

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 960, 966, and 984

[Docket No. FR-4485-P-01]

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: Proposed rule.

SUMMARY: This proposed rule addresses several changes related to admission and occupancy requirements of public housing and section 8 assisted housing that were made by the Quality Housing and Work Responsibility Act of 1998 (referred to as the "1998 Act"). With respect to admission and occupancy, this rule includes important changes concerning choice of rent, community service and self-sufficiency in public housing. This rule also includes important changes concerning admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs. Some of the provisions included in this rule are already in effect, as more fully discussed in HUD's Notice of Initial Guidance on the 1998 Act, published on February 18, 1999 ("Initial Guidance Notice"), and HUD's interim rule on the PHA Plan, also published on February 18, 1999 (PHA Plan interim rule). The provisions that are already in effect are identified in this rulemaking.

DATES: Comment due date: June 29, 1999.

ADDRESSES: Submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Please refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For the public housing and tenant-based Section 8 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 4112, 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.

SUPPLEMENTARY INFORMATION:

Background—the 1998 Act

Comprehensive Reforms to Public Housing and Section 8 Programs

The Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD appropriations Act, Pub.L. 105-276, 112 Stat. 2518, approved October 21, 1998) (referred to in this rule as "the 1998 Act" or "the Act") amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*, "the 1937 Act") to make comprehensive changes to HUD's public housing, tenant-based assistance, and Section 8 project-based programs. Some of the reforms made by the 1998 Act affect public housing only, and some of the reforms affect Section 8 tenant-based and project-based programs as well. Throughout this preamble and in the provisions of 24 CFR part 5 addressed in this rule, HUD indicates where the matter under discussion applies only to one program or to more than one program.

This Proposed Rule

What This Rule Addresses

This rule addresses both provisions of the 1998 Act that are already in effect, and provisions that are being implemented by this rule. The chart provided in this preamble shows:

- (1) Which sections of the 1998 Act are being addressed by this rule,
- (2) Which of the 1998 Act changes being implemented in this rule apply to which HUD programs, and
- (3) Which sections of the 1998 Act are effective now.

Several Conforming Amendments Included in This Rule

HUD will accept comments on any of the regulatory changes included in this rule. The provisions of the 1998 Act that are already in effect have been implemented directly from the statute,

without exercise of discretion by HUD. In order to bring HUD's regulations up to date with the changes made by the 1998 Act, the final rule published after consideration of comments on this proposed rule will need to incorporate these changes. Therefore, the conforming regulatory changes that need to be made to the regulations in 24 CFR parts 5 and 960 have been included in this rule, so the reader can review the regulations in their amended and updated form. Since these changes do not reflect exercise of discretion, however, HUD is not likely to change these provisions in response to public comment.

Regulatory Location of Statutory Provisions

In some cases, a statutory provision being implemented could be placed either in specific program regulations, such as part 982 covering Section 8 tenant-based assistance, or in the regulations governing programs authorized by the 1937 Act, part 5. This proposed rule and other proposed rules being issued at approximately the same time may contain overlapping provisions. When the final rules are issued, we will make the final determination about the appropriate regulatory location of the provisions and place them in the appropriate part.

Program Changes That Require Appropriations Act Approval

Some of the 1998 Act provisions make changes to HUD programs that would take effect only upon approval in appropriations acts. These changes are not included in this rule. If approved in appropriations acts, they will be implemented by notice. Examples of provisions that are dependent upon appropriations act approval are the addition of exclusions from income for medical expenses of nonelderly families and for child and spousal support, and the addition of earned income disallowances in the Section 8 program for earned income.

Previous Proposed Rule on Admission and Occupancy

A proposed rule streamlining the admission and occupancy provisions applicable to public housing and making other changes was published in the **Federal Register** on May 9, 1997 (62 FR 25728). The May 9, 1997 proposed rule is withdrawn. HUD intends to issue a second proposed rule to implement the 1998 Act safety and security provisions for public and assisted housing and expects to make other streamlining changes similar to those

proposed in the May 9, 1997 rule at that time.

Again, the chart that follows presents a summary overview of what this rule

addresses. In the chart, the term PBC refers to project-based certificates.

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Statutory Section	Applies to public housing?	Applies to Section 8 certificates & vouchers?	Applies to Section 8 PBC & moderate rehabilitation?	Applies to New Constr, Sub Rehab, & other project-based Sec.8 programs?	Effective Now?
Sec. 506 Definitions	Yes	Yes	Yes	Yes	No (except singles)
Sec. 507 Minimum Rent	Yes	Yes	Yes	Yes	Yes
Sec. 508 Adjusted Income					
a. Mandatory Deductions	Yes	Yes, subject to appropriations	Yes, subject to appropriations	Yes, subject to appropriations	No
b. Permissive Deductions	Yes	No	No	No	No
Sec. 509 Family Self-Sufficiency Program Amendments	Yes	Yes	No	No	Yes
Sec. 512 Community Service & Self-Sufficiency					
a. 8 hour require.	Yes	No	No	No	No
b. No reduction in rent for reduced welfare income for failure to comply	Yes	Yes	No	No	Yes
Sec. 513 Income Targeting	Yes	Yes	Yes	Yes	Yes
Sec. 514 & 545 Repeal of Federal Preferences	Yes	Yes	Yes	Yes	Yes
Sec. 523 Family Choice of Rental Payment	Yes	No	No	No	No
Sec. 524 & 548 Occupancy by					
a. Police Officers	Yes	Yes	Yes	Yes	Yes
b. Over income families	Yes	No	No	No	Yes

Organization of Rule

While the rule is published for public comment, HUD may reconsider the organization of this rule, and not only this rule but the existing codified regulations. HUD may determine that the regulations proposed by this rule or proposed to be revised by this rule can be better organized. HUD also may determine that regulatory text can be worded more plainly and clearly, and some regulatory provisions can be consolidated with others, or if they are provisions that are likely to change frequently, these provisions (if not imposing binding requirements) may be better left to non-regulatory sources (such as notices, guidance documents, etc.) Accordingly, HUD may make organizational changes (including streamlining and plain language changes) at the final rule stage. Any comments on the organization of this rule or the existing regulations is welcome.

II. Specific Changes to Admission and Occupancy Requirements

This section of the preamble discusses the changes made to admission and occupancy requirements of the 1937 Act by the 1998 Act and the regulatory changes that will be made as a result of the statutory amendments. Some of these statutory sections were also discussed in the Initial Guidance Notice on the 1998 Act, published in the **Federal Register** on February 18, 1999 (64 FR 8192). For the convenience of any reader who would like a reference to the discussion of a certain section of the new statute provided in the Initial Guidance Notice, this section provides the applicable reference.

Using Computer Matching Results (24 CFR 5.211) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

For some time, HUD has conducted a computer matching initiative to provide one independent source for verifying resident income. HUD can disclose the matched information to the PHAs, in the case of information matched from Social Security records. Since HUD is precluded by law from disclosing Federal tax return data to PHAs, section 508 of the 1998 Act adds a requirement that when HUD notifies an assisted family of information regarding family income, earnings, wages, or unemployment compensation, the family must disclose the information to the public housing agency. This rule adds a new section, 24 CFR 5.211 to implement these provisions.

The rule provides that once the family discloses the information to the PHA,

the PHA must review the information for accuracy and take appropriate action. Appropriate action may include review of the information with the tenant and changing the family's rent as needed. If the PHA verifies a case of documented fraud, it should take action to recover excess housing assistance received by the tenant due to unreported income, or evict the tenant or terminate assistance, and take other appropriate administrative or legal action. HUD will be providing additional information on its computer matching initiative.

Section 508 of the Act was discussed in the Initial Guidance Notice at 64 FR 8198, beginning in the middle column.

Change From HA to PHA (§ 5.214)

In the definitions provided in 24 CFR 5.214, HUD removes the definition of "HA." This acronym HA refers to a housing agency, which was the collective term used by HUD to refer to both a public housing agency and an Indian housing authority. The Native American Housing Assistance and Self-Determination Act (NAHASDA) (Pub.L. 104-330, approved October 26, 1996) eliminated several separate programs of Indian housing assistance and replaced them with a single block grant program. NAHASDA also provided that affordable housing assistance be made directly to Federally-recognized tribes, which in turn may designate a housing entity to act on their behalf by becoming the NAHASDA block grant program recipient. The practical consequence is that Indian housing authorities (or "tribally designated entities") are now governed by separate regulations, implementing NAHASDA. Therefore, the only remaining category of housing agency recognized under the 1937 Act is a Public Housing Agency or "PHA." HUD's rule amending part 982, published elsewhere in today's **Federal Register**, provides a broader definition for HA. At the final rule stage, the part 5 regulations may incorporate this definition.

Repeal of Preference for Elderly, Disabled, and Displaced Over Other Singles (24 CFR 5.405, 960.407) (Section 506 of the 1998 Act Amending Section 3(b) of the 1937 Act)

This rule removes the current regulatory giving preference to elderly, disabled, or displaced families over other single persons in all 1937 Act programs (§ 5.405(b)), in compliance with section 506 of the Act. In addition, this rule includes a conforming change to remove the outdated public housing provisions (§ 960.407(b), (c), and (d)). A PHA may continue to have this type of

preference as part of its local preference policies. If a PHA does not keep as its highest preference a preference for elderly, disabled, or displaced families over other singles as a local preference, the PHA will have to rearrange its current waiting list.

