

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 5, 880, 881, 884, 886, 891, 960, 966, 984 and 985**

[Docket No. FR-4485-F-03]

RIN 2501-AC59

**Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

**SUMMARY:** This final rule implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility Act of 1998. These changes concern choice of rent, community service and self-sufficiency in public housing, and admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs. This final rule follows a proposed rule published on April 30, 1999, and takes into consideration the public comments received on the proposed rule.

**DATES:** *Effective Date:* The provisions of this rule are effective on April 28, 2000, except for the provisions of § 5.661, which will become effective when the information collections it contains receive approval from the Office of Management and Budget. The announcement of approval and the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For the public housing and Section 8 tenant-based housing assistance programs—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington, DC, 20410; telephone (202) 708-0744, or the Public and Indian Housing Resource Center at 1-800-955-2232.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6138, Washington, DC, 20410; telephone (202) 708-3000.

(With the exception of the telephone number for the PIH Resource Center, these are not toll-free telephone numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal

Information Relay Service at (800) 877-8339. You also may contact the individuals listed above by e-mail: Patricia\_S\_Arnaudo@hud.gov and Willie\_Spearmon@hud.gov.

**SUPPLEMENTARY INFORMATION:***Organization of this Preamble*

## I. Background

## II. Changes Made at the Final Rule Stage

- A. Reorganization of program regulations
- B. Common occupancy requirements
- C. Section 8 project-based programs
- D. Public housing program
- E. Removal of outdated references to federal preferences
- F. Summary of regulatory changes
  - 1. Family disclosure of HUD notice concerning family income—§ 5.240 (proposed rule § 5.211)
  - 2. Selection preferences—§§ 5.655 and 960.206 (proposed rule § 5.410)
  - 3. Definition of economic self-sufficiency program—§ 5.603(b)
  - 4. Income eligibility and income targeting for admission—(For most Section 8 project-based programs, § 5.653; for public housing, § 960.202) (proposed rule § 5.607)
  - 5. Annual income—§ 5.609
  - 6. Adjusted income—§ 5.611
  - 7. Public housing self-sufficiency incentives—§ 960.255 (proposed rule § 5.612)
  - 8. Choice of rent in public housing—§ 960.253 (proposed rule § 5.614)
  - 9. Minimum rent—5.630(b) (proposed rule § 5.616)
  - 10. Public housing and Section 8 tenant-based assistance programs: How welfare benefit reduction affects family income—§§ 5.603 and 5.615 (proposed rule § 5.618)
  - 11. Occupancy by police officers in public housing and Section 8 project-based housing—§§ 5.661 and 960.503-505
  - 12. How PHA administrators service requirement—§ 960.605
  - 13. Assuring resident compliance—§ 960.607
  - 14. Definitions—§ 984.103
  - 15. Administrative fees—§ 984.302
  - 16. Utility reimbursements—§ 5.632
  - 17. Family income and verification—§ 960.259

## III. Discussion of the Public Comments

- A. General
- B. Using Computer Matching—Results—Family disclosure of income (proposed rule § 5.211; final rule § 5.240)
- C. Repeal of Preference for Elderly, Disabled, and Displaced over Other Single Persons (proposed and final rule § 5.405)
- D. Repeal of Federal Preferences (proposed rule: removed §§ 5.415, 5.420, 5.425 and 5.430 and revised § 5.410; final rule removes in addition to above §§ 5.405 and 5.410, adds a new § 5.655, and revises §§ 960.204-960.206)
- E. Income Targeting (proposed rule § 5.607; final rule §§ 5.653 and 960.202)

F. Annual Income, Adjusted Income (proposed and final rule §§ 5.603, 5.609, and 5.611)

1. Exclusions vs. Deductions  
2. Permissive Deductions—Applicable to Public Housing Only

G. Minimum Rents (proposed rule § 5.616; final rule § 5.630)

H. Self-Sufficiency Incentives—Public Housing Only (proposed rule § 5.612; final rule § 960.255)

1. Disallowance of Increases in Income as a Result of Employment

2. Individual Savings Account

I. Income Changes Resulting From Noncompliance with Welfare Program Requirements (proposed rule § 5.618; final rule §§ 5.603, 5.613, and 5.615)

J. Rents in Public Housing (proposed rule §§ 5.603 and 5.614; final rule §§ 5.603 and 960.253)

1. Income-Based Rents

2. Flat Rents

3. Family Choice

4. Switching Rent Methods to Lower Rent Because of Financial Hardship

5. Retaining Ceiling Rents

K. New Community Service and Self-Sufficiency Requirements for Public Housing (proposed rule §§ 960.603-960.611; final rule §§ 960.601-960.609)

1. General

2. Exemptions

3. Noncompliance

L. Reexamination and Verification of Family Income and Composition (proposed rule §§ 5.617 and 960.209; final rule §§ 5.657, 960.257, and 960.259)

M. Occupancy by Police Officers and Over-Income Families (proposed and final rule §§ 5.619 and 960.503-960.505)

N. Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (proposed and final rule Part 984)

O. Lease Requirements (proposed and final rule § 966.4)

P. Escrow Deposits (proposed and final rule § 966.55)

## IV. Findings and Certifications

**I. Background**

On April 30, 1999 (64 FR 23460), HUD published a proposed rule that addressed several changes related to admission and occupancy requirements in HUD's public housing and Section 8 assisted housing programs. These were made by the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD appropriations Act, Public Law 105-276, 112 Stat. 2518, approved October 21, 1998) (referred to in this rule as "the 1998 Act") which amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*, "the

1937 Act"). The 1998 Act made comprehensive changes to HUD's public housing, Section 8 tenant-based and project-based programs. Some of the reforms made by the 1998 Act affect public housing only, and others affect Section 8 tenant-based and project-based programs in addition to public housing.

The preamble to the April 30, 1999 proposed rule provided a detailed overview of the changes made to admission and occupancy requirements for the public housing and Section 8 housing assistance programs by the 1998 Act. The preamble to the proposed rule also addressed admission and occupancy provisions of the 1998 Act that are already in effect, and those admission and occupancy provisions proposed to be implemented through the April 30, 1999 rule. The preamble to the April 30, 1999 proposed rule also listed which sections of the 1998 Act were addressed by the proposed rule, and which HUD programs were affected by the changes. This information was described in the preamble to the April 30, 1999 proposed rule, and also presented in chart form (see 64 FR 23462). The preamble to this final rule does not repeat that information.

In addition to the rulemaking, HUD published a notice in the **Federal Register** on August 6, 1999 (64 FR 42956), which provided guidance pending publication of this final rule. That notice instructed PHAs to implement certain rent provisions effective October 1, 1999, based on the proposed rule. The notice stated that PHAs following the guidance would not be penalized for any changes made by HUD to the proposed rule provisions at the final rule stage and would be provided adequate time to adjust their policies.

The public comment period on the proposed rule closed on June 29, 1999. At the close of the public comment period, HUD had received 113 public comments. The commenters included housing authorities, national organizations representing housing authorities or residents, property managers, organizations representing victims of domestic violence, legal services organizations, policy organizations, and city and county organizations that provide housing or human services. All the comments were carefully considered and significant issues raised by the comments are addressed in Section III of this preamble. Section II of this preamble, which immediately follows, highlights the changes made at this final rule stage.

## II. Changes Made at the Final Rule Stage

### A. Reorganization of Program Regulations

At this final rule stage, HUD has reorganized the program regulations in a number of ways to make it easier to find and view specific requirements that apply to a particular program. Therefore, the provisions on preferences for admission and income targeting for the public housing and Section 8 tenant-based assistance programs, as well as public housing choice of rents, were moved from Part 5 to the applicable program regulations (24 CFR part 960 for public housing, and 24 CFR part 982 for the Section 8 tenant-based assistance programs). Provisions that only apply to Section 8 tenant-based assistance programs were covered in the Housing Choice Voucher Program final rule (amendments to 24 CFR part 982), published October 21, 1999 (64 FR 56894–56915). Most of the tenant-based program public comments were addressed in that rule.

### B. Common occupancy requirements

Part 5 is reorganized by grouping common requirements for determination of "family income" and "family payments" that apply to both Section 8 and public housing.

The rule adds a heading for provisions on "family income" (§ 5.609 to § 5.632). The provisions under this heading cover determination of annual income (§ 5.609), adjusted income (§ 5.611), cooperation with welfare agency (§ 5.613), and effect of welfare benefits reduction on family income (§ 5.615).

The rule also adds a heading for provisions on "family payment" (§ 5.628 to § 5.632). The provisions under this heading cover determination of total tenant payment (§ 5.628), minimum rent (§ 5.630), and utility reimbursements (for the public housing and Section 8 programs, except for the Section 8 voucher program) (§ 5.632).

### C. Section 8 Project-Based Programs

Before this rule, there was no place to group regulatory "occupancy requirements" that only apply to the Section 8 project-based assistance programs. This rule therefore adds a new heading in 24 CFR part 5 to consolidate occupancy requirements for the various Section 8 project-based assistance programs (§§ 5.653 to 5.661). The provisions for Section 8 project-based assistance under this heading cover determination of income eligibility and income targeting (§ 5.653), owner selection preferences

(§ 5.655), family information and verification (§ 5.659), and approval for security personnel to live in a project (§ 5.661).

### D. Public Housing Program

For a clearer presentation, the final rule reorganizes and consolidates public housing admission and occupancy requirements in the existing part 960.

Subpart A of part 960 specifies that part 960 applies to public housing and lists defined terms. Subpart A also states the requirement to administer public housing in accordance with applicable civil rights laws and regulations, the PHA duty to affirmatively further fair housing, and the requirement for the PHA to submit applicable equal opportunity certifications.

Subpart B of part 960 reorganizes, revises, and consolidates public housing admission requirements. This subpart covers:

- requirements for eligibility and for targeting assistance to extremely low income families (§ 960.202);
- policies and criteria for selecting families (§§ 960.204 and 960.205);
- waiting list and local preferences in admission (§ 960.206).

Subpart C of part 960 reorganizes and consolidates public housing requirements concerning reexamination of income and determination of rent for public housing residents. This subpart covers:

- the new choice of rent requirements under the 1998 Public Housing Reform Act, that allow the family to choose annually whether to pay a flat market-based rent or an income-based rent (§ 960.253);
- the requirement for the PHA to disregard increases in income as a result of employment in calculating income-based rent (§ 960.255);
- policies on regular and interim reexamination of family income and composition (§ 960.257);
- requirements for obtaining and verifying family information (§ 960.259); and
- restrictions on eviction when family income increases (§ 960.261).

A new subpart E of part 960 contains provisions describing the circumstances in which a PHA may permit occupancy of public housing units by persons who are not eligible for assistance in the public housing program:

- A PHA with a small public housing program (fewer than 250 units) may lease a public housing unit to "over-income" families—who are not income eligible for admission to the public housing program (§ 960.503).
- A PHA may allow professional police officers to reside in public housing to

increase security for public housing residents (§ 960.505).

Subpart F of part 960 states the requirements for PHA administration of the new community service and economic self-sufficiency requirements for public housing residents under the 1998 Public Housing Reform Act. The rule also incorporates related changes in the public housing lease and grievance requirements at 24 CFR part 966. These include amendments concerning the term and renewal of a public housing lease in accordance with the 1998 law (§ 966.4).

One change made to § 966.4(l) is to clarify the relationship between a revision to the lease and the right of a PHA to terminate tenancy. Section 966.3 provides that the PHA can modify the lease at any time during the lease term, so long as it follows the requirements of notice to tenants and resident organizations and consideration of their comments before adopting any new lease form. That remains unchanged. This rule does modify the provisions for a written rider executed by both parties (§ 966.4(o) and (p)) and moves it to a new location, § 966.4(a)(3). The revised § 966.4(a)(3) provides that the lease may be modified at any time by written agreement of the tenant and the PHA. The rule also adds a provision concerning termination of tenancy to § 966.4(l), to permit a PHA to terminate a tenancy if the tenant refuses to accept a revision to the lease after being given *at least* 60 days notice of its proposed effect and being allowed a reasonable time to respond to the offer.

#### *E. Removal of Outdated References to Federal Preferences*

A number of the regulations for Section 8 project-based programs continued to include a paragraph concerning the federal preferences, which have been eliminated by statute, and outdated references to parts 812 and 813, which no longer exist. Therefore, these superfluous references to Federal preferences are removed and the outdated references to parts 812 and 813 are corrected in this rule. (See the revisions to parts 880, 884, 886, and 891.) HUD will make any necessary conforming changes to parts 882 and 982, to reflect changes in income targeting, owner selection, and family information and verification in a separate rule.

#### *F. Summary of Regulatory Changes*

HUD also made the following changes to the April 30, 1999 proposed rule.

1. Family disclosure of HUD notice concerning family income—§ 5.240 (proposed rule § 5.211).

The final rule provides that a family must promptly furnish to the responsible entity (the PHA or owner responsible for determining family income) any letter from HUD concerning the amount or verification of family income. This requirement applies to a family that resides in a dwelling unit with assistance in the public housing program or the Section 8 tenant-based assistance program, or for which project-based assistance is provided under Section 8, Section 202, or Section 811. (The rule implements section 3(f) of the 1937 Act (42 U.S.C. 1437a(f)), as amended by the 1998 Public Housing Reform Act, and as further amended by the HUD FY 2000 appropriation act (Public Law 106-74, section 214(a), approved October 20, 1999. The FY 2000 appropriation extends applicability of this provision from just public housing and Section 8 tenant-based assistance, as provided under the 1998 act, to project-based assistance under Section 8, Section 202, and Section 811.)

The PHA or other responsible entity must verify the information received from the family and make appropriate adjustments in the amount of income, rent, or housing assistance payment. With respect to families no longer in occupancy, the PHA or other responsible entity should pursue abuses regarding excess rental assistance, such as reporting the deficiency of payments to credit bureaus, if it is practical to do so, and recovery of such amounts, if they have the resources to do so.

2. Selection Preferences—§§ 5.655 and 960.206 (proposed rule § 5.410).

#### Residency Preference

HUD has clarified at § 5.655 (for Section 8 projects) and § 960.206(b)(1)(i) (for public housing) that residency requirements are still prohibited, and that any residency preferences must be implemented in accordance with applicable nondiscrimination and equal opportunity requirements listed at § 5.105(a). The final rule provides that use of a residency preference may not have the “purpose or effect” of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability or age of any member of an applicant family.

“Residency preference” is defined as a preference for admission of persons who reside in a specified geographic area. For public housing, the rule provides that the PHA may adopt a preference for admission of a resident of a county or municipality. However, the PHA may not adopt a residency

preference for an area smaller than a county or municipality.

A PHA that administers a public housing program or a Section 8 tenant-based program must include any PHA residency preference in its statement of PHA policies that govern eligibility, selection and admission to the program. (For public housing, see § 960.206(b)(1).) Such policies are included in the PHA Plan submitted to HUD, in accordance with 24 CFR part 903. HUD may disapprove the plan if any part of the plan is not consistent with applicable laws and regulations—including the applicable civil rights authorities and regulations. In the case of the Section 8 project-based assistance programs, the owner of a project must adopt a written tenant selection plan in accordance with HUD requirements, including civil rights authorities and regulations (see § 5.655(b)(2)).

If an owner adopts a residency preference, it must use one approved by HUD. There are several ways that a residency preference could be approved by HUD: (1) Prior approval in the owner's affirmative fair housing marketing plan; (2) prior approval in the jurisdiction's PHA Plan; or (3) modification of the owner's affirmative fair housing marketing plan. In applying any residency preference, the rule requires the owner to treat an applicant who is working or has been hired in the residency preference area as a resident of the residency preference area. The project owner may treat as residents applicants who are graduates of, or active participants in, education and training programs in the residency preference area if the education or training program is designed to prepare individuals for the job market.

#### Preference for Working Families

HUD also has clarified, in § 960.206(b)(2) (public housing) and in § 5.655 (Section 8 projects), that a PHA or Section 8 project owner may adopt a preference for working families (families where the head, spouse, or sole member, is employed). If the responsible entity chooses to adopt a working family preference, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities, as defined for eligibility purposes (see § 5.403(a)). A working family preference cannot be based on the amount of earned income. (See § 5.655(c)(2)(ii).) By statute and this rule, the owner is prohibited from preferring higher income families over families of lower income to occupy a project or unit (§ 5.655(b)(3); 42 U.S.C. 1437n(c)(4)).

#### Preference for Person With Disabilities

A Section 8 owner or PHA administering public housing may adopt a preference for admission of families that include a person with disabilities, but not for persons with a specific disability (§§ 5.655(c)(3) and 960.206(b)(3)).

#### Preference for Victims of Domestic Violence

The PHA or owner should consider whether to adopt a preference for victims of domestic violence, as provided in §§ 5.655(c)(4) and 960.206(b)(4).

#### Preference for Single Persons

The law no longer mandates a federally directed priority for elderly or disabled over other single persons. The final rule specifies that the responsible entity may adopt a preference for admission of single persons who are elderly, displaced, homeless, or persons with disabilities over other single persons (§§ 5.655(c)(5) and 960.206(b)(5)).

#### 3. Definition of economic self-sufficiency program—§ 5.603(b).

HUD has added a new definition of the term “economic self-sufficiency program”. It is defined as any program designed to encourage, assist, train, or facilitate the economic independence of assisted families or to provide work for such families. Economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any other program necessary to ready a participant to work (such as substance abuse or mental health treatment). As defined in this rule, “economic self-sufficiency program” includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). (See the definition of work activities at § 5.603(c).)

The new definition of the term “economic self-sufficiency program” is used in the following regulatory provisions, pursuant to the Public Housing Reform Act:

- Provision that family income (for the public housing and Section 8 tenant-based assistance programs) includes welfare benefits reduced because of family failure to comply with welfare agency requirements to participate in an economic self-sufficiency program (§ 5.615); and
- The requirement for public housing residents to participate in an economic self-sufficiency program or other eligible activities (24 CFR part 960, subpart F).

4. Income eligibility and income targeting for admission—(For most Section 8 project-based programs, § 5.653; for public housing, § 960.202) (proposed rule § 5.607).

In the final rule, provisions concerning Section 8 project-based admission and income targeting are found in § 5.653, and for public housing in § 960.202.

#### Eligibility

The rule provides that no family other than a low income family is eligible for admission to the public housing program or the Section 8 project-based assistance program (other than the project-based voucher program) (§ 5.653(b); § 960.202(a)). The final rule adds a definition of the term “low income family” (in §§ 5.603), replacing a previous statutory reference. Generally, “low income” designates a family whose income does not exceed 80 percent of area median income, with certain adjustments.

#### Targeting

The Public Housing Reform Act targets available Section 8 and public housing units to families with incomes below thirty percent of the area median income (Section 513 of the Act). In the rule, such families are called “extremely low income families”.

The law sets the minimum percent of Section 8 or public housing units that must be rented to extremely low income families each year. In the Section 8 tenant-based program, the PHA must generally target at least 75 percent of annual admissions to such families. In public housing, the PHA must generally target at least 40 percent of annual admissions to such families (with credit if the PHA exceeds the target number of admissions in its Section 8 tenant-based program). In the Section 8 project-based programs, the owner must target 40 percent of annual project admissions to units assisted under the program to extremely low income families.

As originally enacted, the Public Housing Reform Act provided that HUD was authorized to adjust the extremely low income (30 percent of median income) limit only “for smaller and larger families” (42 U.S.C. 1437n). However, the law was subsequently amended to also permit adjustments necessary “because of unusually high or low family incomes” (at section 205 of the fiscal year 2000 HUD appropriation act, Public Law 106–74, 10/20/99). In the final rule, the definition of the term “extremely low income family” is revised to incorporate this statutory change (§ 5.603). This definition applies

to the three categories of 1937 Act housing subject to income targeting.

The final rule restates the provisions that specify public housing targeting requirements, including the calculation of public housing targeting credits for admission to the PHA’s tenant-based voucher program (§ 960.202(b)).

The final rule provides that the responsible entity (PHA or owner) must comply with HUD prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements (§ 5.653(f); § 960.202(d)).

