

Protecting Public Benefits 101

Stetson Law 2023 National Conference on Special Needs Planning and Special Needs Trusts

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Program: Attorneys who work in elder law and special needs planning frequently work with attorneys who have practices that focus on personal injury. Sometimes settlements can endanger a recipient's eligibility for public benefits. This program will help you learn how to identify public benefits issues and address the issues in a fashion that brings solutions for everyone.

PROTECTING PUBLIC BENEFITS: 101

STETSON NATIONAL SPECIAL NEEDS CONFERENCE: 2023

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INTRODUCTIONS

- Special Needs Planning requires a background in the law + expertise with fiduciaries
- EVERY ATTORNEY needs to know about special needs trusts and public benefits
- The world of “Special Needs Planning” is broad + public benefits can be complex
- Working with colleagues who have expertise in this area minimizes risk for all parties
- Issue spotting is important for all attorneys *and* fiduciaries

WHO IS YOUR CLIENT?

- Always ask yourself “Who is the Client”
- Multiple attorneys may work on the same case. If you are the attorney with expertise in SNTs, is your client:
 - The attorney who needs your assistance in the probate division?
 - The guardian/conservator?
 - The injured party?
 - Someone else?
- Who signs the fee agreement?
- If any Court involvement is needed, the Court will need to understand the relationships between the parties.

IS THERE A COURT RULE REGARDING RELEASE OF LIABILITY IF THE COURT APPROVES THE SETTLEMENT?

- In Arizona, this is our rule (rule in your state may be similar)
- (a) Court Approval.
 - (1) When Required. Except as provided in subpart (a)(2), **no settlement of a claim brought on behalf of a minor or an adult in need of protection is binding on the minor or the adult in need of protection unless it is approved by a judicial officer.** If the court approves the settlement, it may authorize the execution of appropriate releases of liability.
 - (2) When Not Required. Under A.R.S. § 14-5424(C)(19), a conservator may enter into a binding settlement of claims not involving personal injury or wrongful death without court approval.
- (b) Who May Approve.
 - (1) Claims of Minors. Any superior court judge or judge pro tem may approve the settlement of a minor's claim if the settlement does not exceed \$10,000. If the settlement exceeds \$10,000, it must be approved by a superior court judge or judge pro tem in a probate proceeding under A.R.S. Title 14.
 - (2) Claims of Adults in Need of Protection. Any superior court judge or judge pro tem in a probate proceeding under A.R.S. Title 14 may approve the settlement of a claim brought on behalf of an adult in need of protection.

SPECIAL NEEDS TRUST AND BENEFITS

- A Special Needs Trust (SNT) is a trust established for the benefit of an individual with a serious mental or physical disability who is receiving or may be entitled to ‘needs based benefits.’
- There is no precise definition of “special needs” and this terminology means something different to everyone. (see Daniel McGee v DHCS).
- Be careful – there are different types of SNTs.
- Some government assistance is based on need, some is based on “entitlement” and some is based on financial criteria (income and/or assets).

PUBLIC BENEFITS

- Basic programs that assist the Aged, Blind and Disabled
 - Social Security Disability (SSD)
 - Medicare
 - Supplemental Security Income (SSI)
 - Medicaid/waiver program/long term care
 - SNAP (food assistance)
 - Housing Assistance

WHAT BENEFITS IS SOMEONE RECEIVING?

- It can be difficult to determine what benefits someone receives.
- If you do not know what benefits someone is receiving, mistakes can be made.
- Many people have a misunderstanding of what public benefits they receive and what benefits they are eligible to receive (now and in the future).
- How do you actually know what benefits someone is receiving?
- The Social Security website is a great resource:
<https://www.ssa.gov/myaccount/proof-of-benefits.html>
- Everyone should look at their Social Security benefit verification letter!

PUBLIC BENEFITS

- SSD and Medicare are entitlement programs, where someone paid into the program vis-à-vis a work history.
- SSI and Long-Term Care Medicaid are needs based programs, where the applicant must qualify based on financial criteria.
- Medicaid health insurance eligibility will be state specific and may only be based on income not on assets.

UNDERSTANDING SSI

- Supplemental Security Income (SSI) is a need-based cash benefit of the SSA for those individuals who are Aged, Blind or Disabled and who also meet the income and asset limits.
- Children under age 18 can get SSI if they meet Social Security's definition of disability for children and there are limited income and resources in the household.
- Federal Benefit Rate (for 2023 is \$914 for individual and \$1,371.00 for couple)
- In many states this means automatic eligibility for Medicaid Health insurance

UNDERSTANDING SSD

- Disability for an individual who is not blind: (20 CFR 404.1505):The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.
- To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see 20 CFR 404.1560(b)) or any other substantial gainful work that exists in the national economy.
- Disability can be difficult to substantiate without proper medical documentation.

DISABLED CHILDREN

- In the case of children, the child must have a physical or mental condition, or combination of conditions that results in “marked and severe functional limitations.” This means that the condition(s) must seriously limit the child’s activities. The child’s condition must have lasted or be expected to last at least 12 months; or must be expected to result in death.

SSI RESOURCES

- Resource limit for a single person is \$2,000 (\$3,000 for a couple).
- Excluded resources
 - Home if occupied by the SSI recipient
 - Personal Property
 - Life Insurance up to \$1500 cash value
 - Irrevocable burial plan, Revocable burial plan up to \$1500 cash value
 - Burial Plot
 - Motor vehicle
 - NOTICE: A restricted conservatorship account is NOT an excluded resource

SSI INCOME

- **20 CFR 416.1102 What is income?**
- Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (see 20 CFR 416.1110 and 416.1123(b)), (70 FR 6344, Feb. 7, 2005).
- NOTE: Rule may be changing so that food may be omitted from the calculation of in-kind support and maintenance (ISM).
- NOTE: Rule may also be changing regarding how rent will be treated as ISM. If the rent paid is greater than the max presumed maximum value (PMV), then no ISM will be calculated or charged. If the rent paid is less than the PMV, then the difference between the rent paid and max PMV will be charged as ISM.

SSI INCOME

- Unearned income: interest, dividends, rent, royalties, alimony and support; reduces SSI benefits dollar for dollar after the first \$20.
- Earned Income: wages or net self employment income; reduces benefits one dollar for every two dollars earned after the first \$85. (there are some additional deductions-see 20 CFR 416.1112 et seq.)
- Direct cash to the SSI beneficiary—results in a dollar for dollar reduction of SSI benefits, after the first \$20. If the cash payment exceeds the SSI benefit (plus \$20), the person will be disqualified from SSI and lose automatic eligibility for Medicaid benefits (in those States where there is automatic qualification).

SSI INCOME

- In-Kind (non-cash to the beneficiary)
 - Either non-cash items given to the beneficiary or for items paid by someone else, *including* payments by the Trustee of the Special Needs Trust
 - ISM- In-Kind Support and Maintenance means payments for food or shelter (20 CFR 416.1130(b)).
 - ISM is treated as income to the recipient in the month received and can thus reduce the SSI payment, even if the payment was made by the SNT. If the ISM includes both food and shelter, SSI will be reduced by 1/3 of the maximum SSI benefit plus \$20. Otherwise, the SSI will be reduced by the lesser of the actual proven value of the ISM and the 1/3 of the maximum SSI benefit plus \$20. Essentially, in 2023, SSI is reduced by approximately \$300.

DEEMING

- The assets and income of a child's parent(s) is deemed to that child. Thus, often a minor child is not eligible for SSI. See 20 CFR 416.1160(c)
- Deeming applies if the parent(s) has income and/or resources that SSA must consider and
 - The child is under age 18; and lives at home with their parent(s), or adoptive parent(s);
OR
 - The child lives away at school, but comes home on some weekends, holidays, or school vacations and is subject to parental control.

MEDICAID HEALTH INSURANCE

- Typically, Medicaid provides medical services like labs, x-rays, hospital services, pregnancy care, and general doctor's visits. Often, Medicaid also provides behavioral health services.
- Ways to qualify for Medicaid varies state to state:
 - SSI Related: categorically eligible (42 CFR 435.120)
 - In some states, the long term care piece of Medicaid may allow a person to qualify for acute care services, even during a transfer penalty period.
 - Supplemental Security Income Medical Assistance Only (SSI MAO) and Medicaid income limits for individuals and couples vary by state. There is no resource limit.

LONG TERM CARE MEDICAID

- Long Term Care Medicaid
- Your State may provide services through various waiver programs. Those programs may have different eligibility criteria. Typically, these programs provide long term care services including: nursing home; in home care; assisted living; group homes; respite care; and adult day care.
 - Must be medically eligible, an individual must be in need of care comparable to that received in a nursing facility, although the services do not need to be provided in a nursing facility or by a registered nurse. The medical evaluation is different for the elderly versus those with developmental disabilities.

LONG TERM CARE MEDICAID

- Income limits for the applicant;
- Asset limits for the applicant (\$2000) (except in California).
- If married, the spouse is limited to assets that are the lesser of $\frac{1}{2}$ of the total assets or \$148,620 (except in California).
- IRAs, retirement accounts, life insurance, cash accounts, investments, etc. of both spouses may be counted or may not. You need to check the rules in your State. Typically assets in a grantor trust for the benefit of either spouse are counted.
- Assets in a restricted Conservatorship account are **COUNTED** resources.
- Watch out for transfers! The look-back period begins on the first day of the 60th month prior to the month of application.

WILL THE INDIVIDUAL BENEFIT FROM A SNT?

- Which government benefits are at issue?
- Will the individual be able to obtain or maintain health insurance?
- Where will the individual live?
- What are the expected costs and needs of the individual?
- Is the individual eligible for any VA benefits?
- If there are settlement funds awarded, how much will the individual net?
- Who will administer the SNT and what will the administrative overhead look like?

HEALTH INSURANCE

- If the individual will be eligible for SSD, he/she will receive Medicare 24 months later.
 - Individual may be eligible for a medicare savings programs if the client has limited income and resources to help pay some or all of their Medicare premiums, deductibles, copayments, and coinsurance.
- If the individual will be eligible for SSI, then the person may be eligible for Medicaid.
- Federal Marketplace (Affordable Care Act/Obamacare)

OTHER THINGS TO CONSIDER

- Spending down assets to help an individual become eligible for Medicaid
- Allocation to other family members
- Does the client need to remain on benefits
 - In some cases the income from a monthly benefit may not be critical, but the Medicaid health benefits are important to maintain.
- If a house is purchased from a SNT, must be titled to the SNT—remember the payback risk.
- If a vehicle is purchased from a SNT, the best practice is for the SNT to hold the lien on the title.

RECEIPT OF FUNDS

- If the client is already on SSI or Long Term Care Medicaid, remember that the receipt of the funds must be reported in the month of receipt; and ideally spent in the same month if a spend down plan is being utilized to maintain benefits.
- Plan ahead so that funds can be spent thoughtfully in the same month of receipt.

TYPES OF SNTs

First Party

- Beneficiary's own \$
- Payback to State on death
- Restrictive use
- Under age 65
- When unexpected assets/funds
 - Inheritance
 - Settlement

Third Party

- \$ from another person(s)
- No payback to State on death
- Less restrictive use
- Expected assets/funds
 - Inheritance
 - Gifts

PLAN AHEAD!

Pooled

- Trustee is a trust company
- Pool funds with other beneficiaries for better investment return
- 1st or 3rd Party SNTs

FIRST PARTY SNT

- A First Party SNT is a trust that is funded with the individual's funds (rather than through a trust already established by a third party).
- Usually funded with PI settlement funds or directly inherited assets to a disabled individual.
- ***In Arizona, must be funded prior to the beneficiary reaching age 65!***
(otherwise it is treated as a transfer and will delay ALTCS eligibility)
- In some States a pooled first party SNT can be funded post age 65. (See also included ALJ decisions).

FIRST PARTY SNT

- Issues to consider:
- Reporting requirements to the court, SSA and/or Medicaid;
- Use of the SNT funds and impact on eligibility;
- Bonding of the Trustee;
- Administrative costs;
- Potential need for restricted accounts;
- Pay back requirement.

FIRST PARTY SNT

- Can only be established by: a parent, grandparent, guardian (not conservator), court or the competent disabled beneficiary.
- The challenge is determining whether the trust is needed in the first place. With proper administration of the trust, can trust assets be used in a fashion that benefits the beneficiary who remains eligible for public benefits?
- Lots of discussion about how the trust will work and what the pay back provision means is important *before* a First Party Trust is funded.

WHAT IS A POOLED TRUST AND HOW DOES IT DIFFER FROM A SNT?

- Established pursuant to 42 U.S.C. Sec. 1396p(d)(4)(C)
- Not an individual trust
- Doesn't require establishment by parent, grandparent, guardian, court
- Governed by single master trust agreement
- Assets of the beneficiary are pooled for management/investment purposes but tracked separately as individual accounts

WHAT IS A POOLED TRUST ...?

- Must be managed by non-profit although trustee duties may be delegated to professional or corporate trustee
- No age limitation although Medicaid may penalize enrollment after age 65
 - Not all state Medicaid programs penalize post-65 enrollment
- To the extent funds are retained by trust on death of beneficiary, no payback
 - Some state Medicaid programs limit extent to which funds can be retained
 - Retained funds utilized for charitable purposes

LIENS

- In many States a SNT cannot pay past due debts
- Be sure all liens are paid *before* funding SNT
- Any reimbursement to family who covered costs before funds were available must be paid *before* SNT is funded
- If lien has not been negotiated, include language in the court order to hold funds in attorneys' account to pay final amount and then fund remainder to SNT (or wherever)

ALTERNATIVE TRUSTS

- In Arizona, we have a statute that allows use of a court approved trust to defer payment or payout of settlement
- Can provide protection to minor beyond age 18 such as spendthrift/creditor protection
- More flexible and protective than structured settlement annuity but can also be used in conjunction with such an annuity to provide more balanced investment approach

ALTERNATIVE TRUSTS (CONT.)

- Trust can be drafted and the funds in the beneficiary's estate can be invested to minimize income taxes
- An irrevocable trust over which beneficiary has no control enables beneficiary (and his family) to remain eligible for public benefits that are income-sensitive only (Medicaid, Nutritional Assistance aka Food Stamps)
- An irrevocable trust can be drafted in a fashion that allows it to later qualify as a special needs trust (if necessary)

MEDICARE SET-ASIDE ARRANGEMENTS

- Medicare Secondary Payer Act (MSPA) provides authority for CMS to require consideration of plaintiff's future medical expenses
- Medicare precluded from paying medical expenses when payment can reasonably be expected to be made under workers compensation plan, ... or liability insurance
- ... then came along the Medicare, Medicaid & SCHOP Extension Act of 2007 which requires all insurers, etc. to identify when there is a plan primary to Medicare
- Defendants and their insurers now insist on MSAs in liability cases even when not appropriate or required
- No rules or regs, but many memos in workers compensation cases
 - Settlement > \$25k and currently eligible or Settlement > \$250k and reasonably expected to be eligible within 30 months

LIABILITY MEDICARE SET-ASIDE ARRANGEMENTS

- CMS issued memo dated 9/30/2011
- Physician's certification re: continued need for treatment at time of settlement
 - If none, then no need to submit to CMS and keep on file
 - If ongoing treatment required, use rules of thumbs in workers compensation cases
- Need separate certification for each settlement if multiple settlements

MEDICARE SET-ASIDE ARRANGEMENTS (CONT.)

- Companies calculate set-aside amount by evaluating past med tx, current med condition, probability of future med needs, life expectancy
- MSA can be self-administered, administered via custodial account, or in a formal trust
- Structured settlement ideal for purposes of funding cost-effectively and covering cost of administration
- MSA does *NOT* preserve eligibility for other needs-based public benefit programs; if there is a SNT, must be a subtrust of the SNT

MEDICARE SET-ASIDE ARRANGEMENTS: PROTECTING THE PI ATTORNEY FROM LIABILITY (CONT.)

- Obtain physician's certification re: need for future medical treatment
- If physician certifies need for future medical treatment, follow rules for WC cases re: threshold amounts
- Use company to calculate MSA amount
- Submit to CMS although unlikely to respond
- Establish MSA and fund it
- Advise plaintiff in writing re: rules
- Advise plaintiff in writing of potential for denial of future medical care coverage for the injury subject to the litigation
- Paper your file

GALLARDO v MARSTILLER

- Gianinna Gallardo suffered catastrophic injuries when she was hit by a truck after getting off her school bus, and she remains in a persistent vegetative state. She eventually recovered \$800,000 in a court-approved settlement, which applied to her past medical expenses, future medical expenses, lost wages, and other damages. However, the settlement amount covered only a fraction of each type of damages.
- Medicaid had paid \$862,688.77 toward her past medical expenses.
- Supreme Court of the US, No. 20-1263
- **Holding:** The Medicaid Act permits a state to seek reimbursement from settlement payments allocated for future medical care.
- **Judgment:** Affirmed, 7-2, in an opinion by Justice Thomas on June 6, 2022. Justice Sotomayor filed a dissenting opinion in which Justice Breyer joined.

QUALIFIED SETTLEMENT FUNDS: WHAT ARE THEY?

- Section 468B of the IRC allows defendants to make payments to a court-created trust, account or fund. The payments go into account that is subject to the court's continued oversight.
- The payments to the fund made by the defendants are tax-deductible and the defendants are released from liability while the remaining issues are resolved.
- Once payment is made, the fund administrator works to make proper allocations among plaintiffs and claims. Administrator has authority to arrange payments in a number of ways including cash payments, periodic payments, or through a special needs trust.
- Can be used to settle cases of any value involving single or multiple plaintiffs, including plaintiffs with derivative claims.....Some dispute in single plaintiff cases as to whether viable

QUALIFIED SETTLEMENT FUNDS: 3 REQUIREMENTS

- To establish a valid QSF there are 3 requirements
 1. Must be established or approved by governmental authority and must be subject to the continuing jurisdiction of that authority.
 2. Must be established to resolve contested or uncontested claims asserting liability for a tort, breach of contract or violation of law.
 3. Must meet the requirements of a trust under applicable state law. Alternatively, the monies placed in the fund must be kept separate and apart from the assets of the defendant, the defendant's insurance carrier, or other related parties.
- The administration of a QSF requires expertise.

QUALIFIED SETTLEMENT FUNDS: WHY AND WHEN ARE THEY A GOOD IDEA?

- “Stops the clock” so plaintiff’s counsel can carefully evaluate settlement options
 - Resolution of liens
 - Determination of appropriate allocation among multiple plaintiffs
 - Assessment of public benefits at issue and whether Medicare Set-Aside and/or Special Needs Trust in order
- Neither plaintiff nor plaintiff’s counsel have custody of funds so **NO** constructive receipt!!!
- Can immediately pay attorney’s fees and costs via court order
- Preserve opportunity to structure settlement
- Generates income subject to akin to corporate tax but deductions for admin costs and related expenses allowable

STRUCTURED SETTLEMENTS AND PUBLIC BENEFITS

- Payments from a structured settlement constitute “income” for purposes of public benefits eligibility.
- If a SNT is established, then the payee on the structured settlement must be the trust and all payments must be irrevocably assigned to the SNT by court order.
- Consider who should be named the contingent beneficiary of a structured settlement payable to a SNT.
- Consider potential estate taxation on death of annuitant and include commutation provision to provide for sufficient liquidity to pay such liabilities (and reimburse Medicaid in case of SNT).
- Consider deferring payment on structured settlement until minor reaches age of majority if the beneficiary is not disabled. Maybe you can avoid a full conservatorship (or guardian of the property)? In Arizona, we have “single transaction authority” provisions in statute.