Repeal of Federal Preferences in Admission and Selection for Assistance (24 CFR 5.410-5.430, 960.204, 960.407) (Sections 514 and 545 of the 1998 Act Amending Sections 6 and 8 of the 1937 Act)

The Federal preferences, which have long applied to public housing and Section 8 housing assistance payments programs, are repealed by the 1998 Act. The system of Federal preferences provided that some significant portion of applicants who are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent, were to be given preference in admission and selection for assistance over other families. Congress had suspended this system of preferences on an annual basis in appropriations acts beginning on January 26, 1996, until this repeal.

Although the 1998 Act eliminates the Federal preferences, the Act continues to allow PHAs to establish their own system for making dwelling units or Section 8 assistance available to families having certain characteristics, now requiring this system of preferences to be linked to their PHA Annual Plan. Each PHA's system of preferences established must be based upon local housing needs and priorities, as determined by the PHA using generally accepted data sources, including waiting list data and any information obtained during public comment on the PHA Annual Plan and under the requirements applicable to the Consolidated Plan (see 24 CFR part 91, subpart B). These requirements are reflected in the PHA Plan interim rule.

The 1998 Act (in section 514) also includes a statement that a PHA should consider preferences for individuals who are victims of domestic violence, consistent with the PHA Annual Plan. Section 514(e) provides:

It is the sense of the Congress that, each public housing agency involved in the selection of eligible families for assistance under the United States Housing Act of 1937 (including residency in public housing and tenant-based assistance under section 8 of such Act), should, consistent with the public housing agency plan of the agency, consider preferences for individuals who are victims of domestic violence.

Under the rule, PHA policies may provide preferences for veterans, as a needy population.

To implement the elimination of the Federal preferences, this rule removes §§ 5.415, 5.420, 5.425, and 5.430 and revises §§ 960.204 and 960.407 to remove references to the term "Federal preference." This rule also makes several changes to § 5.410:

- It reflects the new link of a PHA's local preferences with the PHA Annual Plan.
- For Section 8 programs other than the Certificate/Voucher, Project-based Certificate, and Moderate Rehabilitation, it gives project owners more flexibility in determining their own tenant selection plan. The rule does the following:

- (1) Continues the prohibition on use of residency requirements;
- (2) Removes reference to use of the PHA's local preferences (which was located in § 5.410(d)(2)(iii)); and
- (3) Specifically authorizes the owner to use a preference for working families, providing it does not give greater weight to an applicant based on the amount of the employment income.

This last provision is included in the revised § 5.410(c)(1), which preserves a responsible entity's authority to adopt a preference for working families (currently found in § 4.415(b)(1)), retaining the reference to anti-skipping protections (currently found in § 5.410(e)(2)) in the revised § 5.410(g). This authority for working family preferences separate from any local preferences adopted by a PHA is derived from section 513(c)(4) of the Act, which describes the income targeting requirements for project-based Section 8 assisted housing.

Sections 514 and 545 were discussed in the Initial Guidance Notice at 64 FR 8200, beginning in the right hand column, and 64 FR 8207, middle column, respectively.

*Income Targeting (24 CFR 5.607)
(Section 513 of the 1998 Act Amending
Section 16 of the 1937 Act)*

The 1998 Act (section 513) completely revises the income targeting provisions formerly found in section 16 of the 1937 Act.

For Public Housing

The 1998 Act imposes a general rule that not less than 40 percent of admissions in any fiscal year must be families whose income does not exceed 30 percent of median income for the area—"extremely low-income families." The Act, however, allows a PHA to decrease the percentage of extremely low-income families admitted to public housing if the PHA has given new Section 8 tenant-based assistance to

more than the required number of extremely low-income families, subject to several restrictions. Even in that event, the PHA cannot reduce the percentage of extremely low-income families in public housing below 30 percent.

For Section 8 Project-Based Assistance

For Section 8 project-based assistance, the percentages of units to which families with incomes higher than 50 percent of median income may be admitted and the anti-skipping restriction remain the same. This rule, however, adds a provision (§ 5.410(c)(1)) permitting owners to adopt a preference for working families, as discussed above. This rule also adds a new requirement for admission of at least 40 percent extremely low-income families to a particular project in a fiscal year. The income targeting requirements do not apply to project-based assistance made available to prevent or ameliorate the effects of displacement.

For Section 8 Tenant-Based Assistance

For Section 8 tenant-based assistance, PHAs must target 75 percent of new admissions to extremely low income families. A PHA may use admission of extremely low-income families in its section 8 tenant-based program that exceed 75 percent of its admissions in a fiscal year ("credit") to reduce the number of admissions of extremely low income families in its public housing program. This credit, however, must be the lesser of: (1) 10 percent of the families initially given section 8 tenant-based assistance during the year; or (2) the number of families who are not extremely low income and who have been admitted to public housing in projects located in census tracts having a poverty rate of 30 percent or more.

Section 8 tenant-based assistance targeting requirements do not apply to a low-income family that is "continuously assisted" under the 1937 Act or to a low-income or moderate income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing.

New Definition Added

Because of the importance of the term "extremely low-income family," this rule adds a definition for this term in § 5.603.

Facilitating Administration of Income Targeting

A PHA can facilitate administration of income targeting if it applies these requirements on the same annual basis

as the fiscal year of its public housing or tenant-based program.

Section 513 was discussed in the Initial Guidance Notice at 64 FR 8199, right hand column.

Annual Income, Adjusted Income (24 CFR 5.603, 5.609, 5.611) (Section 508 of the 1998 Act amending Section 3 of the 1937 Act)

Exclusions Versus Deductions

HUD has long made a distinction between exclusions from income used to determine "annual income" for eligibility, and deductions for use in determining "adjusted income," and therefore rent. Section 508 of the 1998 Act changed the calculation of adjusted income by adding a number of mandatory deductions to determine adjusted income, which in some cases reflected HUD's exclusions from annual income. For example, HUD's regulations already exclude from "annual income" the earned income of minors. The Act adopted a mandatory deduction from income used to calculate "adjusted income" for earned income of minors. Given the statutory enactment of this as a deduction, this rule removes the exclusion from annual income and places earned income of minors as a deduction in calculating "adjusted income," to avoid providing a duplicate benefit on the same subject.

The 1998 Act adopted the requirement already found in HUD's regulatory definition of "child care expenses" (in 24 CFR 5.603) that they must be "reasonable." The Act revised the definition of dependents to include not only full-time students at traditional educational institutions, but also persons pursuing full-time vocational training. HUD's definition of "full-time student" (in 24 CFR 5.603) already included vocational training, but only in the context of certificate granting vocational schools. In this rulemaking, HUD revises the definition of "full-time student" (in § 5.603) to refer generally to "vocational training."

Permissive Deductions—Applicable to Public Housing Only

For public housing, the 1998 Act created deductions for PHAs to use, if they so choose, to promote self-sufficiency and for other purposes. A PHA that decides to provide permissive deductions must describe its deductions in the agency's written policies. HUD cannot assure the provision of additional subsidy to the PHA to cover reduced income resulting from such permissive deductions, however.

The 1998 Act lists a number of examples of permissive deductions: to

the extent these amounts have not already been deducted from annual income or reimbursed to the family from other sources:

(1) Excessive travel expenses, in an amount not to exceed \$25 per family per week for travel related to employment, education, or training.

(2) An amount of a family's earned income, based on any of the following:

- (i) All the earned income of the family;
- (ii) The amount earned by particular members of the family;
- (iii) The amount earned by families having certain characteristics; or
- (iv) The amount earned by families or members during certain periods or from certain sources.

Other deductions include but are not limited to payroll deductions, such as social security taxes, income taxes and medical insurance premiums. In setting policies on permissive deductions, PHAs are encouraged to coordinate with their local Temporary Assistance for Needy Families (TANF) agencies to assure that assisted housing and TANF support one another. The permissive deductions replace the current optional exclusions from annual income for public housing. (The proposed rule removes the optional exclusions from the definition of annual income, 24 CFR 5.609.)

Section 508 was discussed in the Initial Guidance Notice at 64 FR 8198, middle column.

Minimum Rents (24 CFR 5.616) (Section 507 of the 1998 Act Amending Section 3(a) of the 1937 Act)

Section 507 follows the previous statutory authority of requiring minimum rents of up to \$50 for public housing and the Section 8 certificate, voucher, and moderate rehabilitation programs. For section 8 project-based assistance, the minimum rent is \$25. In the public housing and the Section 8 programs other than the vouchers, "minimum rent" refers to minimum total tenant payment (TTP) and not a minimum tenant rent (TR). As provided in § 5.613, the total tenant payment is the highest of several calculations, one of which is the minimum rent. So, for example, if 30 percent of a family's "monthly adjusted income" were \$42, and 10 percent of the family's unadjusted "monthly income" were \$20, and a PHA had set the minimum rent at \$50, the amount of the "total tenant payment" would be \$50. What the family paid ("tenant rent") might be less or more than that, depending on whether the family pays its own utilities. A family paying its own utilities would be entitled to a utility

reimbursement, if the utility allowance were greater than the TTP.