#### 5. Annual Income—§ 5.609.

##### a. Income of minors—§ 5.609(c)(1).

The proposed rule would have removed the existing provision that specifies that annual income does not include earned income of minors and made it a deduction instead. That proposal is not adopted in this final rule.

b. Resident stipend for member of PHA governing board (§ 5.609(c)(iv)). The Public Housing Reform Act provides that the governing board of a PHA must generally contain at least one member who is directly assisted by the PHA (42 U.S.C. 1437(b)). To support and facilitate implementation of this new statutory requirement, HUD is clarifying that the resident service stipend exclusion covers amounts received by residents who serve on the PHA governing board. HUD is concerned that without this clarification, residents may be discouraged from participating. This provision was not included in the April 30, 1999 proposed rule. However, the added language does not reflect any change in HUD’s position, but instead clarifies what is permissible under current regulations.

#### 6. Adjusted Income—§ 5.611.

The rule is revised (at § 5.611(a)(3)(ii)) to clarify that the allowance for unreimbursed reasonable attendant care and auxiliary apparatus expenses may not exceed the employment income received by family members (including the person with disabilities) who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

#### 7. Public housing self-sufficiency incentives—§ 960.255 (proposed rule § 5.612).

The final rule comprehensively restates and revises the provisions for disallowance of increases in income as a result of employment in calculation of annual income of a public housing family after a family member is first employed (§ 960.255). The new provisions include:

- Definitions of disallowance, previously unemployed, and qualified family (§ 960.255(a)).
- A revised technical description of the calculation of the disallowance during the initial twelve months, the second twelve month exclusion and phase in, and the maximum four year period of disallowance for increases in income as a result of employment of individual family members (§ 960.255(b)).
- Specification that the disallowance of increases in income as a result of employment only applies for calculation of rent after admission to the program, but does not apply in determination of income eligibility or income targeting for admission (§ 960.255(c)).
- Specification that the disallowance of increases in income as a result of employment applies to persons who are or were assisted, within 6 months, under any State program of temporary assistance for needy families funded under part A of title IV of the Social Security Act only if the amount of TANF-funded assistance, benefits or services is at least five hundred dollars.

During the first 12 months after commencement of employment of a family member, the PHA disallows the incremental increase in a family member's income as a result of employment. In the second 12-month period, the PHA disallows 50 percent of the incremental increase. The final rule clarifies that the amount of the incremental increase in income is calculated by comparing the amount of the family member's income before the beginning of qualifying employment to the amount of such income after beginning the employment. It is this amount that is subject to being disregarded.

The rule is revised to specify the maximum disallowance for income as a result of employment of an individual family member (§ 960.255(b)(3)). The family may receive the disallowance only as follows:

- Disallowance is limited to one forty-eight month period from the beginning of the first month after commencement of qualifying employment of an individual family member; and
- During this forty-eight month period, for a maximum of twelve months, the incremental increase is disregarded, and for a maximum of twelve months, 50 percent of the incremental increase is disregarded. (If the period of increased income does not last for 12 consecutive months, the disallowance

period may be resumed at any time within the 48 month period. However, each qualifying family member is only entitled to a total of 12 months of each disallowance.)

The final rule also specifies that the disallowance of an incremental increase of income as a result of employment is only applied to determine the annual income of families residing in public housing units, not to determine annual income of applicants for purposes of income eligibility or targeting (§ 960.255(c)).

#### 8. Choice of Rent in Public Housing—§ 960.253 (proposed rule § 5.614).

Once a year, the PHA must give a public housing tenant the opportunity to choose between paying a “flat rent,” based on the unit's rental value, or an “income-based rent,” based on family income. The final rule substantially revises and clarifies the regulatory requirements for choice of rent that are provided in the 1998 Public Housing Reform Act.

#### Flat rent (§ 960.253(b))

The final rule provides that the flat rent is based on the market rent. The market rent is the rent charged for comparable units in the private, unassisted rental market at which the PHA could lease the public housing unit after preparation for occupancy. In determining the flat rent, a PHA must consider:

- The location, quality, and the size, type and age of the unit; and
- Any amenities, housing services, maintenance, and utilities provided by the PHA.

The PHA must use a reasonable method to determine flat rent and must keep records that document this method. The PHA records must show how the PHA determines flat rents in accordance with its method and document flat rents offered to families.

For families who pay an income-based rent, the PHA reimburses the family if the allowance for tenant paid utilities is greater than the family's total tenant payment. This is called a “utility reimbursement.” The final rule provides that the PHA will not pay a utility reimbursement for a family that has chosen to pay a flat rent for its home.

#### Income-based rent (§ 960.253(c))

If a family chooses to pay an “income-based rent,” the tenant rent paid to the PHA is based on family income and the PHA rental policies. The PHA will use a percentage of family income or some other reasonable system to set income-based rents.

The PHA has broad flexibility in deciding how to set income-based rent

for its tenants. However, the income-based tenant rent plus the PHA's allowance for tenant paid utilities may not exceed the “total tenant payment” as determined by a statutory formula.

The rule provides that if the utility allowance for tenant paid utilities exceeds the total tenant payment, the PHA must pay the excess as a “utility reimbursement” on behalf of the family. The rule provides that the PHA may choose to pay the utility reimbursement either to the family, or directly to the utility supplier for the utility bills on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier (§ 960.253(c)(3)).

#### 9. Minimum Rent—§ 5.630(b) (proposed rule § 5.616).

Section 8 and public housing families are required to pay a minimum rent (42 U.S.C. 1437a(a)(3); § 5.630(a)). However, the family is exempt from minimum rent if the family shows that it is unable to pay the minimum rent because of a “financial hardship” situation (§ 5.630(b)).

In the public housing program, the Section 8 certificate and voucher programs (including both tenant-based and project-based assistance under these programs), and the Section 8 moderate rehabilitation program, the PHA may establish a monthly minimum rent from \$0 to \$50 for a family (§ 5.630(a)). In the public housing and the Section 8 tenant-based assistance programs, the PHA policies for determining the amount of minimum rent up to this maximum are described in submissions with the PHA's annual plan, and in the PHA's Section 8 administrative plan (§ 903.7). In the other Section 8 programs, the owner is required to charge a fixed minimum rent of \$25 set by HUD.

The final rule modifies the provision that allows a hardship exemption for a family that has lost eligibility or is awaiting an eligibility determination for a Federal, State, or local assistance program. The rule provides that the exemption applies to a family with a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996 (§ 5.630(b)(1)).

The final rule provides that hardship includes a situation where the family would be evicted “because it is unable to pay the minimum rent” (§ 5.630(b)(1)(ii)). The rule also provides that the financial hardship exemption only applies to payment of minimum rent—not to rent based on the other

branches of the formula for determining the total tenant payment (§ 5.630(b)(2)(iii)(C)).

10. Public housing and Section 8 tenant-based assistance programs: How welfare benefit reduction affects family income—§§ 5.603 and 5.615 (proposed rule § 5.618).

A welfare agency may reduce welfare benefit payments to sanction a family for noncompliance with welfare self-sufficiency or work activities requirements. The 1998 Public Housing Reform Act provides that the rental contribution of a family assisted in the public housing or tenant-based assistance programs “may not be decreased” if welfare benefits are reduced for this reason (Public Law 105–276, section 512(d); 42 U.S.C. 1437j(d)). This requirement is triggered when a family’s rental contribution is calculated on the basis of family income. The law requires that family income include the amount of the welfare benefits that would have been paid if not for the welfare agency sanction. Therefore, the family rental contribution is not decreased because of the welfare sanction. The final rule substantially revises the proposed regulation to implement the statutory requirement.

For this purpose, the final rule (§ 5.615(b)) adds three defined terms to designate and describe key statutory and regulatory concepts.

#### Covered Families

The statutory term “covered families” designates the universe of families who are required to participate in a welfare agency economic self-sufficiency program and may, therefore, be the subject of a welfare benefit sanction for noncompliance with this obligation. As defined in the rule, “covered families” means families who receive welfare assistance or other public assistance benefits from a State or other public agency under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

#### Specified Welfare Benefit Reduction

The term “specified welfare benefit reduction” designates those reductions of welfare agency benefits (for a covered family) that may not result in a reduction of the family rental contribution. As defined in the rule, “specified welfare benefit reduction” means a reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the

welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

#### Imputed Welfare Income

The term “imputed welfare income” is defined in this rule, “imputed welfare income” means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family’s annual income. This amount is included in family annual income and, therefore, reflected in the family rental contribution based on this income. The final rule provides that a family’s annual income includes the amount of imputed welfare income plus the total amount of other annual income (§ 5.615(c)(1)). However, the rule provides that the amount of imputed annual income is offset by income from other sources received by the family that starts after the sanction is imposed.

The rule is revised to clarify the relationship between the welfare agency, which is responsible for determining the amount of any specified reduction in welfare benefits, and the PHA, which is responsible for determining family income (including any imputed welfare income because of the welfare agency’s reduction of welfare benefits).

The 1998 Public Housing Reform Act provides that the PHA must count imputed welfare income of a covered family only after the PHA has received notice of the welfare reduction from the welfare agency (42 U.S.C. 1437j(d)(4)). Accordingly, the rule provides that the PHA bases its imputed welfare income on information provided to it by the welfare agency (§ 5.615(c)(1)). The rule provides that, at the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member and the reason for such reduction (§ 5.615(c)(2)). The welfare agency will also inform the PHA of any subsequent change in the term or amount of a specified benefit reduction.

The implementation of the statutory imputed rent requirement (i.e., the prohibition of a decrease in rent paid by the family because of the welfare sanction), as well as other efforts to promote economic independence of assisted families, requires close cooperation between the PHA and local welfare agencies. The final rule, therefore provides that PHAs must make their best efforts to enter into cooperation agreements with welfare

agencies (§ 5.613). These cooperation agreements will be designed:

- To target public assistance, benefits and services for families assisted in the PHA’s Section 8 and public housing programs to achieve self-sufficiency; and
- To verify information on welfare benefits for applicants and participants in these programs.

#### Function of PHA

The PHA is responsible for determining the amount of imputed welfare income that is included in the family’s annual income—which is used to determine maximum income-based rent for a public housing family—and the amount of the housing assistance payment for a voucher family (§ 5.615(c) and (e)(1)). During the term of the welfare agency’s welfare benefit reduction, the PHA includes imputed welfare benefits in family income, as determined by the PHA at an interim or regular reexamination (§ 5.615(c)(3)). For this purpose, as provided in the law, the PHA uses the information provided to the PHA by the welfare agency. The welfare agency informs the PHA of the fact, amount, and reason for a welfare benefit reduction (§ 5.615).

Under the rule, the PHA is required to ask welfare agencies to inform the PHA of any welfare benefit reduction that may result in imputed welfare income, the term of the reduction, and the amount of a specified welfare benefit reduction. In computing a family’s annual income, the PHA must include the imputed welfare income because of the welfare agency determination to reduce the family’s welfare benefit. However, the final rule specifies that the PHA is not responsible for determining that a reduction of welfare benefits was correctly determined by the welfare agency in accordance with welfare agency requirements and procedures (§ 5.615(e)(2)). The rule states that:

Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency’s normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency’s determination of a specified welfare benefit reduction. (§ 5.615(e)(3))

#### Review of PHA decision

In the public housing program and the Section 8 tenant-based assistance programs, the family may seek an administrative hearing for review of the PHA determination of family income, or the calculation of the family rent or housing assistance payment, in

accordance with HUD requirements. The final rule specifies that the family may invoke the PHA's regular program hearing processes for review of a PHA determination of the amount of imputed welfare income in accordance with HUD requirements (§ 5.615(d)).

The final rule provides that if a family (public housing tenant or Section 8 participant) claims that the PHA has not correctly calculated the amount of imputed welfare income, and if the PHA denies the family's request to modify such amount, the PHA must give the family written notice of such denial, with a brief explanation of the basis for the PHA determination. The PHA notice must state that if the family does not agree with the PHA determination, the family may request a hearing in accordance with the applicable program hearing procedures (the public housing grievance procedures under part 966 or the Section 8 hearing procedures under § 982.555). In the case of public housing, the rule specifies that the tenant is not required to deposit the disputed amount in escrow in order to obtain a grievance hearing. (There is no parallel escrow requirement for Section 8. The participant may obtain a hearing without deposit of an escrow.)

11. Occupancy by police officers in public housing and Section 8 project-based housing—§§ 5.661 and 960.503–505.

#### Section 8 Projects

The final rule provides (§ 5.661) that a Section 8 project owner may ask the contract administrator (PHA or HUD) for approval to lease a Section 8 assisted unit to a police officer or other security personnel, for the purpose of increasing security for Section 8 families residing in the development. The rule defines the terms "security", "security personnel" and "police officer." Security includes the protection of project residents, including resident project management, from criminal or other activity that is a threat to person or property, or that arouses fear of such threat. Security personnel means a police officer or other qualified security officer. A police officer is a full-time duly licensed police officer. Other security personnel must have adequate training and experience to provide security for project residents.

The owner's application must include:

- A description of criminal activity in the project and community;
- The effect of criminal activity on resident security;
- Qualifications of proposed security personnel who will live in the housing;

- How the owner proposes to check their backgrounds and qualifications;
- Disclosure of a family relationship between the owner and any security personnel;
- How residence by security personnel will increase security of Section 8 residents;
- Rent to be paid and terms of occupancy by resident security personnel.

The contract administrator has discretion whether to approve or disapprove occupancy by security personnel in a Section 8 project, and such approval may be withdrawn at the discretion of the contract administrator. The amount of contract rent for a unit does not change when the unit is occupied by security personnel. However, the monthly housing assistance payment to owner equals the contract rent (as determined in accordance with the Housing Assistance Payments Contract and HUD requirements) minus the amount of monthly rent payable by security personnel residing in the housing.

#### Public housing

For public housing, before a PHA permits occupancy by police officers, the PHA must include in the PHA Plan or supporting documents a description of the terms and conditions for them to occupy units and a statement that this action was taken to increase security for public housing residents.

12. How PHA administers service requirement—§ 960.605. HUD has revised the rule to clarify that the PHA's notice to the resident on the community service and economic self-sufficiency requirements must also describe the process to change exemption status of family members.

13. Assuring Resident Compliance—§ 960.607. HUD has revised § 960.607(c) to clarify how a PHA should respond to a report that an individual covered by community service has moved from the household.

14. Definitions—§ 984.103. HUD has revised the definition of "welfare assistance" for the FSS program to refer only to cash maintenance payments for ongoing basic needs, funded under Federal or State welfare programs such as the TANF program. The definition borrows from the Department of Health and Human Services' TANF definition of "assistance" and excludes nonrecurring short term benefits designed to address individual crisis situations. For FSS purposes, the following do not constitute welfare assistance: food stamps; emergency rental and utilities assistance; and SSI, SSDI, and Social Security.

15. Administrative fees—§ 984.302. HUD has revised § 984.302(a) to delete the reference to the minimum program size of the public housing FSS programs. The performance funding system provides for the inclusion of reasonable eligible administrative costs for both mandatory and voluntary public housing FSS programs.

16. Utility Reimbursements—§ 5.632. HUD has revised the provision previously found at § 5.615, which required PHAs to get the consent of a public housing family before sending a utility reimbursement directly to the utility supplier. Section 5.632 now allows PHAs to send the utility reimbursement directly to the utility supplier without the consent of the public housing family that is paying an income-based rent. This change was first mentioned in the preamble to the proposed rule, Streamlining the Public Housing Admission and Occupancy Requirements, published in the **Federal Register** on May 9, 1997 (62 FR 25731). A similar provision has been in effect since July 3, 1995, for the tenant-based Section 8 program. In response to a comment received on that rule, § 5.632 also requires that the PHA notify the public housing family of the amount paid to the utility supplier.

17. Family Income and Verification—§ 960.259.

HUD has made a conforming change, at § 960.259, to mirror the Section 8 requirement for third party verification of information. If third party documentation is not available, the reason must be documented in the file.

In addition to these substantive changes, HUD has made editorial changes in some of the regulations, such as adding subheadings to certain paragraphs to make the subject matter of the paragraph easily identifiable, and dividing a lengthy paragraph into subparagraphs. As HUD proceeds with the rulemaking required under the 1998 Act to make the changes required to various components of the public housing and Section 8 program regulations, HUD may, at a later date reorganize Chapter IX of the HUD regulations, as well as certain subparts of part 5, to better reflect where requirements applicable to public housing and the Section 8 programs are identical and where they differ, and to better highlight the new additions to the regulations such as the PHA Plans, the Capital Fund and the Operating Fund.

### III. Discussion of the Public Comments

#### A. General

This section presents HUD responses to the significant issues raised by the

individuals and entities who submitted comments on the April 30, 1999 proposed rule. The organization of the discussion of public comments generally follows the organization of changes made to admission and occupancy requirements as set out in Section II of the preamble of the April 30, 1999 proposed rule. The heading "Comment" states the comment made by a commenter or commenters and the heading "Response" presents HUD's response to the issue or issues raised by the commenter or commenters.

There were certain concerns raised by the commenters that were directed to more than one change in admission and occupancy requirements. The majority of the commenters expressed concern about the administrative burden imposed by the changes, particularly the community service requirements. Some commenters also were concerned that the income targeting requirements will substantially reduce affordable housing for some persons, such as elderly families in need whose income may be above the targeting requirements. As the commenters recognized, these are statutory requirements and the flexibility that HUD has to implement these statutory requirements is very limited.

Other commenters recognized that there are limits to the amount of information that HUD can provide in regulatory text, and requested that HUD provide additional guidance and information on many of the new admission and occupancy requirements. HUD recognizes that the changes made by the 1998 Act to public housing and Section 8 programs are significant and there is much information to absorb. As HUD stated in its guidance published on February 18, 1999 (64 FR 8192), HUD staff, and especially staff of HUD's Office of Public and Indian Housing at Headquarters and in the Field Offices are ready to assist PHAs and owners in understanding the provisions of the 1998 Act, and with carrying out their responsibilities under the new statute. As noted in the February 18, 1999 guidance, HUD's Office of Public and Indian Housing has established a website that is devoted to providing additional information about the various provisions of the statute, as well as additional information and guidance on 1998 Act rules issued by HUD. (See <http://www.hud.gov/pih/legistitlev.html>; Public Housing Reform link; the Multifamily Tenant Characteristics System (MTCS) website can be found at <http://www.hud.gov/pih/systems/mtcs/pihmtcs.html>.) HUD intends to provide additional training and guidance during the coming year.

The following provides a discussion of specific issues raised by the commenters.

*B. Using Computer Matching Results—Family Disclosure of Income (Proposed Rule § 5.211; Final Rule § 5.240)*

*Comment.* The final rule should (1) provide for HUD to notify the PHA that the income discrepancy letter was sent to the family, and (2) specify the time limit for the family to contact the PHA. The rule should provide that PHAs be notified by HUD of the date that the family was sent an income discrepancy letter or mailed a copy of the letter, and that a time limit of less than 10 working days be established for the family to contact the PHA.

*Response.* PHAs or owners, as the responsible entity, have the primary responsibility for income verification, reexamination, and debt collection. The responsible entity can enforce § 5.240(b) and implement § 5.240(c) through their contractual relationships with assisted families. HUD's authority to use Federal tax return data from the Internal Revenue Service (IRS) is limited by statute to disclosure to tenants. HUD will provide responsible entities with a list of tenants to whom it has sent income discrepancy letters. The rule does require tenants who receive such letters, containing information about Federal tax return data, to disclose the letter to the responsible entity promptly. Usually, the responsible entity should interpret this prompt submission requirement to mean that the family must disclose the letter within 30 days of receipt.

*Comment.* The final rule should require PHAs to take appropriate action (for example, to recover excessive housing assistance received by tenants) only with respect to current residents and tenant-based participants and not former residents and participants.

*Response.* The final rule has been modified to reflect the language of section 508(d) of the 1998 Act by limiting application of the income matching provisions to families that (1) reside in a public housing dwelling unit; (2) receive Section 8 assistance; or (3) reside in a project assisted under the Section 202 or Section 811 program. Responsible entities who have the resources to pursue abuses regarding recovery of excess rental assistance of former tenants may do so.

*C. Repeal of Preference for Elderly, Disabled, and Displaced Over Other Single Persons (Proposed and Final Rule § 5.405) (Section 506 of the 1998 Act Amending Section 3(b) of the 1937 Act)*

*Comment.* The repeal of the preference for elderly, persons with disabilities, and displaced persons over other single persons will cause a shortage of affordable housing for these persons. Without the preference, these groups will face a more difficult time in finding affordable housing.