ABLE ACCOUNTS AND OTHER IDEAS

- ABLE accounts: beneficiary disabled prior to age 26; (age 46 as of 1/1/2026) can fund up to \$17,000 per calendar year; up to \$100,000 in total assets
- Additional amounts if the beneficiary works but cannot participate in the 401(k) plan
- Beneficiary can only have one ABLE account.
- All assets in the ABLE account are excluded for ALTCS and SSI but there is a payback at death
- Payments for food and shelter from an ABLE account do not impact SSI or Medicaid
- Can make a distribution to an ABLE account from a SNT

OTHER IDEAS

- Non disabled minor beneficiary:
 - Court approval to fund an UTMA account (beneficiary will receive the money at age 21 without further court order)
 - Fund a 529 tuition program
 - Does your State have other options?

FEDERAL REVERSIONARY TRUST

- For Federal Tort claims
- Medical bills are paid from the trust and on the death of the injured plaintiff beneficiary the assets remaining in the trust revert to the United States government.
- The beneficiary will NOT be eligible for Medicaid or SSI because the Federal Reversionary Trust is a countable resource (ie State Medicaid program is not entitled to funds on death of the beneficiary).
- Be very careful when agreeing to this solution.
- The Trusts are VERY restrictive in how the funds are used and the beneficiary will lose or be ineligible for Medicaid and SSI.

SUPPLEMENTAL MATERIALS

Social Security Administration Announced Potential Changes to ISM Calculations for SSI

SSA proposed an update the regulations to remove food from the calculation of in-kind support and maintenance (ISM) and the SSA is changing their policy for individuals that pay rent and how it will be treated for ISM. The POMS will reflect the changes if the regulations are updated. Food is not included in the calculation of ISM then SSI applicants and recipients would no longer need to provide information about their food expenses. If the rent paid is greater than the max presumed maximum value (PMV), then no ISM will be calculated or charged. If the rent paid is less than the PMV, then the difference between the rent paid and max PMV will be charged as ISM.

See Attached: [CFR:20 CFR 416Agency/Docket No. SSA-2021-0014](#)

See Attached: [CFR:20 CFR 416Agency/Docket No. SSA-2023-0010](#)

Act of 2016 (HOTMA) Final Rule

HUD issued a proposed rule to update its regulations according to HOTMA's statutory mandate. The final rule changes under HOTMA address multiple things, including standards for income determination, resident self-certification, and interim reexaminations. Among other changes, the final rule excludes from income distributions of the principal or the property that was transferred into an irrevocable trust (like an SNT) that is outside the control of any member of the household. Distributions of income (e.g., interest earned) from the trust when the distributions are used to pay the cost of health and medical care expenses for a minor are also excluded. All provisions for Multifamily Housing programs will become effective on January 1, 2024.

See Attached: [HOTMA Final Rule Published in the Federal Register in February 2023](#)



QUESTIONS?

THANK YOU!

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Supplemental Materials

Potential Changes to ISM Calculations for SSI

See: [CFR:20 CFR 416Agency/Docket No. SSA-2021-0014](#)

See: [CFR:20 CFR 416Agency/Docket No. SSA-2023-0010](#)

Act of 2016 (HOTMA) Final Rule

See: [HOTMA Final Rule Published in the Federal Register in February 2023](#)

Materials and Program by

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within 90 days after the effective date of this AD.

(4) Where EASA AD 2022–0151 specifies to perform corrective actions if “discrepancies are detected, as identified in the inspection SB,” for this AD perform corrective actions if cracking is detected.

(5) Where paragraph (2) of EASA AD 2022–0151 specifies to “accomplish the applicable corrective action(s)” if discrepancies are detected, for this AD if any cracking is detected and the stiffener has already been reworked, or if any cracking is not removed after a third rework of the horizontal upper stiffener, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2019–24–13 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0151 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer,

Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3225; email Dan.Rodina@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0151, dated July 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0151, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on February 9, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03141 Filed 2–14–23; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2021–0014]

RIN 0960–AI60

Omitting Food From In-Kind Support and Maintenance Calculations

AGENCY: Social Security Administration.
ACTION: Notice of Proposed Rulemaking.

SUMMARY: We propose to update our regulations to remove food from the calculation of In-Kind Support and Maintenance (ISM). We also propose to add conforming language to our definition of income, excluding food from the ISM calculation. Accordingly, Supplemental Security Income (SSI) applicants and recipients would no longer need to provide information about their food expenses for us to consider in our ISM calculations. We expect that these changes will simplify our rules, making them less

cumbersome to administer and easier for the public to understand and follow. These simplifications would make it easier for SSI applicants and recipients to comply with our program requirements, which would save time for both them and us, and improve the equitable treatment of food assistance within the SSI program. The proposed rule also includes other, minor revisions to the regulations related to income, including clarifying our longstanding position that income may be received “constructively” (we will define this term below).

DATES: To ensure that your comments are considered, we must receive them no later than April 17, 2023.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0014 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the “search” function to find docket number SSA–2021–0014. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, 3rd Floor (East) Altmeyer Building, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B,

Woodlawn, MD 21235, 410-966-7384. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <https://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We administer the Supplemental Security Income (SSI) program. SSI provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults age 65 and older. These individuals must meet multiple eligibility requirements, including having resources and income below specified amounts.¹ Resources are cash or other liquid assets, or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.² Income is anything the applicant or recipient receives in cash or in-kind that can be used to meet food and shelter needs.³ Applicants' and recipients' resources may affect their SSI eligibility, while their income may affect both their eligibility and payment amounts.

Once a claimant is found eligible for SSI, their monthly payment is determined by subtracting countable income from the Federal benefit rate (FBR), which is the monthly maximum Federal SSI payment.⁴ The FBR for 2023 is \$914 for an individual and \$1,371 for an eligible individual with an eligible spouse.⁵

Typically, after the first \$65 earned each month, a recipient's SSI benefit will be reduced 50 cents for every \$1 of earned income. For example, a recipient who earns \$101 each month from a part-time job would receive \$896 in monthly benefits in 2023. This is calculated by excluding the first \$65 of the \$101 earned (\$36 remaining) and then reducing the SSI payment by half of that amount—an \$18 reduction against the

original payment of \$914. Additionally, for income that is *unearned* (for example, cash received from a family member), after the first \$20 received each month, for each dollar of unearned income a recipient's SSI payment is reduced by \$1. For example, a recipient who received \$50 from a grandparent each month would receive in \$884 in monthly SSI benefits. This is calculated by excluding the first \$20 of the \$50 received (\$30 remaining) and then reducing the SSI payment by that amount—a \$30 reduction against the original payment of \$914.

Income that affects the monthly benefit amount can be provided in cash or in-kind. Generally, we assess in-kind items at their current market value⁶ under the presumption that they can be sold or otherwise converted to meet expenses. However, we treat the actual provision of in-kind contributions of food or shelter to an applicant or recipient differently than any other type of in-kind item.

Specifically, when food,⁷ shelter, or both are provided to an SSI applicant or recipient (e.g., someone pays for rent, mortgage, food, or utilities), we consider it "in-kind support and maintenance" (ISM).⁸ For example, if an applicant or recipient lives with his brother and does not pay rent, we would consider the shelter that his brother provides as ISM. Similarly, if an applicant or recipient lives with a friend and consumes the food in her friend's home but does not contribute toward the food or rent, we consider the food and shelter that the friend provides as ISM. As another example, if an applicant or recipient lives alone but her parents bring her groceries each month and pay her utility bills, we consider her parents' help as ISM.

In these circumstances, due to the complexity of determining the precise value of ISM and how these forms of support impact overall household operating expenses for a given individual, we typically reduce the SSI benefit by approximately one-third.⁹ We

discuss the specific means of doing so in the next section.

Because ISM requires that applicants or recipients receive food, shelter, or both, by definition, ISM does not apply if applicants or recipients live alone and pay for their own food and shelter, or if they live with other people and pay their pro rata share of the food and shelter expenses.¹⁰ Further, ISM does not apply when applicants or recipients live only with a spouse and minor children, and nobody outside the household pays for their food and shelter, regardless of whether the spouse or minor child provides food or shelter.¹¹ Additional circumstances are discussed further in our regulations.¹²

Like other forms of income, ISM can reduce the amount of SSI benefits. When ISM applies, we determine its value using one of two rules: (1) the Value of the One-Third Reduction (VTR) rule or (2) the Presumed Maximum Value (PMV) rule.¹³

The VTR Rule

The VTR rule applies when an applicant or recipient¹⁴ lives throughout a month in another person's household and receives both food and shelter from others living in that household.¹⁵

Example: Joe lives in his cousin's house and consumes the food in his cousin's house. He does not contribute toward the food or rent. We would assess the ISM Joe receives under the VTR rule because he lives in another person's household and receives food and shelter from someone in that household.¹⁶

In-kind Support and Maintenance. Social Security Bulletin, vol. 68, no. 4, 2008, www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.

¹⁰ As a general principle, if SSI recipients do not contribute their pro-rata share of household operating expenses, but they do contribute an amount within \$20 of their pro-rata share of household operating expenses, we treat the situation as if the recipients pay their pro-rata share under our tolerance policy, and do not reduce benefits because of ISM.

¹¹ See 20 CFR 416.1148.

¹² See 20 CFR 416.1142 through 416.1148.

¹³ See 20 CFR 416.1130, 416.1131, and 416.1140.

¹⁴ We refer to "applicant or recipient" here and throughout the NPRM when we mean "applicant, recipient, or couple" for ease of reference, except where reference to the couple is specifically relevant.

¹⁵ See 20 CFR 416.1132 for how we define living in another person's household. To clarify, we note that under current rules, we apply the VTR rule when an applicant or recipient lives in another person's household throughout a month and all the food and shelter expenses are paid in part by others living inside the household and part from outside. See also Program Operations Manual System (POMS) SI 00835.200.

¹⁶ SSI applicants and recipients are responsible for reporting changes to their living arrangements as they occur to ensure an accurate calculation of

¹ See 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 CFR part 416.

² 20 CFR 416.1201.

³ 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

⁴ See 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

⁵ 87 FR 64296, 64298 (2022). A table of the monthly maximum Federal SSI payment amounts for an eligible individual, and for an eligible individual with an eligible spouse, is available at <https://www.ssa.gov/oact/cola/SSlants.html>. When the FBR is adjusted for the cost of living, the amount of the potential ISM reduction adjusts accordingly.

⁶ Current market value (CMV) means the price of an item on the open market in your locality (20 CFR 416.1101). We generally determine that the CMV of food or shelter is equal to the amount a vendor would charge for it.

⁷ We use the term "food" as commonly defined (e.g., it includes items like groceries and meals purchased from a restaurant).

⁸ Cash provided to purchase food is not considered as ISM. It is considered cash.

⁹ The SSI program included the one-third reduction provision in the statute to prevent us from having to determine the actual value of room and board when a recipient lives with a friend or relative. For more information, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of*

Under the VTR rule, we reduce by one-third the applicable FBR.¹⁷ Because the FBR for 2023 is \$914 for an individual and \$1,371 for an eligible individual with an eligible spouse, when we apply the VTR rule in 2023, we reduce SSI benefits by \$304.66 ($\$914 \times \frac{1}{3}$) for individuals and \$457 ($\$1,371 \times \frac{1}{3}$) for an eligible individual with an eligible spouse.¹⁸ This means the maximum this individual could receive in SSI benefits for that month is \$609.34. This amount is calculated and applied before we look at certain other factors, such as earned income, which could further reduce the benefit amount.

The PMV Rule

The PMV rule applies when an applicant or recipient receives ISM, but the VTR rule does not apply. This means we apply the PMV rule when an applicant or recipient receives ISM but does not receive both food and shelter from the household in which the applicant or recipient lives.¹⁹ In other words, the PMV rule would apply when applicants or recipients live in their own household, but someone helps them with food, shelter, or both; they live in someone else's household, but only receive food or shelter (not both) from the household in which they live;²⁰ or they live in a non-medical

their monthly benefit amount. Recipients are informed of these reporting responsibilities during their initial claim, pre-effectuation, and redetermination. This means applicants and recipients are responsible for reporting many factors related to their benefits, including changes to food expenses, which may fluctuate from month to month. See 20 CFR 416.701 through 416.714 for reporting responsibilities.

¹⁷ The one-third reduction is established by statute. See section 1612(a)(2)(A) of Social Security Act (Act) (42 U.S.C. 1382a(a)(2)(A)). Accordingly, we are not proposing changes to the calculation of benefits under the VTR rule.

¹⁸ See 20 CFR 416.1147 through 416.1149 for special circumstances.

¹⁹ Currently, when deciding whether to apply the PMV or VTR rule, we consider that an applicant or recipient is not subject to the VTR rule when the applicant or recipient (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter and the contribution equals or exceeds the pro rata share of household operating expenses for food or shelter. This is because the applicant or recipient is not receiving both food and shelter from the household in which he or she resides. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their share of food or shelter to their household operating expenses. See 20 CFR 416.1130 through 416.1141.

²⁰ Unlike the VTR rule, which as previously explained derives the one-third reduction explicitly from section 1612(a)(2)(A) of the Act, we established the PMV rule through our rulemaking authority. The PMV rule enables us to efficiently reduce benefits when ISM is involved instead of having to attempt to value the ISM, but also allows individuals to rebut and use a real valuation of the ISM if they believe it would be beneficial for their claim.

institution as described in 20 CFR 416.1141(c).

Example: Lola lives with her minor daughter in an apartment. Lola's mother brings them groceries every week and pays two-thirds of Lola's rent. Although Lola receives assistance with both food and shelter, we assess the ISM Lola receives under the PMV rule, because she lives in her own household.

Example: Michael lives with his sister in his sister's apartment. He does not pay rent but pays for his own food.²¹ He has special dietary restrictions and does not consume any of the household's food. Though he lives in another person's household, we would assess the ISM Michael receives under the PMV rule, because he does not receive both food and shelter from that household (he only receives shelter).

Example: John, an eligible individual, leaves his permanent residence and enters a jail on March 15. He is released on May 6 to his home where he has rental liability and pays for all of his food and shelter. No ISM is charged in March for the period spent in jail because, as of the first of the month, he was in his permanent residence and he was not incarcerated throughout the month. In April, John is considered ineligible for a benefit payment due to incarceration for a full month. However, upon release, his benefits are reinstated, and John is charged ISM under the PMV rule for the food and shelter received while in jail from May 1 through May 6. He is not charged ISM under the VTR rule because he did not receive food and shelter throughout a month.

Under the PMV rule, any food or shelter received is presumed to be worth a set maximum value, unless the applicant or recipient rebuts this presumption. The set maximum value is one-third of the FBR, plus the amount of the general income exclusion, which is currently \$20.²² Therefore, when we use the set maximum value under the PMV rule, we reduce SSI benefits by \$324.66 (one-third of the current FBR of \$914 (\$304.66), plus the general income exclusion of \$20) for individuals and \$477 (one-third of the current FBR of \$1,371 (\$457), plus the general income exclusion of \$20) for couples. Applicants or recipients can rebut the presumption that the food or shelter is

worth the set maximum value. If applicants or recipients successfully rebut that presumption, we reduce their benefits by a smaller amount or not at all.²³ Note that the \$20 general income exclusion does not apply when we use the VTR rule.²⁴

To rebut the presumption that the food or shelter provided is worth the maximum value, the applicant or recipient, or the applicant's or recipient's representative payee, must provide evidence showing that either: (1) the current market value of any food or shelter received, minus any payment that someone makes for them, is less than the PMV; or (2) the actual amount someone else pays for the applicant's or recipient's food or shelter is less than the PMV. The applicant, recipient or representative payee has 30 days to submit evidence of a lower amount (e.g., a payment receipt, a bill with a lower amount, a bank payment). If the evidence is not provided, we calculate the applicant's or recipient's ISM using the set maximum value.

When applying the PMV rule, we consider whether ISM is provided by someone inside the household, outside the household, or both; the number of people in the household; and whether the applicant or recipient is unmarried or part of an eligible couple.²⁵ ISM calculations under the PMV rule account for these factors to determine an applicant's or recipient's pro rata share of the total household operating expenses.²⁶ Once we have determined the pro rata share of the household operating expenses, we then consider the applicant's or recipient's contribution toward those expenses. The difference between the applicant's or recipient's share of the expenses and the applicant's or recipient's contribution toward those expenses is the amount by which we reduce the

²³ 20 CFR 416.1140(2)(ii).

²⁴ See § 416.1124(c)(12).

²⁵ For example, if the applicant or recipient is part of an eligible couple, we follow the same steps as we would to compute an individual's ISM amount using the PMV rule except we double the pro rata share of expenses (to account for two people), and we subtract the couple's combined contribution (instead of the individual's contribution) toward the household operating expenses.

²⁶ Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (20 CFR 416.1133). Under the proposed policy, food would be omitted from this calculation. Note that this term is distinct from certain uses of "household expenses" in other aspects of the SSI program, such as the monthly household expenses information collected on the SSA-632 (Request for Waiver of Overpayment Recovery).

²¹ If applicable, under our current policies, we ask applicants or recipients if their contributions are allocated for food or shelter. When we ask if they are earmarking their contribution to either food or shelter and they say, "no," we look at the contribution to determine if they meet their pro rata share of all expenses listed on the Household Expenses and Contributions page within the SSI Claims System.

²² See § 416.1124(c)(12).

applicant’s or recipient’s benefits for ISM (up to the applicable limit).

Example: Larry lives with his brother and sister-in-law in their household. If he receives both food and shelter from his brother and sister-in-law, we would assess his ISM under the VTR rule, reducing his benefits by \$304.66 each month. However, in this example, he provides evidence that he pays for his share of shelter expenses, so we assess his ISM under the PMV rule (because he is not receiving both food and shelter from the household in which he lives). He tells us that he consumes the household’s food, but that he does not contribute toward the food expenses. Upon prompting from our technician about whether he wished to rebut the presumption of the maximum value, Larry rebuts the presumption that the food or shelter provided is worth the maximum value and demonstrates that the household’s food expenses are \$500 monthly.²⁷ We consider Larry’s share of the food expenses to be \$166.66 (the total household food expenses divided among three people), and we reduce Larry’s benefits by this amount. For comparison, the set maximum value under the PMV rule would have reduced his benefits by \$324.66, and the VTR rule would have reduced his benefits by \$304.66.