Total Tenant Payment (TTP)

To remove current confusion in the old definition of TTP and clarify that it applies to all programs, this rule changes the current definition to include current statutory definitions and adding a definition of minimum rent.

Section 507 of the Act was discussed in the Initial Guidance Notice at 64 FR 8197, left hand column.

Self-Sufficiency Incentives—Public Housing Only (24 CFR 5.612) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

Disallowance of Earned Income

For public housing only, the 1998 Act exempts earned income for families who start work or self-sufficiency programs. The Act phases in the impact on rent of an increase in earned income of certain families. A PHA cannot increase a public housing family's rent for a period of 12 months if the increase in income results from (1) earnings of a previously unemployed family member; (2) earnings of a family member during participation in a self-sufficiency or job training program; or (3) earnings of a family member that had been receiving welfare in the previous six months. After the 12-month disallowance, a family's rent increase must be phased in. The phased-in rent cannot increase as a result of the earned income by more than 50 percent (50%) for an additional 12 months. HUD is implementing this statutory provision by directing PHAs not to increase the family's annual income, on which the income-based rent is based, to reflect such an increase in income. The actual change in family income will be recorded in the data system, however. (New § 5.612 reflects this change.)

As families move into the work force for the first time, they often experience periods of employment and unemployment. The rule as proposed does not place a limit on the number of times a family or an individual can benefit from the disallowance of earned income; the 1998 Act contains no specific limitations. HUD specifically asks for comments on this subject, including limits on the number of times a family or individual can take advantage of the disallowance.

Previous Earned Income Disregard

The income disregards formerly applicable only to public housing (under 24 CFR 5.609) are being removed. These include PHA optional

exclusions from annual income. These exclusions are replaced with similar permissive deductions reflected in the new definition of adjusted income (24 CFR 5.611). Families who have been given optional income exclusions under the old rules must be permitted to retain those exclusions until the family's next annual reexamination.

The new 12-month disallowance (under 24 CFR 5.612) replaces the current 18-month earned income disregard for persons going from training programs to work (under 24 CFR 5.609(c)(13)). Families who currently have an 18-month disregard, or who qualify for such disregard on or before September 30, 1999, can continue that disregard for the 18 months or as long as they would have qualified under the old rule.

Individual Savings Account

Under the 1998 Act, PHAs may establish and maintain individual savings accounts for public housing residents who pay income-based rents. Where the PHA has a policy to offer individual savings accounts, a family may choose an individual savings account instead of being given the 12-month disallowance of earned income and phasing in of a rent increase. Families who choose individual savings accounts would pay the higher rent and the PHA would deposit the increased amount in the savings account. Once established, a family could access the account for purchasing a home, paying education costs, moving out of public housing, or other purposes promoting self-sufficiency. PHAs are not required to provide the savings account option. However, savings accounts are a good way to help families reach self-sufficiency. If a PHA offers savings accounts, the PHA needs to have written policies on management of the accounts. (See 24 CFR 5.612 and 5.614(a)(2).) These policies could be modeled after the Family Self-Sufficiency (FSS) escrow accounts found at 24 CFR part 984 or Turnkey III accounts at 24 CFR part 904. At a minimum, a PHA savings account policy must: (1) provide for payment of interest and annual notification to the resident of account status; and (2) provide that any balance in such an account when the family moves out is the property of the family.

Section 508 was discussed in the Initial Guidance Notice at 64 FR 8198, middle column.

Income Changes Resulting From Welfare Program Requirements (24 CFR 5.618) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

The 1998 Act addresses the interaction of welfare programs and HUD's treatment of income for purposes of determining rent in the public housing and Section 8 tenant-based assistance programs. The Act provides (in section 12(d) of the 1937 Act) that a family's rent must not be decreased as a result of a reduction in welfare benefits based on either (1) fraud by a member of the family; or (2) the family's failure to comply with the welfare program's requirement for work activities or participation in an economic self-sufficiency program. HUD is implementing this statutory provision by directing the responsible entities not to reduce the family's annual income, on which the income-based rent is based, to reflect such a reduction in welfare benefits. The actual change in family income will be recorded in the data system, however.

If a reduction in income results from the expiration of a lifetime limit on benefits or a loss of benefits because of a durational time limit on welfare benefits despite compliance with work requirements, the rule directs the responsible entity to reflect the reduced income in determination of the family's annual income.

In addition, when a family is adversely affected by reductions in welfare benefits as described in this section, the rule requires the responsible entity to notify families that they have the right to a review through a grievance hearing in accordance with § 966.55(e) for public housing, or through the use of an informal hearing under § 982.555(a)(i) for section 8 tenant-based certificate and voucher programs. (See the revision to § 966.55(e) to reflect this for public housing.)

The addition of a new § 5.618, which applies to public housing and Section 8 tenant-based programs, reflects treatment of welfare benefit reductions.

Section 512 was discussed in the Initial Guidance Notice at 64 FR 8199, left hand column.

Rents in Public Housing (24 CFR 5.603, 5.614) (Section 523 of the 1998 Act Amending Section 3(a) of the 1937 Act)

Section 523 of the 1998 Act makes significant changes to the rents charged for public housing units. Legislative history notes that the current rent policies provides disincentives to work and upward mobility. The Act gives PHAs significant flexibility to develop rent policies to encourage self-

sufficiency. In addition, public housing residents can choose annually between paying an income-based rent or a flat rent. Rent policies also can be used to help PHAs provide for deconcentration of poverty and income mixing. Both income-based and flat rents must be determined by the PHAs in accordance with their written policies. (Rents are the subject of the new 24 CFR 5.614. In this rule, HUD revises the definition of "tenant rent" in § 5.603 to reflect the differences among the programs now that PHAs have flexibility in determining rents in public housing.)

Income-Based Rents

In general, the monthly rental amount, including any applicable utility allowance, calculated under this method must not exceed the highest of the following: 30 percent (30%) of the family's monthly adjusted income; 10 percent (10%) of the family's monthly income; or the welfare rent, if applicable. The monthly rental amount cannot be less than the minimum rent set by the PHA. The 1998 Act permits PHAs to set income-based rents at an amount less than the maximum of 30 percent of monthly adjusted income/10 percent of monthly income/welfare rent. This gives PHAs considerable flexibility in setting income-based rent structures. PHAs could set income-based rents at a fixed percentage below 30 percent, could have a rent schedule which sets the same rent amount for families whose income are within a certain income range, impose ceiling rents, etc. HUD cannot assure PHAs that it can provide additional subsidy to cover any reduced income resulting from such policies. Future operating subsidy distribution is the subject of negotiated rulemaking.

Flat Rents

Flat rents are intended as an incentive for residents to remain in public housing after they have attained a level of self-sufficiency. Working families will provide positive role models for other residents. The Act requires flat rent be set at "rental value," which HUD interprets to be reasonable market value. In establishing reasonable market value, PHAs should review rent of comparable units in the community. A PHA must document its means for establishing the reasonable market value. Methods that a PHA may consider in establishing reasonable market value include using the area's Section 8 rent reasonableness survey for comparable developments. PHAs should review their flat rents as often as necessary to assure they comply with the regulatory requirements, but at least annually. HUD cannot assure PHAs that it can provide additional

subsidy to cover any reduced income resulting from such policies. Future operating subsidy distribution is the subject of negotiated rulemaking.

Family Choice

The 1998 Act requires PHAs to give families a choice among options for rents. The options provided must include at least a flat rent and an income-based rent. This choice must be given to each family annually. PHAs must provide residents with enough information to make an informed choice. For example, a PHA could provide the family both the income-based rent and the flat rent for the unit. If the PHA has not completed a current examination of the family's income (because the family has been on flat rent and the PHA's policy is not to conduct annual re-examinations on such families), the PHA should provide a worksheet or other information on how income-based rent is determined so the family could calculate its own income-based rent amount.

Switching Rent Methods to Lower Rent Because of Financial Hardship

The 1998 Act requires a PHA to immediately switch a family from a flat rent to an income-based rent if the PHA determines that the family has a financial hardship circumstance. The PHA must develop written policies stating what the PHA will consider a financial hardship. The PHA's policy must include situations in which the income of the family has decreased because of loss or reduction of employment; death in the family or loss of assistance; or increase in the family's expenses for medical costs, child care, transportation, or education. PHAs can include additional circumstances. Because the 1998 Act requires that PHAs immediately switch rents, a PHA will need to conduct an examination of the family's income in order to switch the rent as quickly as possible, but the rent should be lowered no later than the first of the month following the month the family reported the hardship.

Retaining Ceiling Rents

The 1998 Act permits PHAs that currently have ceiling rents to retain those rents instead of developing flat rents. HUD interprets this to mean that PHAs may retain ceiling rent instead of flat rents for three years, after which time those ceiling rents must be adjusted to the same levels as required for flat rents. Ceiling rents are subject to the limitations that a family cannot be required to pay more than its income-based rent. Therefore, families with ceiling rents must be given a reduced

rent if their income goes down. The PHA must continue to conduct annual reexaminations of income for families who choose ceiling rents, since the three year income review is not applicable to the ceiling rent provision.