*Response.* The 1998 Act eliminated the statutory preference for single persons who are elderly, have disabilities, or are displaced over other single persons. However, the repeal of federal preferences does not prevent a PHA from choosing to establish a local preference for single persons who are elderly, have disabilities, are displaced, or are homeless over other single persons.

*Comment.* While it was appropriate for HUD to implement the statutory elimination of Federal preferences, the result is the elimination of the rule in § 5.415(b) that PHAs must give households of elderly persons and persons with disabilities the benefits of any employment preference and not discriminate among applicants based on the amount of employment income.

*Response.* HUD revised § 960.206(b)(2) to include some of the language from former § 5.415, which states that if a working family preference is adopted as a local preference, the preference must be extended to households whose head and spouse, or sole member, is age 62 or older or meets the definition of a person with disabilities.

*Comment.* The final rule should: (1) Expand the implicit meaning of "disabled" in the old rule, as well as in the new § 5.410(c), to give the benefit of employment preferences to those who can provide evidence of a disability, but who may not be receiving benefit payments based on the inability to work; (2) broaden the employment preference exception to include individuals who satisfy the definition of "disabled" under section 3(b)(3)(E) of the U.S. Housing Act of 1937 or otherwise cannot comply with the terms of the preference due to a disability; and (3) exempt those individuals with serious disabilities lasting less than twelve months. These changes are needed to prevent discrimination based on disability status.

*Response.* As noted in the preceding response, HUD has retained some of the language previously found at § 5.415(b) and expanded the benefit to apply to



persons who meet the definition of "persons with a disability", regardless of whether they are receiving disability income. Sections 5.655 and 960.206 remind PHAs and owners that their admission preferences must comply with certain governing statutes, regulations and executive orders pertaining to nondiscrimination, including HUD's affirmative fair housing objectives. In addition, the PHA system of local preferences is included in the PHA Plan, which requires civil rights certifications. (Although § 5.410, which described nondiscrimination provisions has been removed in this final rule, § 5.105(a) lists the applicable requirements.)

*D. Repeal of Federal Preferences (Proposed Rule Removed §§ 5.415, 5.420, 5.425 and 5.430 and Revised § 5.410; Final Rule Removes in Addition to Above §§ 5.405 and 5.410, Adds a new § 5.655, and Revises §§ 960.204–960.206)*

*Comment.* With permanent repeal of Federal preferences, can owners still apply them voluntarily? When federal preferences were suspended, owners were advised that they could still use them if they so chose, and asked whether the permanent repeal of these preferences precludes owners from continuing to exercise this option.

*Response.* By law, the selection of tenants from among eligible applicants is left to the discretion of the owner. Now the owner may choose to use any or all of the federal preferences and may determine the hierarchy of any preferences it adopts.

*Comment.* Many PHAs will continue to use the formerly required federal admission preferences as part of their local preferences, and therefore the final rule should eliminate the duplicate tenant notification requirements when PHAs alter their federal admission preferences. It should be sufficient for PHAs to notify the public and tenants through resident advisory board consultation and the public inspection and hearing requirements associated with the PHA Plan.

*Response.* The public comment process for the PHA Plan provides the method of public consultation concerning the establishment of local preferences. The rule does eliminate a separate process just for approval of preferences, now that the statutory foundation for that provision has been eliminated.

*Comment.* The proposed rule was right to encourage consideration of preferences for individuals who are victims of domestic violence. The final

rule should give battered women priority consideration for housing.

*Response.* The final rule keeps the language of the proposed rule concerning consideration of preferences for individuals who are victims of domestic violence. The final rule, consistent with the statute, eliminates Federal preferences and permits PHAs to establish local preferences, including preferences for victims of domestic violence.

*Comment.* The final rule should require that all preferences be based solely on the need for housing.

*Response.* Consistent with the statute, the rule requires that any local preferences be based on housing needs and priorities, not solely housing need.

*Comment.* The discretion of Section 8 owners to develop their own preferences must be limited to ensure that they do not exclude extremely low-income tenants, minority applicants, or victims of domestic violence.

*Response.* The statute urges PHAs to consider granting a preference for victims of domestic violence in public housing and Section 8 tenant-based programs. Section 8 owners may choose to adopt a preference for victims of domestic violence. Of course, under the new § 5.655, owner preferences are still subject to anti-skipping, residency preference, and fair housing requirements.

*Comment.* The final rule should require resident input on selection preferences for private owners.

*Response.* The law does not require the owner to solicit resident input regarding an owner's selection preferences. The law gives the owner the discretion to develop its own selection preferences. The owner, however, may provide opportunity for resident comment.

*Comment.* Section 5.410(b) needs to clarify that PHAs are not required to add preferences based on public comment regardless of merit.

*Response.* The language in § 960.206(a)(1), "as determined by the PHA," is clear that a PHA has the discretion to determine whether public comments should be adopted.

*Comment.* The admission preference information required to be provided to applicants by § 5.410(h) of the proposed rule should be required to include brief descriptions of the preferences.

*Response.* PHAs generally are aware that the preference information provided to applicants should clearly convey through description who is eligible for the preference. Section 5.410 has been removed in the final rule. The requirement for informing applicants

has been moved to §§ 5.655 and 960.206.

*Comment.* The final rule should include the requirement that PHAs' local preferences must be consistent with the needs identified in the applicable Consolidated Plan(s) and the requirements of civil rights statutes and the obligation to affirmatively further fair housing. It is not sufficient, as the proposed rule states, that a PHA must consider public comments on the Consolidated Plan and the PHA Plan in setting local preferences. The preferences must be consistent with the needs identified in the applicable Consolidated Plans.

*Response.* The system of local preferences is included in the PHA Plan, which requires civil rights certifications. The PHA Plan is the vehicle in which PHAs describe any local preferences and the PHA Plan must be consistent with the Consolidated Plan for the jurisdiction in which the PHA is located.

*Comment.* The final rule should ensure that any local preferences do not result in discrimination against persons protected by civil rights laws by requiring: (1) The PHA or owner to consider the applicable Analysis of Impediments to Fair Housing Choice; (2) the PHA or owner to analyze the potential discriminatory effects of any proposed preference on the protected classes; and (3) the PHA or owner to refrain from setting a preference that will have a discriminatory effect, undermine the ability of the PHA or local jurisdiction to affirmatively further fair housing or remove impediments to fair housing choice, or impede implementation of an affirmative marketing plan.

*Response.* As noted earlier in this preamble, the final rule does require preferences to comply with nondiscrimination requirements. In addition, the final rule reinstates the language of former § 5.415(b) requiring that elderly families and persons with disabilities be given the same preference as working families (§§ 5.655(e)(2) and 960.206(b)(2)). "Working family" means a family whose head, spouse, or sole member is employed. If a Section 8 owner chooses to adopt a working family preference, the preference may not be based on the amount of earned income. This restriction does not apply to selection by a PHA for admission to public housing.

*Comment.* The final rule should provide for HUD approval of residency preferences for compliance with civil rights laws. Although the rule retains the prohibition against residency requirements, the rule fails to include

the former requirement for the Section 8 tenant-based programs that HUD approve residency preferences after review for compliance with civil rights laws, and this omission may be inconsistent with section 511 of the 1998 Act.

*Response.* For both the public housing and Section 8 tenant-based programs, a PHA's residency preferences are part of the PHA's Annual Plan (see new § 903.7(c)). There is no separate HUD approval of a PHA's residency preferences, and the entire plan is subject to input by the Resident Advisory Board (§ 903.13), a public hearing, and public comments (§ 903.17). PHA plan approval requires certification by the PHA of its compliance with civil rights requirements (§ 903.7(o)). Part 960 states that public housing admission policies must contain a statement that any residency preferences will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family. The final rule provides that if an owner adopts a residency preference, it must comport with its Affirmative Fair Housing Marketing plan or be identical to the one in the PHA Plan for the jurisdiction. (See discussion above.)

*E. Income Targeting (Proposed Rule § 5.607; Final Rule § 5.653 and 960.202) (Section 513 of the 1998 Act Amending Section 16 of the 1937 Act)*

*Comment.* The targeting requirement will reduce affordable housing for elderly persons who are not extremely low-income. A significant number of elderly persons are not at or below 30% of median income, and they will lose access to affordable housing as a result of the targeting requirements. Voluntary income targeting should be adopted, not mandatory targeting.

*Response.* The targeting requirement is a statutory requirement, directed to providing housing to those most in need of housing. There are many elderly persons who will be assisted by the targeting requirements. In addition, other HUD programs, for example, HUD's Section 202 Program for Elderly Persons, and programs administered by other public and private entities, will work to maintain affordable housing for those elderly persons who are not at or below 30% of median income.

*Comment.* The Welfare Reform Act employment requirements will make it difficult to meet the public housing admission requirement for 40% extremely low income families, since many families are required to seek and

maintain employment. Additionally, the 40% targeting requirement will cause major lease problems for PHAs who have high rent jurisdictions.

*Response.* The Welfare Reform Act has moved millions of families from welfare to work, but there are many families—including those remaining on welfare and those who have moved into entry level jobs—who remain in need of housing assistance. HUD believes that the reality for most jurisdictions is that it will not be difficult for a jurisdiction to meet the 40% targeting requirement.

*Comment.* The 40% targeting requirement will greatly reduce the number of public housing families who pay a reasonable portion of total tenant payment (TTP).

*Response.* The purpose of targeting is to ensure that some of the neediest families will continue to have access to housing assistance. The number of families served by funding for these programs is an issue not addressed in this rule.

*Comment.* The proposed rule provided, in § 5.607(b)(i), for a limitation of 30 percent of the area median income with "adjustments" for smaller and larger families. The final rule should clarify the type of adjustment that will be used. Additionally, the final rule omits any standard to govern HUD's discretion to determine a higher or lower percent of area median income as may be necessary because of unusually high or low family incomes.

*Response.* The adjustments for smaller and larger families are incorporated into the income limits for the public housing and Section 8 programs, which are issued by HUD each fiscal year.

*Comment.* The targeting requirement simply steers PHAs to focus on percentages rather than families. This will result in families on the waiting list being "skipped" in order to admit another family based solely on income.

*Response.* PHA admission policies to achieve both the goals of reducing poverty and income mixing in public housing may generally include skipping over certain applicants on the waiting list based on incomes. Skipping may be necessary to serve the required percentage of the neediest families (extremely low income). Such skipping is not new, however, with respect to assisted housing admissions; both federal and local preferences always have involved skipping of families on the waiting list in the public housing program, provided it is uniformly applied.

*Comment.* The final rule should exempt small PHAs and PHAs with high

vacancy rates from income targeting requirements. The final rule must specify a standard for good cause requests made by PHAs to establish different targeting requirements, and what documentation the PHA must provide to HUD.

*Response.* HUD understands that some PHAs may have challenges regarding income targeting; however, these requirements are statutory. For most jurisdictions, it will not be difficult to meet the 40% targeting requirement for public housing.

*Comment.* The final rule should clarify whether the income targeting requirement is applicable to "move-in" actions only or also includes situations where an initial certification is done to move someone from a section 236 project to a section 8 project.

*Response.* The rule has been revised to clarify that the income targeting requirement applies upon initial admission to the Section 8 project-based assistance program.

*Comment.* The final rule should define the term "relatively low incomes," which is used in § 5.607(a)(3). Another comment suggests that the final rule needs to clearly express the prohibition against concentration in public housing.

*Response.* The rule, at § 960.202, is revised to refer to the deconcentration requirements (more detail is in the PHA Plan rule), as well as the targeting requirements. The term "relatively low incomes" is no longer referenced.

*Comment.* The final rule should clarify that income targeting standards are to be applied on a PHA-wide basis and not on a project-by-project basis.

*Response.* The rule, at § 960.202(b)(1)(i), requires that at least 40% of the admissions to the public housing program in each fiscal year must be extremely low income families. This language clearly reflects that the requirement is applied on a PHA-wide basis. The rule at § 960.202(b)(ii) also reflects that this requirement is applicable to PHAs on a PHA-wide basis.

*Comment.* HUD must be cognizant that PHAs will be in a quandry when attempting to simultaneously implement the skipping provision, associated with the deconcentration policy, and the targeting requirement for annual admissions to public housing. HUD should consider the income mix and deconcentration policies that agencies submit as part of their PHA Plan, and the HUD respect the "good faith efforts" that PHAs undertake to create mixed-income communities based on the PHA management discretion and local conditions.

*Response.* The deconcentration of poverty and income mixing requirements are discussed in the final rule on the PHA Plan.

*Comment.* In some jurisdictions, there are apparent discrepancies between SSI grant levels, minimum wage earnings, and the extremely low income level in some counties, but these discrepancies can be administratively addressed by HUD.

*Response.* HUD makes adjustments every year for areas with unusually high or low housing costs relative to means. HUD also has made further adjustments for unusually high or low incomes for income eligibility to take into account State Supplemental Security Income (SSI) benefit levels. HUD issued Notice PDR 99-04 on July 21, 1999, to make changes that relate to the "30 percent of area median income" limits. These income limits have been increased wherever necessary to ensure that the one-person 30 percent income limit is at least as high as the State Supplemental Security Income (SSI) benefit level. The SSI program provides a minimum entitlement income standard for elderly and disabled households.

HUD will not make further adjustments to fiscal year income limits to accommodate minimum wage households, because this would drastically alter the 30 percent standard and would be inconsistent with Congressional intent.

*F. Annual Income, Adjusted Income (Proposed and Final Rule §§ 5.603, 5.609, and 5.611) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)*

#### 1. Exclusions vs. Deductions

*Comment.* The mandatory deduction from income for the earned income of minors will have the consequences of reducing the number of households eligible to move in. HUD has the statutory authority discretion to exclude (not deduct) income from minors.

*Response.* HUD agrees with this comment. The final rule maintains the language § 5.609(c)(1) that excludes the income of minors from the definition of annual income. HUD provided advance notice of this provision to PHAs in its notice on "Public Housing Rent Policies; Guidance Pending Publication of Final Rule on Admission and Occupancy Requirements" published on August 6, 1999 (64 FR 42956). The change from the proposed rule applies to all Section 8 programs as well as to public housing.

*Comment.* HUD should revise the mandatory deduction language pertaining to the \$480 for each

dependent. Section 5.611(a)(1) should be modified to read as follows: "\$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities."

*Response.* The suggested revision is not necessary. The \$480 deduction applies for each dependent. The term "dependent" is defined in § 5.603(d) and includes the recommended categories of dependent.

*Comment.* Section 5.611(a)(3)(ii) of the current rule places a limit on the amount of the deduction for unreimbursed reasonable attendant care and auxiliary apparatus expenses. It states that "this allowance may not exceed the employment income received by family members who are age 18 years of age or older." The proposed provision does not contain any limit on the amount of the deduction. The limitation language in the existing rule should be retained.

*Response.* HUD agrees with this comment and has revised § 5.611(a)(3)(ii) to clarify that the allowance may not exceed the employment income received by family members who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

*Comment.* Section 508 of the 1998 Act does not support HUD's interpretation that certain exclusions from income be treated as deductions. Congress refers to the items listed in section 508 as mandatory exclusions from income not deductions. HUD's interpretation, as reflected in § 5.611, applies the permissive exclusions to adjusted income but not to annual income. Since PHAs do have the authority under the current regulation to exclude earned income from annual income, and this rule removes that authority, this rule renders certain families ineligible for assistance. The statutory grant of authority to PHAs—to adopt "permissive exclusions" (42 U.S.C. 1437a(b)(5)(B)—does not deprive HUD of the authority pursuant to which it granted PHAs the discretion to adopt non-mandatory exclusions for the purpose of ascertaining public housing income eligibility under § 5.609(d), which HUD now proposes to repeal.

*Response.* The language on "permissive exclusions" (found in section 508 of the 1998 Act, which amends section 3(b) of the 1937 Act) makes a change in the determination of "adjusted income" (which is used to

determine rent), not in "annual income" (which is used to determine eligibility). HUD has distinguished between subtractions from these terms by calling the subtractions from annual income "exclusions" and the subtractions from adjusted income "deductions." Therefore, the statutory change directs that there be permissive deductions from adjusted income. Of course, adjusted income is an amount that is based on "annual income," so an exclusion from annual income also impacts "adjusted income."

Since the new statutory language mandates permitting a deduction from "adjusted income" and an exclusion from "annual income" on the same basis could result in a double benefit with respect to the same type of income, HUD has eliminated the permissive exclusion from annual income for earned income. However, HUD notes that the new permissive deduction is much broader than the language in the regulations regarding optional exclusions for earned income. Although the new rule provides flexibility with respect to the subsidy amount paid to the family as a result of the rent calculation rather than flexibility on what families are admitted (based on an eligibility determination), it permits a PHA to grant a permissive deduction for categories other than working families. Therefore, the proposed language in § 5.611 is not revised in this final rule.

*Comment.* The term "adult co-tenant" used in § 5.611(a)(5) should be added to the definition of "family head or spouse." The final rule should also clarify whether an adult co-tenant has the same status as a spouse for eligibility determination and other purposes.

*Response.* The rule does not currently define "family head or spouse," and HUD does not believe a definition of "adult co-tenant" is necessary. A PHA has the discretion to define "family" and a PHA can include in its definition of family the term "adult co-tenant."

#### 2. Permissive Deductions—Applicable to Public Housing Only

*Comment.* Permissive deductions should be extended to the Section 8 tenant-based programs. Permissive deductions should not be limited to public housing.

*Response.* Section 508(a)(5)(B) of the 1998 Act explicitly provides that permissive deductions are applicable only to the income of families residing in public housing units. HUD therefore is precluded by statute from extending permissive deductions to the Section 8 tenant-based programs.

*Comment.* The statute provides several examples of permissive deductions for public housing such as excessive travel expenses up to \$25 per week and earned income in certain situations, and these examples should be included in the rule.

*Response.* While HUD recognizes that examples are helpful, HUD believes that regulatory text generally is not the appropriate place to include examples, guidance and similar information. There are better formats other than codified regulations (which are updated only once a year) to provide this sort of information. HUD will provide examples in future guidance.

*Comment.* Section 5.611(b) of the rule provides that the PHA must describe its permissive deductions in its written policies. The final rule should provide that private entities administering public housing units are allowed to diverge from the PHA's plan, and these entities can implement permissive income exclusions without being included in the PHA's plan.

*Response.* The PHA and any private entity administering public housing units on behalf of a PHA must follow the PHA's written policies, which are required to be available to the public locally in connection with the PHA's Plan.

*G. Minimum Rents (Proposed Rule § 5.616; Final Rule § 5.630) (Section 507 of the 1998 Act Amending Section 3(a) of the 1937 Act)*

*Comment.* For project-based Section 8, there are a set of exemptions to minimum rent. It is unclear in this rulemaking whether these exemptions are eliminated and replaced by the financial hardship exemption, or is financial hardship being added to the list?

*Response.* The financial hardship exemption constitutes the only statutory exemption to minimum rent. The statute then establishes subcategories of financial hardship exemptions.

*Comment.* While HUD has taken the minimum rent requirements directly from the statute, these requirements, as written in the proposed rule, make the imposition and collection of minimum rent meaningless. Since the law (and proposed rule) would prohibit the eviction of any family who fails to pay the minimum rent. PHAs have no way to enforce collection. The impact of the no eviction policy on public housing will result in an increase in operating subsidy needs to offset uncollected rents. By prohibiting PHAs from evicting those who do not pay, PHAs will likely experience an increase in tenant accounts receivable.

Additionally, the hardship exemption eliminates any need for minimum rent. The exemption from payment of minimum rent due to financial hardship will have the effect of causing PHAs to establish a minimum rent of \$0, and a minimum rent of \$0 should be allowed only for exceptional situations.

*Response.* The exemption that prohibits public housing and Section 8 evictions resulting from the minimum rent is statutorily required. PHAs still have the option to determine the level of minimum rent. For public housing and the Section 8 certificate, voucher and moderate rehabilitation programs, the minimum rent maybe set any where from \$0 to \$50. For other project-based Section 8, the minimum rent is \$25.