As an example, we have provided the steps we use to calculate the value of ISM for an unmarried applicant or recipient, who has rental liability, when the ISM is provided by someone within the same household:

- Step 1:* Divide the total household operating expenses (including food expenses) by the number of household members. The result is the applicant’s or recipient’s pro rata share.
- Step 2:* Subtract the applicant’s or recipient’s contribution to the household operating expenses (including food expenses) from the applicant’s or recipient’s pro rata share. The result is the actual value of ISM. (The actual value cannot be less than \$0.)
- Step 3:* Compare the actual value of the ISM to the set maximum value under the PMV rule (currently \$324.66). Select the lesser of the two values. Reduce the FBR by this amount.²⁸

When deciding whether to apply the PMV or VTR rule, we also follow the general principle that an applicant or recipient is not subject to the VTR rule when he or she (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or shelter, and the contribution equals or exceeds the pro rata share of household operating expenses for food

or shelter. This is because such applicants or recipients are not receiving both food and shelter from the household in which they reside. In other words, we evaluate ISM under the PMV rule when applicants or recipients contribute their pro rata share of food or shelter to their household operating expenses.²⁹

In January 2022, there were approximately 7,341,000 individuals receiving SSI. Based on our internal data, we estimate that we reduced the payments of 793,000 SSI recipients because of ISM in the same month. Of these 793,000, we estimate that we reduced payments for 358,000 SSI recipients under the VTR rule and that we reduced payments for 434,000 recipients under the PMV rule.³⁰ Of those assessed under the PMV rule, we estimate that 207,000 (48%) successfully rebutted the presumed maximum value (*i.e.*, their payments were reduced less than the PMV rule’s set maximum value). In addition, we estimate that the mean ISM amount among all recipients evaluated under the PMV was \$207 and the mean ISM amount among recipients who successfully rebutted the PMV was \$112. Table 1 summarizes the status of ISM-impacted recipients in January 2022:³¹

	VTR	PMV—maximum amount applies	PMV—lower than the maximum amount
Affected Recipients (count)	358,000	227,000	207,000
Affected Recipients (as percentage of all ISM recipients)	45%	29%	26%
Mean ISM Amount	\$280.33	³² \$300.33	\$112

²⁷ When explaining PMV and the process of rebutting to an applicant or recipient, we do not provide a specific script to our technicians (see SI 00835.320 B.2 for the guidance we provide technicians.) In summary, technicians explain to applicants or recipients: (1) that they are receiving ISM, (2) what form of ISM we are charging and the value, and (3) that they have the right to rebut the PMV. While we do not require technicians to use the term “rebut,” it has been used historically in our written communications with the applicant or recipient, including the “Rebuttal Rights Notification” letter that is sent after the conversation.

Procedurally, when applicants or recipients choose to rebut the PMV, the technician explains to them that they have 30 days to provide evidence showing that the actual value is less than the PMV. In some cases, an applicant or recipient may have evidence in-hand to present to us, the technician is able to verify the household expenses, and the rebuttal is easily processed. Otherwise, the applicant or recipient is responsible for providing us the necessary evidence within 30 days. However, if the individual indicates a need for assistance, the technician is responsible for assisting to obtain the necessary evidence, per policy.

We have found that most applicants and recipients who state they wish to rebut the PMV follow up within 30 days with the necessary documentation. Some applicants and recipients state they want to rebut, but don’t provide the documentation within 30 days, and so the PMV generally is applied.

We do not have any indication that applicants and recipients for whom the PMV applies have any confusion surrounding the term “rebuttal” or face procedural challenges or undue burdens with understanding or providing the necessary evidence to successfully rebut the PMV. We have also not historically received any feedback regarding concerns with how this information is presented in the “Rebuttal Rights Notification” letter that is typically sent as follow-up after the conversation between the technician and the applicant or recipient. However, as noted in the section of this NPRM entitled “Solicitation for Public Comment,” we are specifically seeking comment regarding the experience of understanding and rebutting the PMV, including any feedback related to the clarity of the concept of “rebuttal,” suggestions for improving the “Rebuttal Rights Notification” letter (which we have documented), and other potential regulatory or programmatic improvements to

simplify the rebuttal process. We note that while we may not be able to implement suggestions as an element of the final rule, feedback may still help inform future decisions regarding the rebuttal process.

²⁸ If there are other sources of ISM, there are additional calculations. For more examples of ISM computations, please see the section titled, “HOW DOES MY LIVING ARRANGEMENT AFFECT MY SSI BENEFIT AMOUNT?” available at <https://www.ssa.gov/ssi/text-living-ussi.htm>.

²⁹ See POMS SI 00835.170.

³⁰ See Table 1 of our supplemental document titled, “Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM),” available at www.regulations.gov as a supporting document for Docket SSA–2021–0014.

³¹ The FBR for 2022 was \$841 for an individual and \$1,261 for an eligible individual with an eligible spouse. See 86 FR 58715, 58717 (2021). When we applied the VTR rule in 2022, we reduced SSI benefits by \$280.33 ($\$841 \times \frac{1}{3}$) for individuals and \$420.33 ($\$1,261 \times \frac{1}{3}$) for an eligible individual with an eligible spouse.

Proposed Change

We propose to update our regulations to exclude food from the calculation of ISM. We also propose to add conforming language to our definition of income explaining that food would be an ISM exception.

Accordingly, we would no longer consider food expenses in our ISM calculations. Instead, we would consider only shelter expenses (*i.e.*, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). We would continue to use the VTR or PMV rule to determine the value of the ISM provided. We would apply the VTR rule when applicants or recipients live in another person’s household throughout a month and their shelter expenses (rent or mortgage, and utilities) are paid by others living inside the household,³³ and when household operating expenses are paid by a combination of others living inside the household and others living outside the household. Alternatively, we would apply the PMV rule when applicants or recipients live in their own households, and someone outside the home pays for their shelter costs.³⁴

Our proposal to remove food from ISM calculations could eliminate the benefit reduction that we currently apply to some recipients. This would occur in some cases in which an applicant or recipient allocated a higher proportion of their contribution toward shelter expenses. It could also occur in some cases if an applicant or recipient contributed to their household operating expenses generally. Further, in some circumstances, recipients may choose to reallocate their funds to adjust the amount they contribute toward shelter expenses.

Example: Stan lives in an apartment with a friend, and Stan has rental liability, which means Stan is liable to a landlord for rent. Currently, his household operating expenses are \$1,400 monthly (\$1,000 rent and utilities, and \$400 food). Stan’s pro rata share of the household operating

expenses is \$700. Stan contributes \$500, specifically for rent. He does not contribute to the household’s food expenses, though he consumes the household’s food. In this example, during an interview with our technician, the technician informed Stan that they would apply the maximum value under the PMV rule and asked Stan if he intended to rebut the maximum value. Stan rebutted the amount of shelter ISM that he receives, indicating it is less than the maximum value. Under the current rule, we would apply the PMV rule and reduce Stan’s monthly SSI benefits by \$200 (the difference between his pro rata share and his contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to \$1,000. This would reduce Stan’s pro rata share to \$500. If he still contributed \$500 monthly to his household operating expenses, he would meet his pro rata share and we would no longer reduce his benefits because of ISM.

Example: Jane lives in an apartment with her sister, and Jane has rental liability. Currently, their household operating expenses are \$1,200 monthly (\$900 rent and utilities, and \$300 food). Jane’s pro rata share of the household operating expenses is \$600. Jane contributes \$500. Currently, we would apply the PMV rule and reduce Jane’s monthly SSI benefit by \$100 (the difference between her pro rata share and her actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses to \$900. This would reduce Jane’s pro rata share to \$450. If she still contributed \$500 monthly to her household operating expenses, we would no longer reduce her benefits because of ISM.

We expect that some other applicants or recipients—those who do not contribute their full pro rata share even after food expenses would be omitted—may experience a smaller benefit reduction under the proposed policy. This could occur if a higher proportion of an applicant’s or recipient’s

contribution is allotted toward shelter expenses, or if applicants or recipients contribute to their household operating expenses generally and they continue to contribute the same amount toward their household operating expenses even after, as proposed, food is no longer included in household operating expenses. When applicants or recipients pay a larger share of their expenses, they receive less ISM, meaning their benefits may be reduced less.

Example: Mark owns his home, and his parents live with him. Currently, the household operating expenses are \$2,050 monthly (\$1,600 for mortgage and utilities and \$450 for food). Mark’s pro rata share of the household operating expenses would be \$683.33. Mark contributes \$500. Currently, we would apply the PMV rule and reduce Mark’s SSI benefit by \$183.33 (the difference between his pro rata share and his actual contribution). Under the proposed rule, we would exclude food expenses, bringing the total household operating expenses down to \$1,600. This would reduce Mark’s pro rata share to \$533.33. If he still contributed \$500 monthly to his household operating expenses, we would reduce his benefits by \$33.33 for ISM.

Though we propose to eliminate food expenses from our ISM calculations, we would still consider food expenses for a narrow purpose: to determine whether to use the VTR rule or the PMV rule in certain circumstances. Food expenses would not be included in the actual calculation. We would continue to ask applicants and recipients certain questions about food. These questions are: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive Supplemental Nutrition Assistance Program (SNAP) benefits? If applicants or recipients answer “yes” to any of these questions, even if the applicant or recipient lives in another person’s household, we would evaluate their ISM using the PMV rule to calculate ISM, and we propose to add this to our regulations.

SUMMARY OF VTR RULE AND PMV RULE UNDER CURRENT AND PROPOSED REGULATIONS

ISM rule	Current regulation	Proposed regulation
VTR Rule	<p><i>When the Rule Applies</i></p> <p>We apply when applicants and recipients:</p> <ul style="list-style-type: none"> live throughout a month in another person’s household; and 	<p><i>When the Rule Would Apply</i></p> <p>We would apply when applicants and recipients:</p> <ul style="list-style-type: none"> live throughout a month in another person’s household; and

³² After the \$20 general income exclusion is applied, if there is no other income, the benefit reduction in 2022 was \$280.33.

³³ *Example:* If an applicant or recipient lives with a friend and does not pay for his share of the rent or mortgage and utilities, we would apply the VTR rule.

³⁴ *Example:* If an applicant or recipient lives by herself, but her sister pays her utility bills, we would use the PMV rule to evaluate the help provided by the applicant’s or recipient’s sister.

SUMMARY OF VTR RULE AND PMV RULE UNDER CURRENT AND PROPOSED REGULATIONS—Continued

ISM rule	Current regulation	Proposed regulation
PMV Rule	<ul style="list-style-type: none"> • receive both food and shelter from others living in the same household. <p><i>Amount We Reduce Benefits</i> We reduce by one-third of the applicable FBR.</p> <p><i>When the Rule Applies</i> We apply when the applicant or recipient receives food or shelter but does not meet the conditions of the VTR rule.</p> <p><i>Amount We Reduce Benefits</i> If applicants or recipients successfully rebut the presumption that the food or shelter provided to them is worth a set maximum value, we determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (including food expenses). We reduce the applicable FBR by the actual value.</p>	<ul style="list-style-type: none"> • receive shelter from others living in the same household. <p><i>Amount We Would Reduce Benefits</i> We would reduce by one-third of the applicable FBR (no change).</p> <p><i>When the Rule Would Apply</i> We would apply when the applicant or recipient receives shelter but does not meet the conditions of the VTR rule (no change).</p> <p><i>Amount We Would Reduce Benefits</i> If applicants or recipients successfully rebut the presumption that the shelter provided to them is worth a set maximum value, we would determine the actual value of the ISM by subtracting the applicants' or recipients' contribution from their pro rata share of the total household operating expenses (omitting food expenses). We would reduce the applicable FBR by the actual value.</p>

In addition, we propose to update § 416.1131 with clarifying language. Currently, our regulations state that for the VTR rule to apply, an applicant or recipient must receive both food and shelter from the person in whose household they are living. In practice, when determining whether to apply the VTR rule, we consider others in the household as well. We calculate the total household operating expenses and divide by the number of household members to calculate the pro rata share. If the applicant or recipient is paying his or her pro rata share, he or she would be eligible for a full benefit amount, before we take into consideration other factors (e.g., earned or unearned income) unrelated to the ISM policy that might impact the actual benefit amount for which they are eligible. We would clarify this longstanding practice in our regulations.

Finally, we note that this proposal would not change our current rules that cover wages paid in kind (20 CFR 416.1110(a)(3)). Under section 1612(a)(1)(A) of the Act, we are required to consider food that an individual receives from an employer as wages. 20 CFR 416.1110(a)(3) will remain unchanged to stay consistent with the Act.

Codifying Counting Income Constructively

Independent from removing food from the ISM calculation, we also propose to clarify that income may be received “constructively.” Income is received constructively, unless there are significant restrictions on the applicant’s or recipient’s ability to receive it, if it is under an applicant’s or recipient’s control or an applicant or

recipient can use it despite not actually receiving it. Constructive receipt of income is part of our current policy and this change would make it clearer.

Justification for Change

The basic purpose of SSI is to assure a minimum level of income to people who are aged, blind, or disabled and who have limited income and resources. As discussed above, we evaluate many types of income when determining whether someone is eligible under the program. We have historically included in-kind receipt of food in our consideration because food assistance helps people meet their basic needs. However, the complexities of our current food ISM policies may outweigh their utility. The Social Security Advisory Board stated in 2015 that “the complexity of ISM rules contributes to the number of hours that SSA must spend to prevent under and overpayments—and diverts resources from other program integrity activities”³⁵ The Board also noted that “collecting and verifying information to determine whether there is in-kind support at the application stage is time-consuming and having to continue to make that assessment is burdensome, both for the agency and the SSI recipient who must maintain constant communication with the agency.”³⁵ Moreover, the current ISM policy may

³⁵ See the Social Security Advisory Board Statement on the Supplemental Security Income Program, “The Complexity of In-Kind Support and Maintenance.” 2015, pgs. 4 and 6, https://www.ssab.gov/wp-content/uploads/2021/03/2015_-_SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual%20report%20to%20the%20President%20and%20the%20Congress.

insert barriers into what would otherwise be an innocuous receipt of a meal or food from an individual’s friends or family. The current requirements for reporting in-kind food receipts could discourage SSI applicants and recipients from receiving an often informal but important form of help.

Accordingly, we propose to make the changes outlined for two reasons: to simplify our policy (which will allow for improved application, adjudication, compliance, and comprehension of our rules) and to promote equity by not disadvantaging an already vulnerable population when they receive food assistance. We expect that the proposed rules would provide increased financial security to impacted beneficiaries; provide consistent treatment of food support regardless of source; reduce unduly burdensome reporting requirements; and facilitate improved food security among certain beneficiaries.

Proposal Would Simplify the Policy

The proposed change would simplify SSI policy in several ways. Removing a variable from our ISM calculations would: (1) reduce the amount of program rules an applicant or recipient needs to understand; (2) reduce the amount of information that applicants or recipients must report, both during the application process and in post-award reporting;³⁶ (3) simplify and shorten processing; and (4) lead to fewer benefit recalculations (and therefore, for

³⁶ Although we refer to the applicant or recipient for ease of reference, if the applicant or recipient has a representative payee, the representative payee would be responsible for reporting the information discussed in this section.

example, possibly fewer ISM-related overpayments).

The proposed rule follows a change we made to our program in 2005, when we published a final rule removing clothing from the definition of ISM,³⁷ which simplified our policies and improved our work efficiency. Like the 2005 simplification, this proposal would simplify the ISM calculation with respect to a factor for which it is difficult to obtain accurate, verifiable estimates. Like clothing, food is an expense that fluctuates from month to month and may be provided from different sources at different intervals. We anticipate these simplifications will help make our program more equitable for applicants and recipients. We discuss the ways in which this policy is more equitable in the section titled, "Proposal Would Promote Equity."

1. Reduce the Amount of Program Rules an Applicant or Recipient Needs To Understand

The ISM policy has been cited as one of the most complicated aspects of the SSI program, and applicants and recipients and their representatives have expressed difficulty in understanding and complying with our current ISM rules. As explained by Nicholas (2014), "a substantial portion of the ISM literature criticizes ISM policies for being inequitable, complex, intrusive, and burdensome."³⁸ Complicated rules can lead to otherwise-eligible individuals' forgoing applying for benefits or taking on unnecessary burden while navigating application and award processes. We expect that reducing the number of variables may help applicants and recipients and their representatives understand the calculations more easily, which may reduce burden associated with both applying for benefits and maintaining eligibility.

2. Reduce the Amount of Information That Applicants or Recipients Must Report

Under our current regulations, we require applicants or recipients to provide detailed information about their household composition, their household operating expenses, and their contributions toward household operating expenses. We collect this information when applicants apply for benefits and when any of this

information changes. The proposed changes would lessen the reporting burden on applicants or recipients by reducing the amount of information applicants or recipients must report. They would no longer need to inform us of their households' food expenses, their contributions to their households' food expenses, or changes to either, except under very limited circumstances. Under the proposal, these circumstances would be limited to changes that could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still inform us if they live in another person's household and if they answer "yes" to any of the following questions: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP benefits?

First, individuals applying for SSI may receive in-kind food support specifically because they lack any reliable source of income and are reliant on non-cash support from friends and family. By reporting this in-kind support on their application, they may receive a reduced benefit due to the ISM policy. However, the receipt of SSI may grant recipients the financial means to start obtaining their own food, and the change in how they obtain their food would need to be reported. The quick succession of having to provide newly updated income information to us imposes reporting and adjudication costs on the recipient and the agency, respectively. Moreover, if the recipient fails to report the reduction in in-kind food support, they may fail to receive the full benefit for which they were eligible. By no longer collecting this information during the application, we also reduce the need for newly awarded beneficiaries to have to provide an updated report.³⁹

Second, current requirements to report detailed information about household composition, household operating expenses, and contributions toward household operating expenses

may present challenges for applicants or recipients. It may be difficult for applicants or recipients to provide accurate estimates of their food expenses and contributions. Actual food purchases may involve varying intervals and multiple household members, vendors, and forms of payment. Further, the applicant's or recipient's estimates are tied to the price of food, which is variable. In fact, one popular measure of inflation excludes the food sector because it is a price category considered excessively volatile.⁴⁰ Changing food prices means that applicants' or recipients' reported food expenses may not accurately reflect their future food expenses. When recipients report food expenses that do not reflect their actual food expenses, they must immediately report the discrepancy to ensure we calculate their benefit amount correctly. Otherwise, they risk an overpayment or underpayment.⁴¹

Removing food from our ISM calculations would also eliminate challenges applicants and recipients experience to verify food expenses and their contributions toward those expenses. To verify food expenses, typically another household member must attest to the estimates provided.⁴² In most cases, there is no other method of expense verification. In contrast, for shelter costs, we can usually obtain verification through an applicant's or recipient's rental or mortgage agreement, tax records, and utility bills. Complying with these requirements can impose burdens on applicants and recipients.

3. Simplify and Shorten Processing

As Balkus et al., noted in a 2008 analysis, we must make a determination concerning ISM receipt for most SSI recipients, but only about 9 percent of SSI recipients have their benefits reduced due to ISM. Further, they noted that "a determination may involve a detailed accounting of household expenses and the individual's

³⁹ In 2007, we began redeveloping VTR cases three months after the first payment. During this redevelopment period, the technician determines if recipients should be assessed under the PMV rule based on household contribution or based on a relocation into their household. The data showed that the number of people who transitioned from VTR to PMV within a two-month period was low. For example, of those in pay status in December 2020, only 465 made a transition from VTR to PMV in January or February of 2021. For comparison, we also looked at those in pay in December 2021. Of those in pay status in December 2021, only 285 made the transition in January or February of 2022. We do not anticipate that this proposed rule, if finalized, would change our policy of contacting a recipient, who is receiving ISM under the VTR rule, and redeveloping the claimant's case three months after the first payment.

⁴⁰ See "The trouble with food and energy." The FRED Blog, 29 Feb. 2016, fredblog.stlouisfed.org/2016/02/the-trouble-with-food-and-energy/.

⁴¹ Applicants and recipients are responsible for reporting many factors related to their benefits. While reporting food is just one of many, our proposal would simplify reporting by removing one of the frequently fluctuating variables applicants and recipients must report.