Section 523 was discussed in the Initial Guidance Notice at 64 FR 8202, right hand column.

New Community Service and Self-Sufficiency Requirements for Public Housing (24 CFR 960.603-960.611) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

Section 512 of the 1998 Act adds a new requirement for non-exempt residents of public housing. Each non-exempt adult public housing resident must contribute eight (8) hours for each month of community service or participate in a self-sufficiency program for 8 hours in each month. (The exemptions are discussed later in this section.) Community service is service for which the individual volunteers. A new subpart F is added to 24 CFR part 960, establishing the community service and self-sufficiency requirements.

Each PHA Annual Plan must include a description of how the community service and self-sufficiency requirements will be implemented. The new subpart F of 24 CFR part 960 outlines basic parameters for implementing the community service and self-sufficiency requirement, while retaining flexibility for PHAs to develop initiatives responsive to local circumstances. PHAs are encouraged to partner with qualified resident councils or resident management corporations, community and volunteer groups, or other third party contractors to assist PHAs with program administration.

The Relationship of Community Service and Self-Sufficiency

Since community service is considered a tool to assist residents in becoming responsible and self-sufficient, a number of community service activities are considered self-sufficiency activities. A PHA policy may provide for combining or substituting community service hours with approved self-sufficiency hours to reach the 8 hour monthly requirement.

Community Service

Community service offers public housing residents an opportunity to contribute to the communities that support them. In establishing community service policies, PHAs should not limit community service to a single type of activity and/or a single location in which the activity is to be performed. A PHA could include as

community service activities improving the physical environment of the resident's development, volunteer work in a local school, hospital or child care center, working with youth organizations, helping neighborhood groups on special projects, or participation in programs that develop and strengthen resident self-responsibility such as drug and alcohol abuse counseling and treatment, household budgeting and credit counseling, and English proficiency. The 1998 Act specifically prohibits political activity as community service.

A PHA can administer its own community service program, form cooperative relationships with other entities in order to make opportunities available for residents or contract the entire community service program to a third party, including qualified resident councils. A PHA may use a combination of these options. A PHA must ensure that its own community service programs as well as programs developed through cooperative relationships or contracts with third parties are accessible for persons with disabilities.

In administering its own program, a PHA or its authorized designee identifies the most appropriate community service opportunities for residents and directly supervises the performance of the community service. This approach might include developing a directory of eligible opportunities from which residents could select.

Instead of managing the entire process, a PHA could link residents with agencies seeking volunteers. Under this approach, the PHA's administrative duties would be limited to monitoring the appropriateness of the service and confirming a resident's participation.

Another alternative is for the PHA to contract with another entity to run the community service program. The contract entity would then perform all necessary administrative functions. The PHA would be responsible to assure contract compliance. PHAs must follow their procurement policies and 24 CFR 85.36 to contract out their community service programs.

When for-profit third party contractors are used, the PHA should ensure that the administrators overseeing the program do not have a financial interest in the entity where community service participants are assigned. The PHA also should ensure that the conditions under which the work is to be performed are not otherwise hazardous, 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. The Senate Committee Report on this provision noted that community service is not to be perceived as punitive or demeaning activity, but rather community service should be 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. (Senate Report at pg 21).

Self-Sufficiency

Participation in self-sufficiency activities can satisfy part or all of a resident's requirement to perform community service. A non-exempt adult public housing resident may participate in an economic self-sufficiency program for 8 hours in each month. The 1998 Act defines economic self-sufficiency program to include activities that are designed to encourage, assist, train or facilitate economic independence. In setting policies for this requirement, PHAs are encouraged to look at a broad range of self-sufficiency activities. In addition to apprenticeships and job readiness training, such activities as substance abuse and mental health counseling and treatment, English proficiency, and household budgeting and credit counseling may be considered activities which promote economic self-sufficiency. As with community service, a PHA could operate its own economic self-sufficiency program, develop linkages with other agencies (e.g., TANF), or contract for services to be provided to its residents.

Geographic Location

The 1998 Act discusses the geographic location where the resident must perform the community service or participate in the economic self-sufficiency activity. The location includes PHA-owned property and the community at large. The Congressional intent is that residents provide service to their own communities. In rural areas, a resident's community may encompass a large geographic area, while in dense urban settings, the community may be a neighborhood. In its policy, a PHA should make clear the meaning of "community."

Exemptions

The 1998 Act provides a list of exemptions to the requirement for community services and economic self-sufficiency. These include adults who are 62 years of age or older, persons with disabilities, persons engaged in work activities (as defined by section

407(d) of the Social Security Act), and persons participating in a welfare to work program, or receiving assistance from and in compliance with a State program funded under part A, title IV of the Social Security Act. (For purposes of the community service requirement, an adult is a person 18 years or older.) PHAs need to develop policies and procedures for determining and documenting residents' exemptions. Generally PHAs should re-verify an adult's exemption status annually. There are, of course, obvious exceptions. For example, an individual exempt by being over 62 years in age would not need re-verification.

PHAs must establish policies that permit residents to change exemption status during the year if their situation changes. Unemployed residents, for example, must be able to request a determination of exemption if they find work or start a training program.

Persons eligible for a disability deduction are not necessarily automatically exempt from the community service, economic self-sufficiency requirement. The 1998 Act defines "disability" very narrowly for the purpose of the community service requirement. Further, the Act states that a person is exempt only to the extent the disability makes the person "unable to comply" with the community service requirement. The PHA must ensure that the community service and self-sufficiency programs are accessible to persons with disabilities.

The PHA must document all exemptions for the resident's file. Policies must identify what kinds of documentation the PHA will accept. Generally, PHAs should follow the same standards of documentation for exemptions as they do for other verifications.

While the 1998 Act exempts categories of persons based on their characteristics, such as age or employment, the Act does not exempt adult residents of particular developments or kind of units. Therefore, families who pay flat rent, live in public housing units within market rate developments, or families who are over income when they initially occupy a public housing unit are not automatically exempt.

Cooperative Relationships With Welfare Agencies

The 1998 Act calls upon all PHAs to make their best efforts to enter into cooperative relationships with the agencies that provide assistance to their clients. PHAs should seek and advocate for agreements to target assistance to PHA clients. Agreements with such

agencies will not only facilitate exchange of information, they will expand the choice of community service and self-sufficiency programs available to PHA clients and facilitate coordination of those services. As noted in the Initial Guidance Notice, the 1998 Act amends the Public Housing Management Assessment Program (PHMAP) (and the successor program—the Public Housing Assessment System (PHAS)) to include the extent of a PHA's coordination, promotion or provision of effective self-sufficiency programs.

Lease Requirements

Under the 1998 Act, public housing leases must have 12 month terms. The lease must be automatically renewable except for noncompliance with the community service requirements. An annual signing process is not necessary. The public housing lease also must provide for termination and eviction for noncompliance with the community service requirements. Any lease changes (including addenda) must be made in accordance with the provisions of 24 CFR 966.3, including notice to tenants and opportunity for comment. The PHA must implement this provision for each family at the family's next regularly scheduled annual reexamination on or after October 1, 1999, and for families admitted after October 1, 1999. The PHA may not renew or extend the lease if a household contains a nonexempt adult who has failed to comply with the community service requirement.

Documentation

Reasonable documentation must be provided to verify the community service requirements. The documentation must be placed in the resident's file at the time of reexamination.

Noncompliance

Each PHA must determine, on an annual basis, if non-exempt residents are in compliance. The PHA must have a policy which permits noncompliant families to cure the noncompliance. Such a policy must require the noncompliant adult and the head of household to sign an agreement to make up the hours needed within the next 12-month period. Continued noncompliance will result in eviction of the entire family, unless the noncompliant family member is no longer a part of the household.

Section 512 was discussed in the Initial Guidance Notice at 64 FR 8199, left hand column.

Occupancy by Police Officers and Over-Income Families (24 CFR Parts 5 and 960) (Sections 524 and 548 of the 1998 Act Amending Sections 3 and 8 of the 1937 Act)

Section 524 of the 1998 Act amends section 3(a) of the 1937 Act to provide that PHAs and owners may allow police officers to reside in public housing or assisted housing under the requirements of the statute. Under this section, small PHAs may also rent units to over-income families on a month-to-month basis, in accordance with statutory requirements, if there are no eligible families applying for assistance for that month, provided that the over-income family agrees to vacate (with at least 30 days notice) when the unit is needed for an income-eligible family. Section 548 of the Act provides for law enforcement and security personnel in project-based section 8 housing assistance to increase security.

Section 524 of the Act was discussed in the Initial Guidance Notice at 64 FR 8202, right-hand column. Section 548 of the Act was discussed in the Initial Guidance Notice at 64 FR 8204, middle column.

Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (24 CFR Part 984) (Section 509 of the 1998 Act Amending Section 23 of the 1937 Act)

Section 509 of the 1998 Act amended section 23 of the 1937 Act to make several changes to the Family Self-Sufficiency Program, which were effective on October 21, 1998. Section 509 provides that the mandatory minimum FSS program size will not increase when a PHA receives incremental Section 8 funding or public housing units on or after October 21, 1998. Section 509 also allows PHAs to reduce their mandatory minimum FSS program size obligation as families successfully complete their FSS contracts.

HUD's regulations (24 CFR part 984) are amended to clarify that for public housing, receipt of incremental housing units means reservation of funds to acquire or construct additional public housing units on or after October 21, 1998. Similarly, for Section 8 certificate and voucher funding, receipt of funds means reservation of funds for the Section 8 certificate and voucher programs. An expanded listing of excluded funding categories that did not increase a PHA's mandatory minimum program size is now included in 24 CFR 984.105. The regulations in part 984 are also amended to clarify that PHAs may continue to implement and administer

FSS programs larger than the required levels, and that HUD approval of the PHA's FSS action plan authorizes the PHA to implement a voluntary FSS program.

In addition, § 984.306(b)(1) has been revised so that PHAs can now approve a family's move outside the PHA's jurisdiction during the first 12 months of a family's FSS contract of participation. The regulatory definition of welfare assistance in § 984.103 also has been revised so that it does not disadvantage working families and families with persons with disabilities.

Section 509 was discussed in the Initial Guidance Notice at 64 FR 8198, right hand column.

III. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 5.410,

5.612, 5.614, 5.616, 960.605, and 984.201 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Comments regarding the information collections contained in the rule must be submitted by June 29, 1999. Comments on these information collections should refer to the title of this rule and must be sent to: Reports Liaison Officer, Mildred Hamman, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4238, Washington, DC 20410.

Specifically, comments are solicited from members of the public and affected

entities concerning the proposed collection of information to:

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

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

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

The burden of the information collections is estimated as follows:

Section of 24 CFR	Number of respondents	Responses per resp.	Total ann. responses	Hours per response	Total ann. hours
5.410 (Resid. Prefs.)	3,400	1	3,400	16	54,400
5.611 New Deductions	3,400	1	3,400	8	27,000
5.612(c) Indiv Sav Accounts	8,000	1	8,000	2	16,000
5.614(c) Written Rent Options	3,400	1	3,400	16	54,400
5.618(b) Welf. Rent Verif.	3,400	1	3,400	3	10,200
5.618(c) Welf. Rent Notice	3,400	1	3,400	1	3,400
960.605(c) Comm Serv	3,400	1	3,400	1	3,400
984.201 FSS Action Plan 2577–0178 exp 7/31/99 .....	.....	.....	.....	.....	.....
960.505 Over Inc Fams in Small PHAs	500	1	500	1	500
Total Burden .....	.....	.....	.....	.....	169,300

Regulatory Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed 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 proposed 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 proposed rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule begins the rulemaking process to implement

changes to admission and occupancy requirements in public housing made by the Quality Housing and Work Responsibility Act of 1998. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding 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, SW, Washington, DC 20410.

Federalism Impact

The General Counsel, as the Designated Official for HUD under Section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule would not have federalism implications concerning the division of local, State, and Federal responsibilities, and therefore review under the order is not required. The proposed rule is exclusively concerned with admission and occupancy requirements in public housing. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal government and State and local governments.

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 proposed 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, Grant programs—Indians, 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 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.

Accordingly, HUD proposes to amend parts 5, 960, and 966 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.

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

2. Add a new § 5.211, to read as follows:

§ 5.211 Disclosure of income matching information to the public housing agency.

(a) Public housing residents and section 8 tenant-based participants must disclose the letter and other information they received from HUD regarding their income (under HUD's income verification initiative) to the PHA.

(b) The PHA must verify the accuracy of the income data, change rent amounts, or terminate assistance, as

appropriate, when public housing residents or Section 8 tenant-based participants disclose income information, as described in paragraph (a) of this section.

§ 5.214 [Amended]

3. Amend § 5.214 by removing the definition of “HA”.

Subpart D—Definitions and Other General Requirements for Assistance Under the United States Housing Act of 1937

§ 5.400 [Amended]

4. Amend § 5.400 by removing the parenthetical phrase.

5. Amend § 5.403 to add a definition of *responsible entity*, to read as follows:

§ 5.403 Definitions.

* * * * *

Responsible entity means:

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

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

§ 5.405 [Amended]

6. Amend § 5.405 as follows:

a. By removing from the last sentence of paragraph (a) the phrase: “who are not elderly persons, or displaced persons, or persons with disabilities”;

b. By removing paragraphs (b) and (d); and

c. By redesignating paragraph (c) as paragraph (b).

7. Revise § 5.410, to read as follows:

§ 5.410 Selection preferences.

(a) *Applicability.* The preferences for admission to the various programs differ. For each program, the preferences are administered by the responsible entity.

(b) *Local preferences in public housing.* A PHA may establish a system for admitting or selecting families for assistance that provides preference to families having certain characteristics. A system of preferences must be based on local housing needs and priorities, as determined by the PHA using generally accepted data sources, including waiting list and any information obtained during public comment on the PHA Annual Plan and under the requirements applicable to the Consolidated Plan. Additionally,

consistent with the PHA's Annual Plan, the PHA should consider preferences for individuals who are victims of domestic violence.

(c) *Preferences in project-based Section 8 assistance programs other than project-based certificates and moderate rehabilitation.* (1) The responsible entity may give preference to working families. In implementing a preference for working families, the responsible entity is subject to the anti-skipping provision of paragraph (g) of this section regarding income levels. (If a responsible entity adopts a preference for working families, the entity must not give greater weight to an applicant based on the amount of employment income, and an applicant household must be given the benefit of the preference if the head of the household, spouse, or sole member of the household is age 62 or older or is receiving social security disability benefits, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A responsible entity may give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market.

(2) Owners must develop a written tenant selection plan in accordance with program requirements. Owners are permitted to use PHA local preferences in their tenant selection plan. If an owner elects to make use of local preferences established by a PHA, the tenant selection plan must describe how any preferences will be used.

(d) *Preference in the Section 8 tenant-based, project-based certificate, and moderate rehabilitation programs.* The PHA may establish a system of local preferences for selection of families admitted to the program that are consistent with the PHA Plan. (See §§ 982.207, 983.203, and 882.514 of this title.)

(e) *Residency preferences.* (1) *Public housing.* A preference for admission or selection for assistance of families who reside anywhere in a specified “residency preference area” is permitted to respond to local needs and priorities. Applicants who are working or who have been notified that they are hired to work in the residency preference area must be treated as residents of the residency preference area, and a residency preference may not be based on how long the applicant has resided in or worked in the residency preference area.

(2) *Section 8 programs other than tenant-based certificate/voucher, project-based certificate, and moderate*

rehabilitation programs. In these programs, local residency requirements are prohibited.

(3) *Section 8 certificate/voucher, project-based certificate, and moderate rehabilitation programs.* See §§ 982.207(b), 983.203(a), and 882.514(b) of this title.

(f) *Use of other factors in public housing and project-based Section 8 housing.* The responsible entity may, in selecting a family for a particular unit, match other characteristics of the applicant family with the type of unit available, for example, number of bedrooms. In selection of a family for a unit that has special accessibility features, the responsible entity must give preference to families who include persons with disabilities and can benefit from those features of the unit (see §§ 8.27 and 100.202 of this title). Also, in selection of a family for a unit in a public housing mixed population project, the responsible entity must give preference to elderly families and disabled families (see, for example, subpart D of part 960 of this title).

(g) *Section 8 income-based admission.* In Section 8 programs, the responsible entity may not select an applicant for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(h) *Informing applicants about admission preferences.* (1) The responsible entity must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(2) If the responsible entity determines that the notification to all applicants on a waiting list required by paragraph (h)(1) of this section is impracticable because of the length of the list, the responsible entity may provide this notification to fewer than all applicants at any given time.

* * * * *

§§ 5.415, 5.420, 5.425, and 5.430 [Removed]

8. Remove §§ 5.415, 5.420, 5.425, and 5.430.

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

9. Amend § 5.601 as follows:
a. Revise the heading of § 5.601;
b. Remove existing paragraphs (a)(2)(iii) and (b);
c. Redesignate the introductory text of paragraph (a) as new paragraphs (a) and (b), introductory text;

d. Redesignate paragraphs (a)(1) through (a)(3) as paragraphs (b)(1) through (b)(3);

e. Add new paragraphs (c) and (d).
The revised heading of § 5.601, revised paragraphs (a) and (b), introductory text, and new paragraphs (c) and (d) read as follows:

§ 5.601 Purpose, applicability and reporting.

(a) *Purpose.* This subpart provides the definitions and requirements for income limits for admission, annual income, adjusted income, total tenant payments, utility allowances and reimbursements, and reexamination of income and family composition for the programs listed in paragraph (b) of this section.

(b) *Programs covered.* This subpart covers the following HUD programs:

(1) * * *

* * * * *

(c) *Income eligibility for assistance.*

No family other than a low-income family shall be eligible for admission to a program covered by this subpart, unless otherwise determined by HUD.