*Comment.* The initial rent freeze for hardship determinations should be reduced from 90 days to 30 days. This will benefit the family should the PHA find that a hardship does not exist, resulting in the family having to pay retroactive rent for a period that the rent was frozen. If a hardship does exist, PHAs could extend the rent freeze in 30 day increments (with documentation from the family). A maximum limit for hardships should be established at the discretion of the PHA.

*Response.* The statute dictates the 90-day waiting period. This would not preclude a family from paying back amounts owed prior to that period.

*Comment.* Although the choice of minimum rents is discretionary on the part of the PHA, the final rule should be explicit that this discretionary decisionmaking is subject to all the due process protections of any lease change, especially given the fact that electing to institute a minimum rent affects residents' property rights.

*Response.* Protections regarding any lease changes are already provided under 24 CFR part 966.

*Comment.* The final rule should direct PHAs to make sure that they have procedures in place to prevent any eviction against a family in minimum rent status. The final rule should make clear that the tenants in minimum rent status may not be evicted for non-payment of the minimum rent in excess of the tenant rent otherwise payable; that is (1) eviction restriction is not limited to a 90-day period and (2) it does not apply to section 8 families.

*Response.* The rule already provides that PHAs must have written policies governing hardship. Those policies must include an exemption of payment of the minimum rent when the family would be evicted as a result of the imposition of the minimum rent requirement. (See § 5.630.)

*Comment.* The final rule should clarify that inability to pay minimum rent cannot be grounds to reject an applicant for housing if the applicant qualifies for a hardship exemption.

*Response.* Eligibility for housing is a separate determination from calculation of rent. If a family is income-eligible and meets the PHA of owner's screening criteria, then the family's applicant for housing would not be rejected. Once the family signs a lease, it has the same protections as all families with respect to hardship exemptions.

*Comment.* Notwithstanding the authority to set a minimum rent in project-based settings of not more than \$50 per month, HUD has chosen to continue its previous decision to set a minimum rent amount of \$25 for all project-based settings. In light of the burden and complexity of the decisionmaking process concerning hardship requests which HUD delegated to project-based owners, HUD should set the minimum rent at a maximum of \$25 for project-based owners and let the private owner at its operation choose to impose a \$0 minimum rent.

*Response.* The final rule maintains the language of the proposed rule. The statute directed HUD to establish the minimum rent for the project-based Section 8 assistance programs of not more than \$50 month. HUD selected a mid-point figure of \$25 as a reasonable minimum for these programs.

*Comment.* The statutory language is clearer than HUD's rule on the hardship exemption, and the rule should more closely mirror the statutory language. Another comment suggests that the final rule should make clear that § 5.616(b)(1) includes situations where a tenant has requested government assistance, been denied, and is appealing the denial, either through the administrative or a judicial process. Another comment states the proposed rule omitted language from the 1998 Act regarding families with a member who is an alien lawfully admitted for permanent resident, and suggests that § 5.616(b)(1) be revised accordingly.

*Response.* HUD has revised § 5.60(b)(1)(i) in this final rule to read as follows: "When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996." HUD believes that this revision will address the first and third

comments. HUD disagrees that additional language is necessary on the second matter regarding appeals. The language in the regulation mirrors the statutory language.

*Comment.* It is not clear why HUD established different standards in § 5.616 for public housing tenants and Section 8 tenants. For public housing this section provides that one a family requests an exemption, the PHA must immediately suspend the minimum rent until a hardship determination is made. With respect to Section 8 tenants, the rule provides that the PHA must suspend the minimum rent beginning the month following the request, not immediately. There seems no reason to provide less protection to section 8 tenants.

*Response.* HUD interprets "Immediately" to mean the month following the family's hardship request until the responsible entity determines whether there is a qualifying financial hardship, and whether or not it is temporary or long term. The rule now contains identical language regarding suspension of the minimum rent requirement beginning the month following the hardship request for both the public housing and Section 8 tenant-based programs (§ 5.630(b)(2)).

*Comment.* The final rule should clarify that temporary hardship is 90 days or less, and a long term hardship is one that is of more than 90 days duration. Once the hardship lasts 90 days, the rule should require the PHA to treat the hardship as long term, grant the exemption and make it retroactive to the beginning. The final rule should further provide that in situations where it is immediately clear that an income loss will last longer than 90 days or that income loss has already lasted more than 90 days, HUD should require the PHA to grant the exemption.

*Response.* The statute does not provide 90 days as an absolute in defining temporary hardship versus long term hardship. The 90 days relates to a prohibition on eviction commencing on the date of the family's request for exemption from the minimum rent in excess of the tenant rent otherwise payable.

*Comment.* The final rule should provide a specific time frame for notifying residents of their right to request a minimum rent hardship exemption.

*Response.* HUD declines to provide a specific time frame for notification to residents. The statute, and consequently the rule also, leave this decision to the PHA.

*Comment.* The minimum rent exception policy does not address (and

should address) the family's inability to repay a retroactive rent without creating another hardship. The temporary hardship period should be debt free. Additionally, the rule needs to address more fully the repayment agreement process.

*Response.* HUD declines to adopt this suggestion, which is not supported by the statute. The language in the regulation that requires the PHA or owner to offer the family a reasonable repayment agreement addresses this concern in a manner consistent with the statute.

*Comment.* Allowing housing authorities to set a minimum rent based on local conditions is a good idea. However, the exemption from payment of the minimum rent due to financial hardship will result in housing authorities electing not to establish a minimum rent. A minimum rent of \$0 should only be allowed for exceptional situations.

*Response.* The exemption for hardship cases is statutorily required.

*H. Self-Sufficiency Incentives—Public Housing Only (Proposed Rule § 5.612; Final Rule § 960.255) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)*

#### 1. Disallowance of Increases in Income as a Result of Employment

*Comment.* The April 30, 1999 proposed rule did not place a limit on the number of times a family or individual can benefit from disallowance of increases in income as a result of employment, but HUD specifically sought comment on that issue. The majority of commenters who commented on this issue favored a limit. Some commenters favored a limit but did not make suggestions on what the limit should be. One commenter simply opposed the disallowance. Specific suggestions on the limits that should be placed on claiming an income disregard were as follows: (1) Limit to fixed number of months, as opposed to some fixed number of times an individual could qualify to begin the period of earning disallowances; (2) limit one time per household; limit one time per household but allow family to retain welfare benefits longer; (3) limit two times per household; (4) limit two times in a five-year period; (5) limit 3 times and each time the 12 month period is decreased; and (6) allow PHAs to set limit.

*Response.* HUD appreciates and carefully considered all proposals. HUD has revised the rule to limit each member of a family to receipt of the benefit of the 12 month cumulative

income disregard (and the subsequent 12 month phase in) for no more than twelve months of each benefit (the full disregard and the phase-in) over a four year period commencing the first time the individual is eligible for the benefit. After that 48-month period, there would be no further eligibility of the family member for this disregard. Additionally, the rule also limits eligibility for persons who are or were assisted, within 6 months, under any State program of temporary assistance under part A of title IV of the Social Security Act only when the amount of TANF-funded assistance, benefits or services during the 6 month period totals at least \$500. The \$500 floor was chosen because that amount demonstrated that the person was not receiving only minimal assistance. These limitations both recognize the potential administrative burden for PHAs, and support the self-sufficiency efforts by individuals who need to use this provision more than one time for valid reasons (newly working families often have changes in jobs and experience periods of unemployment, especially during the first few years of starting employment). A Congressional floor colloquy [144 Cong. Rec. S11840 (daily ed. October 8, 1998) (statement of Sen. Mack)] before enactment of the statute, suggested that the rules implementing the disallowance of increased income as a result of employment should provide flexibility but at the same time not encourage households to change their employment patterns to take advantage of the disregard.

*Comment.* HUD should not impose a limit on the income disregard. The statute imposes no limit on the availability of the income disregard, and neither should the rule.

*Response.* HUD has the authority to implement the disallowance of increases in income as a result of employment in a flexible manner that creates incentives for work, but does not allow for abuse of this benefit. The floor colloquy cited earlier directed HUD to do this.

*Comment.* PHAs should not have to wait to increase a family's rent and also be limited in the amount of increase.

*Response.* The new statute clearly requires PHAs to delay increase in the rent of a newly employed family for one year, and then limits the amount of increase for another year.

*Comment.* In § 5.612(a)(1), HUD should replace the phrase "established minimum wage" with the "highest applicable minimum wage." This change, if implemented, will account for variations in minimum wage among jurisdictions and where the state

minimum wage is higher, assure that the higher wage is used in the calculation.

*Response.* HUD recognizes that the minimum wage may be higher in some states, and that the higher minimum wage of the state is the prevailing wage for HUD purposes. The language of the rule is clear on this point and no elaboration is needed.

*Comment.* The final rule should clarify the continued application of existing § 5.609(c)(13) for transition purposes. The preamble to the proposed rule repeats the statute's continued application of § 5.609(c) for residents qualified prior to October 1, 1999. This continued coverage should be stated in the final rule, to minimize difficulty with implementation of the income disregard.

*Response.* The continued application of § 5.609(c)(13) is clear and no elaboration of this point is needed in the rule.

*Comment.* HUD needs to develop a fool proof data tracking system for monitoring the periods used for this disregard. This tracking system could be incorporated into the HUD 50058 form and the Multifamily Tenant Characteristics System (MTCS).

*Response.* HUD is in the process of updating MTCS to capture all of the changes necessary as a result of the changes made by the 1998 Act.

*Comment.* The final rule should clarify that the burden is on the family to notify the PHA of eligibility for an income disallowance. Section 5.612 should contain language that requires a family to notify the PHA of its eligibility for a disallowance for increases in income as a result of employment, and to provide the requisite information in support of any requested disallowance.

*Response.* It is at the PHA's discretion to establish policies prescribing when and under what conditions a family must report changes in income, if other than at the annual re-examination, and to establish reasonable income verification. Additionally, under revised § 960.257(b), a family may request an interim reexamination of income at any time.

*Comment.* The final rule should provide a broad interpretation of participation in a self-sufficiency or job training program to include not only the phase of the program spent in job training or job preparation but also to include the work experience phase of self-sufficiency training in which participants are working full-time but still receive monitoring or counseling from the self-sufficiency program.

*Response.* There is nothing in the proposed rule or this final rule that limits the interpretation suggested by

the comment. No additional clarification is needed.

*Comment.* The final rule should clarify that eligibility for the disallowance for increases in income as a result of employment begins at the time the income is earned.

*Response.* The rule is clear that eligibility for this disallowance begins on the date the employment starts or the date income from employment increases (see revised § 960.255(b)(1)).

*Comment.* To serve as a self-sufficiency incentive, the rule needs to accord favorable treatment to increased earnings that occur shortly after completion of a training program, rather than during participation in one. Section 5.612(a)(2) of the proposed rule leads one to the conclusion that increased earnings that occur after completion of a training program would not qualify for special treatment under the rule because the increase did not occur "during participation."

*Response.* The statute is clear regarding this provision. Eligible amounts to be excluded under § 960.255(a)(ii) are any income increases received by a family member during participation in any family self-sufficiency or other job training program and not increases that occur after participation in a self-sufficiency or other job training program. For example, a family member could be eligible for this exclusion if a component of the training program provides training, monitoring, or assistance after the person becomes employed. However, a family member whose income does not increase during participation in a family self-sufficiency or other job training program may still be eligible for a disallowance of increases in income under paragraph § 960.255(a)(i) or (a)(iii).

*Comment.* The rule should state clearly that families may qualify for the limit on rent increases when they begin employment or increase their earnings. The rule should clarify that for the purposes of determining eligibility for disregard of earned income, a family has been assisted within 6 months "under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act." The final rule should clarify that there are two programs under Part A of Title IV of the Social Security Act that qualify a family for the earned income disregard, and that there are several benefits and services funded from federal or state TANF funds.

*Response.* The two programs under Part A of Title IV of the Social Security Act include the TANF program administered by the State or local

welfare agency and the Welfare-to-Work (WTW) program administered by the State or local WTW agency. Under the TANF program, the State or local welfare agency can use funds to pay for benefits or services, such as wage subsidies, child care, and transportation, as well as a one-time payment of assistance or diversion assistance funded from Federal or State TANF funds. Families assisted under any program under Part A of Title IV of the Social Security Act and who meet the other criteria under § 5.612 are eligible for the disallowance for increases in income as a result of employment. The PHA needs to coordinate and verify with its local welfare and WTW agencies to help the PHA determine who is eligible under § 5.612 for this disallowance.

*Comment.* The final rule should clarify that training includes technical schools and community colleges. The final rule also should clarify in § 5.612 that family self-sufficiency includes training programs for people with disabilities that provide stipends or very low wages in a sheltered workshop type of job prior to transitioning to competitive employment.

*Response.* There is nothing in the rule that would preclude technical schools, community colleges and training programs for persons with disabilities from being considered as family self-sufficiency or job training. The rule cannot list all eligible programs that may qualify as training, but this could be addressed further in future guidance issued by the Department.

## 2. Individual Savings Account

*Comment.* The final rule should clarify that individual savings accounts are permissive on the part of PHAs and not mandatory.

*Response.* The statute and regulation, at § 960.255(d), clearly state that a public housing agency *may* establish an individual savings account. The PHA has the option of offering individual savings accounts. The rule reflects the statutory language. Therefore, a family cannot require the PHA to establish an individual savings account.

*Comment.* Section 5.612(c) gives the PHA the choice of offering individual savings accounts to eligible families and the choice transfers to the residents. This is not what the statute provides. The statute places the choice first with the eligible family, not the PHA. The rule should be revised to conform to the statutory language.

*Response.* HUD disagrees with this comment. As noted in the preceding response, the statute clearly gives the PHA the option to offer individual

savings accounts. A family cannot compel the PHA to offer these accounts.

*Comment.* The final rule should clarify conditions of authorized withdrawals from the individual savings account, and specifically should provide guidance on the term "moving out."

*Response.* Sections 960.255(d)(3) and (6) of the rule address the conditions under which a family receives its account when moving out.

*Comment.* Section 5.612(c) states: "The PHA must provide that any balance in such an account when the family moves out is the property of the family unless the family is not in compliance with the lease." The rule language is not clear whether the family loses its savings account if the family is evicted for any reason.

*Response.* A family does not automatically lose its savings account if the family is not in compliance with the lease and is evicted. If a family is evicted for non-compliance with the lease, the family would receive its savings account, less any amounts the family owes the PHA.

*Comment.* HUD's individual savings accounts should be modeled on accounts developed by other Federal agencies or organizations.

*Response.* Both the statute and the regulation provide a PHA with flexibility in establishing individual savings accounts. Given this flexibility, HUD declines to require a PHA to establish an individual savings account in accordance with a specific model. However, the final rule does clarify that a PHA may not charge a fee for maintaining an account for a family, but it may pass along to the family any fee that a financial institution imposes on it for maintaining the account.

*I. Income Changes Resulting From Noncompliance With Welfare Program Requirements (Proposed Rule § 5.618; Final Rule §§ 5.603, 5.613, and 5.615) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)*

*Comment.* Section 5.618(a) lists those households whose rental payments may not reflect welfare reductions. It includes failure to satisfy economic self-sufficiency requirements imposed by the welfare agency. This list should be expanded to include categories such as failure to comply with child support requirements.

*Response.* The statute is specific regarding compliance with welfare program requirements, including fraud eradication and support for economic self-sufficiency and work activity requirements. When determining tenant rent for families participating in the

public housing and tenant-based Section 8 programs, PHAs are required not to consider reductions in income attributable to the welfare agency's sanctioning and enforcement of other welfare program requirements that are not related to economic self-sufficiency and work activity requirements. The statute contains a definition of economic self-sufficiency programs, which the regulation incorporates (§ 5.615).

*Comment.* The list of households exempt from the limitation on rent reduction should also include a household that may have lost welfare income due to economic self-sufficiency sanction, but has subsequently obtained income from new sources.

*Response.* The definition of "covered family" in the statute means a family that (1) receives benefits for welfare assistance or public assistance from a State, or other public agency under a program for which the Federal State, or local law relating to the program requires, as a condition of eligibility for assistance under the program, participation of a member of the family in an economic self-sufficiency program, and (2) resides in a public housing dwelling unit or is provided tenant-based assistance under Section 8. The comment suggests adding as an exemption, persons who were sanctioned but have since obtained employment or have gained other sources (of income).

This exception to the usual rent rules provided by the statute is for loss or reduction of welfare assistance or public assistance benefits due to sanctioning. The amount of income not actually received by the family as a result of sanctioning is included in the annual income as "imputed welfare income". If the member of the family is no longer receiving any such benefits (because the family member is now working) the exception is not applicable. If, however, the member of the family is still receiving some portion of welfare/public assistance benefits (due to a reduction and not a total loss of benefits as a result of sanctioning), the exception remains applicable, even if the member of the family has income from other sources. A PHA should continue to include the imputed welfare income until either the sanction term ends or the family's income from other resources is at least equal to the imputed welfare income.

*Comment.* It is not clear in § 5.618(a) that the only households subject to the rent reduction limitation at issue are those who meet the definition of "covered family" in the statute at 42

U.S.C. 1436j(d)(1). The final rule should clarify this point.

*Response.* HUD revised the rule, at § 5.615(b), to include a definition of "covered family" that tracks the statutory language.

*Comment.* The final rule should provide clarification of the term "fraud." PHA staff is not always knowledgeable about welfare law and the subtleties involved in welfare fraud issues, and therefore it may not be clear to a PHA employee that the allegation of fraud that results in restitution and participation in civil rehabilitation programs results in no welfare fraud allegation or conviction.

*Response.* As noted earlier, each State or local welfare agency determines for its program when a family has failed to comply with particular requirements or has committed fraud. The PHA must work with the State or local welfare agency to understand what constitutes fraud or noncompliance that results in a reduction of welfare assistance or public assistance benefits of a covered family.

*Comment.* Section 5.618(b) needs to clarify that a PHA cannot deny a rent reduction pursuant to the statutory requirements before the PHA obtains notice described in the statute that justifies application of 42 U.S.C. 1437j(d)(2) and (3) and justifies its denial of rent reduction.

*Response.* The final rule, at § 5.615(c)(2), is clear regarding the obligation of the PHA to obtain written verification from the welfare agency of the basis for the reduction of welfare assistance or public assistance benefits and the term of the reduction of benefits.

*Comment.* Section 5.618(b) should state with specificity that the PHA is bound by federal confidentiality laws as well as state and local data privacy and confidentiality laws in its sharing of information with the welfare agency.

*Response.* The verification of income or welfare benefits is covered under HUD existing regulations that provide for confidentiality and use of information obtained from third parties.

*Comment.* HUD must provide clear guidance to PHAs on what information is appropriately required from the welfare agency. The PHA will probably need a release from the family to obtain the verification the statute and regulation require. HUD must provide guidance in clearly limiting the scope of the release to protect the resident and the housing authority staff from overreaching inquiries and unnecessary release of protected information that may leave the housing authority open to liability if information is carelessly

handled. HUD should provide PHAs with a model release form.

*Response.* HUD is in the process of developing a model cooperation agreement, which can be used to specify the verification process to determine welfare assistance or public assistance benefits, as well as obtaining verification of any loss of benefits due to noncompliance or fraud. PHAs, however, may not delay the implementation of this provision based on the Department's timetable for design or issuance of a model cooperation agreement. The PHA is required to make its best efforts to enter into such cooperation agreements, with State, local or other agencies providing assistance to covered families under welfare assistance or public assistance programs, as may be necessary.

*Comment.* Section 5.618(c) references the hearing procedures in § 982.555, which are applicable to tenant-based Section 8 tenants. This section should also refer to the hearing procedures for public housing residents in § 966.55(e)(2).

*Response.* The rule was revised, at § 5.615(d)(1), to reference the public housing hearing procedures in part 966.

*Comment.* A PHA's notice to a family of the PHA's decision to deny the rent reduction after obtaining verification of income reduction for noncompliance with economic self-sufficiency requirements should be in writing, timely provided, specifically state the decision of the PHA and the basis for the decision in law and fact, and advise the family of the procedure for seeking review.

*Response.* The final rule, at § 5.615(d), provides that a PHA must notify the family in writing that they have a right to ask for an explanation stating the specific grounds of a PHA determination, and that the family may request a hearing under the grievance procedure if they disagree with the determination.