⁴² When SSI applicants or recipients provide information about household expenses, our technicians contact the homeowner or another household member who is knowledgeable of the household expenses for verification. The contact information for the other knowledgeable household member is provided to us by the applicant or recipient and is also located on the Household Expenses and Contributions page within the SSI Claims System.

³⁷ 70 FR 6340 (2005).

³⁸ See Nicholas, Joyce. "Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients." Social Security Bulletin, vol. 74, no. 3, 2014, <https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html>.

contribution, to establish whether the individual pays his or her pro rata share of expenses. In addition to initial claims, this determination must be repeated if there is any change in household composition or expenses that might affect the amount of the SSI benefit.”⁴³

The program complexities associated with administering the ISM policy also fall on our personnel who are responsible for reviewing and adjudicating claims, as well as other front-line personnel responsible for communicating the policy to applicants and recipients. By eliminating food from the ISM calculation and thus simplifying the ISM policy, our personnel would save time associated with training on the current ISM policy and with adjudicating and reviewing claims and post-award reporting changes in in-kind food support when compared to the current ISM policy.

4. Lead to Fewer Benefit Recalculations and Fewer Improper Payments

When an SSI recipient reports changes related to his or her food expenses or contributions, we must recalculate the recipient's benefit amount based on the updated information.⁴⁴ If we eliminate food from our ISM calculations, recipients will no longer need to report these changes, nor would they be subject to recalculations for these changes. This will save beneficiaries time and reduce the required reporting frequency.

As an example, this could lead to fewer situations in which we determine a beneficiary has been overpaid due to unreported ISM. Similarly, if an overpayment still occurred, it could be lower since we would no longer consider food as part of the ISM calculation. We have noted that the ISM reporting requirement is challenging for beneficiaries to comply with. As Nicholas summarized, “GAO and SSA’s

⁴³ ISM rules have long been identified as a source of administrative complexity. For more information about administrative complexity related to ISM, see Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. “Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance.” Social Security Bulletin, vol. 68, no. 4, 2008, www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.

⁴⁴ Under the proposed rules, applicants or recipients would need to contact us if their response to a food question changes because this could affect whether their ISM is evaluated under the VTR or PMV rule. In other words, applicants or recipients would still contact us if they live in another person's household and their answer to one of the following questions changes: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP benefits? See 20 CFR 416.701 through 416.714 for reporting responsibilities.

Office of the Inspector General have repeatedly declared ISM policy as one of the leading causes of SSI improper payments.”⁴⁵ For example, in Fiscal Year (FY) 2018, ISM overpayments totaled \$356 million.⁴⁶ Removing food from the ISM calculation may help reduce overpayments, which can be time- and resource-consuming for both recipients and the agency. We expect simplifying the ISM policy will enhance compliance with SSI rules.

Proposal Would Promote Equity

SSI recipients have low income and resources. Because low-income people disproportionately encounter barriers across a range of social, health, and economic outcomes, our goal is to improve their circumstances, thus improving equity, by removing benefit reductions for this population. As discussed below, we anticipate the policy may facilitate increased food security, which could lead to an overall greater sense of well-being and better health outcomes. As well, the new process would remove a disincentive for family and friends to provide food support, and be generally easier, less burdensome, and potentially less anxiety-provoking. Specifically, this proposed rule would promote equity by: (1) providing increased financial security to affected beneficiaries; (2) providing consistent treatment of food support regardless of source; (3) reducing reporting requirements and the effects of reporting on applicants and recipients; and (4) facilitating improved food security among certain beneficiaries. Removing these obstacles would ultimately promote equity by lessening the disparity between SSI applicants or recipients and others.

1. Providing Increased Financial Security to Affected Beneficiaries

By design, the SSI program serves people who may be facing barriers in various aspects of their lives: individuals with low incomes, including older individuals, families with children, individuals with disabilities, and people who may have been historically underserved. This proposal would benefit disabled, blind, and aged persons who are struggling to

⁴⁵ See Nicholas, Joyce. “Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients.” Social Security Bulletin, vol. 74, no. 3, 2014, <https://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html>.

⁴⁶ See pages 188 and 195–196 of our FY 2019 Agency Financial Report available at <https://best.ssa.gov/finance/2019/Payment%20Integrity.pdf>. ISM is also a leading cause of underpayments. For example, ISM underpayments totaled \$246 million in 2018.

meet basic food and shelter expenses, as the 2022 Federal maximum SSI benefit amount (\$10,092/year) is lower than the current Federal poverty level, which is set at \$13,590 for an individual. It removes barriers to food security for persons affected by persistent poverty. Individuals receiving SSI are disproportionately likely to encounter social, economic, and health inequities that are in part compounded by their, on-average, below-poverty level income.⁴⁷ Removing food from the ISM calculation generally would increase the income support to recipients who may have reduced benefits due to the current ISM policy, which in turn generally would provide them additional financial security.

This proposal would also remove a possible disincentive for family and friends to help applicants or recipients obtain food. In a United States Department of Agriculture (USDA) study of households that receive SNAP benefits,⁴⁸ researchers found that, among food coping strategies cited by study participants, a significant minority of the food-secure SNAP households turn to family networks for assistance.⁴⁹ Our proposed rule would ensure that, when applicants or recipients rely on networks of family or friends to help obtain the food they need, we will not reduce their benefits as a result. Under the current PMV rule, when we consider food provided to applicants or recipients, it is offset by dollar-for-dollar reductions in the

⁴⁷ Penalizing in-kind assistance from private sources may reduce social equity by discouraging social relationships for vulnerable individuals. For the importance of social relationships to people with disabilities, see Tough, Hannah; Siegrist, Johannes; and Fekete, Christine. 2017. “Social relationships, mental health and wellbeing in physical disability: a systematic review.” BMC Public Health 17 (414).

⁴⁸ SNAP is a Federal program that provides nutrition benefits to low-income individuals and families that are used at stores to purchase food. Most SSI recipients receive benefits from SNAP (For example, 62.8 percent of SSI recipients received SNAP in 2013). See Bailey, Michelle and Hemmeter, Jeffrey. “Characteristics of Noninstitutionalized DI an SSI Program Participants, 2013 Update.” Research and Statistics Note No. 2015–02. Released September 2015. <https://www.ssa.gov/policy/docs/rsnotes/rsn2015-02.html>. The average monthly SNAP benefit was about \$155 per person in 2020. See Supplemental Nutrition Assistance Program, Aug. 6, 2021, available at <https://fns-prod.azureedge.net/sites/default/files/resource-files/34SNAPmonthly-8.pdf> <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNAPsummary-11.pdf>.

⁴⁹ See U.S. Department of Agriculture. SNAP Food Security In-Depth Interview Study (2013) at <https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf>, p. xiii. While this study focused on SNAP participants, not specifically SSI recipients receiving SNAP, there is some overlap. Some households in the study received SSI. See pg. 7.

applicants' or recipients' benefits, up to the set presumed maximum value (currently \$324.66). Because of this offset, in most cases, the help from family or friends does not improve the recipient's ability to meet his or her food needs because this would cause a reduction to the recipient's SSI benefit amount. This creates undesirable effects. For one, because food support generally does not prompt ISM if it comes from charitable or government sources, the current ISM policy could be seen to favor government or charitable sources of food support over support from friends and families. Second, the one-for-one offset means that for SSI applicants and recipients who would otherwise receive food support below the PMV threshold, there may be no incentive to receive said support.

By removing food from ISM calculations, we would remove a consideration that recipients could view as discouraging establishing and maintaining these vital forms of familial, social, and community support that can be a critical, if informal, support structure. Encouraging these support networks for beneficiaries currently receiving SSI may also facilitate additional resiliency for individuals even if they stopped receiving benefits in the future.

Example: Sheila lives alone and normally purchases her own food, but she is having trouble meeting her monthly food expenses. Her daughter wants to help her with her food expenses and buys Sheila \$100 of groceries each month. Under current regulations, Sheila would contact us to report the ISM her daughter is providing (\$100 of groceries each month). We would then reduce Sheila's monthly SSI benefit by \$100. Ultimately, Sheila would receive the same amount of assistance each month because without her daughter's help, Sheila's benefits would not be reduced by \$100. She would receive no net benefit from receiving \$100 in groceries (and would have to spend time reporting the receipt of groceries).

2. Providing Consistent Treatment of Food Support Regardless of Source

This proposed rule would also allow us to treat food assistance uniformly, regardless of the source. Under current rules, as explained above, we apply our ISM rules to determine if we need to reduce recipients' benefits because of the food assistance they receive from private sources, like family and friends. However, we do not reduce a recipient's benefits for the food assistance they receive from public sources, such as SNAP. In other words, public sources of

food assistance are not counted as ISM under current rules. Therefore, excluding food from the calculation of ISM would ensure that food assistance from public and private sources are treated uniformly (*i.e.*, both excluded) under ISM rules. Removing this inconsistency would decrease the complexity of our program.

3. Reducing Reporting Requirements and the Effects of Reporting on Applicants and Recipients

As previously discussed in our justifications focused on the time- and cost-savings associated with simplifying the ISM policy, the challenges associated with understanding and complying with ISM requirements likely compound existing inequities for SSI recipients. Manasi Deshpande and Yue Li provide a detailed overview of contemporary research related to how these challenges can disproportionately lead to underutilization of critical services and programs by those most in need.⁵⁰ Other behavioral science research has shown that burdens like the complicated food-support ISM reporting requirements can have negative effects for individuals already facing scarcity, as is the case for many SSI recipients.⁵¹

Relatedly, current ISM policy requires that SSI recipients report simple acts of charity or support from friends or family, and beneficiaries may be improperly paid if they fail to report these events in a timely manner. Because the SSI program may be perceived as complicated and burdensome, there may be a psychological cost such as anxiety or stress related to reporting food. This could lead to individuals' not wanting to apply or failing to comply with the requirements for maintaining their SSI benefits. By treating the sharing and provision of food, a common human generosity, as something that must be reported, it is possible some beneficiaries may experience frustration, anxiety, or discomfort that in turn may reduce SSI participation (or may result in current recipients' failing to report in-kind food support). Questioning individuals about items as personal as a household's food purchases may be seen as overly intrusive without achieving a substantial program goal. This proposal has the potential to make our rules less

⁵⁰ Deshpande, Manasi, & Li, Yue. (2019). Who is screened out? Application costs and the targeting of disability programs. *American Economic Journal: Economic Policy*, 11(4), 213–48.

⁵¹ Mullainathan, S. & Shafr, E. (2013.) Scarcity: Why having so little means so much. Henry Holt and Company.

intrusive and better protect beneficiaries' privacy and dignity while continuing to meet the requirements of the program.

5. Facilitating Improved Food Security Among Certain Beneficiaries

This proposal would remove benefit reductions that applicants or recipients may incur when they receive help obtaining food from family or friends. By removing benefit reductions, we may remove a barrier to food security for individuals with low incomes. Food insecurity is defined as "limited or uncertain availability of nutritionally adequate and safe foods, or limited or uncertain ability to acquire acceptable foods in socially acceptable ways."⁵² Food insecurity is often associated with poor health. For example, after certain risk factors were controlled, studies found that "food-insecure children are at least twice as likely to report being in fair or poor health and at least 1.4 times more likely to have asthma, compared to food-secure children; and food-insecure seniors have limitations in activities of daily living comparable to those of food-secure seniors fourteen years older."⁵³ By implementing the policy, we will potentially increase food security for some SSI recipients, which may alleviate some of the ill-effects of food insecurity.

Research shows that food insecurity rates are often higher than average for people facing certain barriers. The USDA's Economic Research Service published 2019 rates of food insecurity that were more than two and a half times higher for households with incomes below 185 percent of the poverty threshold than for the national household average (27.6 percent vs. 10.5

⁵² See "Measurement." USDA Economic Research Service, www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx#insecurity.

⁵³ See Gundersen, Craig; Ziliak, James. "Food Insecurity and Health Outcomes" *Health Affairs*, vol. 34, no. 11, Nov. 2015, www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.0645. In addition, "even short-term food insecurity can have significant impacts on children's health, including poorer behavioral, emotional, and nutritional outcomes. Among children, food insecurity has been linked to increased risk of obesity." See Metallinos-Katsaras, Elizabeth; Must, Aviva; Gorman, Kathleen. "A longitudinal study of food insecurity on obesity in preschool children." *Journal of the Academy of Nutrition and Dietetics*, Dec. 2012, pubmed.ncbi.nlm.nih.gov/23174682/, doi: 10.1016/j.jand.2012.08.031. As another example, a study found that in a national sample of older adults, there was "an inverse association between food insecurity and cognitive function." See Frith, Emily; Loprinzi, Paul. "Food insecurity and cognitive function in older adults: Brief Report." *Clinical Nutrition*, vol 37, no. 5, pp. 1765–1768, <https://doi.org/10.1016/j.clnu.2017.07.001>.

percent).⁵⁴ Further, a 2019 article noted findings suggesting that households with a disabled adult are “disproportionately food insecure,” and that “disabilities are associated with food insecurity through multiple pathways.”⁵⁵ We do not know to what extent this rule will result in increased food security alongside other more prominent benefits, such as reduced burden associated with less reporting required by claimants. However, we intend for it to have an impact in this area. SSI applicants and recipients are a population likely to face challenges in food security. By removing food from the ISM calculation, we are removing obstacles to obtaining food that could help ease the burden of rising food costs for some recipients.

Justification for Retaining Food-Related Questions

As explained above, we would still ask certain food-related questions for the narrow purpose of determining whether to use the PMV or VTR rule to assess ISM, and we would make this clear in our regulations. Using food expenses for this narrow purpose is a significant simplification of our current policies for the reasons provided above. Applicants or recipients would need only to answer three questions related to food expenses with a “yes” or “no”; they would not need to provide dollar amounts.⁵⁶ Similarly, this consideration would allow us to remain consistent with our current policy of when we evaluate applicants or recipients under the PMV rule. If we did not continue to consider food for this narrow purpose, some applicants or recipients who currently have their ISM evaluated under the PMV rule would be required to have their ISM evaluated under the VTR rule, which might be disadvantageous for them. Based on administrative data of recipients’

⁵⁴ See “Key Statistics & Graphics.” USDA Economic Research Service, www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.

⁵⁵ Heflin, Colleen; Altman, Colleen; Rodriguez, Laura. “Food insecurity and disability in the United States.” *Disability and Health Journal*, vol. 12, no. 2, 2019, pages 220–226, ISSN 1936–6574, <https://doi.org/10.1016/j.dhjo.2018.09.006>. Also, according to the USDA Economic Research Service, disability is an important risk factor for food insecurity. See Coleman-Jensen, Alisha; Nord, Mark. “Disability is an Important Risk Factor for Food Insecurity.” 6 May 2013, www.ers.usda.gov/amber-waves/2013/may/disability-is-an-important-risk-factor-for-food-insecurity.

⁵⁶ These questions are: (1) do you buy food separately from the household? (2) do you eat all meals out? and (3) do you receive SNAP payments? If applicants or recipients answer “yes” to any of these questions, we will evaluate their ISM using the PMV rule. Food expenses would not be included in the calculation.

current living arrangements as of May 19, 2022, we found the following: 12,977 recipients earmark their household operating expenses contributions for both food and shelter; 3,427 earmark for food only; 39,412 recipients report that they “eat all meals out;” and 889,651 recipients report that they “buy food separately.”⁵⁷ This data comes from the SSI Claims System, which includes all recipients receiving SSI as of May 19, 2022. While some of these recipients may no longer face an ISM reduction at all under our proposal because they exclusively receive food support and do not receive any shelter support (see, for example, our previous example with “Larry”), many of these recipients are in in-kind support situations similar to our example with “Michael.” However, unlike in our example with “Michael,” which discusses rebutting the PMV under our current rules, if Michael were no longer able to earmark expenses for food, and we did not continue to ask these food questions, the VTR rule would apply. We do not have precise estimates of how much the average increase in ISM reductions would be in such situations.

As discussed in greater detail in the E.O. 12866 section below, in addition to ensuring that our proposal to remove food from the ISM calculation does not inadvertently disadvantage individuals to whom the PMV rule currently applies, retaining these food-related questions would also result in our applying the PMV rule to certain individuals who are currently evaluated under the VTR rule. In our case study, we found that roughly one-third (*i.e.*, 122 of 353) of recipients currently evaluated under VTR would instead be evaluated under PMV. Of those 122 cases, 46 would receive more-favorable treatment under our proposal. We assumed that they would successfully rebut the PMV, and these 46 cases on average would see an increase of \$166 in Federal SSI payments in 2023 relative to current rules. We assumed that another 51 cases would not successfully rebut the PMV and have no change in SSI payment, because they have no other income. In the remaining 25 cases, however, we assumed that the PMV would not be rebutted and that the recipient has other income of at least \$20, which would result in these recipients’ experiencing a \$20 decrease in monthly Federal SSI payments relative to current rules (because PMV

⁵⁷ See Tables 2 and 3 of our supplemental document titled, “Tables of Administrative Data Related to In-Kind Support and Maintenance (ISM),” available at www.regulations.gov as a supporting document for Docket SSA–2021–0014.

reductions are subject to one-third of the FBR plus the \$20 general income exclusion).

While we recognize that some applicants and recipients may not benefit from our proposed changes, we believe that retaining the three food questions is necessary to ensure that individuals who currently have the PMV rule applied to them, and thus have the ability to rebut the PMV, continue to have the PMV rule applied to them where appropriate. As discussed in the solicitation for comments, we welcome comments on alternative ways to achieve our stated goals related to retaining these food questions, including advancing equity and simplifying the program.

Clarifications to Our Definition of Income

When we remove food from the calculation of ISM, we would make that clear in our general definition of income. This change would ensure consistency among our regulations. Separate from the removal of food from the calculation of ISM, we would use this opportunity to clarify that income may be received constructively. Constructive receipt of income is part of our current policy, and this change would make the definition of income clearer.

Explanation of Changes

We propose to revise our ISM regulations to make clear in 20 CFR 416.1130 that we have removed food from the calculation of ISM. We would also revise the general definition of income in 20 CFR 416.1102 accordingly, and we would take the opportunity to clarify in the general definition of income that income may be constructively received. We would also make minor revisions to several other regulatory sections to conform and align with these updates. These other sections include 20 CFR 416.1103, 416.1104, 416.1121, 416.1131, 416.1132, 416.1133, 416.1140, 416.1147, 416.1148, and 416.1149.

Solicitation for Public Comment

As discussed elsewhere in this rulemaking, we are seeking public comment on this proposed rule. Questions the public may wish to consider when evaluating this proposed rule:

- Are there additional aspects of the ISM policy that we could simplify under current statutory authorities? What would be the effects of doing so?
- Are there any other policies that are related to ISM that we should consider

in the context of this proposed rulemaking?

- Do you have additional information that relates to or otherwise informs our description of the applicant or recipient experience under current ISM policies?

- Are there forms or other information collections that we have not noted that would or should require modification as a result of this proposed policy change?

- Are there other information collection improvements that could further reduce respondent burden, either under the current ISM policy or under the policy proposed in this rule?

- Is there data or research related to equity and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?

- Is there data or research related to administrative burden and the SSI population (or, more generally, low-income or disabled populations) that could also be used to inform the final rule?

- Do you have any additional justifications for, or arguments against, this proposed rule?