(d) *Reporting.* PHAs and owners must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with the income eligibility restrictions of this subpart.

(Approved by the Office of Management and Budget under Control number 2502-0204)

10. In § 5.603, revise the definitions of *full-time student*, and *tenant rent*, and add definitions of *extremely low-income family* and *responsible entity*, to read as follows:

§ 5.603 Definitions.

* * * * *

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.

* * * * *

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

* * * * *

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

* * * * *

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing).

* * * * *

§ 5.605 [Removed]

11. Remove § 5.605.

12. Revise 5.607 to read as follows:

§ 5.607 Income Limits for Admission.

(a) *Public housing.*—(1) *Income mix.* For admission to a PHA's public housing unit, the PHA may establish and use criteria for selection of residents for units in public housing developments that will produce a mix of incomes in the developments, subject to the provisions of this section. (The PHA's admissions policies that are designed to deconcentrate poverty and to bring a mix of incomes into developments are an element of its PHA Plan, part 903 of this title.)

(2) *Targeting.*—(i) *General.* At least 40 percent of the admissions to the public housing program in each fiscal year must be extremely low income families, as defined in § 5.603.

(ii) *Exceptions.* "Credit" provisions of paragraph (d) of this section permit the level of extremely low income families admitted to other HUD programs in a given fiscal year to affect the general targeting requirement for admissions to public housing.

(3) *Prohibition.* In complying with paragraph (a)(2) of this section, the PHA must not concentrate very low-income families in one public housing development or one building within a development. For this purpose, very low-income families includes other families with relatively low incomes.

(4) *Effect of Section 8 tenant-based assistance on public housing targeting.* The PHA may reduce the required number of public housing units to which extremely low-income families must be admitted to the extent the PHA has credits, in the same fiscal year, for admissions of extremely low-income families to its Section 8 tenant-based assistance program beyond the number required for that program.

(i) *Maximum number of credits.* The PHA may not have more credits than the lesser of:

(A) Ten percent of the total number of families admitted to the Section 8 tenant-based assistance program during the fiscal year; or

(B) The number of the PHA's public housing units in projects located in census tracts with a poverty rate of 30 percent or more that are made available and filled by eligible families who are not extremely low-income families.

(ii) *Limitation on use of credits.* In any fiscal year, at least 30 percent of a PHA's admissions to public housing units must be extremely low-income families, despite the availability of credits.

(b) *Section 8 tenant-based assistance.*

(1) *Targeting.* Not less than 75 percent of the families admitted to a PHA's tenant-based Section 8 program during the PHA fiscal year must be families whose annual income does not exceed the following amounts as determined by HUD:

(i) 30 percent of the area median income, with adjustments for smaller and larger families; or (ii) A higher or lower percent of the area median income, if HUD determines a higher or lower percent is necessary because of unusually high or low family incomes.

(2) *Conversion of assistance.*

Conversion of assistance for a participant in the PHA certificate program to assistance in the PHA voucher program does not count as an "admission," and is not subject to targeting under paragraph (b)(1) of this section.

(3) *Inapplicability of targeting.*

Admission of the following categories of families is not subject to targeting under paragraph (b)(1) of this section:

(i) A low-income family that is continuously assisted under the 1937 Act; or

(ii) A low-income or moderate-income family that is displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, as defined at § 248.101 of this title.

(4) *Jurisdictions served by more than one PHA.* If two or more PHAs that administer Section 8 tenant-based assistance have an identical jurisdiction, these PHAs shall be treated as a single PHA for purposes of meeting the targeting requirements of this section. In such a case, the PHAs shall cooperate to assure that aggregate admissions by such PHAs comply with the targeting requirement under paragraph (b)(1) of this section. If such PHAs do not have a single fiscal year, HUD will determine which PHA's fiscal year is used for this purpose.

(5) *Use of family's income.* The annual income (gross income) of an applicant family is used both for determination of income-eligibility under § 5.601(c) and for PHA income-targeting under paragraph (b)(1) of this section.

(c) *Section 8 project-based assistance.*

(1) *Applicability.* Income limits established by paragraph (c)(2) of this section apply to the following programs:

(i) Section 8 New Construction or Substantial Rehabilitation (parts 880 and 881 of this title);

(ii) Section 8 Property Disposition and Loan Management Set-Aside (part 886 of this title);

(iii) Section 8 Project-Based Certificate (part 983 of this title);

(iv) Section 8 Moderate Rehabilitation (part 882 of this title);

(v) Low-income housing preservation program (LIHPRA or ELIHPA, in effect before November 28, 1990); and

(vi) Section 8 following conversion from the Rent Supplement or Section 236 Rental Assistance Payments programs.

(2) *Targeting.* At least 40 percent of families admitted to a project in a fiscal year must be extremely low-income families.

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

(ii) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (d) and (e) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(iii) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (c)(3)(ii) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(A) 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;

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

(C) 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).

(iv) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners 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.

§ 5.609 [Amended]

13. Amend § 5.609 as follows:

a. Redesignate the introductory text of existing paragraph (b)(6) except heading as paragraph (b)(6)(ii) and redesignate existing paragraph (b)(6) (i) and (ii) as paragraphs (b)(6)(ii) (A) and (B).

b. Add, after the heading of paragraph (b)(6), a new paragraph (i) to read as follows:

* * * * *

(b) * * *

(6) * * * (i) The amount of reduced welfare income that is disregarded specifically because the family engaged in fraud or failed to comply with an economic self-sufficiency or work activities requirement.

* * * * *

c. Remove paragraphs (c)(1) and (c)(13) and renumber the remaining paragraphs as (c) (1) through (15).

d. Remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

14. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the PHA) 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, a PHA

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 a disability, to the extent necessary to enable any member of the family (including the member with a disability) to be employed;

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

(5) The amount of any earned income of a family member (other than the family head or spouse) who is not 18 years of age or older.

(b) *Permissive deductions—for public housing only.* A PHA may establish other deductions from annual income. The PHA must identify these deductions in its written policies and must grant them to every family who qualifies.

15. Add a new § 5.612 to read as follows:

§ 5.612 Self-Sufficiency incentives—applicable to public housing only.

(a) *Limit on rent increases.* The PHA must not increase the annual income of an eligible family as a result of increased income due to employment during the 12-month period beginning on the date on which the employment is commenced. Eligible families are those that reside in public housing:

(1) Whose income increases as a result of employment of a family member who was previously unemployed for one or more years. For purposes of this section, “previously unemployed” includes a person who has earned, in the previous twelve months, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

(2) Whose employment income increases during the participation of a family member in any family self-sufficiency or other job training; or

(3) Who is or was, within 6 months, assisted 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 TANF agency, and whose earned income increases.

(b) *Phase-in of rent increases.* Upon expiration of the 12-month period

described in paragraph (a) of this section, the rent payable by a family may be increased due to continued employment of a family member except that for the 12-month period following expiration of the 12 month disallowance, the increase may not be greater than 50 percent of the amount of the total rent increase.

(c) *Individual Savings Accounts.* As an alternative to the disallowance of earned income described in paragraph (a) of this section or the phase-in of rent increase described in paragraph (b) of this section, a PHA may 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 accounts an amount equal to the total amount that otherwise would have been applied to the family's rent payment as a result of employment;

(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 interest income; and

(5) At least annually the PHA must provide the family with a report on the status of the account.

(6) 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.

16. Revise § 5.613 to read as follows:

§ 5.613 Total tenant payment.

(a) 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 designated for housing; or

(4) Minimum rent, in accordance with applicable provisions of § 5.616.

(b) 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.

17. Add a new § 5.614 to read as follows:

§ 5.614 Choice of rent in public housing.

(a) The amount payable monthly by the family as rent to the PHA is the rent selected annually by the family from the options offered under the PHA's rent policies. The options must include:

(1) *Flat rent.* A flat rent is the amount of tenant rent based on the market value of the unit, as determined by the PHA. 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. A PHA must take reasonable steps to determine market value, and generally should use a comparability study. The comparability study would analyze relevant factors for the community in which the unit is located, including unassisted rents for housing of similar age, location, condition, amenities, design and size. The PHA must maintain records regarding the calculation and establishment of flat rents; and

(2) *Income-based rent.* An income-based rent is the amount of tenant rent based on the family's income, as determined by the PHA, and the PHA's rent policies, which may specify a percentage of family income, a schedule of amounts, or some other feasible system. The income-based rent, including any applicable utility allowance, must not exceed the total tenant payment. A PHA may administer income-based rents in a way that involves depositing a portion of the tenant rent to an escrow or savings account, imposing a ceiling on tenant rents, adopting permissive income deductions (24 CFR 5.611(b)), or other reasonable amounts, as long as the tenant rent plus any utility allowance does not exceed total tenant payment. (See § 5.611(b).)

(b) *Ceiling rent.* A PHA may retain ceiling rents instead of flat rents for a period of three years from [insert effective date of final rule]. After this three year period, the PHA must adjust the ceiling rents to the same level as 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.