*Comment.* The rule should be revised to require final action on the part of the welfare agency before rent reduction can be refused. Section 5.618(b), as proposed, permits responsible entities to delay rent adjustments until verification is obtained from the welfare program. The proposed rule conflicts with the statutory basis for the rule, 42 U.S.C. 1437j(d), which states at subsection (d)(4) that the PHA may not refuse to take action to reduce rent until written notification is obtained from the welfare program.

*Response.* The final rule provides, at § 5.615(c)(2), that the PHA must rely on the written determination of the welfare agency to base its decision concerning

rent reduction, which tracks the statutory requirement.

*Comment.* Rent reduction limitation also should apply to families for which other benefits are decreased due to fraud, for example, Social Security benefits which have decreased due to defrauding the Social Security Administration.

*Response.* The treatment of income changes resulting from welfare program requirements which prohibit the reduction of rent due to noncompliance or fraud is statutory and is applicable to welfare assistance and public assistance benefits specifically. HUD does not have the authority to expand this provision to other federal assistance programs.

*Comment.* The rent reduction process results in additional administrative burden, specifically, increased reporting requirements and tracking of eligible families.

*Response.* HUD is aware that the rent reduction process will require PHAs to obtain written verification of sanctioning from welfare agencies. HUD believes that the administrative responsibility imposed by the verification process can be simplified and minimized through cooperative relationships with the welfare agencies.

*Comment.* HUD must provide additional guidance for § 5.618 because of the complex nature of the various welfare programs and PHA unfamiliarity with their operation.

*Response.* The best guidance concerning the nature and operation of the various welfare programs comes from the welfare agencies who administer these programs. HUD anticipates that these welfare agencies will be cooperative in assisting PHAs in understanding their programs. HUD strongly encourages PHAs to coordinate with their State or local welfare agencies to improve the reporting of income and detection of fraud and to streamline the process where possible. Additionally, HUD encourages PHAs to use the cooperation agreements, as described in section 12(d)(7) of the 1937 Act, as amended by section 512 of the 1998 Act, to improve the service delivery between the two agencies to promote self-sufficiency and otherwise address the needs of low-income families.

*J. Rents in Public Housing (Proposed Rule §§ 5.603 and 5.614; Final Rule §§ 5.603 and 960.253) (Section 523 of the 1998 Act Amending Section 3(a) of the 1937 Act)*

#### 1. Income-Based Rents

*Comment.* The preamble language in the proposed rule that stated HUD cannot provide assurance of its ability to

subsidize ceiling rents is inappropriate. Whenever Congress has conditioned a commitment on the availability of future appropriations, it has explicitly said so. There is no such language conditioning the statutory commitment to provide a fair and equitable level of operating assistance for tenancies that pay flat rents or ceiling rents established in accordance with section 523 of the 1998 Act.

*Response.* While the 1998 Act does not explicitly condition this provision on the availability of future appropriations, the subsidy of either flat rents or ceiling rents is an issue being considered during the operating fund negotiated rulemaking because of the cost implications. The subsidy to pay for any particular level or type of rent cannot be assured.

#### 2. Flat Rents

*Comment.* The language in § 5.614(a)(1) concerning the use of comparability studies to justify a flat rent system seems contrary to the Federal Government's policy disfavoring statements in the Code of Federal Regulations that give advice about what a regulated entity should do, rather than stating what it must do. With respect to the specific suggestion that a PHA should use a comparability study to justify a flat rent system, section 523 of the 1998 Act, which establishes the requirement for alternative rent systems, does not employ the term "comparability." To the extent that comparability studies may constitute one manner for developing flat rents, section 523 of the 1998 Act, makes it one method among equals.

*Response.* It is important that there be a uniform standard for setting flat rents, to ensure that the rents established meet the statutory requirements and are established in a comparable manner across all PHAs. The cost implications of flat rents further make a uniform policy necessary. HUD has revised § 960.253(b)(2) to more clearly articulate the statutory link between flat rents and the rental market. The rule has been further revised to clarify the requirement for documenting the method for setting the flat rents equal to comparable market rents. In addition, we note that to have adequate information about the income levels of families served by the 1937 Act programs, HUD may seek income information on a sampling basis from families paying flat rents, whose incomes are not regularly required to be examined more often than every three years.



*Comment.* If a comparability study is used, the rule needs to make sure that such study includes certain additional factors, such as crime level in the project and in the vicinity; drug activities in the project and in the vicinity; and gang activities in the project and in the vicinity, to name a few.

*Response.* Section 960.253(b)(3) broadly identifies the factors a PHA must consider when determining flat rents. HUD has clarified that the flat rent must be the estimated rent at which the PHA actually could rent the unit once it is prepared for occupancy.

### 3. Family Choice

*Comment.* The family's ability to choose between an income-based rent and a flat rent will be an administrative burden for the PHA.

*Response.* Choice of rent is required by section 523 of the 1998 Act. Section 523 increases a PHA's flexibility regarding rent policies, while also requiring that a family be given a choice of flat or income-based rent.

*Comment.* Section 523 of the 1998 Act requires that tenants who pay a ceiling or flat rent receive income reexaminations not less than once every three years. HUD should adopt the statutory three-year standard. While the statute allows the family to "elect annually" without showing hardship to change its rent-payment method, that is the family's choice, and in the absence of that election, a PHA should not be required to go through the costly, unnecessary task of conducting an annual income-based rent determination for a family who does not want one and does not need one.

*Response.* As stated in the comment, section 523 of the 1998 Act requires PHAs to provide families residing in public housing the choice to elect annually, which rent option they prefer, even if they are paying a ceiling rent or flat rent, but permits income to be reviewed every three years if the family chooses the flat rent. HUD emphasizes that a family must be offered a choice of rent options annually, and must be provided sufficient information to make an informed choice. To illustrate, if a family elected an income-based rent (because according to their calculations, the income based rent is less than the flat rent), but upon re-examination by the PHA discovered that the income-based rent is actually higher than the flat rent, the family should be allowed to opt for the flat rent at that time (because the information regarding choice of rents seems insufficient for the family to have made a reasonable choice). In response to the comment,

however, the final rule provides that where a family previously has elected a flat rent (prior to the three year required reexamination), the PHA must provide the calculation of the income-based rent only at the family's request.

*Comment.* The PHA is responsible for providing the rent option to the family every year along with sufficient information for the family to make an informed choice. The rule should clarify the meaning of "sufficient information." Additionally, the preamble to the proposed rule provides that the PHA should provide each affected family a worksheet so that it may compute its own income-based alternative rent. The preamble language appears to contradict proposed § 5.614(c), which requires the PHA to conduct an annual rent determination for the family—as though the family had elected to pay rent based on income—and provide the family a copy of its policy on switching between rent systems.

*Response.* The preamble to the proposed rule provided a discussion of the minimum amount of information a PHA should, and the types of information a PHA could provide to a family regarding choice of rents. The regulation clearly states what minimum amount of "sufficient" information is necessary. The preamble suggested a worksheet as a possible alternative, in a manner similar to PHAs who provide residents worksheets at annual re-examination.

*Comment.* All residents should be notified by the PHA about the flat rent and income-based rent prior to implementation.

*Response.* HUD believes that a PHA's obligations concerning rent options and notification to families of their options is appropriately addressed in the rule. The rule requires the PHA to (1) establish written policies concerning rent policies, and (2) inform families of their rent options.

### 4. Switching Rent Methods to Lower Rent Because of Financial Hardship

*Comment.* Switching rents due to financial hardship creates a significant administrative burden.

*Response.* As noted earlier in this preamble, choice of rent is explicitly required by section 523 of the 1998 Act, as is the ability to switch rents because of financial hardship. Choice of rents is intended to provide increased amount of flexibility regarding rent policies for PHAs and residents, as families transition from welfare to work. Congress believed it necessary, however, to have hardship provisions for families who may need additional

assistance at certain points in the transition.

*Comment.* Granting a rent waiver to one family penalizes other families who are meeting their obligations; additional rent collections will decrease. A sizable percentage of all households living in public housing experience financial hardship frequently, yet the PHA expects them to pay their rent in full, on time. In special circumstances, a family may sign a payment agreement to make up rent which is in arrears. However, granting a rent "waiver" to one family penalizes others who are meeting their rent obligation. Ultimately rent collection rates will go down.

*Response.* Section 960.257(b) now provides that families may request an interim reexamination of family income or composition because of any changes since the last determination. Families who experience an unanticipated reduction in income are able to request an interim reexamination, and have their rent adjusted accordingly. Therefore, these families are not penalized, as suggested by the comment.

*Comment.* The final rule should make clear that a family must specifically notify the PHA of its wish to switch rent methods due to financial hardship, and the rule should provide that the rent be lowered no later than the first of the month following the month the family reports the hardship is unreasonable and should be revised.

*Response.* As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. However, HUD realizes that the PHA may not be able to immediately adjust its systems to switch a family's rental payment. When establishing its policies, a PHA should indicate the timeframe in which a family must notify the PHA of a financial hardship, and the need to switch rent systems, and the PHA should be able to act within 30 days, which includes verifying the financial hardship, before switching the family from one rent system to another. Such policies should attempt to maintain administrative simplicity while being responsive to unforeseen changes in family circumstances.

*Comment.* There should be a limit on the number of times within a specified period of time that a family or individual can claim the hardship exemption.

*Response.* The rule provides such a limitation. The rule provides that once a family switches to income based rent due to financial hardship, the family must wait until its next annual option to select the type of rent.

*Comment.* The final rule should clarify that circumstances for

exemptions for death apply only to family members on the lease or principal wage earners, to prevent multiple requests for hardships due to death for other circumstances not envisioned by the Congress or HUD.

*Response.* The statute indicates that financial hardship policies must include situations where the family has experienced a decrease in income because of a death in the family. HUD does not believe that this was intended to be limited to the death of family members who are wage earners, but rather any family members on the lease for the unit, whose death created a loss of income in the household.

*Comment.* The statute requires a PHA to "immediately" provide for the family to switch to an income-based rent upon a determination that a family is unable to pay the previously chosen flat rent because of financial hardship. The rule seems to imply that the PHA can make its own policy on switching from a flat rent to income-based; however, it appears that the statute gives the PHA no choice in certain specific instances. HUD needs to clarify this matter.

*Response.* As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. Though the PHA does not have discretion in determining whether or not to switch a family's rent because of hardship, the PHA does have discretion in establishing its hardship policies, including the time frame in which a family must notify the PHA of a financial hardship, and the need to switch, the type of verification required, etc. When establishing such policies, the PHA should attempt to maintain administrative simplicity while being responsive to unforeseen changes in the family circumstances.

##### 5. Retaining Ceiling Rents

*Comment.* HUD should provide the option to use ceiling rents beyond three years. HUD's interpretation that the statute limits the retention of ceiling rents is wrong. The 1998 Act explicitly permits PHAs with ceiling rents to retain them, instead of developing flat rents based on neighborhood market rental levels for comparable housing.

*Response.* HUD is not revising the ceiling rent provision from that provided in the proposed rule. As stated in the proposed rule, PHAs that have already established ceiling rents may continue to use those ceiling rents in lieu of establishing a flat rent for those units for three years. After the three year period, ceiling rents will continue to be allowed as a cap on an income based rent, but not as an alternative to flat rents.

At the time the 1998 Act was enacted, a proposed rule was pending which would have resulted in a requirement that ceiling rents reflect the market in a manner similar to that required by the statute and this regulation for flat rents. That rule would have been finalized accordingly. HUD thus believes that a maximum 3-year time period on retention of ceiling rents as an alternative to flat rents is both reasonable and fully consistent with Congressional intent. Of course, the flat rents will have a similar effect to ceiling rents set at market. In addition, tenants for whom the flat rents are higher than the current ceiling rents always can choose to pay the income-based rent, which will not exceed thirty percent of their adjusted incomes.

#### *K. New Community Service and Self-Sufficiency Requirements for Public Housing (Proposed Rule §§ 960.603–960.611; Final Rule §§ 960.601–960.609) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)*

##### 1. General

*Comment.* There is a significant administrative burden associated with the new community service and self-sufficiency requirements. The community service requirement is punitive to public housing residents. The requirement to establish a community service program exceeds the PHA's charter. These requirements clearly constitute an unfunded mandate. HUD must take steps to minimize the burden to the fullest extent without compromising statutory intent.

*Response.* The new community service and self-sufficiency requirements are statutory. HUD has strived to provide as much flexibility as possible to PHAs to allow them to administer this provision without creating significant burden.

HUD urges implementation of this provision in a manner consistent with its intent, as discussed in the Senate Committee Report (S. Rep. No. 63, 105th Cong., 1st Sess. 1997). The Report states that the provision is not intended to be perceived as punitive, but rather considered as rewarding activity that will assist residents in improving their own and their neighbors' economic and social well-being and give residents a greater stake in their communities.

*Comment.* The final rule should eliminate the requirement for a PHA to identify and notify each individual of the community service status. The PHA should only be obligated to notify all families of the general requirements and exemptions and place the burden upon the family to notify the housing

authority of the required participation of some of its family members, under the pain of lease violation and subsequent eviction actions. Additionally, the final rule should permit the resident to self-certify concerning his or her ability to comply with the community service requirement.

*Response.* HUD has revised §§ 960.605 and 960.607 to provide PHAs as much flexibility as possible, while still meeting the statutory requirement. The revision to § 960.605(c) requires PHAs to verify compliance annually, at least 30 days before the expiration of the lease term. Self-certification by residents is not acceptable; third party certification must be provided by the entity with whom the resident is working.

There are various community service models that PHAs may want to consider in developing their process for administration of the community service requirement. One of the models is based on a high school requirement for graduation used by high schools, that each student is required to perform a certain number of hours of community service in order to graduate. Similarly, PHAs could provide guidance lists of acceptable activities to residents, along with ways to contact various groups or PHA-sponsored activities that meet the requirement and intent of the community service provision. Residents could, perhaps two months prior to the end of the lease, have a signed certificate from the community service or self-sufficiency activity contact, that in fact they have provided the requisite amount of service.

Additionally, PHAs may, but are not required to, provide advance approval of a community service activity. Advance approval by the PHA may avoid the possibility of refusing to recognize the activity as eligible after it was performed by the resident. Advance approval also may help to ensure that the activity is not performed under conditions that would be considered hazardous, or that the work is not labor that would be performed by the PHA's employees responsible for essential maintenance and property services, or that the work is otherwise unacceptable.

*Comment.* Residents who are not exempt from community service should be provided a statement of rights and obligations.

*Response.* The rule provides, at § 960.605(c), for written notification of the provisions of the community service requirement to all residents, including a description of the service requirement, who is exempt, and how the exemption will be verified.

*Comment.* A community service contribution of 8 hours a month is too low. The requirement should be at least 16 hours a month. Another comment suggests that the rule should clarify whether required hours may be accrued.

*Response.* The statute is clear that the expectation is that each adult member of the family unless otherwise exempt is required to contribute eight hours per month of community service. HUD, however, believes that there should be some flexibility for PHAs to allow individuals, based on circumstances that may prevent the individual from performing the eight hours of community service/economic self-sufficiency each month, to remedy this requirement by performing the activity prior to the renewal of the lease or within a reasonable period determined by the PHA.

*Comment.* The final rule should go further and require residents to provide verification that they applied for employment in 3 different locations each week.

*Response.* This suggestion exceeds the requirement imposed by the statute. The rule reflects the statutory requirement to engage in community service.

*Comment.* The final rule should provide for duly-elected resident councils to administer community service requirements and have community service activities include activities to develop and strengthen the capacity of resident councils. Additionally, the final rule needs to address issue of acceptable community service providers.

*Response.* As noted earlier in this preamble, HUD's position is to allow PHAs as much flexibility as possible in administering the community service and self-sufficiency requirements. PHAs have the discretion to involve duly-elected resident councils in the administration of community service requirements. Additionally, PHAs are in the best position to determine acceptable community service activities within the broad parameters established. HUD encourages PHAs to involve qualified resident councils where they can facilitate effective implementation of the community service requirement.

*Comment.* HUD should provide funding from resident initiatives funds for third party administration of the community service requirement.

*Response.* This comment is outside the scope of this rulemaking. The purpose of this rulemaking is limited to implementing the changes in admission and occupancy requirements made by the 1998 Act.

*Comment.* With respect to § 960.607(d) that provides, in relevant part, "if the noncompliant adult moves from the unit, the lease may be renewed," the rule should explain how a PHA should respond to a report that a covered individual has moved from the household.

*Response.* HUD believes the following revision to § 960.607(c)(2) will address this issue. Section 960.607, which addresses "Assuring Resident Compliance," is revised at the final rule stage to add the following language: "All members of the family who are subject to the service requirement are complying with the service requirement or are no longer residing in the unit."

*Comment.* There is concern about liability that may be attributable to PHAs for requiring or explicitly approving community service activities. HUD and the Congress must fully consider the implications of this requirement and implement this provision so as to ensure maximum protection for PHAs against possible litigation in this regard.

*Response.* Again, PHAs are given considerable discretion to implement the community service and self-sufficiency requirements as they determine appropriate, taking into consideration their resident population and local circumstances (e.g., using local community service providers). PHAs can and should implement community service programs in a prudent manner that will minimize liability.

*Comment.* The final rule should provide no adverse action against a resident if a community service provider is not responsive. Since PHAs will rely on other agencies for verification of resident community service activity, it is essential that no adverse action be taken against a resident if the third party agency fails to respond to housing authority and resident requests for verification. Another comment suggests that the rule should provide owners and PHAs with the right to require tenants to provide reasonable documentation for activities that meet community service requirements. Another comment suggests that the rule also should require PHAs to provide notice to residents of programs in which the residents may participate to meet the community service requirement. Another comment suggests that the rule should provide that the 8 hour per month requirement can be a combination of the community service and economic self-sufficiency requirements. Another comment suggests that HUD should advise

whether it will issue a form of certification to be executed by entities for which residents perform community service activities; if the certification appears valid on its face, may the PHA rely on the certification, or must it take any further action to confirm that the certification is accurate.

*Response.* The rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency, as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD therefore declines to adopt all of these specific suggestions. The regulation has been revised to clarify that the eight hours can be a combination of the community service and economic self-sufficiency activities to meet the requirement.

*Comment.* The final rule needs to address the relationship between a person performing community service and the PHA or community service provider. The rule should clearly specify that: the resident performing community service is neither an employee of the PHA nor the community service provider; the resident is not entitled to a stipend, unemployment or worker's compensation or disability benefits.

*Response.* The statute and this regulation clearly do not create or contemplate an employer/employee relationship between the public housing resident performing community service and the PHA or other community service provider.

## 2. Exemptions

*Comment.* Persons with disabilities should not be exempt from community service requirements, because generally all persons with disabilities can perform some type of community service—for example, collating material for a nonprofit agency. In contrast to this first comment were the following comments. Persons with disabilities should be exempt on basis of any existing documentation already in place of their status, and not require new certification. There should not be a dual test to exempt persons with disabilities, i.e., disability and inability to work. The final rule must provide clear standards on how to determine that a person with disabilities is unable to work. The final rule should exempt persons with disabilities who are not yet officially labeled as such. Persons receiving disability assistance under a state disability program should be automatically exempt.

Exempt all persons with disabilities absent clear evidence to the contrary.

*Response.* The exemption from the community service requirement for persons with disabilities who are also not able to perform community service is statutory. In terms of documentation of a disability, standards already exist, as provided in the language of § 960.601. Existing documentation will be accepted as evidence of a disability, and disabled individuals will be permitted to self-certify that they can or cannot perform community service or self-sufficiency activities. The rule cannot exempt persons with disabilities who are not yet officially classified as such, because documentation is required, as provided in § 960.601 and in the statute. Persons receiving disability assistance under a State disability program may be exempt, if they meet the disability definition in section 12 of the 1937 Act and in § 960.601.

*Comment.* Any PHA verification of disability is not consistent with Fair Housing Act regulations.

*Response.* Verification of disability is not inconsistent with the Fair Housing Act regulations. The new law establishes a community service requirement and provides a definition of person with disabilities that is separate from the definition provided under the Fair Housing Act.