- Are there other methods we could use to measure the time-savings associated with this proposed rule? Are there other methods of the value of time we could use to measure the opportunity costs associated with this policy?

- If you have had experience with the rebuttal process:

- Are applicants and recipients to whom the PMV rule applies typically able to comprehend the requirements associated with rebuttal? Are there terminological or other plain-language improvements we could make to the rebuttal process to improve clarity or reduce burden on applicants and recipients?

- Does the “Rebuttal Rights Notification” (included in the docket for this rulemaking) clearly communicate the purpose of and requirements for rebutting the PMV? Are there ways we could improve how this information is communicated?

- Are there any regulatory, sub-regulatory, paperwork, or process improvements we could make to the PMV rebuttal process to reduce respondent burden or otherwise increase successful submission of rebuttal evidence?

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the

rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.*, grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

The primary anticipated impact of this rule is a small increase in monetary transfers from the government to SSI recipients. To estimate this, our Office of the Chief Actuary (OCACT) took a sample of 0.1% of all SSI recipients who are impacted by the current ISM

policy—a total sample of 764 recipients. Based on the best available data, OCACT estimated that implementation of these proposed rules for all eligibility and payment determinations effective April 1, 2023, and later will result in an increase in Federal SSI payments of a total of about \$1.5 billion over the period of fiscal years 2023 through 2032. This represents an increase in Federal SSI payments of 0.2%.

Of the 764 cases in our sample:

(1) (PMV to PMV) We estimate that 411 cases (54%) are individuals who are currently evaluated under PMV and would continue to be evaluated under PMV. As discussed in the preamble, there are multiple types of living arrangements that result in assessment under the PMV rule, including (1) individuals who live in another person’s household and receive either food or shelter support, but not both; and (2) individuals who live in their own household and who receive in-kind shelter or food support, or both. In each of these PMV scenarios, some recipients currently receive the PMV reduction, currently \$324.66 (after the general income exclusion is applied, if there is no other income, the current reduction is \$304.66—the same as the VTR), while others rebut the PMV and have their Federal SSI payment reduced by a smaller amount. We estimate that of these 411 cases, 42 would have an increase in the monthly SSI payment as a result of this proposed rule. Of these 42 individuals, we estimate that 24 recipients would have no PMV reduction and that the other 18 recipients would have a lesser PMV reduction. We estimate that the average increase in the monthly Federal SSI payment among those 42 cases would be \$91 in 2023. We estimate that roughly 10% of all PMV-impacted recipients, or roughly 43 thousand, (5% of the total population of ISM-impacted recipients), will see an increase in their Federal SSI payment as a result of this aspect of the rule.

In our review of these cases, we did not examine which types of the above-described living arrangements would see changes due to the proposed rule. There are three main groups of individuals who could see this type of change: (1) Individuals who live in someone else’s home and receive only food support because they earmark their contribution to household shelter expenses. These individuals would not be considered to be receiving countable ISM under the proposed rule as long as their contribution to shelter expenses meets their pro rata share. (2) Individuals who live in someone else’s home and receive only shelter support,

because they earmark their contribution to household food expenses. These individuals might see their ISM decrease to zero dollars if they no longer need support and are able to contribute to their household expenses that cover their pro rata share. (3) Individuals who live in their own household and receive both food and shelter support. These individuals would see a decrease in their ISM amount, if their countable ISM falls below the PMV and they choose to rebut.

(2) (VTR to VTR) We estimate that 231 cases (30%) are individuals who are currently evaluated under VTR and would continue to be evaluated under VTR. These are recipients who under current rules live throughout a month in another person's household and receive both food and shelter support from others living in the household, and under the proposed rules live throughout a month in another person's household and receive shelter support from others living in the household. Where the VTR rule applied under current policy and would apply under the proposed policy, there would be no change in ISM as a result of the proposed rule.

(3) (VTR to PMV) We estimate that 122 cases (16%) are individuals who are currently evaluated under VTR and would be evaluated under PMV under proposed rules. These are individuals who live in another person's household and receive in-kind shelter support, but who we anticipate will indicate they

consume all their food separately, by asserting that they buy food separately from the household, that they eat all meals out, or that they receive Supplemental Nutrition Assistance Program (SNAP) benefits. We estimate that 46 of these individuals would have an increase in their monthly SSI payment. On average we estimate that the increase in the monthly SSI payment would be \$166 in 2023. Of these 46 individuals, we estimate that 11 would have no PMV reduction and that 35 would be charged less than the maximum amount. We estimate that roughly 6% of all ISM-impacted recipients, or roughly 48 thousand recipients, will see an increase in their payment as a result of this aspect of the rule. We estimate that another 51 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have no change in payment due to the proposed rule because they have no other income. We estimate that roughly 7% or 52 thousand ISM-impacted recipients would see no change in payment as a result of this aspect of the rule. By contrast, the other 25 individuals who would shift from VTR to PMV would not successfully rebut the PMV and would have other income. In these instances, recipients would experience a \$20 reduction in their monthly Federal SSI payment. This is because under current rules they receive the VTR ISM reduction, which is one-third of the Federal benefit rate (currently \$304.66),

whereas under the proposed rule these recipients would receive the PMV ISM reduction, which is one-third of the Federal benefit rate plus the amount of the general income exclusion (currently \$20) for a total Federal payment reduction for an individual of \$324.66. When a recipient does not have other income, the \$20 general income exclusion reduces the countable ISM amount. However, when a recipient has other income totaling at least \$20, the \$20 general exclusion is already used to reduce that income, and the payment is thus reduced by the full PMV amount when the PMV is not successfully rebutted. We estimate that roughly 3% of all ISM-impacted recipients, or roughly 26 thousand, will see a decrease in their Federal SSI payment as a result of this aspect of the rule.

Therefore, of the 764 cases in our sample, we estimate that 88 total cases (12% of those affected by current ISM rules and 1% of all Federal SSI recipients) would have an increase in monthly SSI payments. 25 total cases (3% of ISM-impacted recipients, less than 1% of all Federal SSI recipients) would have a decrease in monthly Federal SSI payments. We estimate that the average increase in the monthly Federal SSI payment would be \$131 in 2023 for recipients experiencing an increase, and that the average Federal SSI payment reduction would be \$20 for recipients experiencing a decrease. The table below provides a summarization of the case study.

Current rules	Proposed rules	Impact	Count	Percentage	Average change in monthly payments in 2023	Extrapolation to all ISM recipients (in thousands)	Aggregate change in monthly payments in 2023
PMV	PMV	No change in payment	369	48	.....	383	.....
PMV	PMV	Increase in payment	18	2	\$105	19	\$1,889
PMV	No ISM	Increase in payment	24	3	81	24	1,934
VTR	VTR	No change in payment	231	30	.....	240	.....
VTR	PMV	Increase in payment	46	6	166	48	7,658
VTR	PMV	No change in payment	51	7	.....	52	.....
VTR	PMV	Reduction in payment	25	3	(20)	26	(500)

Anticipated Administrative Cost-Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net administrative savings of \$25 million for the 10-year period from FY 2023 to FY 2032. The net administrative savings is mainly a result of unit time savings as field office employees will not have to spend time explaining and developing food as part of ISM during initial claims, pre-effectuations reviews,

redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems to remove food from the ISM calculation, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs as a result of more individuals' being eligible for SSI benefits, which increases claims, reconsiderations, appeals, CDRs, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits

We anticipate qualitative benefits from this proposal because, if implemented, it would simplify our policy and make the SSI claims process easier for applicants and recipients. The public benefits from simplifications to our program because it may take less time and effort to understand our program and its requirements, and may make it easier to comply with the program's requirements. Also, because SSI applicants and recipients would not

need to report as much information related to food expenses, they may save time that they otherwise would have spent gathering information and contacting us to report this information. As discussed in the Paperwork Reduction Act (PRA) section below, we estimate the time savings just on the SSI Application forms to be 1 minute per response. This represents an annual burden reduction of 95,668 hours. We estimate that these time-savings will result in cost-savings of \$1,691,311 for the first year, and an estimated cost-savings of \$16,913,110 over a 10-year period (we developed this figure by approximating the “opportunity cost” for the respondents, which varies per form).

However, we anticipate that the time-savings on the SSI application are only a limited component of the overall time-savings to the public. By eliminating the need to report food support, recipients will no longer need to report changes across the course of their receipt of SSI. Additionally, reporting food support, whether on the initial application or at a later point during post-award eligibility, oftentimes requires us to develop further, which may require completion of a variety of information collections and forms, to include SSA-8006-F4 (Statement of Living Arrangements, In-Kind Support and Maintenance); SSA-8011-F3 Statement of Household Expenses and Contributions); SSA-8000 (Application for Supplemental Security Income (SSI)); SSA 8202-BK (Statement for Determining Continuing Eligibility for Supplemental Security Income Payment); SSA-8203-BK (Statement for Determining Continuing Eligibility for Supplemental Security Income Payment; SSA-5062 (Claimant Statement about Loan of Food or Shelter); SSA-L5063-F3 (Statement about Food or Shelter Provided to Another). As discussed in the PRA section, we estimate that this proposed change would not result in fewer forms completed. However, with a time savings of one minute per response, we estimate an overall time savings of 95,668 hours. Time savings in completing these forms not only benefits the recipient; we often must develop this information from third parties, whose time will also be saved through this proposal. While we do not maintain administrative data on the volume of post-award information

collections pertaining to food-support reporting, we anticipate administrative time savings.

In many situations recipients fail to report receiving food in a timely manner. This requires us to redevelop this issue after a recipient’s monthly benefit amount has been paid. This, in turn, may create an overpayment, which would require us to develop the issue further and contact the recipient for an interview. As discussed in the preamble, we expect that simplifying the ISM policy will reduce improper payments. The overpayment recovery process can, at times, be a time-intensive process to navigate, particularly for beneficiaries seeking to have their overpayment waived or reconsidered. While we have not quantified the amount of time beneficiaries spend working to resolve overpayments related to food ISM, we anticipate that this proposal would result in time savings associated with reduced improper payments.

Further, as discussed in the preamble, there are potential qualitative benefits to the proposal such as reduced food insecurity, enhanced social support networks, reduced frustration and anxiety among the beneficiary population associated with understanding and complying with complicated food-support ISM policies, potentially enhanced dignity with elimination of the need to report receipt of food to the government (which may appear intrusive to some applicants and recipients), and more consistent and equitable treatment of beneficiaries’ various sources of food assistance.

Anticipated Costs

Outside of transfers, we do not anticipate more than *de minimis* costs associated with this rulemaking. Since this regulation would reduce reporting requirements and simplify the evaluation process for adjudicators, there are no costs in those areas. The SSI ISM policy is complex by nature, and sometimes those complexities make it difficult for the public to understand and follow the rules of the program. Better understanding of SSI program rules may occur over time. We do not anticipate that this proposal would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the beneficiary community

that has been noted by some, including the SSAB.⁵⁸

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States’ abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule will require minor changes to the following forms:

1. SSA-8000-BK (OMB No. 0960-0229), Application for Supplemental Security Income;
2. SSA-8006 (OMB No. 0960-0174), Statement of Living Arrangements, In-Kind Support and Maintenance;
3. SSA-8011 (OMB No. 0960-0456), Statement of Household Expenses and Contributions;
4. SSA-5062 & SSA-L5063 (OMB No. 0960-0529), Claimant Statement about Loan of Food or Shelter and Statement about Food or Shelter Provided to Another;
5. SSA-8202-BK (OMB No. 0960-0145), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment; and
6. SSA-8203-BK (OMB No. 0960-0416), Statement for Determining Continuing Eligibility for Supplemental Security Income Payment.

The form changes will result in a burden reduction of one minute per response per affected form, resulting in a 95,668-hour total burden savings. This figure represents the difference between the previous and new total estimated annual burden. See below for details of the burden calculations.

Below are charts showing the revised burden estimates, to be effective when we finalize the rule.

- (1) SSA-8000-BK (0960-0229):

⁵⁸ See the Social Security Advisory Board Statement on the Supplemental Security Income Program. “The Complexity of In-Kind Support and Maintenance.” 2015, <https://www.ssab.gov/wp->

[content/uploads/2021/03/2015_-_SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual](https://www.ssab.gov/wp-content/uploads/2021/03/2015_-_SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual)

[%20report%20to%20the%20President%20and%20the%20Congress.](https://www.ssab.gov/wp-content/uploads/2021/03/2015_-_SSI_In-Kind_SupportMaintenance.pdf#:~:text=The%20Complexity%20of%20In-Kind%20Support%20and%20Maintenance%20Public,annual)

Modality of completion	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claim System	1,646,520	1	34	933,028	* \$19.86	** 21	*** \$29,974,897
SSA-8000-BK (Paper Form)	705	1	39	458	* 19.86	** 21	*** 14,001
Totals	1,647,225	.....	.....	933,486	.....	.....	*** 29,988,898

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(2) SSA-8006 (0960-0174):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or telephone wait time (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	109,436	1	6	10,944	* \$11.70	** 21	*** \$576,190
SSA-8006 (Paper Form)	12,160	1	6	1,216	* 11.70	** 21	*** 64,022
Totals	121,595	.....	.....	12,160	.....	.....	*** 640,212

* We based this figure on the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(3) SSA-8011 (0960-0456):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	398,759	1	14	93,044	* \$28.01	** 21	*** \$6,515,406
SSA-8011 (Paper Form)	21,000	1	14	4,900	* 28.01	** 21	*** 343,123
Totals	419,759	.....	.....	97,944	.....	.....	*** 6,858,529

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(4) SSA-5062 & SSA-L5063 (0960-0529):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
SSA-5062 (SSI Claims System)	29,026	1	19	9,192	* \$19.86	** 21	*** \$384,311
SSA-L5063 (SSI Claims System)	29,026	1	19	9,192	* 19.86	** 21	*** 384,311
SSA-5062 (Paper Form)	29,026	1	29	14,029	* 19.86	** 21	*** 480,374
SSA-L5063 (Paper Form)	29,026	1	29	14,029	* 19.86	** 21	*** 480,374
Total	116,104	.....	.....	46,442	.....	.....	*** 1,729,370

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(5) SSA-8202-BK (0960-0145):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
SSI Claims System	1,764,207	1	19	558,666	*\$11.70	**21	***\$13,760,815
SSA-8202-BK (Paper Form)	67,698	1	20	22,566	* 11.70	**21	*** 541,242
Totals	1,831,905			581,232			*** 14,302,057

* We based this figure on the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(6) SSA-8203-BK (0960-0416):

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost annual (dollars)*	Average wait time in field office or for teleservice centers (minutes)**	Total annual opportunity cost (dollars)***
SSI Claims System	1,468,220	1	18	440,466	*\$19.86	**21	***\$18,953,252
SSA-8203-BK (Paper Form)	135,357	1	19	42,863	* 19.86	**21	*** 1,792,127
Totals	1,603,577			483,329			*** 20,745,379

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on averaging both the average FY 2022 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

We calculated the aggregate burden saving associated with this proposed rule as follows:

2,250,261 (total current reporting burden across all six information collections) – 2,154,593 (total reporting burden across all six information collections reflecting a 1 minute burden reduction due to implementation of this rule) = 95,668 burden hours saved.

SSA is submitting an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974, Email address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until March 17, 2023, which is 30 days after the publication of this notice. To receive

a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 9601, 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, part 416, as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Amend § 416.1102 by revising to read as follows:

§ 416.1102 What is income?

Income is anything that you receive in cash or in kind that you can use to meet your needs for food or shelter. For purposes of this definition, income may be received “actually” or “constructively.” Income is received constructively, unless there are significant restrictions on your ability to receive it, if it is under your control or you can use it despite not actually receiving it. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash but is something else that you can use to meet your needs for food or shelter. Exception: Food is not included in the calculation of in-kind support

and maintenance, which is a type of unearned income that we have special rules for valuing (see §§ 416.1130 through 416.1148).

■ 3. Amend § 416.1103 by revising paragraphs (a)(4), (b)(2), the example in paragraph (g) and paragraph (j) to read as follows:

§ 416.1103 What is not income?

(a) * * *

(4) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

* * * * *

(b) * * *

(2) In-kind assistance (except shelter) provided under a nongovernmental program whose purpose is to provide social services; or * * *

* * * * *

(g) * * *

Examples: If your daughter uses her own money to pay your mortgage payment directly to the mortgage lender, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the transaction provides you with shelter; the mortgage payment is in-kind income for shelter to you. Similarly, if you book a hotel room on credit and your son later pays the bill, the payment to the hotel is not income to you, but the payment of the bill is in-kind income for shelter to you. In this example, if your son pays for the hotel bill in a month after the month of the hotel stay, we will count the in-kind income to you in the month in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food or shelter. Therefore, the payment for the lawn service is not in-kind income as defined in § 416.1102.

* * * * *

(j) *Receipt of certain noncash items.* Any item you receive (except shelter as defined in § 416.1130) which would be an excluded nonliquid resource (as described in subpart L of this part) if you kept it, is not income.

Example 1: A community takes up a collection to buy you a specially equipped van, which is your only vehicle. The value of this gift is not income because the van does not provide you with food or shelter and will become an excluded nonliquid resource under § 416.1218 in the month following the month of receipt.

Example 2: You inherit a house which is your principal place of residence. The value of this inheritance is income because the house provides you with

shelter and shelter is income. However, we value the house under the rule in § 416.1140.

■ 4. Amend § 416.1104 by revising the fourth sentence and removing the fifth sentence in the paragraph to read as follows:

§ 416.1104 Income we count.

* * * One type of unearned income is in-kind support and maintenance (shelter), which we value depending on your living arrangement.

* * * * *

■ 5. Amend § 416.1121 by revising paragraph (h) to read as follows:

§ 416.1121 Types of unearned income.

* * * * *

(h) *Support and maintenance in kind.* This is shelter furnished to you that we value depending on your living arrangement. We use one rule if you are living throughout a month in another person's household receiving all your shelter from others living in the household. We use different rules for other situations in which you receive shelter. We discuss all of the rules in §§ 416.1130 through 416.1148.

■ 6. Amend § 416.1130 by revising paragraphs (a), the first, sixth and seventh sentence in paragraph (b) and paragraph (c) to read as follows:

§ 416.1130 Introduction.

(a) *General.* Both earned income and unearned income include items received in kind (see § 416.1102). Generally, we value in-kind items at their current market value, and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (*i.e.*, §§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones resides in his son's house. Mr. Jones receives a monthly SSI Federal benefit rate that is reduced by one-third. This one-third represents the value of the income he receives because he lives in the household of a son, throughout a month,

who provides all of his shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We determine his SSI payment for that month considering the shelter he received from his son two months earlier in November. In determining the value of that shelter he received in November, we use the Federal benefit rate for January.

(b) * * * We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. * * * In those States, if the required amount of rent is less than the presumed maximum value, we will consider as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market value, whichever is less. In addition, cash payments made to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance. * * *

(c) *How we value in-kind support and maintenance.* We have two rules for valuing the in-kind support and maintenance that we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with shelter, unless we determine that you buy your food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits (see §§ 416.1131 through 416.1133). The presumed value rule applies in all other situations in which you receive countable in-kind support and maintenance (see §§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These conditions are discussed in §§ 416.1141 through 416.1145.

* * * * *

■ 7. Amend § 416.1131 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 416.1131 The one-third reduction rule.