(c) *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 information:

(1) The dollar amounts of tenant rent for the family under each option; and

(2) The PHA's policies on switching type of rent in circumstances of financial hardship.

(d) *Changing type of rental payment.* If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately switch the family's rental payment from flat rent to income-based rent.

(e) *Written policies on financial hardship.* The PHA must establish written policies for determining financial hardship circumstances. Policies must include situations in which the family:

(1) Has experienced a decrease in income because of changed circumstances, loss or reduction of employment, death in the family, and reduction in or loss of earnings or other assistance;

(2) Has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(3) Such other situations determined by the PHA to be appropriate.

18. Add a new § 5.616, to read as follows:

§ 5.616 Minimum rent.

(a) *Minimum rent.* A family must pay at least a minimum rent, established by the responsible entity. For public housing and the section 8 certificate, voucher and moderate rehabilitation programs, the PHA may establish a minimum rent of \$0 to \$50. For other section 8 programs, the amount is \$25. This minimum rent includes tenant rent plus any utility allowance. The responsible entity must grant an exemption from payment of this minimum rent if the family is unable to pay that rent as a result of financial hardship, as described in the responsible entity's written policies.

(b) *Financial hardship.* The financial hardships that must be included are the following:

(1) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program;

(2) When the family would be evicted as a result of the imposition of the minimum rent requirement;

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

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

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

(c) *Request for hardship exemption.*—

(1) *For public housing.* (i) If a family requests a hardship exemption, the PHA must suspend the minimum rent requirement immediately, until the PHA determines whether there is a qualifying financial hardship and whether the hardship is long-term.

(ii) If the PHA determines that there is a qualifying hardship, but that it is temporary, the PHA reinstates the minimum rent from the time of suspension. The PHA cannot evict the family for nonpayment of the amount of minimum rent in excess of tenant rent otherwise payable during the 90-day period beginning on the date the family requested an exemption. The PHA must offer the family a reasonable repayment agreement for the amount of back rent owed.

(2) *For section 8 certificate, voucher and moderate rehabilitation programs and project-based section 8 assistance.*

(i) If a family requests a hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's hardship request until the responsible entity determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(ii) If the responsible entity determines that there is a qualifying financial hardship, but that it is temporary, the responsible entity may not impose a minimum rent for a period of 90 days from the date of the family's request. At the end of the 90-day suspension period, a minimum rent is imposed retroactively to the time of suspension. The family must be offered a responsible repayment agreement for the amount of back rent owed.

(3) *For all programs.* (i) If the responsible entity determines there is no qualifying hardship exemption, the responsible entity must reinstate the minimum rent including the back payment for minimum rent from the time of suspension on terms and conditions established by the responsible entity.

(ii) If the responsible entity determines there is a qualifying long-term financial hardship, the responsible entity must exempt the family from the minimum rent requirements.

(d) *Appeal of financial hardship determination.* A family who appeals a financial hardship determination through the public housing grievance procedure is exempt from any escrow deposit that may be required by the regulations governing these procedures.

19. In § 5.617, revise paragraph (a); redesignate existing paragraph (b) as paragraph (c); and add a new paragraph (b), to read as follows:

§ 5.617 Redetermination and verification of family income and composition.

(a) *Initial determination and regular redeterminations.*—(1) *Section 8.* The responsible entity must conduct a redetermination of family income and composition at least annually.

(2) *Public housing.* (i) For families who pay an income-based rent, the PHA must conduct a redetermination 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.

(ii) For families who choose flat rents, the PHA must review the income of the family in accordance with the PHA's established policies, at least once every three years.

(iii) For all families who include nonexempt individuals, as defined in 24 CFR 960.602, the PHA must determine compliance once each 12 months with community service and self-sufficiency requirements in 24 CFR 960, subpart F.

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

(b) *Interim redeterminations.*—(1) *When the redetermination is conducted.* A family may request an interim redetermination of family income or composition because of any changes since the last determination. The responsible entity must make the interim redetermination within a reasonable time after the family request. The responsible entity may adopt policies prescribing when and under what conditions the family must report a change in family composition.

(2) *How the redetermination is conducted.* In the case of a PHA, interim redeterminations must be conducted consistent with policies in its PHA Annual Plan. The change in income is annualized, even if the income is not expected to last for a full year. If the income changes again, the new amount

of monthly income will be annualized again.

* * * * *

20. Add a new § 5.618, to read as follows:

§ 5.618 Treatment of income changes resulting from welfare program requirements for public housing and section 8 tenant-based programs.

(a) *General.* A responsible entity must not reduce the annual income of a family residing in public housing or reduce the contribution toward rent of a family receiving Section 8 tenant-based assistance because of a reduction in the family's welfare assistance specifically because of fraud or failure to participate in an economic self-sufficiency program or comply with a work activities requirement. A reduction in welfare assistance is not to be treated as failure to participate in an economic self-sufficiency program or to satisfy a work activities requirement if the reduction results from:

- (1) The expiration of a lifetime limit on receiving benefits;
- (2) When a family has sought but cannot find employment; or
- (3) The family has complied with welfare program requirements but loses welfare because of a durational time limit such as a cap on welfare benefits for a period of no more than two years in a five-year period.

(b) *Verification.* When a family requests a rent reduction based on a reduction in family income from welfare, the responsible entity must obtain written verification from the welfare agency of the basis for the reduction. If the reduction is specifically the result of the family's failure to participate in an economic self-sufficiency program or comply with work activities requirements or fraud by the family, the responsible entity must not reduce the family's rent.

(c) *Notification to families.* Responsible entities must notify families who are adversely affected by the requirements of this section that they have the right to review through the PHA's grievance procedure (for public housing) without paying a deposit in escrow, or through use of the informal hearing procedure under 24 CFR 982.555(a)(i) (for Section 8 tenant-based certificate and voucher programs).

21. Add a new § 5.619, to read as follows:

§ 5.619 Occupancy by police officers in public housing and section 8 project-based housing.

(a) *Public housing—(1) Police officer.* 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.

(2) *Occupancy in public housing.* For the purpose of increasing security for the residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for public housing, to reside in a public housing dwelling unit. The PHA must include in its PHA Annual Plan the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies.

(b) *Section 8 project-based housing—(1) Police officer (including security personnel).* To be considered eligible for occupancy in section 8 project-based housing, the police officer must be employed full time (not less than 35 hours per week) by a governmental unit or a private employer and compensated expressly for providing police or security services.

(2) *Occupancy in section 8 project-based housing.* (i) Owners must submit a written plan to their local HUD Field Office for authorization to lease an available unit to over-income police officers. The owner's application must include:

(A) A statement detailing existing social and physical conditions of the property and the owner's informed assessment of the need for crime deterrence for that property;

(B) A statement of the anticipated benefits that the presence of police officers will create at the property and in the community;

(C) A description of the proposed gross rent for the unit and any special conditions for occupancy, including the rent that would ordinarily be charged for the unit and the owner's annual maintenance cost for the unit (this rent may be a flat rent and not related to the income of the police officer);

(D) The terms of the lease including a provision that states that the police officer's right of occupancy is dependent on the continuation of the employment that qualified the officer for residency in the property under the plan;

(ii) An owner may not offer a unit to a police officer if the officer would displace an income eligible tenant from leasing the available unit, or would require an existing tenant to move to make the unit available to the officer.

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

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

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

Subpart B—Admission, Rent and Reexamination

§ 960.204 [Amended]

23. Amend § 960.204 by removing from paragraph (a)(2)(iii) the phrase "federal preference, ranking preference, or local", in paragraph (a)(3)(ii) by adding a semicolon after the words "waiting list", and by removing the remainder of paragraph (a)(3)(ii).

24. Revise § 960.209 to read as follows:

§ 960.209 Regular and interim redeterminations and verification of family income and composition.

The PHA must conduct regular and interim redeterminations of family income and composition in accordance with § 5.617 of this title.

Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects

25. Revise § 960.407 to read as follows:

§ 960.407 Selection preference for mixed population projects.

(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population projects. 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 projects.

(b) In offering available units to elderly families and disabled families in mixed population projects, the PHA should first offer units with accessible features to persons with disabilities who require the accessibility features of the unit, in accordance with the requirements of §§ 8.27 and 100.202(c)(3) of this title.

26. Revise subpart E to read as follows:

Subpart E—Occupancy by Over-Income Families

Sec.

960.503 Definitions.

960.505 Occupancy by over-income families in certain public housing.

Subpart E—Occupancy by Over-Income Families

§ 960.503 Definitions.

Eligible families. Families who are eligible for residence in public housing assisted under the United States Housing Act of 1937 (42 U.S.C. 1437).

Over-income family. An individual or family who is not a low-income family at the time of initial occupancy.

§ 960.505 Occupancy by over-income families in certain public housing.

A PHA that owns or operates fewer than two hundred fifty (250) units, may rent a unit in a public housing development to an over-income family, in accordance with its PHA Annual Plan, under the following circumstances.