*Comment.* Documentation that a family is receiving assistance under the TANF Program should be sufficient verification of a family member's exemption from community service requirement. If PHAs verify that the resident family is receiving assistance under the TANF program without sanction for non-compliance with a work activity requirement, there should be no additional verification.

*Response.* To determine whether a family member is exempt from the community service requirement, the PHA must verify with the welfare agency that the person is complying with a work activities requirement. "Work activities" is broadly defined in Section 407(d) of the Social Security Act (42 U.S.C. 607(d)), and it is expected that individuals participating in these work activities will be exempt from community service requirements under this part. (HUD will make the definition of work activities available through its website and through additional guidance.) Additionally, the PHA has the discretion to adopt the verification process suggested by the commenter.

*Comment.* Exemption for welfare status will be difficult to determine and enforce because status can change frequently.

*Response.* To minimize burden to the PHA, HUD suggests that PHAs include the determination of welfare status in the cooperation agreement they enter into with the local welfare agency.

*Comment.* The final rule should provide that PHAs are to rely on documentary evidence from other agencies bearing responsibility for determining an exemption category. PHAs are not responsible for making an independent determination of status.

*Response.* Nowhere in the rule is a burden placed on PHAs to determine an exemption category of a family member that is related to welfare programs. That determination is clearly left to welfare agencies, and PHAs are to look to these agencies for the determination of exemption of a family member.

*Comment.* The process for qualification for an exemption needs to be addressed by the rule. The proposed rule did not adequately address how a PHA would determine whether an adult, non-elderly household member would establish qualification for an exemption from the community service requirement.

*Response.* As stated in an earlier response, the rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD declines to establish by rule a process for qualification for an exemption.

*Comment.* The final rule should exempt primary caregivers; retirees below the age of 62; homemakers; and pregnant women.

*Response.* The categories of individuals exempt from the community service and self-sufficiency requirements are statutory. HUD does not have the authority to add additional categories.

*Comment.* The final rule should codify in the regulatory text the preamble language that states that PHAs must establish policies that permit residents to change exemption status during the year if their situation changes. This language should be added to paragraph (2) of § 960.605(c).

*Response.* HUD has included language at § 960.605(c) that requires PHAs to establish and describe policies addressing categories of individuals exempt from the service requirement. The PHA policy should include how the PHA will deal with any changes in exemption status.

### 3. Noncompliance

*Comment.* The rule should clarify whether a person who has been declared to be required to participate in community service has the right to a grievance hearing to challenge the decision of the PHA.

*Response.* Section 512 of the 1998 Act contains the requirement of due process for residents when the PHA is reviewing and determining resident compliance with the community service and self-sufficiency requirements.

*Comment.* Notice of noncompliance and a copy of any agreement for cure should be given to both the noncompliant resident and the leaseholder. It is critical that the leaseholder be included because it is the leaseholder's obligation to ensure compliance.

*Response.* HUD agrees. The rule (at § 960.607(b)) already specifies that the noncompliant adult and the head of household must sign any noncompliance and cure agreement.

#### L. Reexamination and Verification of Family Income and Composition (Proposed Rule §§ 5.617 and 960.209; Final Rule §§ 5.657, 960.257, and 960.259)

*Comment.* For a family paying income-based rent, it is of paramount importance that the rent is income-based and that an interim reexamination be processed immediately, not "within a reasonable time after the family request." The responsible entity should be required to make the reexamination immediately, or within 5 working days of the family's request to prevent hardship to the family. Another comment suggests that § 5.617 should require that any reduction must be effective either in the month in which the family loses income or the following month and that reductions can be retroactive. Another comment suggests the final rule specify how long an interim reexamination must take, as the current regulations do, otherwise delays in decreases in rent can cause tenants to be able to afford rents and be evicted.

*Response.* HUD does not prescribe the time period between the reexamination and implementation of the new rent. Whatever action the responsible entity intends to take in this regard and the time periods involved should be reasonable, consistent with and according to State law. When establishing its lease policies, the responsible entity should attempt to maintain administrative simplicity, while being responsive to unforeseen changes in family's circumstances. Additionally, current regulations do not

specify how long an interim reexamination must take.

*Comment.* The rule requires strict annualization of interim income changes in every case, and annualization can cause substantial increases in rent for assisted tenants even where significant income reductions are quite foreseeable in the future. The rule should permit responsible entities to be able to “look back” at a family’s historical income patterns in appropriate cases if available information is not reliable for predicting income for the reasonably foreseeable future.

*Response.* Annual income is defined in § 5.609(a)(2) as “all amounts monetary or not, which . . . are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date . . .” This definition always has allowed PHAs to base anticipated income for the next year on historical patterns rather than current or immediate past income, and PHAs will have an additional incentive to do this in situations where the family’s income then will assist the PHA in meeting income targeting goals. To provide additional flexibility in this area, section 5.609 (e) of the existing rule, which permits PHAs to anticipate income for a shorter period when 12 months is not feasible, has been further revised in the new § 5.609(d). It now references seasonal or cyclic income and permits—but does not require—annualization when the PHA believes that past income is the best available indicator of expected future income. PHAs should consider the effect of their policy on the treatment of seasonal or cyclic income on their ability to satisfy the requirement for targeting admission to very low income families.

*Comment.* Section 5.617 requires at least annual income and family composition determinations for public housing residents paying income-based rent, but notes that the rule does not require this determination for public housing residents who have chosen flat rents. Annual reexaminations of income and family composition are necessary for families paying flat rents because PHAs must allow families to choose their rent structure annually.

*Response.* The statute specifically states that for families electing to pay a flat rent, the PHA need only reexamine their income every three years. As reflected in responses to other comments, during the three-year period, PHAs are required to provide families paying a flat rent with the calculation of the income-based rent only if the family requests that information.

*Comment.* Section 5.617(b)(2) should be revised to assure that any interim reporting process include oral and written explanation to the resident of the factors considered in the rent recalculation, particularly disregard of increases in income from employment, choice of rent, and child care and medical care deductions.

*Response.* A PHA must establish policies and procedures regarding interim reexaminations, and such policies are reported in connection with the PHA Annual Plan. It is at the PHA’s discretion to establish policies on how it will conduct an interim reexamination, beyond what is specified in § 960.257(b) for the public housing program.

*M. Occupancy by Police Officers and Over-Income Families (Proposed and Final Rule §§ 5.619 and 960.503–960.505) (Sections 524 and 548 of the 1998 Act Amending Sections 3 and 8 of the 1937 Act)*

*Comment.* In light of the public nature of the PHA planning process, the portion of the plan that addresses police officer placement in public housing should not contain the level of detail demanded by the current rule with respect to the number and location of officers to be placed in particular projects.

*Response.* The regulation clarifies that the PHA Plan or supporting documents include the number and location of the public housing units to be occupied by police officers and the terms and conditions of their tenancies and a statement that the action is taken to increase security for public housing residents. The new law provided substantial relief to PHAs in this area compared to previous requirements found in 24 CFR part 960. Reporting of this limited information in connection with the PHA Plan is not unreasonable.

*Comment.* The rule requires owners of Section 8 project-based buildings to submit a written plan to the local HUD Field Office for authorization to lease a unit to over income police officers. Such plans should be submitted to the PHA for approval or disapproval in those instances where the housing authority is the contract administrator.

*Response.* HUD agrees with this comment and has revised the rule to adopt this suggestion.

*N. Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (Proposed and Final Rule Part 984) (Section 509 of the 1998 Act Amending Section 23 of the 1937 Act)*

*Comment.* The change to the definition of “welfare assistance” for purposes of the Family Self-Sufficiency Program in § 984.103 (i.e., removing Medicaid and SSI from the definition) will assist low-income families by allowing working participants to complete the program successfully without sacrificing their family’s health associated benefits.

*Response.* HUD agrees that the new definition of “welfare assistance” for purposes of the Family Self Sufficiency (FSS) program supports welfare reform. This definition remains basically unchanged in the final rule, except that we have borrowed language from the definition of assistance used in the TANF program. Additional clarifications are addressed in the following comments and responses.

*Comment.* The final rule should clarify whether the new definition of welfare assistance covers emergency assistance and food stamps.

*Response.* HUD has revised the language in § 984.103 to confirm that Food Stamps and emergency rental and utilities assistance are not included in welfare assistance for purposes of the FSS program.

*Comment.* The definition of welfare assistance in § 984.103 should be revised to read as follows: “Welfare assistance does not include the income assistance received by non-head-of-house family members for their disabilities (SSI, SSDI, etc.) or for Social Security.” Without this change an FSS participant is penalized for having a disabled or elderly family member.

*Response.* HUD has revised the language at § 984.103 to confirm that SSDI, SSI, and Social Security benefits are not welfare assistance.

*Comment.* The final rule should clarify participants to which the new definition of “welfare assistance” is applicable.

*Response.* Guidance on this issue is more appropriate for implementing instructions and guidance documents than for this rule.

*Comment.* The definition of “welfare assistance” appears contradictory, because it states that the term “welfare assistance” does not include programs that provide “health care, child care, or other services to working families”, but the TANF program provides these very services and the TANF program is included in the definition of welfare assistance.

*Response.* HUD has revised the definition of “welfare assistance” for purposes of the FSS program to clarify what is and is not included.

*Comment.* The rule should clarify that for voluntary or mandatory FSS programs, HUD reimburses PHAs for the cost of the FSS escrow.

*Response.* This comment is not within the scope of this rulemaking. The issue of reimbursement is a matter to be addressed by the negotiated rulemaking committees for the Section 8 Renewal Fund and the Public Housing Operating Fund.

*Comment.* The rule should include authorization for Section 8 FSS families to use their escrow accounts funds for homeownership through HUD programs, as well as other governmental programs.

*Response.* The rule does not provide any restriction to use escrow account funds for homeownership through HUD programs or other governmental programs. Therefore no explicit authorization is needed.

*Comment.* The rule should address PHA approval of portability moves during the initial year of the FSS contract. Additionally, the rule should clarify whether a tenant has a right to a hearing if a PHA denies the tenant’s request to move outside of a PHA’s jurisdiction during the first 12 months after the effective date of the contract.

*Response.* The rule is not the appropriate place to address the various situations in which a PHA should or should not approve requests for moves during the first year of the FSS contract. Specifying the circumstances in which a PHA must approve a move would unnecessarily limit the PHA’s discretion in administering its programs. Although a PHA should not arbitrarily restrict moves where there is good cause for the tenant to move, the decision to approve or disapprove the move rests with the PHA. A hearing is not required if a PHA denies the tenant’s request to move outside of a PHA’s jurisdiction. Families, however, always have the option of bringing their complaints to HUD if they believe that the PHA has acted without justification. Also, see § 982.353 for portability restrictions

during the first 12 months after admission.

*Comment.* The rule should contain a specific requirement that in determining whether to grant a FSS participant’s request to move within the initial 12 month period of tenancy, the PHA must consider its duty to affirmatively further fair housing.

*Response.* The Department will not adopt this suggestion. A PHA’s duty to affirmatively further fair housing is a consideration at the basis of many PHA decisions with respect to tenants. This is only one factor, however, considered by a PHA with respect to a tenant’s request to move. Others include the availability of appropriate services, training, and employment opportunities.

*O. Lease Requirements (Proposed and Final Rule § 966.4) (Section 512 of the 1998 Act Adding Section 6(l)(1) to the 1937 Act)*

*Comment.* The requirement for a 12-month lease will adversely affect PHAs both financially and with respect to unit occupancy. The 12-month lease will have an adverse impact on Tenant Accounts Receivable. The 12-month lease term should be optional. Allow PHAs to establish lease terms based on local practices and conditions. The rule should provide exceptions to the 12-month lease term.

*Response.* The requirement for a 12-month lease is statutory, as well as the requirement that the PHA lease be renewable for all purposes except noncompliance with community service requirements. Regardless of the term of the lease, PHAs may allow for a 30-day (or less) notice period for tenants to notify the PHA that they wish to terminate the lease. This will eliminate any adverse impact on tenants or Tenant Accounts Receivable. In establishing the initial term, a PHA may extend the period a few days beyond 12 months to make the lease term extend to the end of a month.

*P. Escrow Deposits (Proposed and Final Rule § 966.55)*

*Comment.* Escrow deposits, as provided in § 966.55, should be required only when the PHA asserts that rent is

due because of the family’s act or failure to act.

*Response.* The regulatory language is clear that an escrow deposit is required only in instances where a hearing is scheduled in any grievance involving the amount of rent. The rule goes on to say that the escrow deposit is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family’s act, or failure to act, took place. No additional clarification is necessary.

*Comment.* Escrow requirements should be waived whenever recent hardship or welfare benefit rent reductions are involved.

*Response.* The regulatory language is clear that the PHA must waive the requirement for an escrow deposit in cases where either (1) a family is appealing a financial hardship determination related to minimum rent requirements, or (2) the family is appealing a PHA’s decision not to reduce the annual income of a family as a result of a reduction in welfare benefits attributable to fraud or a failure to participate in an economic self-sufficiency program or to comply with a work activities requirement. No additional clarification is necessary.

**IV. Findings and Certifications**

*Public Reporting Burden*

The information collection requirements contained in this final rule are unchanged from the proposed rule. The final rule, however, reorganized certain regulatory sections of the proposed rule. The sections containing the information collections affected by the proposed and final rules are stated in the chart below. These information collections were reviewed 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 number 2577–0230. In accordance with the Paperwork Reduction Act, no agency may 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.

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
5.410 Residency Preferences .....	5.655(c)
5.611 New Deductions .....	960.206(b)
5.612(c) Individual Savings Accounts .....	5.611
5.614(c) Written Rent Options .....	960.255(d)
5.618(b) Welfare Rent Verification .....	960.253(e)
5.618(c) Welfare Rent Notice .....	5.615(c)
5.618(c) Welfare Rent Notice .....	5.615(d)

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
960.605(c) Community Service .....	960.605(c)
960.505 Over Income Families in Small PHAS .....	960.505

*Regulatory Review*

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this final rule is a “significant regulatory action,” as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department’s Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements changes to admission and occupancy requirements in public housing made by the Quality Housing and Work Responsibility Act of 1998. These are statutory changes, and these admission and occupancy requirements apply to all families residing in public housing or receiving Section 8 assistance or applying for public housing or Section 8 assistance. The Congress did not provide exceptions for admission and occupancy requirements to families because the PHAs or responsible entities that administer the covered HUD programs are small entities. Admission and occupancy policies are the type of policies that should be uniform throughout HUD’s programs, except to the extent that the type of program (i.e., public housing or Section 8 assistance) because of its statutory basis creates differences in this requirements. Because these are statutory requirements, HUD has no discretion to alter these requirements on the basis of the size of the entity administering the program, but has made every effort in this rule to minimize administrative burden for all entities whenever possible.

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in

accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding remains applicable to this final rule, and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

*Federalism Impact*

This final rule does not have federalism implications. It does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled “Federalism”).

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year.

*Catalog*

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850, 14.855, and 14.857.

**List of Subjects**

*24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 880*

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

*24 CFR Part 881*

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

*24 CFR Part 884*

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

*24 CFR Part 886*

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

*24 CFR Part 891*

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 960*

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

*24 CFR Part 966*

Grant programs—housing and community development, Public housing.

*24 CFR Part 984*

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

*24 CFR Part 985*

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

Accordingly, HUD amends parts 5, 880, 881, 884, 886, 891, 960, 966, 984, and 985 of title 24 of the Code of Federal Regulations as follows:

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

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

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

2. In part 5, revise all references to the term "HA" to read "PHA".

**Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers**

- 3. Amend § 5.100 as follows:
  - a. Revise the introductory text to read as set forth below;
  - b. Remove the definition of "housing agency (HA)";
  - c. Add, in alphabetical order, definitions of the terms "public housing", and "responsible entity".

**§ 5.100 Definitions.**

The following definitions apply to this part and also in other regulations, as noted:

\* \* \* \* \*

*Public housing* means housing assisted under the 1937 Act, other than under Section 8. "Public housing" includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

\* \* \* \* \*

*Responsible entity* means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;

(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

**§ 5.105 [Amended]**

4. Amend paragraph (a) of § 5.105 by adding, after the phrase "section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at", the phrase "part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*";

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

**§ 5.210 [Amended]**

- 5. Amend paragraph (b)(2) of § 5.210 by removing the phrase "as provided in parts 813 and 913 of this title".
- 6. Amend § 5.214 as follows:
  - a. In the definition of "assistance applicant", revise paragraph (2) to read as set forth below;
  - b. In the definition of "participant", revise paragraph (2) to read as set forth below;

c. Revise the definition of the term "Processing entity" to read as set forth below:

**§ 5.214 Definitions.**

\* \* \* \* \*

*Assistance applicant.* \* \* \*

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

\* \* \* \* \*

*Participant.* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

7. In § 5.236, revise paragraphs (b)(1) and (b)(3)(i)(B) and (C) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

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

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

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

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

\* \* \* \* \*

8. Add new § 5.240 to read as follows:

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

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

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

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

**Subpart C—Pet Ownership for the Elderly or Persons with Disabilities**

9. In § 5.300 revise paragraph (a)(3) to read as follows:

**§ 5.300 Purpose.**

- (a) \* \* \*
- (3) The public housing program.

**§ 5.306 [Amended]**

10. Amend § 5.306 by removing the definition of "public housing programs".

11. Revise the heading of Subpart D to read as follows:

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

**§ 5.400 [Amended]**

12. Amend § 5.400 by removing the parenthetical phrase.

**§ 5.403 [Amended]**

13. Amend § 5.403 as follows:

- a. Remove paragraph (a), the introductory text of paragraph (b), and the paragraph designation of paragraph (b);

- b. Revise the definitions of "disabled family" and "elderly family" to read as set forth below; and

- c. Add, in alphabetical order, the definition of "person with disabilities" to read as set forth below:

**§ 5.403 Definitions.**

\* \* \* \* \*

*Disabled family* means a family whose head, spouse, or sole member is a



person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

\* \* \* \* \*

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

\* \* \* \* \*

*Person with disabilities:*

- (1) Means a person who:
  - (i) Has a disability, as defined in 42 U.S.C. 423;
  - (ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
    - (A) Is expected to be of long-continued and indefinite duration;
    - (B) Substantially impedes his or her ability to live independently, and
    - (C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
  - (iii) Has a developmental disability as defined in 42 U.S.C. 6001.
- (2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- (3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- (4) Means "individual with handicaps", as defined in § 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

**§§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430 [Removed]**

14. Remove §§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430.

15. In part 5, revise the heading of subpart F to read as follows:

**Subpart F—Section 8 and Public Housing: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance**

16. Revise § 5.601 to read as follows:

**§ 5.601 Purpose and applicability.**

This subpart states HUD requirements on these subjects:

- (a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs.

These additional requirements concern:

- (1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;
- (2) Owner selection preferences;
- (3) Owner reexamination of family income and composition.

17. Amend § 5.603 as follows:

- a. Remove paragraphs (b) and (c) and redesignate paragraph (d) as paragraph (b);
- b. Revise paragraph (a) to read as set forth below;
- c. Amend the definition of "owner" in newly designated paragraph (b) by removing the phrase "24 CFR part 885." and adding in its place "part 891 of this title."; and
- d. Amend newly designated paragraph (b) by revising the definitions of "full-time student", "tenant rent", and "utility reimbursement"; and by adding, in alphabetical order, definitions of "economic self-sufficiency program", "extremely low income family", "imputed welfare income", "low income family", "very low income family", and "work activities" to read as set forth below:

**§ 5.603 Definitions.**

\* \* \* \* \*

(a) *Terms found elsewhere in part 5—*

(1) *Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, and *Section 8* are defined in § 5.100.

(2) *Subpart D.* The terms "disabled family", "elderly family", "family", "live-in aide", and "person with disabilities" are defined in § 5.403.

(b) \* \* \*

*Economic self-sufficiency program.*

Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

*Extremely low income family.* A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger

families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

\* \* \* \* \*

*Full-time student.* A person who is attending school or vocational training on a full-time basis.

*Imputed welfare income.* See § 5.615.