(a) * * *

(2) Receive shelter from others living inside the household or from a combination of others living inside the household and others living outside the household. (If you do not receive shelter from others living in the household, see § 416.1140.)

(3) Do not buy food separately from the household, eat all meals out, or receive Supplemental Nutrition Assistance Program benefits. If you buy food separately from the household, eat all meals out, or receive Supplemental

Nutrition Assistance Program benefits, any ISM received for shelter will be calculated under the PMV rule (see § 416.1140).

* * * * *

■ 8. Amend § 416.1133 by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.1133 What is a pro rata share of household operating expenses.

(a) * * * (If you are receiving shelter from someone outside the household, we value it under the rule in § 416.1140.)

* * * * *

(c) Household operating expenses are the household's total monthly expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. * * *

■ 9. Amend § 416.1140 by revising to read as follows:

§ 416.1140 The presumed value rule.

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(12).

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any shelter you receive, minus any payment you make for it, is lower than the presumed value; or

(ii) The actual amount someone else pays for your shelter is lower than the presumed value.

(b) *How we determine the amount of your ISM under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the shelter you receive, we use the presumed value to figure your ISM.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the shelter you receive, we use the actual amount to figure your ISM.

■ 10. Amend § 416.1147 by revising paragraph (a), the paragraph heading in paragraph (b) and first sentence in paragraph (b)(1), paragraph (c) and the

third sentence in paragraph (d)(1) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household.* When both of you live in another person's household throughout a month and receive shelter from others living in the household or a combination of others living inside the household and others living outside the household, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple is in a medical institution and the other member of the couple lives in another person's household and receives shelter from others living in the household or a combination of others living inside the household and others living outside the household.* (1) If one of you is living in the household of another person who provides you with shelter, and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for his or her care (§ 416.211(b))), and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). * * *

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2).

(d) * * *

(1) * * * We value any shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that its value is less as described in § 416.1140(a)(2). * * *

* * * * *

■ 11. Amend § 416.1148 by revising paragraph (b) to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

* * * * *

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose

income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any shelter that person provides is not income to you. However, if you receive any shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

■ 12. Amend § 416.1149 by revising paragraph (c)(1)(i) and (ii) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(1)(i) If you enter a medical treatment facility where you are eligible for the reduced benefits payable under § 416.414 for full months in the facility, and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical treatment facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider shelter provided during a medical confinement to be income.

(ii) If you enter a medical treatment facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the

facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

[FR Doc. 2023-02731 Filed 2-14-23; 8:45 am]

BILLING CODE 4191-02-P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142-AA22

Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; extension of responsive comment period.

SUMMARY: The National Labor Relations Board (the Board) published a Notice of Proposed Rulemaking in the **Federal Register** on November 4, 2022, seeking comments from the public regarding its proposed rule concerning Representation—Case Procedures: Election Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships (“NPRM”). The deadline for initial comments was extended on December 1, 2022, to February 2, 2023, with responsive comments due on February 16, 2023. The date to submit responsive comments to the initial comments is being extended due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket.

DATES: The responsive comment period for the proposed rule published November 4, 2022, at 87 FR 66890, extended December 1, 2022, at 87 FR 73705, is further extended. Responsive comments to initial comments must be received by the Board on or before March 1, 2023.

ADDRESSES:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. Follow the instructions for submitting comments.

Delivery—Comments may be submitted by mail or hand delivery to: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. Because of security

precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov*. If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273-1940 (this is not a toll-free number). Individuals with hearing impairments may call 1-866-315-6572 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Board sought comments from the public regarding its November 4, 2022, NPRM. Pursuant to an extension published on December 1, 2022, initial comments were due on February 2, 2023, and responsive comments were due on February 16, 2023. The Board is extending the responsive comment deadline due to an administrative error that occurred within *Regulations.gov* that inadvertently allowed six comments to be filed on a closed NLRB rulemaking docket from 2018. These comments have been moved to the correct NPRM docket. The new due date for submission of responsive comments is March 1, 2023.

Only comments submitted through <http://www.regulations.gov>, hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at <http://www.regulations.gov> and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on <http://www.regulations.gov> without making any changes to the comments, including any personal information provided. The website <http://www.regulations.gov> is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers,

and email addresses in their comments, as such submitted information will become viewable by the public via the <http://www.regulations.gov> website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through <http://www.regulations.gov> will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

Dated: February 10, 2023.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2023-03215 Filed 2-14-23; 8:45 am]

BILLING CODE 7545-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. OSHA-2021-0012]

RIN 1218-AD43

Arizona State Plan for Occupational Safety and Health; Proposed Reconsideration and Revocation; Withdrawal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reconsideration of final approval of State Plan; withdrawal.

SUMMARY: OSHA is withdrawing its proposed reconsideration of the Arizona State Plan's final approval status.

DATES: The proposed rule published on April 21, 2022, at 87 FR 23783, is withdrawn effective February 15, 2023.

ADDRESSES: *Docket:* To read or download comments and materials submitted in response to OSHA's revocation proposal, go to Docket No. OSHA-2021-0012 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions are available for inspection and, where permissible, copying at the OSHA Docket Office, U.S. Department of Labor; telephone: (202) 693-2350 (TTY number: (877) 889-5627). Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. For

the availability of this material at NARA, email: fr.inspection@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on August 17, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–18119 Filed 8–23–23; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2023–0010]

RIN 0960–A182

Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations by applying nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States. The exception recognizes that a “business arrangement” exists when the amount of required monthly rent for a property equals or exceeds the presumed maximum value. This proposed rule would improve nationwide program uniformity, and, we expect, improve equality in the application of the rental subsidy policy.

DATES: To ensure that your comments are considered, we must receive them no later than October 23, 2023.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2023–0010 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the “search” function to find docket number SSA–

2023–0010. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to one week for your comment to be viewable.

2. **Fax:** Fax comments to 1–833–410–1631.

3. **Mail:** Mail your comments to the Office of Legislation and Congressional Affairs, Regulations and Reports Clearance Staff, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235.

Comments are available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410–966–7384.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at <https://www.ssa.gov>.

SUPPLEMENTARY INFORMATION:

Background

We administer the SSI program, which provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults aged 65 or older. Eligible individuals must meet all the requirements in the Social Security Act (Act), including having resources and income below specified amounts.¹ Since SSI is a needs-based program for persons with limited income and resources, we must consider the amount of income an applicant or recipient has when determining whether that person is eligible to receive SSI payments. If the individual is eligible, their income is also a factor in calculating the amount of their monthly SSI payments.

Specifically, once an individual is determined eligible for SSI, their monthly payment amount is determined by subtracting their countable monthly income from the Federal benefit rate (FBR),² which is the monthly maximum Federal SSI payment.³ The FBR for 2023

¹ See 42 U.S.C. 1382 and 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 part 416.

² See 20 CFR 416.1101.

³ See 20 CFR 416.405 through 416.415. Some States supplement the FBR amount.

is \$914 for an individual and \$1,371 for an eligible individual with an eligible spouse.⁴ Generally, the more income an individual has, the less their SSI payment will be.⁵ For the purposes of SSI, “income” is defined as anything that an individual receives in cash or in kind that the individual can use to meet their needs for food and shelter.⁶ The Act and our regulations⁷ define income as “earned,” such as wages from work, and “unearned,” such as gifted cash.⁸ Our proposed regulatory change pertains to rental subsidy, which is a type of ISM under the broader umbrella of unearned income.

ISM

As noted above, income that affects an individual’s monthly SSI payment can also be provided in kind.⁹ Generally, we value in-kind items at their current market value and apply the various exclusions for both earned and unearned income; however, we have special rules for valuing food or shelter that is received as unearned income (ISM).¹⁰ Under our current regulations, ISM means any food or shelter that is given to an individual or that the individual receives because someone else pays for it.¹¹ Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.¹² For example, if an SSI recipient’s brother lets the recipient live rent-free in his home throughout a calendar month, we would consider the shelter the brother provides as ISM to the recipient. We have two rules for valuing the ISM that we must count: (1) currently, the one-third reduction rule (VTR) applies if the individual is living in the household of a person, throughout a month, who provides the individual with both food and shelter, and (2) the presumed maximum value rule (PMV) applies in all other situations in which the individual is

⁴ 87 FR 64296, 64298 (2022) A table of the monthly maximum Federal SSI payment amounts for an eligible individual, and for an eligible individual with an eligible spouse, is available at <https://www.ssa.gov/oact/cola/SSIAMts.html>. When the FBR is adjusted for the cost of living, the amount of the potential ISM reduction adjusts accordingly.

⁵ See 20 CFR 416.1100.

⁶ See 20 CFR 416.1102.

⁷ See 42 U.S.C. 1382a; and 20 CFR 416.1102–1124.

⁸ See 20 CFR 416.1104.

⁹ See 20 CFR 416.1102.

¹⁰ See 20 CFR 416.1130(a).

¹¹ See 20 CFR 416.1130(b). We recently published a proposed rule to remove food from the calculation of ISM. See 88 FR 9779 *Omitting Food From In-Kind Support and Maintenance Calculations*, published February 15, 2023.

¹² See 20 CFR 416.1130(b).

receiving countable ISM.¹³ For example, a recipient lives with a sibling. The recipient receives SNAP to pay for their own food, but does not pay shelter expenses. The sibling pays all the shelter expenses. Based on the recipient paying for their own food, SSI is calculated under the PMV rule. The VTR cannot apply, because the recipient is not receiving both food and shelter from the household.

The VTR rule is governed by legislation and requires SSA to reduce the applicable federal benefit rate by one-third when the recipient receives both food and shelter, throughout a month, from the household in which they reside.¹⁴ The PMV rule, which is one-third the federal benefit rate plus \$20, only applies if the recipient receives food or shelter from within the household. In addition, the PMV rule allows recipients to rebut the maximum amount of ISM being charged, by providing the actual value of the ISM being received. Rebuttal is not an option under the VTR rule.

Rental Subsidy

Our current regulation further clarifies that an individual is not receiving ISM in the form of room or rent if they are paying the required monthly rent charged under a “business arrangement.”¹⁵ Under the current general definition, a “business arrangement” exists when the amount of monthly rent required to be paid equals the current monthly rental value (CMRV)—that is, the price of the rent on the open market in the individual’s

locality.¹⁶ For example, if the owner of an apartment would rent that property to any potential tenant for \$800 per month, then the CMRV is \$800.

Consequently, in this example, if an SSI recipient agrees to pay the landlord rent in the amount of \$800 per month, a “business arrangement” would exist and the SSI recipient would not be receiving ISM in the form of room or rent. Conversely, under our current general definition of a “business arrangement,” if the SSI recipient rented the same property but paid only \$400 per month, a “business arrangement” would not exist because \$400 is less than the CMRV.¹⁷

When we develop possible rental subsidy, we first determine whether the required monthly rent is equal to the CMRV. In practice, our technicians must contact the landlord for information on the required monthly rent or reach out to an appropriate source for information about the CMRV for that property and locality. This source can be the landlord or another knowledgeable source (e.g., a real estate firm or rental management agency). With this information in hand, we then compare the rent the individual is paying to the CMRV and document the reason for any reduced monthly rent. If the required monthly rent is less than the CMRV, we count the difference between the required monthly rent and the CMRV as ISM to the SSI applicant or recipient.¹⁸ We use the presumed maximum value (PMV) rule to value this type of ISM. In valuing shelter under the PMV rule, instead of

determining the actual dollar value of the shelter, we presume that the shelter is worth one-third of the FBR plus the amount of the \$20 general income exclusion.¹⁹ SSI applicants and recipients may rebut this presumption by showing that the value of the ISM they are receiving is less than the PMV.²⁰ Thus, under this current general policy, the amount of ISM counted is capped at the PMV. Conversely, if the rent equals or exceeds the CMRV, we determine that there is no rental subsidy.

Take the example of an SSI recipient living with their ineligible spouse and child who is renting a single-family home owned by the recipient’s mother. The mother-landlord alleges the property has a CMRV of \$1,500 per month, but she is requiring the SSI household to pay only \$350 in rent per month. To calculate the rental subsidy under the current general policy, we would subtract the required monthly rent from the CMRV (\$1,500 – \$350 = \$1,150), in which case the rental subsidy would be \$1,150. We would divide the total rental subsidy by the number of people in the household (\$1,150/3 = \$383.33).²¹ Per regulation, the maximum amount of ISM that can be charged is \$324.66 a month for 2023. Therefore, the recipient’s SSI payment is \$589.34 (\$914 (FBR 2023)—\$324.66 (PMV for 2023)). This is with the understanding that the recipient has no other income.²²

The following chart illustrates the above example:

EXAMPLE 1— CURRENT GENERAL RENTAL SUBSIDY POLICY

Equation	Application of the example
CMRV – Required Monthly Rent = Household ISM	\$1,500 – \$350 = \$1,150.
Household ISM/Number of people in household = ISM/Rental Subsidy to the SSI Recipient.	\$1,150/3 people in household = \$383.33.
ISM is capped at the PMV	\$383.33 > \$324.66.
SSI payment = FBR – PMV	SSI payment = \$914 – \$324.66 = \$589.34.

Exception

Following court cases that challenged how we applied ISM rules for rental subsidy, we provided an exception for residents living in jurisdictions covered

by the Court of Appeals for the Seventh Circuit (in our regulations),²³ residents in the Second Circuit (in an Acquiescence Ruling),²⁴ and residents of Texas (in the Program Operations Manual System).²⁵ For residents of these

seven excepted States (Connecticut, New York, Vermont, Illinois, Indiana, Wisconsin, and Texas), a “business arrangement” exists when the required monthly rent the SSI recipient is required to pay equals or exceeds the

¹³ 20 CFR 416.1130(c).
¹⁴ Social Security Act § 1612(a)(2)(A).
¹⁵ 20 CFR 416.1130(b).
¹⁶ Id. See also 20 CFR 416.1101.
¹⁷ In this instance, we would apply ISM’s PMV rule, as the individual is receiving some level of support from the landlord by paying less than the CMRV of the shelter.
¹⁸ See Program Operations Manual System (POMS) SI 00835.380E.
¹⁹ See 20 CFR 416.1140(a).

²⁰ See 20 CFR 416.1140(a)(2).
²¹ The method for calculating the rental subsidy is described in POMS SI 00835.380(E)(1) *Procedure for valuing the actual value (AV) of the rental subsidy*. This methodology reflects our ISM regulatory policy’s approach of examining rental subsidy from the perspective of the household (see e.g., 20 CFR 416.1130).
²² See 20 CFR 416.1140(a).
²³ See 20 CFR 416.1130(b); *Jackson v. Schweiker*, 683 F.2d 1076 (7th Cir. 1982).

²⁴ See Acquiescence Ruling (AR) 90–2(2); *Ruppert v. Bowen*, 871 F.2d 1172 (2d Cir. 1989)—*Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act*. If we finalize this proposed rule, we will rescind AR 90–2(2) as obsolete, in accordance with 20 CFR 416.1485(e)(4).
²⁵ See *Diaz v. Chater*, No. 3:95–cv–01817–X (N.D. Tex. Apr. 17, 1996); POMS SIDAL 00835.380.

PMV.²⁶ In these States, if the required amount of rent is less than the PMV, then the value of the rental subsidy is the difference between the required monthly rent and the PMV or the CMRV, whichever is less. This means there may be a lower threshold for what qualifies as a “business arrangement” for applicants and recipients in these

excepted States because, in many cases, the PMV is lower than the CMRV. Application of this exception tends to reduce the amount of ISM counted towards an individual’s SSI payment, which generally results in a higher SSI payment amount. For example, an SSI recipient whose living arrangement is identical to that discussed in the prior

example, but who resides in one of the seven States in which the exception applies, would not be charged ISM because the required monthly rent exceeds the PMV (\$350 > \$324.66). Consequently, the SSI recipient would continue to receive the FBR (provided they did not receive any other income countable for SSI purposes).

EXAMPLE 2—RENTAL SUBSIDY EXCEPTION POLICY PROPOSED TO BE EXTENDED

PMV < CMRV	\$324.66 < \$1,500.
Required Monthly Rent > PMV	\$350 > \$324.66.
Therefore, no ISM to the SSI Recipient	= SSI Payment = \$914.

As illustrated by these examples, our current application of the ISM rules is not uniform nationwide, and the exception is an advantage only for those SSI applicants and recipients living in the seven excepted States.

Rationale for Regulatory Action

We propose to change the rental subsidy policy in our regulations by applying nationally the definition of “business arrangement” that currently applies in only seven States because of the court decisions noted above. The rationale of the courts that resulted in the situation currently in place in seven states, in particular in the Seventh Circuit decision in *Jackson* and the Second Circuit decision in *Ruppert*, also supports extending this policy to the other states, as outlined in our proposed rule. In *Jackson*, the Seventh Circuit reasoned that it is not enough for a claimant to be provided shelter at a rate below market value for that difference to be counted as “income” for SSI purposes; rather, to be counted as “income,” the difference between the market value and the actual rental payment must result in increased purchasing power to meet the claimant’s basic needs.²⁷ The Seventh Circuit explained that “purchasing power grows if in-kind contributions of shelter either make cash available to purchase necessities of life other than shelter or if, and to the extent, the quality of shelter itself is enhanced to meet basic needs.”²⁸ Similarly, in *Ruppert*, the Second Circuit found that the difference between the CMRV and the required monthly rent does not always constitute

an actual economic benefit which should be counted as “income” for SSI purposes.²⁹ To implement *Ruppert*, for residents of the Second Circuit, we announced that an applicant or recipient does not receive an “actual economic benefit” from a rental subsidy when the amount of required monthly rent equals or exceeds the PMV.³⁰

Applying nationally the definition of “business arrangement” based on the PMV rather than the CMRV, and thus focusing on the SSI recipient’s purchasing power or the actual economic benefit they receive, would also ensure that all SSI applicants and recipients, regardless of where they reside, would have the same policy applied to them regarding the definition of a business arrangement. This uniform definition of business arrangement means that no recipient’s SSI payment amount would be lower simply because they reside in a State where the exception policy described above does not currently apply. This proposed policy change therefore supports our goal of enhancing equality in the programs we administer for all applicants and recipients.

This proposal will also foster efficiency in our administration of the SSI program, because we no longer would have to apply different policies on the definition of a business arrangement depending on the SSI applicant or recipient’s State of residence. In any program as large as ours, “the need for efficiency is self-evident.”³¹ As well, we expect that the proposal would improve customer service by reducing the amount of time

we need to calculate SSI payment amounts in States in which the current exception does not apply. Because the exception is currently in place in some States, we already have a well-established procedure for applying the exception, and we are confident that such a change can be applied nationwide with minimal operational or systems impact.

We are also proposing this rule in response to specific requests from the public. Recently, we adopted the *Social Security Administration’s Agency Strategic Plan for Fiscal Years 2022–2026 (Strategic Plan)*,³² which defines our long-term goals and objectives over the next four years to further our overall mission. Among the stated goals, we resolve to optimize the experience of our customers by adopting policies aimed at serving individuals and communities. Our *Strategic Plan* further commits to engage the public and external stakeholders to better inform our regulatory activities.³³

In support of these goals, we have been in communication since October 2022 with advocate groups representing a wide variety of claimants and beneficiaries from diverse backgrounds. In response, we received numerous suggestions for ways to improve access to our programs, particularly to our SSI program. Among the recommendations we received were suggestions to update and streamline the SSI program’s rules on ISM.