(a) There are no eligible families on the waiting list; or

(b) There are no eligible families applying for assistance in that month;

(c) Before offering the unit to an over-income family, the PHA publicizes the availability of the unit for eligible families—including publishing a thirty (30) day notice in one newspaper of general circulation;

(d) The over-income family rents the unit on a month-to-month basis for a rent charge that is not less than the cost to operate the unit;

(e) The over-income family signs an agreement to vacate the unit when needed by an eligible family; and

(f) The PHA gives the over-income family notice to vacate the unit when the unit is needed for an eligible family, and this notice is given at least thirty (30) days before the over-income family is to vacate.

27. Add a new subpart F to read as follows:

Subpart F—Community Service and Self-Sufficiency Requirements

Sec.

§ 960.603 Definitions.

§ 960.605 General requirements.

§ 960.607 Determining resident noncompliance.

§ 960.609 Prohibition against replacement of employees.

§ 960.611 Third-party coordinating.

Subpart F—Community Service and Self-Sufficiency Requirements

§ 960.603 Definitions.

Exempt individual. An adult who is:

- (1) 62 years or older;
- (2) Is a person with vision impairment or other person with disabilities, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who is unable to comply with this section, or is a primary caretaker of such individual;

(3) Is engaged in a work activity as defined under section 407(d) of the Social Security Act (42 U.S.C. 607(d)), as in effect on and after July 1, 1997;

(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 in a family receiving assistance 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 public Housing Agency 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.

Community Service. For purposes of this section, community service is the performance of voluntary work or duties in the public benefit that serve to improve the quality of life and/or enhance resident self-sufficiency, or/and increase the self-responsibility of the resident within the community in which the resident resides. Political activity is excluded.

Economic Self-Sufficiency program.

Any program designed to encourage, assist, train, or facilitate the economic independence of participants and their families or to provide work for participants. These programs may include programs for job training, employment training, work placement, basic skills training, education, English proficiency, work fare, financial or household management, apprenticeship, and any program necessary to ready a participant to work (such as substance abuse or mental health treatment).

§ 960.605 General Requirements.

(a) *Participation.* Except for residents exempted in § 960.603 of this subpart, each adult resident of a public housing development shall:

(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.

(b) *Effective date of participation.* The requirement is effective for all nonexempt residents following execution of a lease, containing these provisions, by the family head of household.

(c) *PHA obligation.* PHAs must, at a minimum:

(1) Develop a local policy for administration of a community service and economic self-sufficiency program.

(2) Provide written notification of the provisions of the community service requirements to all residents. The notice should describe the requirement, identify who is exempt and how exemption will be verified. The PHA should state when the requirement is effective, as well as the obligations and responsibilities of adult family members, and the consequences of non-compliance.

(3) Determine for each public housing family which family members are subject to or exempt from the community service and self-sufficiency requirement and approves the resident's planned activities to fulfill the requirement.

(4) No more or less frequently than annually, review and determine the compliance of residents with the requirements at least 30 days before lease term expires. Determine any changes to each adult family members exempt or nonexempt status.

(5) Retain reasonable documentation of community service participation or exemption in participant files.

(6) Comply with the civil rights requirements in 24 CFR part 5.

§ 960.607 Determining resident noncompliance.

If the PHA determines that a resident who is not an "exempt individual" has not complied with the community service requirement, the PHA must notify the resident:

(a) Of the noncompliance;

(b) That the determination is subject to the PHA's administrative grievance procedure;

(c) That unless the resident enters into an agreement under paragraph (d) of this section, the lease of the family of which the noncompliant adult is a member may not be renewed. However, if the noncompliant adult moves from the unit, the lease may be renewed;

(d) That before the expiration of the lease term, the PHA must offer the resident an opportunity to cure the noncompliance during the next twelve-month period; such a cure includes a written agreement by the noncompliant adult to complete as many additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the 12 month term of the lease.

§ 960.609 Prohibition against replacement of employees.

In implementing the community service requirement, the PHA may not

substitute community service for work ordinarily performed by public housing employees or replace a job at any location where community work requirements are performed.

§ 960.611 Third-party coordinating.

The PHA may administer the community service directly, or through partnerships with qualified organizations, including resident organizations, or agencies or institutions with a community mission. The PHA must ensure that community service programs that are based directly or through partnerships with qualified organizations or through contracts with such organizations are accessible to persons with disabilities.

PART 966—LEASE AND GRIEVANCE PROCEDURES

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

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

29. In § 966.4, revise the introductory text and add a new paragraph (f)(13), to read as follows:

§ 966.4 Lease requirements.

Each public housing lease must have a 12-month term, which must be automatically renewed for all purposes except noncompliance by an adult member with the community service requirements of part 960, subpart F of this title.

* * * * *

(f) * * *

(13) To contribute 8 hours per month of community service (not including political activities), unless otherwise exempt. The 8 hour each month requirement can be a combination of PHA-approved community service or economic self-sufficiency activities. (See part 960, subpart F of this title.)

30. 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) of subpart A of this part) 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 § 5.616 of this title (concerning financial hardship of minimum rent requirements) or § 5.618 of this title (concerning reduction in welfare benefits related to work requirements). 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

31. The authority citation for part 984 continues to read as follows:

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

32. Throughout part 984, remove the terms "an HA" and "HA" and add in their place the terms "a PHA" and "PHA".

33. Amend § 984.101 by removing paragraph (c) and revising paragraph (b)(3) to read as follows:

§ 984.101 Purpose, scope, and applicability.

* * * * *

(b) * * *

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA that receives funding for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998, must operate a Section 8 FSS program. Receiving funding for additional certificates or vouchers means reservation of funds for the Section 8 certificate or voucher program.

(ii) Each PHA that receives funding for additional public housing units in FY 1993 through October 20, 1998, must operate a public housing FSS program. Receiving funding for additional public housing units means reservation of funds to acquire or construct additional public housing units.

34. In § 984.103, revise the definition of *welfare assistance* to read as follows:

§ 984.103 Definitions.

* * * * *

Welfare assistance means income assistance from Federal or State welfare programs, and includes assistance provided under the Temporary Assistance to Needy Families (TANF) program, and general assistance.

Welfare assistance does not include assistance solely directed to meeting housing expenses, and does not include programs that provide health care, child care or other services for working families.

* * * * *

§ 984.105 [Amended]

35. Amend § 984.105 as follows:

- a. Revise paragraph (a);
- b. Redesignate paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv);
- c. Redesignate the text of paragraph (d) as (d)(1) and add a new heading for redesignated paragraph (d)(1); and
- d. Add a new paragraph (d)(2). The revised and added paragraphs of § 984.105 read as follows:

§ 984.105 Minimum program size.

(a) *General.* A PHA must operate an FSS program of the minimum size determined in this section. Paragraph (c) of this section prescribes the conditions under which HUD may grant an exception to this requirement, and paragraph (d) of this section states the conditions under which the minimum size calculated under this paragraph (a) may be reduced. A PHA may always operate a program of a larger size than the minimum.

(1) *Determining minimum program size.* The minimum size of an FSS program is equal to:

(i) *Public housing.* (A) The total number of public housing units reserved in FY 1993 through October 20, 1998;

plus
(B) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(C) The number of families that have graduated from the FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(ii) *Section 8.* (A) The total number of applicable rental certificates and rental vouchers reserved in FY 1993 through October 20, 1998; plus

(B) The number of rental certificates and rental vouchers reserved under the combined FY 1991/1992 FSS incentive award competition; minus

(C) The number of families who have graduated from the FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(2) *Applicable public housing units.* In determining minimum program size, all additional public housing rental units reserved in FY 1993 through October 20, 1998 will be counted.

(3) *Inapplicable Section 8 certificates and vouchers.* (i) *Renewals.* Except for

the renewal of funding that initially carried an FSS program obligation, renewal funding for rental certificates and vouchers reserved in fiscal year 1993 through October 20, 1998 is not counted when determining the FSS minimum program size.

(ii) *PHAs with existing FSS obligation.* When determining the minimum FSS program size for a PHA that already had an FSS obligation, funding reserved in fiscal year 1993 through October 20, 1998 for the following categories is not counted:

(A) Funding for families affected by the termination, expiration or owner opt-outs under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project and replacement of public housing projects;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments program 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.

(iii) *PHAs with no existing FSS obligation.* If a PHA with no existing FSS obligation received certificate and voucher funding under the categories described in paragraph (a)(3)(ii) of this section in fiscal year 1993 through October 20, 1998, the first such funding counts towards the PHA's minimum FSS program size.

* * * * *

(d) * * *

(1) *Approval of exception.* * * *

(2) *Expiration of exception.* Full and partial exceptions to the minimum size of an FSS program will expire three years from the date of HUD's approval of the exceptions. 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. Revised FSS Action Plan policies must be stated in the PHA's Annual Plan.

* * * * *

36. 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 apply for 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.

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§ 984.301 [Amended]

37. Amend § 984.301 by redesignating paragraphs (a)(1), (a)(2), and (a)(3), as paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii); adding a new paragraph (a)(1) and a new heading for redesignated 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.* * * *

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38. 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 of the PHA's jurisdiction 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 jurisdiction of the initial PHA, consistent with applicable Section 8 program regulations (part 982 of this title).

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Dated: April 8, 1999.

Andrew Cuomo,

Secretary.

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