*Low income family.* A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

\* \* \* \* \*

*Tenant rent.* The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

\* \* \* \* \*

*Utility reimbursement.* The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

*Very low income family.* A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

\* \* \* \* \*

*Work activities.* See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

**§§ 5.605 and 5.607 [Removed]**

18. Remove §§ 5.605 and 5.607.

19. Before § 5.609, add an undesignated center heading to read as follows:

**Family Income**

20. Amend § 5.609 as follows:

- a. Remove and reserve paragraph (c)(13);
- b. Revise paragraph (c)(8)(iv) to read as set forth below;
- c. Revise paragraph (d) to read as set forth below; and
- d. Remove paragraph (e).

**§ 5.609 Annual income.**

\* \* \* \* \*

(c) \* \* \*

(8) \* \* \*

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

\* \* \* \* \*

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

21. Revise § 5.611 to read as follows:

**§ 5.611 Adjusted income.**

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

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) \$480 for each dependent;

(2) \$400 for any elderly family or disabled family;

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

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

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

(4) Any reasonable child care expenses necessary to enable a member

of the family to be employed or to further his or her education.

(b) *Permissive deductions—for public housing only.* For public housing only, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

22. Revise §§ 5.613 and 5.615 to read as follows:

**§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.**

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

**§ 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at § 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by

a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with § 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) *Review of PHA decision.* (1) *Public housing.* If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD

requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to § 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) *Section 8 participant.* A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with § 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.*  
(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits

by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

#### § 5.617 [Removed]

23. Remove § 5.617.

24. After § 5.615, add an undesignated center heading and new §§ 5.628, 5.630, 5.632, and 5.634 to read as follows:

#### Family Payment

##### § 5.628 Total tenant payment.

(a) *Determining total tenant payment (TTP).* Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of the family's monthly adjusted income;

(2) 10 percent of the family's monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with § 5.630.

(b) *Determining TTP if family's welfare assistance is ratably reduced.* If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

##### § 5.630 Minimum rent.

(a) *Minimum rent.* (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to \$50.

(3) For other section 8 programs, the minimum rent is \$25.

(b) *Financial hardship exemption from minimum rent.* (1) *When is family*

*exempt from minimum rent?* The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) *What happens if family requests a hardship exemption?* (i) *Public housing.* (A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) *All section 8 programs.* (A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity

determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) *All programs.* (A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to § 5.628(a)(4) and § 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to § 5.628(a)(1), (a)(2) and (a)(3)).

(3) *Public housing: Grievance hearing concerning PHA denial of request for hardship exemption.* If a public housing family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

#### **§ 5.632 Utility reimbursements.**

(a) *Applicability.* This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see § 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see § 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) *Payment of utility reimbursement.* (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

- (i) To the family, or
- (ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

#### **§ 5.634 Tenant rent.**

(a) *Section 8 programs.* For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) *Public housing.* See § 960.253 of this title for the determination of tenant rent.

25. Add an undesignated center heading, followed by §§ 5.653, 5.655, 5.657, 5.659, and 5.661 to read as follows:

#### **Section 8 Project-Based Assistance: Occupancy Requirements**

##### **§ 5.653 Section 8 project-based assistance programs: Admission—Income-eligibility and income-targeting.**

(a) *Applicability.* This section describes requirements concerning income-eligibility and income-targeting that apply to the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Who is eligible?*

(1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-

based voucher program under part 983 of this title.)

(c) *Targeting to extremely low income families.* For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families that are extremely low income families at the time of admission.

(d) *Limitation on admission of non-very low income families.*

(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the Section 8 project-based dwelling units that were available for occupancy under Section 8 Housing Assistance Payments Contracts effective before October 1, 1981 and that are leased on or after that date shall be available for leasing by low income families other than very low income families. HUD reserves the right to limit the admission of low income families other than very low income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the Section 8 project-based dwelling units that initially become available for occupancy under Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low income families other than families that are very low income families at the time of admission to the Section 8 program. Except with the prior approval of HUD under paragraphs (d)(3) and (d)(4) of this section, the owner may only lease such units to very low income families.

(3) *Request for exception.* A request by an owner for approval of admission of low income families other than very low income families to section 8 project-based units must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low income families;

(ii) Commitment of an owner to attaining occupancy by families with a broad range of incomes;

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects

in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

(iv) Low-income families that otherwise would be displaced from a Section 8 project.

(4) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income-eligibility and for income-targeting under this section.

(f) *Reporting.* The Section 8 owner must comply with HUD-prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements.

**§ 5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.**

(a) *Applicability.* This section applies to the section 8 project-based assistance programs. The section describes requirements concerning the Section 8 owner's selection of residents to occupy a project or unit, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Selection.* (1) *Selection for owner's project or unit.* Selection for occupancy of a project or unit is the function of the Section 8 owner. However, selection is subject to the income-eligibility and income-targeting requirements in § 5.653.

(2) *Tenant selection plan.* The owner must adopt a written tenant selection plan in accordance with HUD requirements.

(3) *Amount of income.* The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family

for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of § 5.653(c).

(4) *Selection for particular unit.* In selecting a family to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the unit to families which include persons with disabilities who require such features (see §§ 8.27 and 100.202 of this title).

(5) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(c) *Particular owner preferences.* The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although the owner is not prohibited from adopting a residency preference, the owner may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area").

(iii) An owner's residency preference must be approved by HUD in one of the following methods:

(A) Prior approval of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with § 108.25 of this title) as a residency preference area;

(B) Prior approval of the residency preference area in the PHA plan of the jurisdiction in which the project is located;

(C) Modification of the Affirmative Fair Housing Marketing Plan, in accordance with § 108.25 of this title,

(iv) Use of a residency preference may not have the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(v) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference

area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* (i) The owner may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities.

(ii) If the owner adopts a preference for admission of working families, the owner must not give a preference based on the amount of earned income.

(3) *Preference for person with disabilities.* The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The owner should consider whether to adopt a preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.* The owner may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

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

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Regular reexamination.* The owner must conduct a reexamination and redetermination of family income and composition at least annually.

(c) *Interim reexaminations.* A family may request an interim reexamination of family income because of any changes since the last examination. The owner must make the interim reexamination within a reasonable time after the family request. The owner may adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

**§ 5.659 Family information and verification.**

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation program and the project-based certificate or voucher programs.

(b) *Family obligation to supply information.* (1) The family must supply any information that HUD or the owner determines is necessary in administration of the Section 8 program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the owner or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(c) *Family release and consent.* (1) As a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members as the owner designates, to execute a HUD-approved release and consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the Section 8 program.

(d) *Owner responsibility for verification.* The owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(1) Reported family annual income;

(2) The value of assets;

(3) Expenses related to deductions from annual income; and

(4) Other factors that affect the determination of adjusted income.

**§ 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.**

(a) *Applicability.* This section describes when a Section 8 owner may lease a Section 8 unit to police or other security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

(b) *Terms.* (1) *Security personnel* means:

(i) A police officer, or

(ii) A qualified security professional, with adequate training and experience to provide security services for project residents.

(2) *Police officer* means a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments.

(3) *Security* includes the protection of project residents, including resident project management from criminal or other activity that is a threat to person or property, or that arouses fears of such threat.

(c) *Owner application.* (1) The owner may submit a written application to the contract administrator (PHA or HUD) for approval to lease an available unit in a Section 8 project to security personnel who would not otherwise be eligible for Section 8 assistance, for the purpose of increasing security for Section 8 families residing in the project. (2) The owner's application must include the following information:

(i) A description of criminal activities in the project and the surrounding community, and the effect of criminal activity on the security of project residents.

(ii) Qualifications of security personnel who will reside in the project, and the period of residence by such personnel. How owner proposes to check backgrounds and qualifications of any security personnel who will reside in the project.

(iii) Full disclosure of any family relationship between the owner and any security personnel. For this purpose, "owner" includes a principal or other interested party.

(iv) How residence by security personnel in a project unit will increase security for Section 8 assisted families residing in the project.

(v) The amount payable monthly as rent to the unit owner by security

personnel residing in the project (including a description of how this amount is determined), and the amount of any other compensation by the owner to such resident security personnel.

(vi) The terms of occupancy by such security personnel. The lease by owner to the approved security personnel may provide that occupancy of the unit is authorized only while the security personnel is satisfactorily performing any agreed responsibilities and functions for project security.

(vii) Other information as requested by the contract administrator.

(d) *Action by contract administrator.*

(1) The contract administrator shall have discretion to approve or disapprove owner's application, and to impose conditions for approval of occupancy by security personnel in a section 8 project unit.

(2) Notice of approval by the contract administrator shall specify the term of such approved occupancy. Such approval may be withdrawn at the discretion of the contract administrator, for example, if the contract administrator determines that such occupancy is not providing adequate security benefits as proposed in the owner's application; or that security benefits from such occupancy are not a sufficient return for program costs.

(e) *Housing assistance payment and rent.* (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the unit, or whether the cost of security services should be borne by the owner from other project income.

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

26. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

27. Amend § 880.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase “(concerning preferences for selection of applicants)”.

**§ 880.104 Applicability of part 880.**

\* \* \* \* \*

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

\* \* \* \* \*

28. Amend § 880.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms “Gross rent”, “Household type”, “Housing type”, and “Housing Assistance Plan”;

c. Add definitions, in alphabetical order, of the terms “Fair Market Rent (FMR)”, “HUD”, “NOFA”, and “Public Housing Agency (PHA)”;

d. Revise the definitions of “ACC (Annual Contributions Contract)”, “Annual income”, “Contract rent”, “Elderly family”, “Family”, “Housing Assistance Payment”, “Low income family”, “Tenant rent”, “Total tenant payment”, “Utility allowance”, “Utility reimbursement” and “Very low-income family” to read as set forth below.

**§ 880.201 Definitions.**

*Annual Contributions Contract (ACC).* As defined in part 5 of this title.

\* \* \* \* \*

*Annual income.* As defined in part 5 of this title.

\* \* \* \* \*

*Contract rent.* The total amount of rent specified in the contract as payable to the owner for a unit.

\* \* \* \* \*

*Elderly family.* As defined in part 5 of this title.

*Fair Market Rent (FMR).* As defined in part 5 of this title.

*Family.* As defined in part 5 of this title.

\* \* \* \* \*

*Housing assistance payment.* The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant

rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a “vacancy payment”, may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

*HUD.* Department of Housing and Urban Development.

\* \* \* \* \*

*Low income family.* As defined in part 5 of this title.

*NOFA.* As defined in part 5 of this title.

\* \* \* \* \*

*Public Housing Agency (PHA).* As defined in part 5 of this title.

\* \* \* \* \*

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

\* \* \* \* \*

*Very low income family.* As defined in part 5 of this title.

29. In § 880.501, revise paragraph (e) to read as follows:

**§ 880.501 The contract.**

\* \* \* \* \*

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with § 5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

30. In § 880.601, revise paragraph (b) to read as follows:

**§ 880.601 Responsibilities of owner.**

\* \* \* \* \*

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

\* \* \* \* \*

**§ 880.603 [Amended]**

31. Amend § 880.603 as follows:

a. In the introductory text of paragraph (b), remove the phrase “in accordance with 24 CFR part 813” and “and 24 CFR part 813”;

b. In paragraph (c)(1), remove the phrase “24 CFR part 813” and add in its place “part 5 of this title”;

c. In paragraph (c)(3), remove the phrase “Gross Rent” and add in its place “contract rent plus any utility allowance”.

**§ 880.612a [Amended]**

32. In § 880.612a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

**PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION**

33. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

34. Amend § 881.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase “(concerning preferences for selection of applicants)”.

**§ 881.104 Applicability of part 881.**

\* \* \* \* \*

(c) Section 881.607 (Termination of tenancy and modification of leases) applies to all families.

\* \* \* \* \*

35. Amend § 881.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms “Gross rent”, “Household type”, “Housing Assistance Plan”, and “Housing type”;

c. Add definitions, in alphabetical order, of the terms “Fair Market Rent (FMR)”, “HUD”, “NOFA”, and “Public Housing Agency (PHA)”;

d. Revise the definitions of “ACC (Annual Contributions Contract)”, “Annual income”, “Contract rent”, “Elderly family”, “Family”, “Housing Assistance Payment”, “Low income family”, “Tenant rent”, “Total tenant payment”, “Utility allowance”, “Utility reimbursement” and “Very low-income family” to read as set forth below.

**§ 881.201 Definitions.**

*Annual Contributions Contract (ACC).* As defined in part 5 of this title.

*Annual income.* As defined in part 5 of this title.

\* \* \* \* \*

*Contract rent.* The total amount of rent specified in the contract as payable to the owner for a unit.

\* \* \* \* \*

*Elderly family.* As defined in part 5 of this title.

*Fair Market Rent (FMR).* As defined in part 5 of this title.

*Family.* As defined in part 5 of this title.

\* \* \* \* \*

*Housing assistance payment.* The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment", may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

*HUD.* Department of Housing and Urban Development.

\* \* \* \* \*

*Low income family.* As defined in part 5 of this title.

*NOFA.* As defined in part 5 of this title.

\* \* \* \* \*

*Public Housing Agency (PHA).* As defined in part 5 of this title.

\* \* \* \* \*

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

\* \* \* \* \*

*Very low income family.* As defined in part 5 of this title.

**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

36. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

37. Amend § 884.102 as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

**§ 884.102 Definitions.**

\* \* \* \* \*

*Annual income.* As defined in part 5 of this title.

\* \* \* \* \*

*Family.* As defined in part 5 of this title.

\* \* \* \* \*

*Low-income family.* As defined in part 5 of this title.

\* \* \* \* \*

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

*Very low-income family.* As defined in part 5 of this title.

**§ 884.105 [Amended]**

38. Amend § 884.105(a) by removing the phrase "Gross Rents" and adding in its place "Contract Rents plus any utility allowances".

**§ 884.116 [Amended]**

39. Amend § 884.116(b) by removing the phrase "24 CFR part 813" and adding in its place "part 5 of this title".

**§ 884.118 [Amended]**

40. Amend § 884.118 as follows:

a. In paragraph (a)(3), remove the phrase "24 CFR parts 5 and 813" and add in its place "part 5 of this title";

b. In paragraph (a)(7), remove the phrase "24 CFR part 813" and add in its place "part 5 of this title"; and

c. In paragraph (a)(8), remove the phrase "813 of this chapter" and add in its place "5 of this title".

**§ 884.214 [Amended]**

41. Amend § 884.214 as follows:

a. Paragraph (b)(2) is amended by removing from the second sentence the comma before the word "except", adding a period in its place, and removing the remainder of the sentence starting with the word "except" and ending with the period.

b. Paragraph (b)(8) is amended by removing the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5 of this title".

**§ 884.218 [Amended]**

42. Amend § 884.218 as follows:

a. In paragraph (a), remove the phrase "813 of this chapter" and add in its place "5 of this title"; and

b. In paragraph (c), remove the phrase "Gross Rent" and add in its place "Contract Rent plus any utility allowance".

**§ 884.223a [Amended]**

43. Amend § 884.223a by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

**PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS**

44. The authority citation for part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

45. Amend § 886.102 as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Low-income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

**§ 886.102 Definitions.**

\* \* \* \* \*

*Annual income.* As defined in part 5 of this title.

\* \* \* \* \*

*Family.* As defined in part 5 of this title.

\* \* \* \* \*

*Low-income family.* As defined in part 5 of this title.

\* \* \* \* \*

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

*Very low-income family.* As defined in part 5 of this title.

**§ 886.119 [Amended]**

46. Amend § 886.119 as follows:

a. In paragraph (a)(3), remove the phrases "24 CFR parts 812 and 813" and "24 CFR part 5" and add in their place "part 5 of this title"; and remove the phrase "provision of Federal selection preferences"; and

b. In paragraphs (a)(7) and (a)(8), remove the phrase "813 of this chapter" and add in its place "5 of this title".

**§ 886.121 [Amended]**

47. Amend § 886.121 as follows:

a. In paragraph (b), remove the phrase "24 CFR part 812" and add in its place "part 5 of this title"; and

b. In paragraph (c), remove the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

**§ 886.124 [Amended]**

48. Amend § 886.124 as follows:



a. In paragraph (a), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title";

b. In paragraphs (a) and (b), remove the phrase "24 CFR part 812" from the three places that it occurs, and add in its place "part 5, subpart E, of this title"; and

c. In paragraph (c), remove the phrase "24 CFR 812.9 and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

**§ 886.128 [Amended]**

49. Amend § 886.128 as follows:

a. Remove the phrase "24 CFR parts 247 and 812" and add in its place "parts 247 and 5 of this title"; and

b. Remove the phrase "24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

**§ 886.129 [Amended]**

50. Amend § 886.129(e) by removing the phrase "24 CFR 812.9" from the one place it appears and by removing the phrase "24 CFR 812.10" from the two places it appears, and adding in each of those places "part 5, subpart E, of this title".

51. Revise § 886.132 to read as follows:

**§ 886.132 Tenant selection.**

Sections 5.653 through 5.661 of this title govern selection of tenants and occupancy requirements applicable under this subpart A.

**§ 886.138 [Amended]**

52. Amend § 886.138 by removing from paragraph (g)(1)(iii)(A)(2) the phrase "24 CFR 813.107" and by adding in its place "part 5 of this title".

53. Section 886.302 is amended as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Low-income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

**§ 886.302 Definitions.**

\* \* \* \* \*

*Annual income.* As defined in part 5 of this title.

\* \* \* \* \*

*Family.* As defined in part 5 of this title.

\* \* \* \* \*

*Low-income family.* As defined in part 5 of this title.

\* \* \* \* \*

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

*Very low-income family.* As defined in part 5 of this title.

**§ 886.318 [Amended]**

54. Amend § 886.318 as follows:

a. Remove the phrase "parts 812 and 813" from paragraph (a)(3) and add "part 5 of this title" in its place;

b. Remove the phrase "provision of Federal selection preferences in accordance with § 886.337," from paragraph (a)(3);

c. In paragraph (a)(6), remove the phrase "part 813 of the chapter" and add in its place "part 5 of this title"; and

d. In paragraph (a)(7), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title".

55. Amend § 886.321 as follows:

a. Revise paragraph (b)(1) to read as set forth below;

b. In paragraph (b)(2), remove the phrase "or to accept applications only from families that claim a Federal preference under § 886.337" and remove the sentence starting with the word "Notwithstanding"; and

c. In paragraph (b)(7), remove the phrase "24 CFR 812.9, and 24 CFR 812.10" and add in its place "part 5 of this title":

**§ 886.321 Marketing.**

\* \* \* \* \*

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, §§ 5.653 through 5.661.)

\* \* \* \* \*

**§ 886.324 [Amended]**

56. Amend § 886.324 as follows:

a. In paragraph (a), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title", and remove the phrase "of part 812" and add in its place "of part 5 of this title";

b. In paragraphs (a) and (b), remove the phrase "24 CFR part 812" and add in its place "part 5 of this title";

c. In paragraph (c), remove the phrase "Gross Rent" and add in its place "Contract Rent plus any applicable Utility Allowance", and remove the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

**§ 886.328 [Amended]**

57. Amend § 886.328 by removing the phrase "24 CFR parts 247 and 812" and

by adding in its place "parts 247 and 5 of this title", and by removing the phrase "24 CFR 812.10" and by adding in its place "part 5, subpart E, of this title".

**§ 886.329 [Amended]**

58. Amend § 886.329(e) by removing the phrase "24 CFR 812.9" and by adding in its place "part 5, subpart E, of this title", and by removing the phrase "24 CFR 812.10" from the two places where it occurs and by adding in those places "part 5, subpart E, of this title".

**§ 886.329a [Amended]**

59. In § 886.329a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

**§ 886.334 [Amended]**

60. Amend § 886.334 by removing from paragraph (b)(4) the phrase "Gross Rents" and adding in its place "Contract Rents plus any applicable Utility Allowances".

**§ 886.338 [Amended]**

61. Amend § 886.338 by removing from paragraph (g)(1)(iii)(A)(2) the phrase "24 CFR 813.107" and adding in its place "part 5 of this title".

**PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES**

62. The authority citation for part 891 continues to read as follows:

*Authority:* 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

**§ 891.410 [Amended]**

63. Amend § 891.410 by removing paragraph (h).

**§ 891.550 [Removed]**

64. Remove § 891.550.

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

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

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

66. Amend part 960 by adding a new subpart A to read as follows:

**Subpart A—Applicability, definitions, equal opportunity requirements.**

Sec.