As discussed above, the current lack of uniformity in our business arrangement definition can disadvantage affected SSI applicants

²⁶ See POMS SI 00835.380.B.7.

²⁷ *Jackson*, 683 F.2d at 1082–87; In *Jackson*, the Seventh Circuit addressed a situation where “a very large percentage” of an individual’s income was already committed to shelter costs before the agency considered any unearned income from a rental subsidy. Under those circumstances, the additional value of the rental subsidy did not increase the individual’s ability to pay for their other basic needs. See also *Supplemental Security Income for*

the Aged, Blind, and Disabled; Subpart K—Income, 51 FR 13487, 13488 (Apr. 21, 1986).

²⁸ *Jackson*, 683 F.2d at 1084.

²⁹ *Ruppert*, 871 F.2d at 1179–81; *Social Security Acquiescence Ruling (AR) 90–2(2)*, 55 FR 28947, 28949 (July 16, 1990).

³⁰ AR 90–2(2), 55 FR at 28949.

³¹ See *Barnhart v. Thomas*, 540 U.S. 20, 29 (2003); *Heckler v. Campbell*, 461 U.S. 458, 461, n.2 (1983).

³² *Social Security Administration, Agency Strategic Plan: Fiscal Years 2022–2026*, page 9, Strategic Goal 1: Optimize the Experience of SSA Customers and Strategic Objective 1.1—Identify and Address Barriers to Accessing Services. available at: <https://www.ssa.gov/agency/asp/>.

³³ *Id.*

and recipients who do not live in States where the rental subsidy exception applies. The differing application of the business arrangement definition was noted by the external parties, who recommended that we apply the current rental subsidy exception nationwide as one way to streamline the SSI program and make it more equitable. We agree with this recommendation. The proposed rules, if finalized, would benefit SSI applicants and recipients, no matter the State they live in, and make the SSI program easier to administer. The proposed change would also make the SSI program more equitable by applying the rental subsidy policy uniformly to all affected SSI applicants and recipients, regardless of where they live.

Moreover, as explained in the study *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance*, “[a]lthough SSI eligibility was intended to be determined on the basis of objective information on income and resources, development of ISM is often based on estimates of food and shelter expenses provided by the applicant or recipient and verified by other household members.”³⁴ By applying the rental subsidy exception nationwide, the rent paid by the SSI applicant or recipient will be compared to a standard dollar amount—the PMV. Our technicians anticipate sending out fewer living arrangement development forms (form SSA–L5061, OMB 0960–0454) by instead confirming the limited necessary information with the landlord orally, namely: that the required rent amount is equal to or greater than the PMV.³⁵ The more detailed estimates currently provided by the landlord or other household members under our

existing regulations are therefore less likely to be needed or used in administering the SSI program. This reduced need to contact landlords or other third parties for information regarding the CMRV also increases the efficiency of the SSI program by reducing the number of instances in which we have to seek out that information (We note that we would need to contact someone other than the landlord only if we cannot verify information with the landlord directly.). In summary, then, this new policy will result in greater efficiency and time savings for our employees, and a reduction in the reporting burden for the public (see Paperwork Reduction Act section of the preamble).

Proposed Change

As discussed above, we propose to apply nationwide the rental subsidy exception currently in place in seven States. Accordingly, our nationwide policy would be that a “business arrangement” exists when the amount of monthly rent required to be paid equals or exceeds the PMV. If the required amount of rent is less than the PMV, we would impute as ISM the difference between the required amount of rent and either the PMV or the CMRV, whichever is less. For example, if the required household rent is \$300, and the CMRV amount is greater than the PMV, then the amount of household ISM would be \$24.66 divided by the number of household members. However, this charge may be offset by other exclusions.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563 and Executive Order 14094

We consulted with the Office of Management and Budget (OMB) and determined that this rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this proposed rule would result in a total increase in Federal SSI payments of \$971 million over fiscal years 2024 through 2033, assuming implementation of this rule on April 29, 2024. These transfers reflect an estimation that approximately 41,000 individuals who would be eligible under our current rules will have their Federal SSI payment increased by an average of \$128 per month attributable to implementation of this rule. There would also be an additional 14,000 individuals who are not eligible under current rules who would be newly eligible and would apply for benefits under the proposed rule.

Anticipated Net Administrative Cost Savings to the Social Security Administration

The Office of Budget, Finance, and Management estimates that this proposal will result in net

³⁴ See Balkus, Richard; Sears, James; Wilschke, Susan; and Wixon, Bernard. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance*. Social Security Bulletin, vol. 68, no. 4, 2008, www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html.

³⁵ Claimants may provide certain types of evidence (e.g., a rental agreement or lease) to support their allegation of rent amount, and in these circumstances an SSA technician does not need to reach out to the landlord to further develop the allegation. However, SSA finds that in many circumstances claimants do not provide SSA with the necessary evidence. In these cases, SSA will attempt to contact the landlord by phone to orally confirm the rent amount. If the landlord is not successfully reached, SSA may still be required to send the form SSA–L5061. SSA seeks comment on additional procedural considerations and/or acceptable forms of evidence (e.g., proof of electronic transfer of funds in the alleged amount to the named landlord) that a claimant might provide that would be minimally burdensome while satisfactorily demonstrating proof of rent amount.

administrative savings of \$10 million for the 10-year period from FY 2024 to FY 2033. The net administrative savings is mainly a result of unit time savings as field office employees will not have to spend time developing CMRV for all rental subsidy calculations during initial claims, pre-effectuations reviews, redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs because of more individuals' being eligible for SSI benefits, which increases claims, reconsiderations, appeals, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits to the Public

We anticipate the following qualitative benefits generated from this proposed policy:

- Saving time and effort for claimants and third parties who may have evidence related to a claimant's application because they would need to submit less information. SSA estimates at a minimum this will result in more than 7,000 hours of time saved in annual reduced paperwork burden, representing an opportunity cost of \$1,140,526 (see the Paperwork Reduction Act section of the preamble below for specifics).
- Potentially get faster determinations or decisions regarding SSI eligibility or

payment amount, or both, which would have both quantitative effects financially and, qualitatively, may alleviate stress for applicants and recipients associated with the length of time it may take to obtain SSI.

- Administratively easier to apply the same policy nationwide.

Anticipated Qualitative Costs

We do not anticipate more than *de minimis* costs associated with this rulemaking. We do not anticipate that this proposal would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the beneficiary community.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility

analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not anticipate any new collections or require revisions to existing collections. However, the application of the revisions to these rules may cause a burden change to our currently approved information collections under the following information collection requests: 0960-0174, the SSA-8006, Statement of Living Arrangements, In-Kind Support and Maintenance; and 0960-0454, the SSA-L5061, Letter to Landlord Requesting Rental Information. Based on our current management information data from the seven states currently implementing these changes, we anticipate these changes will allow for verbal responses from landlords in place of the current form in some situations, thus reducing the overall burden as SSA will not require those respondents to complete the entirety of Form SSA-L51061. In addition, we note that for those who use the paper form, we will send a revised version with question #5 removed. We also anticipate a slight burden reduction to Form SSA-8006, as the respondents may not need to provide as much detail pertaining to their rental subsidy agreement due to the proposed rule.

The following chart shows the time burden information associated with the proposed rule:

OMB No.; form No.; CFR citations	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960-0174 SSA-8006 (Paper Form)	12,160	1	7	1,419	6	1,216	203
0960-0174 SSA-8006 (SSI Claims System)	109,436	1	7	12,768	6	10,944	1,824
0960-0454 SSA-L5061 (Paper Form)	35,640	1	10	5,940	8	4,752	1,188
0960-0454 SSA-L5061 (Phone Call)	35,640	1	10	5,940	3	1,782	4,158
Totals	192,876	.....	.....	26,067	.....	18,694	7,373

The following chart shows the theoretical cost burdens associated with the proposed rule:

OMB No.; form No.; CFR citations	Number of respondents	Anticipated estimated total burden under regulation from chart above (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
0960-0174 SSA-8006 (Paper Form)	12,160	1,216	* \$12.81	** 19	*** \$77,885
0960-0174 SSA-8006 (SSI Claims System)	109,436	10,944	* 12.81	** 24	*** 443,931
0960-0454 SSA-L5061 (Paper Form)	35,640	4,752	* 29.76	** 24	*** 565,678
0960-0454 SSA-L5061 (Phone Call)	35,640	1,782	* 29.76	.....	*** 53,032

OMB No.; form No.; CFR citations	Number of respondents	Anticipated estimated total burden under regulation from chart above (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes)**	Total annual opportunity cost (dollars) ***
Totals	192,876	19,882	.....	.....	*** 1,140,526

* We based this figure on the average DI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm).

** We based this figure on the average FY 2023 wait times for field offices and hearings office, as well as by averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA submitted a single new Information Collection Request which encompasses the revisions to both information collections (currently under OMB Numbers 0960-0174, and 0960-0454) to OMB for the approval of the changes due to the proposed rule. After approval at the final rule stage, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. In addition, we are specifically seeking comment on whether you have any questions or suggestions for edits to the forms referenced above in the context of this proposed regulatory change. Questions to consider might include (but are not limited to):

(1) Are there other SSA information collections we have not noted that you believe we should modify as a result of this proposed policy change?

(2) Do our new estimated time burdens accurately represent the time burden associated with these forms? The burden estimate should include both the time needed to answer the form's questions and activities such as the time spent gathering records and documentation if necessary, or travel time associated with developing and submitting the collection. If you believe our reported estimate is inaccurate (when considering that we anticipate a burden reduction associated with the rulemaking), please explain why.

(3) Are there modifications to the forms or the information collection processes associated with developing information about a recipient's potential rental subsidy that the agency should consider in developing this final rule (keeping in mind that there may be policy or operational limitations on our

ability to implement some types of new information collection processes)?

If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974, Email address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeier, 6401 Security Blvd., Baltimore MD 21235, Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until October 23, 2023, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by October 23, 2023, which is 60 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Programs No 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,
Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, part 416, as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

■ 1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b; sec. 211, Pub. L. 93-66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. In § 416.1130 revise paragraph (b) to read as follows:

§ 416.1130 Introduction

* * * * *

(b) *How we define in-kind support and maintenance.* In-kind support and maintenance means any food or shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

* * * * *

[FR Doc. 2023-18213 Filed 8-23-23; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**24 CFR Parts 5, 92, 93, 570, 574, 882,
891, 960, 964, 966, 982**

[Docket No FR-6057-F-03]

RIN 2577-AD03

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

AGENCY: Office of the Deputy Secretary,
HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations to implement parts of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). In addition to amending regulations for HUD's public housing and Section 8 programs, this final rule revises the program regulations for several other HUD programs. HUD did this in the interest of aligning its requirements across its programs or because the underlying program statute required HUD to make the revisions. These include the regulations for HUD's Community Development Block Grants, HOME Investment Partnerships, Housing Trust Fund, Housing Opportunities for Persons With AIDS, Supportive Housing for the Elderly (Section 202), and Supportive Housing for Persons with Disabilities (Section 811) programs. Since HUD and other Federal agencies may use the regulations revised as part of this rulemaking in the calculation of income for other programs or activities, the public should be aware that the effects of this rulemaking are not limited to the programs listed in this rule and preamble.

DATES: This final rule is effective January 1, 2024, except for the amendments to §§ 5.520(d), 5.628(a), 960.102(b), 960.206(b), 960.253, 960.257(a) and (d), 960.261, 960.507, 960.509, 960.600, 960.601(b), 964.125(a), 966.4(a) and (l), which are effective March 16, 2023.

FOR FURTHER INFORMATION CONTACT:

Public Housing, Housing Choice Voucher (including project-based vouchers), and rehabilitation programs: Michael Dennis, Senior Program Advisor, Office of Public Housing and Voucher Programs, at 202-402-4059 (this is not a toll-free number), or email HOTMAquestions@hud.gov.

Multifamily Housing programs: Jennifer Lavorel, Director, Program Administration Office, Office of Asset Management and Portfolio Oversight, at 202-402-2515 (this is not a toll-free number), or email MFH_HOTMA@hud.gov.

Community Development Block Grant program: Jessie Kome, Director, Office of Block Grant Assistance, Office of Community Planning and Development, at 202-402-5539 (this is not a toll-free number), or email CPD_HOTMA@hud.gov.

HOME Investment Partnerships and Housing Trust Fund programs: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, at 202-708-2684 (this is not a toll-free number), or email CPD_HOTMA@hud.gov.

Housing Opportunities for Persons With AIDS program: Rita Harcrow, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, at 202-402-5374 (this is not a toll-free number), or email CPD_HOTMA@hud.gov.

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

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

SUPPLEMENTARY INFORMATION:

I. Background

History of the Rule

On July 29, 2016, HOTMA was signed into law (Pub. L. 114-201, 130 Stat. 782). HOTMA makes numerous changes to statutes governing HUD programs, including sections 3, 8, and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). HUD published a rule in the **Federal Register** on October 24, 2016 (81 FR 73030), announcing which statutory changes made by HOTMA could be implemented immediately and which statutory changes required further action by HUD.

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

Section 103 of HOTMA, and this was followed by a July 26, 2018 (83 FR 35490) notice that made some provisions of Section 103 of HOTMA effective.

On January 18, 2017, HUD published a proposed rule (82 FR 5458) that made multiple HOTMA provisions for the Housing Choice Voucher (HCV) program, unrelated to sections 102, 103, and 104, effective and solicited public comment on HUD's implementation methods. The conforming regulatory changes for the HCV program provisions implemented by the January 18, 2017, *rulemaking* are not part of this final rule and are being addressed through a separate rulemaking.¹

Many of the statutory provisions in HOTMA are intended to streamline administrative processes and reduce burdens on PHAs and owners of housing assisted by Section 8 programs. Sections 102, 103, and 104 of HOTMA require that HUD make changes to its regulations and take other actions—some of which will also reduce burdens on PHAs and private owners once implemented.

On September 17, 2019 (84 FR 48820), HUD published a proposed rule to update its regulations according to HOTMA's statutory mandate and to implement the provisions of Sections 102, 103, and 104 of HOTMA that require rulemaking. Additional details about the proposed rule may be found at 84 FR 48820 (September 17, 2019). That proposed rule has additional information on the proposed regulatory changes and how they relate to HOTMA. In addition, on December 4, 2020 (85 FR 78295), HUD re-opened public comment on specific provisions dealing with families whose income rises above the new cap for residing in public housing. This final rule follows the publication of the September 17, 2019, proposed rule and considers the public comments received, including public comments received in response to HUD's December 4, 2020, notice re-opening public comments.

Summary of Affected Programs

Because a variety of programs use these definitions, HUD offers the following chart showing which programs (other than the public housing and Section 8 programs) are affected by various changes to the income regulatory provisions in 24 CFR part 5:

¹ HUD published a proposed rule to implement HOTMA's provisions on the voucher programs and

additional streamlining procedures on October 8, 2020 (85 FR 63664).

	HOPWA (Part 574)	HOME (Part 92)	Housing Trust Fund (Part 93)	202/811
Net Family Assets Definition (§ 5.603).	Yes, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under HOPWA is excluded (§ 574.310(f)).	Yes, unless the participating jurisdiction chooses to calculate income using the IRS income definition. The value of a homeowner's principal residence is excluded under owner-occupied rehabilitation programs. Income or asset enhancements derived from the HOME-assisted project shall not be considered in calculating assets or annual income (§ 92.203(c)(1) and (e)(1)).	Yes, unless the HTF grantee chooses to calculate income using the IRS income definition. Income or asset enhancements derived from the HTF-assisted project shall not be considered in calculating assets or annual income (§ 93.151(b)(1)(i) and (e)(1)).	Yes.
Annual Income Definition (§ 5.609(a)).	Yes (§ 574.310(d)(1) and (2) and § 574.310(e)(1) and (2)).	Yes, unless the participating jurisdiction uses IRS income definition under § 92.203(c)(2) (§ 92.203(c)(1)).	Yes, unless grantee uses IRS income definition under § 93.151(b)(1)(ii) (§ 93.151(b)(1)(i)).	Yes (as modified in § 891.105).
Annual Income Exclusions (§ 5.609(b)).	Yes (§ 574.310(d)(1) and (2) and § 574.310(e)(1) and (2)).	Yes, unless the participating jurisdiction uses IRS income definition under § 92.203(c)(2) (§ 92.203(c)(1)).	Yes, unless grantee uses IRS income definition under § 93.151(b)(1)(ii) (§ 93.151(b)(1)(i)).	Yes (as modified in § 891.105).
Annual Income Calculation & Reexaminations (§ 5.609(c)).	Yes (§ 574.310(d)(1) and (2) and § 574.310(e)(1) and (2)).	No, unless unit is subject to § 92.203(a)(1) or the participating jurisdiction accepts income determination under § 92.203(a)(2) (§ 92.203(a) & (f)).	No, unless unit is subject to § 93.151(a)(1)–(3) (93.151(a) & (f)).	Yes (as modified in § 891.105).
Adjusted Income Mandatory Deductions (§ 5.611(a)).	Yes (§ 574.310(d)(1))	Yes (§ 92.203(a) & (f))	No, unless unit is subject to § 93.151(a)(1)–(3) (§ 93.151(a) and (f)).	Yes (as modified by the definition of annual income in § 891.105).
Adjusted Income Additional Deductions (§ 5.611(b)).	No (§ 574.310(e)(1)(iv))	No, unless unit is subject to § 92.203(a)(1) or the participating jurisdiction accepts income determination under § 92.203(a)(2) (§ 92.203(a) and (f)).	No, unless unit is subject to § 93.151(a)(1)–(3) (§ 93.151(a) and (f)).	No.
Adjusted Income Financial Hardship Exemptions (§ 5.611(c)).	Yes, if the grantee elects to grant financial hardship exemptions (§ 574.310(e)(1)(v)).	Yes, if the participating jurisdiction elects to do so under § 92.203(f)(1)(i), if unit is subject to § 92.203(a)(1), or if income determination is accepted under § 92.203(a)(2), (§ 92.203(a) and (f)).	No, unless unit is subject to § 93.151(a)(1)–(3) (§ 93.151(a) and (f)).	Yes.
Asset restriction (§ 5.618).	Yes, but only for housing activities subject to the resident rent payment requirements in § 574.310(d) (§ 574.310(f)).	No	No	No.

II. Changes at the Final Rule Stage

A. Definitions

New and Revised Definitions

HUD edits the definition of “earned income” in § 5.100. In this final rule, HUD expands the proposed definition of “earned income” to explain that “transfer payments” (which are not included in earned income) mean payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits.

The proposed rule definition of “earned income” in § 5.100 largely mirrored the definition of “earned income” currently in § 984.103; however, unlike the definition of “earned income” in § 984.103, the proposed rule did not specify that

“funds deposited in or accrued interest on the FSS program escrow account established by a PHA on behalf of a participating family” is excluded from “earned income.” In the context of both the proposed rule and in this final rule, HUD determined it would be inappropriate to define Family Self-Sufficiency (FSS) escrow deposits as either earned or unearned income because FSS participants do not actually receive FSS escrow funds until the PHA disburses the funds to the family in accordance with FSS requirements. Income earned on amounts placed in a family’s FSS account are excluded from family income pursuant to a new exclusion at 24 CFR 5.609(b)(27). Additionally, the value of FSS accounts is excluded by 24 CFR 5.603 from the calculation of net family assets.