960.101 Applicability.

960.102 Definitions.

960.103 Equal opportunity requirements.

**Subpart A—Applicability, Definitions, Equal Opportunity Requirements**

**§ 960.101 Applicability.**

This part is applicable to public housing.

**§ 960.102 Definitions.**

(a) *Definitions found elsewhere:* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *1937 Act, HUD, MSA, public housing, public housing agency (PHA), Section 8.*

(2) *Definitions under the 1937 Act.* The following terms are defined in part 5, subpart D of this title: *annual contributions contract (ACC), applicant, elderly family, elderly person, extremely low income family, family, low income family, person with disabilities.*

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in part 5, subpart F of this title: *Annual income* (see § 5.609); *economic self-sufficiency program, tenant rent, total tenant payment* (see § 5.628), *utility allowance.*

(b) *Additional definitions.* In addition to the definitions in paragraph (a), the following definitions and cross-references apply:

*Ceiling rent.* See § 960.253(d).

*Designated housing.* See part 945 of this chapter.

*Disabled families.* See § 5.403 of this title.

*Eligible families.* Low income families who are eligible for admission to the public housing program.

*Flat rent.* See § 960.253(b).

*Income-based rent.* See § 960.253(c).

*Mixed population development.* A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.

*Over-income family.* A family that is not a low income family. See subpart E of this part.

*PHA plan.* See part 903 of this chapter.

*Residency preference.* A preference for admission of persons who reside in a specified geographic area.

*Tenant-based.* See § 982.1(b) of this chapter.

**§ 960.103 Equal opportunity requirements.**

(a) *Applicable requirements.* The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in § 5.105(a) of this title.

(b) *PHA duty to affirmatively further fair housing.* The PHA must affirmatively further fair housing in the administration of its public housing program.

(c) *Equal opportunity certification.* The PHA must submit signed equal opportunity certifications to HUD in accordance with § 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.

67. Revise the heading of subpart B of part 960 to read as follows:

**Subpart B—Admission**

68. Revise §§ 960.201 and 960.202 to read as follows:

**§ 960.201 Purpose.**

(a) This subpart states HUD eligibility and selection requirements for admission to public housing.

(b) See also related HUD regulations in this title concerning these subjects:

(1) 1937 Act definitions: part 5, subpart D;

(2) Restrictions on assistance to noncitizens: part 5, subpart E;

(3) Family income and family payment: part 5, subpart F;

(4) Public housing agency plans: part 903;

(5) Rent and reexamination: part 960, subpart C;

(6) Mixed population developments: part 960, subpart D;

(7) Occupancy by over-income families or police officers: part 960, subpart E.

**§ 960.202 Eligibility and targeting for admission.**

(a) *Who is eligible?* (1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to a PHA's public housing program.

(b) *Targeting admissions to extremely low income families.*—(1) *Targeting requirement.* (i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the "basic targeting requirement".

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal

year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) *Credit for admissions to PHA voucher program.* (i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see § 982.201(b)(2) of this chapter), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income eligibility under paragraph (a) and for PHA income targeting under paragraph (b) of this section.

(d) *Reporting.* The PHA must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data, as determined by HUD, necessary to monitor compliance with income eligibility and targeting requirement.

69. Amend § 960.204 as follows:

a. Revise paragraph (a)(2)(i) to read as set forth below;

b. Remove existing paragraph (a)(2)(iii) and redesignate paragraph (a)(2)(iv) as new paragraph (a)(2)(iii);

c. Amend paragraph (a)(3)(ii) by inserting a semicolon after the words "waiting list", by removing the phrase "that includes the following:", and by removing paragraphs (a)(3)(ii)(A) through (D).

**§ 960.204 Tenant selection policies.**

(a) \* \* \*

(2) \* \* \*  
(i) To provide for deconcentration and income-mixing in accordance with the PHA plan (see § 903.7 of this title).

\* \* \* \* \*

70. Amend § 960.205 as follows:  
a. Revise paragraph (b) introductory text to read as set forth below; and  
b. Revise paragraph (c) to read as set forth below

**§ 960.205 Selection criteria.**

\* \* \* \* \*

(b) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

\* \* \* \* \*

(c) The requirements with respect to deconcentrating poverty and producing a mix of incomes in the PHA's public housing developments are found in the PHA Plan rule, at part 903 of this title.

\* \* \* \* \*

71. Revise § 960.206 to read as follows:

**§ 960.206 Waiting list: Local preferences in admission to public housing program.**

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preference for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences.*—(1) *Residency requirements or preferences.*

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area"). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse, or sole member, is employed). However, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or a person with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection for particular unit.* In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).

(d) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(e) *Selection method.* (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:

- (i) Date and time of application; or
- (ii) A drawing or other random choice technique.

(2) The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA plan.

**§ 960.208 [Removed]**

72. Remove § 960.208.

**§ 960.207 [Redesignated]**

73. Redesignate § 960.207 as § 960.208.

**§§ 960.209 and 960.210 [Removed]**

74. Remove §§ 960.209 and 960.210.

75. In part 960, add new subpart C, to read as follows:

**Subpart C—Rent and Reexamination**

Sec.

960.253 Choice of rent.

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

960.257 Family income and composition: Regular and interim reexaminations.

960.259 Family information and verification.

960.261 Restriction on eviction of families based on income.

**Subpart C—Rent and Reexamination**

**§ 960.253 Choice of rent.**

(a) *Rent options.* (1) *Annual choice by family.* Once a year, the PHA must give

each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

- (i) The location, quality, size, unit type and age of the unit; and
- (ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

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

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable

system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

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

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

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested

switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

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

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

*Disallowance.* Exclusion from annual income.

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

*Qualified family.* A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

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

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

(b) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the cumulative twelve

month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in § 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

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

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

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

**§ 960.257 Family income and composition: Regular and interim reexaminations.**

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

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years.

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

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

(b) *Interim reexaminations.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(c) *PHA reexamination policies.* The PHA must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with this section, and shall conduct reexaminations in accordance

with such policies. The PHA reexamination policies must be in accordance with the PHA plan.

**§ 960.259 Family information and verification.**

(a) *Family obligation to supply information.* (1) The family must supply any information that the PHA or HUD determines is necessary in administration of the public housing program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(b) *Family release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the program.

(c) *PHA responsibility for reexamination and verification.* (1) The PHA must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income or income-based rent.

**§ 960.261 Restriction on eviction of families based on income.**

No PHA shall commence eviction proceedings based on the income of the tenant family unless:

- (a) It has determined that there is decent, safe, and sanitary housing of suitable size for the family available at a rent not exceeding the tenant rent; or
- (b) It is required to do so by local law.

**Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects**

**§ 960.405 [Removed]**

76. Remove § 960.405.

77. Revise § 960.407 to read as follows:

**§ 960.407 Selection preference for mixed population developments.**

(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. The PHA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development.

(b) In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units that have special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units (see §§ 8.27 and 100.202 of this title).

78. Revise subpart E to read as follows:

**Subpart E—Occupancy by over-income families or police officers**

Sec.

960.503 Occupancy by over-income families.

960.505 Occupancy by police officers to provide security for public housing residents.

**Subpart E—Occupancy by over-income families or police officers**

**§ 960.503 Occupancy by over-income families.**

A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents),

if all the following conditions are satisfied:

(a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;

(b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;

(c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;

(d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and

(e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

**§ 960.505 Occupancy by police officers to provide security for public housing residents.**

(a) *Police officer.* For purpose of this subpart E, "police officer" means a person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

(b) *Occupancy in public housing.* For the purpose of increasing security for residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. The PHA must include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

79. Add a new subpart F, to read as follows:

**Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities**

Sec.

960.600 Implementation.

960.601 Definitions.

960.603 General requirements.

960.605 How PHA administers service requirements.

960.607 Assuring resident compliance.

960.609 Prohibition against replacement of PHA employees.

**Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities**

**§ 960.600 Implementation.**

PHAs and residents must comply with the requirements of this subpart beginning with PHA fiscal years that commence on or after October 1, 2000. Unless otherwise provided by § 903.11 of this chapter, Annual Plans submitted for those fiscal years are required to contain information regarding the PHA's compliance with the community service requirement, as described in § 903.7 of this chapter.

**§ 960.601 Definitions.**

(a) *Definitions found elsewhere.*

(1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *public housing, public housing agency* (PHA).

(2) *Definitions concerning income and rent.* The following terms are defined in part 5, subpart F of this title: *economic self-sufficiency program, work activities.*

(b) *Other definitions.* In addition to the definitions in paragraph (a) of this section, the following definitions apply:

*Community service.* The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community.

Community service is not employment and may not include political activities.

*Exempt individual.* An adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or

(ii) Is a primary caretaker of such individual;

(3) Is engaged in work activities;

(4) Meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program; or

(5) Is a member of a family receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which

the PHA is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

**Service requirement.** The obligation of each adult resident, other than an exempt individual, to perform community service or participate in an economic-self sufficiency program required in accordance with § 960.603.

### § 960.603 General requirements.

(a) **Service requirement.** Except for any family member who is an exempt individual, each adult resident of public housing must:

(1) Contribute 8 hours per month of community service (not including political activities); or

(2) Participate in an economic self-sufficiency program for 8 hours per month; or

(3) Perform 8 hours per month of combined activities as described in paragraphs (a)(1) and (a)(2) of this section.

(b) **Family violation of service requirement.** The lease shall specify that it shall be renewed automatically for all purposes, unless the family fails to comply with the service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term (see § 966.4(1)(2)(i) of this chapter).

### § 960.605 How PHA administers service requirements.

(a) **PHA policy.** Each PHA must develop a local policy for administration of the community service and economic self-sufficiency requirements for public housing residents.

(b) **Administration of qualifying community service or self-sufficiency activities for residents.** The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make such activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions.

(c) **PHA responsibilities.** (1) The PHA determines which family members are subject to or exempt from the service requirement, and the process for determining any changes to exempt or non-exempt status of family members.

(2) The PHA must give the family a written description of the service requirement, and of the process for

claiming status as an exempt person and for PHA verification of such status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt persons.

(3) The PHA must review family compliance with service requirements, and must verify such compliance annually at least thirty days before the end of the twelve month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA shall obtain verification of family compliance from such third parties.

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

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

### § 960.607 Assuring resident compliance.

(a) **Third-party certification.** If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide signed certification to the PHA by such other organization that the family member has performed such qualifying activities.

(b) **PHA notice of noncompliance.** (1) If the PHA determines that there is a family member who is required to fulfill a service requirement, but who has violated this family obligation (noncompliant resident), the PHA must notify the tenant of this determination.

(2) The PHA notice to the tenant must:

(i) Briefly describe the noncompliance;

(ii) State that the PHA will not renew the lease at the end of the twelve month lease term unless:

(A) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance, and in fact cure such noncompliance in accordance with such agreement; or

(B) The family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

(iii) State that the tenant may request a grievance hearing on the PHA determination, in accordance with part 966, subpart B of this chapter, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

(c) **Tenant agreement to comply with service requirement.** If the tenant or another family member has violated the service requirement, the PHA may not renew the lease upon expiration of the term unless:

(1) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance by completing the additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the twelve-month term of the new lease, and

(2) All other members of the family who are subject to the service requirement are currently complying with the service requirement or are no longer residing in the unit.

### § 960.609 Prohibition against replacement of PHA employees.

In implementing the service requirement under this subpart, the PHA may not substitute community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement.

## PART 966—LEASE AND GRIEVANCE PROCEDURES

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

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

81. Amend § 966.4 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise paragraph (b)(1) to read as set forth below;

c. Add new headings for paragraphs (b)(2) to (b)(5) as set forth below;

d. Revise paragraph (l)(1) and paragraph (l)(2)(i) to read as set forth below;

e. Add paragraphs (l)(2)(iii) and (l)(2)(iv) to read as set forth below;

f. Remove paragraph (o) and paragraph (p).

### § 966.4 Lease requirements.

\* \* \* \* \*

(a) **Parties, dwelling unit and term.** (1) The lease shall state:

(i) The names of the PHA and the tenant;

(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);

(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);

(iv) A statement of what utilities, services and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;

(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in-aide). The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

(2) *Lease term and renewal.* (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.

(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.

(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(l).

(3) *Execution and modification.* The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may be modified at any time by written agreement of the tenant and the PHA.

(b) *Payments due under the lease.* (1) *Tenant rent.* (i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

(ii) The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.

(2) *PHA charges.* \* \* \*

(3) *Late payment penalties.* \* \* \*

(4) *When charges are due.* \* \* \*

(5) *Security deposits.* \* \* \*

\* \* \* \* \*

(1) *Termination of tenancy and eviction.*

(1) *Procedures.* The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

(2) *Grounds for termination of tenancy.* (i) The PHA may terminate the tenancy only for serious or repeated

violation of material terms of the lease, such as failure to make payments due under the lease or to fulfill tenant obligations, as described in paragraph (f) of this section, or for other good cause (including failure to accept the PHA's offer of a lease revision in accordance with paragraph (l)(2)(iv) of this section).

\* \* \* \* \*

(iii) Failure of a family member to comply with service requirement provisions of part 960, subpart F of this chapter, is grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve month lease term.

(iv) The PHA may terminate the tenancy if the family fails to accept the PHA's offer of a revision to an existing lease. Such revision must be on a form adopted by the PHA in accordance with § 966.3. The PHA must give the family written notice of the offer of a revision at least 60 calendar days before it is scheduled to take effect. The offer must specify a reasonable time limit within that period for acceptance by the family.

\* \* \* \* \*

82. Revise § 966.55(e) to read as follows:

**§ 966.55 Procedures to obtain a hearing.**

\* \* \* \* \*

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

\* \* \* \* \*

**PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM**

83. The authority citation for part 984 continues to read as follows:

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

84. Throughout part 984, remove the terms "an HA" and "HA" and add in their place the terms "a PHA" and "PHA".

85. Amend § 984.101 as follows:

a. In paragraph (a)(1), remove the phrase "and Indian"; and

b. Revise paragraphs (b)(3) and (c) to read as set forth below:

**§ 984.101 Purpose, scope, and applicability.**

\* \* \* \* \*

(b) \* \* \*

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA for which HUD reserved funding (budget authority) for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998 must operate a Section 8 FSS program.

(ii) Each PHA for which HUD reserved funding (budget authority) to acquire or construct additional public housing units in FY 1993 through October 20, 1998 must operate a public housing FSS program.

(c) *Applicability.* This part applies to:

- (1) The public housing program, and
- (2) The Section 8 certificate and voucher programs.

**§ 984.102 [Amended]**

86. Amend § 984.102 by removing the phrase "or Indian housing assistance".

87. Amend § 984.103 as follows:

a. Revise paragraph (a) as set forth below;

b. In paragraph (b), remove the parenthetical phrase from the definition of "Earned income";

b. Remove the definition of "HA" from paragraph (b); and

c. Revise the definitions of "Low-income family" and "welfare assistance" in paragraph (b) to read as follows:

**§ 984.103 Definitions.**

(a) The terms *1937 Act*, *Fair Market Rent*, *HUD*, *Public Housing*, *Public Housing Agency (PHA)*, *Secretary*, and *Section 8*, as used in this part, are defined in part 5 of this title.

(b) \* \* \*

*Low-income family.* As defined in part 5 of this title.

\* \* \* \* \*

*Welfare assistance* means (for purposes of the FSS program only)



income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

- (1) Nonrecurrent, short-term benefits that:
  - (i) Are designed to deal with a specific crisis situation or episode of need;
  - (ii) Are not intended to meet recurrent or ongoing needs; and
  - (iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts under TANF;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Social Security Act, to an individual who is not otherwise receiving assistance;

(8) Amounts solely directed to meeting housing expenses;

(9) Amounts for health care;

(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

88. Amend § 984.105 as follows:

a. Revise paragraphs (a) and (b) to read as set forth below;

b. Redesignate paragraph (e) as paragraph (f); and

c. Add a new paragraph (e), to read as set forth below.

**§ 984.105 Minimum program size.**

(a) *FSS program size.* (1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exception or reduction of minimum program size.* Paragraph (c) of this section states when HUD may grant an exception to the minimum program size requirement, and paragraph (d) states when the minimum program size may be reduced.

(3) *Option to operate larger FSS program.* A PHA may choose to operate

an FSS program of a larger size than the minimum.

(b) *How to determine FSS minimum program size.* (1) *Public housing.* The minimum size of a PHA's public housing FSS program is equal to the number of public housing units specified below:

(i) The total number of public housing units reserved in FY 1993 through October 20, 1998; plus

(ii) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(iii) The number of families that have graduated from the PHA's public housing FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(2) *Section 8.* The minimum size of a PHA's Section 8 FSS program is equal to the number of Section 8 certificate and voucher program units as calculated below:

(i) *Units included.* (A) The number of rental certificates and rental voucher units reserved under the combined FY 1991/1992 FSS incentive award competition; plus

(B) The number of additional rental certificates and rental voucher units reserved in FY 1993 through October 20, 1998 (not including the renewal of funding for units previously reserved), minus such units that are excluded from minimum program size in accordance with paragraph (b)(2)(ii) of this section; minus

(C) The number of families who have graduated from the PHA's Section 8 FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(ii) *Units excluded.* When determining a PHA's minimum Section 8 FSS program size, funding reserved in FY 1993 through October 20, 1998 for the following program categories is excluded (except as provided in paragraph (b)(2)(ii)(B) of this section):

(A) Funding for families affected by termination, expiration or owner opt-out under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project or replacement of a public housing project;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments programs to the Section 8 program;

(D) Funding for families affected by the sale of a HUD-owned project; and

(E) Funding for families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance.

(3) *Maintaining minimum program size.* The minimum program size for a PHA's public housing or Section 8 FSS program is reduced by one slot for each family that graduates from the FSS program by fulfilling its FSS contract of participation on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS contract of participation obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires three years from the date of HUD approval of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and a new certification to HUD for consideration.

89. Revise paragraphs (a) and (c) of § 984.201 to read as follows:

**§ 984.201 Action Plan.**

(a) *Requirement for Action Plan.* A PHA must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

(c) *Plan submission.*—(1) *Initial submission.*

(i) *Mandatory program.* Unless the dates stated in paragraph (c) of this section are extended by HUD for good cause, a PHA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days after the PHA receives notice from HUD of:

(A) Approval of the PHA's application for incentive award units; or

(B) Approval of other funding that establishes the obligation to operate an FSS program, if the PHA did not receive FSS incentive award units.

(ii) *Voluntary program.* The PHA must submit its Action Plan and obtain HUD approval of the plan before the PHA implements a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD

requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

\* \* \* \* \*

90. Amend § 984.301(a) as follows:

a. Redesignate paragraphs (a)(1), (a)(2), and (a)(3), as paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii);

b. Add a new paragraph (a)(1) to read as set forth below; and

c. Add a new heading for paragraph (a)(2), to read as follows:

**§ 984.301 Program implementation.**

(a) *Program implementation deadline.*

(1) *Voluntary program.* There is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(2) *Mandatory program.*

\* \* \* \* \*

**§ 984.302 Administrative fees.**

91. Amend § 984.302(a) by removing the phrase “the minimum program size of”.

92. Revise § 984.306(b) to read as follows:

**§ 984.306 Section 8 residency and portability requirements.**

\* \* \* \* \*

(b) *Initial occupancy.*—(1) *First 12 months.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the PHA that selected the family for the FSS program. However, the PHA may approve a family’s request to move outside the initial PHA jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period.

(2) *After the first 12 months.* After the first 12 months of the FSS contract of participation, the FSS family may move outside the initial PHA jurisdiction under portability procedures (in accordance with § 982.353 of this chapter).

\* \* \* \* \*

**PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

93. The authority citation for part 985 continues to read as follows:

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

94. Revise the second sentence of paragraph (o)(2) to read as follows:

**§ 985.3 Indicators, HUD verification methods and ratings. \* \* \***

\* \* \* \* \*

(o) \* \* \*

(2) \* \* \* This number is divided by the number of mandatory FSS slots, as determined under § 984.105 of this chapter.

\* \* \* \* \*

Dated: March 14, 2000.

**Andrew Cuomo,**

*Secretary.*

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