HUD has also added the corresponding definition of “unearned income” in § 5.100. The definition of unearned income specifies that the term is broad, encompassing any annual income, as calculated under § 5.609, that is not earned income. The definition of “Real property” in § 5.100 is also slightly modified from the proposed rule to have the same meaning as real property as provided under the State law in which the property is located.²

² Where the term “State” is used throughout the Part 5 regulations, it includes Territories and Possessions of the United States. This is consistent with the definition of “State” in section 3(b)(7) of the U.S. Housing Act of 1937 which “includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.”

HUD is revising the definition “medical expenses” in § 5.603 to be “health and medical care expenses” consistent with the language used in HOTMA. HUD is also revising the definition to reflect the Internal Revenue Service (IRS) definition of the term and provide additional clarity without using the term to define itself. In addition, this final rule then adds “long-term care premiums” as an example of what is included in the definition of health and medical care expenses. The prior regulation in § 5.603(b) specifically included “medical insurance premiums” as an example of health and medical care expenses, and the proposed rule did not propose to alter this existing example of what counts as health and medical care expenses. In this final rule, HUD is adding a reference to long-term care in the regulatory language to conform with existing practices and policies and to add clarity. For example, the HUD Handbook *Occupancy Requirements of Subsidized Multifamily Housing Programs* (4350.3) (“Multifamily Occupancy Handbook”) states that “long-term care premiums (not prorated)” are examples of deductible health and medical care expenses (see exhibit 5–3 of that Handbook).³

HUD also amends the definition of “net family assets” in § 5.603 in response to questions and requests for clarification submitted in public comments. Initially, HUD clarifies that net family assets do not include the value of all non-necessary items of personal property with a total combined value of \$50,000 or less, as adjusted annually by an inflationary factor. HUD will issue guidance for PHAs, owners, and grantees to determine whether an item is a “necessary item of personal property” or whether the value of the item should be included in calculating the value of all non-necessary items of personal property for the \$50,000 threshold. In addition, HUD is specifying that because negative equity in real property does not preclude a family from selling the property, negative equity alone does not justify excluding such a property from net family assets. The definition of “net family assets” also excludes Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family. HUD adds this language to align with 26 U.S.C. 6409, which states that any Federal tax refund (or advance

payment with respect to a refundable credit) made to any individual “shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual” for benefits or assistance under any Federal program or State or local program financed with Federal funds. HUD also clarifies the definition of “net family assets” to provide that in cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household. Finally, as explained later in this preamble, HUD excludes from the calculation of “net family assets” the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government.

As a result of adding a new income exclusion for “nonrecurring income” (see below), HUD is including definitions for “day laborer,” “independent contractor,” and “seasonal worker” in § 5.603, all of which are referenced in the new income exclusion. HUD expects that adding these new definitions will help PHAs and owners better determine what income must be included when determining the family’s rent for the upcoming year by narrowing the definition of nonrecurring income.

Foster Children and Adults

In § 5.603, HUD is amending the definition of “foster adults” from what was proposed. HUD also adds a definition of “foster child” and is revising the definition of “dependent.” These definitions provide additional details on the characteristics of foster adults and foster children for purposes of determining members of a household. However, while foster adults and foster children are members of the household (and therefore will be considered when determining appropriate unit size and utility allowance), they are not considered members of the family for purposes of determining either annual and adjusted income or net family assets, nor are the assets of foster adults or foster children taken into consideration for purposes of the asset limitations in HUD programs covered by these definitions.

These revised definitions will result in a change in the treatment of foster children and foster adults residing in units assisted under Multifamily

Housing programs because the Office of Multifamily Housing Programs has treated foster children and foster adults as family members. In finalizing this rule, HUD determined that, because the definition of “family” applies to all 1937 Act programs, it was necessary to clarify for HUD programs covered by this rule that a foster child or adult is a member of the household but not a member of the assisted family (similar to a live-in aide). HUD also determined that there are practical considerations that weigh in favor of this clarification across all programs. For example, § 5.403 states that “a child who is temporarily away from the home because of placement in foster care is considered a member of the family.” If an assisted family temporarily housed this foster child and counted the child as a member of their family, then the child would be considered a family member of two assisted families at the same time.

HUD will update its existing Multifamily Housing guidance on foster families, including chapter 3 of the Multifamily Occupancy Handbook, to conform with this final rule. Upon the effective date of this final rule, these regulations supersede conflicting Multifamily Housing guidance.

Fostering Stable Housing Opportunities

This final rule updates the definition of “family” in § 5.403. The definition in this final rule incorporates revisions made to the 1937 Act by the Fostering Stable Housing Opportunities provisions of the Consolidated Appropriations Act, 2021,⁴ which expands the definition of Single Persons. Due to the modification of the 1937 Act prior to this final rule, HUD is making a conforming change to § 5.403 to align with the new statutory language.

Specifically, youth who are between the ages of 18 and 24, who have either left foster care or will leave foster care within 90 days, and who are homeless or at risk of becoming homeless at age 16 or older, will be considered “single persons” for the purposes of Section 8 and public housing under the 1937 Act. Currently, HUD’s regulations at § 5.403 do not include this separate category of eligible youth within the definition of “family.” This final rule updates this definition. Because HUD has no discretion regarding this modification, HUD believes this is an appropriate conforming change to incorporate into the final rule.

⁴ Public Law 116–260, div. Q, tit. I, Section 103 (Dec. 27, 2020).

³ U.S. Department of Housing and Urban Development, *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* (Nov. 2013), <https://www.hud.gov/sites/documents/43503HSGH.PDF>.

Definitions Related to Over-Income Families in Public Housing (§ 960.102)

HOTMA amended the 1937 Act with new and expanded provisions related to families who are residing in public housing units while being over the newly created over-income (OI) limit for that program. HUD is including in this final rule additional definitions related to such families to facilitate the use of consistent terminology throughout provisions in the regulations:

Alternative non-public housing rent. This is the monthly amount PHAs must charge non-public housing over-income (NPHOI) families, allowed by PHA policy to remain in a public housing unit and who have completed the 24 consecutive month grace period. The alternative rent is defined as the higher of Fair Market Rent (FMR) or subsidy.

Covered person. Because the new § 960.509 borrows heavily from the existing lease provisions in § 966.4, which use the term “covered person,” HUD is inserting the definition of “covered person” into § 960.102 to indicate that lease provisions cover the tenant, members of the tenant’s household, guests, or others under the tenant’s control.

Non-public housing over-income family. This is the defined term for a family that is above the OI limit but is remaining in their unit, paying the alternative non-public housing rent. These families will no longer be public housing program (PHP) participants.

Over-income family. This was an existing term that previously referred to a family that is not a low-income family. The term has been revised in the final rule to now mean a family whose income exceeds the OI limit.

Over-income limit. This term was discussed and defined in the notice published by HUD on July 26, 2018 (83 FR 35490) and its September 17, 2019, proposed rule, but was not proposed to be codified as a defined term in the proposed rule. Upon reconsideration, HUD is codifying this definition in § 960.102. This limit is set by multiplying the very low-income level for the applicable area by a factor of 2.4.

Technical Amendments

This final rule also updates an outdated citation in the definition of “Income” in § 570.3. The definition of income in that section incorporates three separate definitions of “income” and allows Community Development Block Grant program grantees and Section 108 Loan Guarantee program borrowers to choose which definition to use to determine whether a family or household is low- or moderate-income.

One option available to grantees is the definition of annual income “as defined under the Section 8 Housing Assistance Payments program at 24 CFR 813.106[.]” However, the Section 8 Housing Assistance Payments program was incorporated into part 5 in 1996, and the definition of “Annual Income” was moved from § 813.106 to § 5.609. Therefore, this citation is out of date. HUD has allowed grantees to use the definition at § 5.609 despite the outdated citation because it is the clear definition applicable “under the Section 8 Housing Assistance Payments program.” This final rule updates the citation from § 813.106 to § 5.609. Because grantees are already authorized to use the definition under § 5.609, this change is technical in nature and will not affect grantees in a substantive manner. Therefore, HUD believes this is an appropriate technical correction to incorporate into the final rule.

HUD also adds cross-references to certain newly added and revised definitions described in part 5 to parts 92 (HOME Program), 93 (HTF Program), and 891 (Section 202 and Section 811 Programs) for consistency across HUD programs.

B. Income

Applicability of Subpart F

Subpart F of part 5 addresses the common definitions and provisions addressing income for multiple HUD programs. In this final rule, HUD is further revising § 5.601 to remove references to the Rent Supplement program (Rent Supp) and Rental Assistance Program (RAP), because all contracts assisted under those programs have either expired or, pursuant to the authority provided under HUD’s Rental Assistance Demonstration program, been converted to Section 8 contracts.

Definition of Income

HUD is revising the definition of annual income in § 5.609(a) for clarity. In paragraph (a)(1), HUD relies on the definition of excluded income under § 5.609(b) to provide the scope of what is included in income. In addition, HUD is modifying paragraph (a)(2) to specify that when net family assets are valued over \$50,000 (as adjusted by inflation) and actual returns cannot be calculated, imputed returns are included in income. All actual returns that can be calculated continue to be included in income.

Exclusions From Income

This final rule makes changes from what was proposed to the exclusions from income in § 5.609(b). Changes to the exclusions related to foster children

and adults, financial aid, and distributions from trusts are discussed elsewhere within this preamble. The remaining changes are discussed here.

In § 5.609(b)(1), HUD is including the corollary to the specification in the definition of income that imputed returns for net family assets valued over \$50,000 are included as income. In § 5.609(b)(1), imputed returns for net family assets valued at or below \$50,000 are explicitly excluded from income. PHAs, owners, and grantees are therefore not required to calculate and may not include imputed returns as family income when a family’s net family assets are valued at or below \$50,000 (as such amount is annually adjusted by an inflationary factor). Actual returns from net family assets continue to be included in income.

In this final rule, HUD revises § 5.609(b)(2) to exclude from income various types of trust distributions. For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b), the final rule excludes from income distributions of the principal or corpus of the trust, and distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor. For a revocable trust or a trust that is under the control of the family or household, any distributions from the trust are excluded from income, except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received. Please see the discussion elsewhere in this preamble (section III. On public comments and HUD’s responses, Section “E. Trust Distributions”) under the header “Income Exclusions”) for a detailed discussion of distributions of income or principal from trusts. HUD is also modifying § 5.609(b)(3) to remove references to income from foster children and adults and to incorporate the new defined term “earned income.” This has the effect of continuing to specifically exclude earned income of all children under the age of 18 within assisted households. This income is currently excluded under 24 CFR 5.609(c)(1) of HUD’s income regulations and will remain excluded under this final rule.

Section 5.609(b)(4) excludes from income payments received for the care of foster children or adults, and the proposed rule proposed language expanding the exclusion to State kinship or guardianship care payments. In this final rule, HUD is clarifying that the exclusion should also apply to

Tribal kinship or guardianship care payments.

Section 5.609(b)(5) excludes from income insurance payments and settlements for personal or property loss. In this final rule, HUD is clarifying that these payments and settlements include, but are not limited to, “payments through health insurance, motor vehicle insurance, and workers’ compensation.” HUD believes that explicitly including these examples will help address questions about what is covered by this exclusion.

In this final rule, HUD excludes “income earned by, government contributions to, and distributions from ‘baby bond’ accounts created, authorized, or funded by Federal, State, or local government” from income in § 5.609(b)(10). HUD also revised 24 CFR 5.603 to exclude the “value of any ‘baby bond’ account created, authorized, or funded by Federal, State, or local government” from the calculation of net family assets. HUD makes these revisions in recognition of the fact that “baby bonds” (money held in trust by the government for children until they are adults) are being authorized in various States and localities in an effort to combat the wealth gap and address systemic poverty. In this final rule, HUD makes other revisions to the proposed § 5.609(b)(10). Specifically, § 5.609(b)(10) now excludes “income and distributions from” rather than the ambiguous “amounts from” any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code.

The proposed rule at § 5.609(b)(10) excluded from annual income any amounts from ABLE accounts under section 529A of the Internal Revenue Code of 1986. With this exclusion, HUD intended to codify a mandatory income exclusion in the Achieving Better Life Experience (ABLE) Act (Pub. L. 113–295). However, HUD has since determined that the income exclusion in the proposed rule did not comply with the statutorily mandated income exclusion and was also inconsistent with Notice PIH 2019–09/H–2019–06 (issued April 26, 2019), *Treatment of ABLE accounts in HUD-Assisted Programs*.⁵ Upon further review of the statutorily mandated income exclusion in the ABLE Act, HUD decided that income exclusions related to ABLE accounts are too nuanced to capture in a succinct, general income exclusion. Therefore, in this final rule, HUD

declines to provide an enumerated income exclusion related to ABLE accounts. Instead, the mandatory income exclusion related to ABLE accounts is provided pursuant to § 5.609(b)(22), which covers amounts that HUD is required by Federal statute to exclude from income and further provides that HUD will publish a notice in the **Federal Register** to identify the benefits that qualify for this exclusion. PHAs, owners, and grantees may refer to Notice PIH 2019–09/H–2019–06 for details about when ABLE account income is excluded. Though HUD is not including an enumerated income exclusion related to ABLE accounts, HUD is retaining language excluding the value of ABLE accounts from the definition of “net family assets” in § 5.603.

In § 5.609(b)(12)(iv), incremental earnings and benefits from various specific employment training programs are excluded from income. In the proposed rule, HUD inadvertently omitted Federal and Tribal employment training programs from the list of income exclusions and included only State and local employment training programs. Therefore, in this final rule, HUD is adding language to also exclude payments from training programs funded by HUD or qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and payments from training of a family member as resident management staff from the family’s income.

In this final rule, HUD is revising the wording of the income exclusions of earned income of dependent full-time students (§ 5.609(b)(14)) and of adoption assistance payments (§ 5.609(b)(15)) to provide greater clarity as to the amount excluded. In both cases, the amount excluded from income was intended to be the amount in excess of the dependent deduction in § 5.611 (understanding that under HOTMA the dependent deduction will be adjusted annually for inflation). Under the proposed rule, rather than simply identifying the amount of the dependent full-time student’s earned income that was specifically excluded from income, HUD identified the amount of the dependent full-time student’s earned income that “shall be considered income” (which was the amount equal to the dependent deduction). HUD is revising both § 5.609(b)(14) and § 5.609(b)(15) to explicitly state that the income exclusion is the earned income in excess of the amount of the deduction for a dependent in § 5.611. Since the dependent deduction under § 5.611

provides for this annual adjustment, HUD believes that the intended purpose of the regulation will be better understood as a result of the revisions in the final rule.

Section 5.609(b)(19) excludes payments to keep family members with disabilities living at home. In the proposed rule, HUD proposed to exclude only payments from State Medicaid-managed care systems to keep a family member who has any disability (not just a developmental disability) living at home. The intent behind these changes was both to expand the existing exclusion to include those with a disability other than a developmental disability and to clarify the types of payments that are excluded from income. Many States provide benefits to individuals with a variety of disabilities, which allow such individuals to remain at home rather than reside in institutional settings such as hospitals, nursing homes, or other institutional or segregated settings, and there was no reason to limit the exclusion to persons with a certain type of disability.

The proposed rule also removed the qualifying language regarding such payments to “offset the cost of services and equipment provided.” HUD is aware that payments under these programs are not limited to reimbursement of specific services and equipment in order to keep a family member with a disability living at home.

In response to public comments that State Medicaid agencies provide in-home supports through a range of delivery structures, such as fee-for-services, not just managed care, HUD is expanding the language in the final rule to exclude all payments from State Medicaid agencies for in-home supports. Federal Medicaid rules allow States to cover a wide range of institutional and home and community-based long-term services and supports (LTSS), but the type of services, populations covered, and delivery models differ substantially across States based on their individual Medicaid program structure.

Additionally, in response to public comments pointing out that there are similar payments from States that are not connected to Medicaid, HUD is expanding the language in the final rule to also exclude payments from or authorized by State agencies for States that use a source of funding other than Medicaid to provide for in-home support.

HUD is also adding payments made or authorized by a Federal agency for this purpose so as not to inadvertently make such payments ineligible for this exclusion. HUD will issue guidance to

⁵ Available at: <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2019-09.pdf>.

PHAs and owners on any payments made by Federal agencies that would be covered by this exclusion. HUD is clarifying in the final rule that payments may be made directly by the State Medicaid agency (including through a managed care entity) or other State or Federal agency, or made by another entity authorized by the State Medicaid agency, State agency, or Federal agency to make such payments on its behalf.

Public commenters also described how in many cases the government agency directly pays the person providing the services. For instance, an adult providing personal care services for a parent or other family member with a disability could receive direct payments from the State agency for performing those services. HUD is adding language in the final rule that amounts paid directly to a member of the assisted family by the State Medicaid agency (including through a managed care entity) or other State or Federal agency (or other entities authorized by the agencies to make such payments) to enable a family member who has a disability who wishes to remain living in the assisted unit, under the applicable terms and conditions for the family member to be eligible for such payments, are excluded from the family's income. This income exclusion applies only to payments to the family member for caregiving services for another member of the family residing in the assisted unit. For example, payments to the family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income. Furthermore, if the agency was making payments for caregiving services to the family member for not only another member of the assisted family but also for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

HUD is revising § 5.609(b)(20), which excludes loan proceeds from income. The revisions specify that the exclusion also covers amounts disbursed to or on behalf of a borrower, or loan proceeds received by a third party instead of the family. Examples of loan proceeds excluded by this new definition can include payments from student loans, car loans, or amounts received from a Home Equity Conversion Mortgage (if the assisted family is in a program that allows for assistance to homeowners *e.g.*, HOME).

In § 5.609(b)(21), HUD is modifying the exclusion of payments received by Tribal members resulting from

mismanagement of assets held in trust by the United States. In addition to using the term "Tribal member" instead of "Indian persons," § 5.609(b)(21) now covers payments excluded from income under Federal law other than the Internal Revenue Code. These payments were always required to be excluded under HUD income exclusion requirements because they are excluded from income for eligibility and determining the amount of assistance under Federal law, but they are now explicitly referenced in § 5.609(b)(21).

HUD also simplified § 5.609(b)(22), which addresses income exclusions required by other Federal statutes. Rather than distributing notices updating the list to PHAs, the final rule commits HUD to publishing the notice in the **Federal Register**.

Section 5.609(b)(23) excludes "gap" payments made pursuant to 49 CFR part 24. These are a form of relocation assistance payments made to displaced persons under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (URA). The "gap" payment pays for the difference in costs associated with moving from one form of housing assistance to another and/or from one dwelling unit to another as a result of permanent displacement for a Federal program or project, as defined under the URA. The final rule revises the exclusion for clarity without making substantive changes.

In the proposed rule, HUD proposed removing the exclusion of "temporary, nonrecurring or sporadic income." This was the result of much confusion over what exactly the exclusion covered. However, after reviewing public comments and additional consideration, HUD has realized the utility of including a broad exemption for income that a family may have received previously but does not anticipate for the coming year. This is particularly needed because under HOTMA, PHAs and owners are to use the family's income from the previous year in making an income determination for the upcoming year, with adjustments as the PHA or owner determines necessary to reflect current income. Therefore, HUD is restoring, in § 5.609(b)(24) of this final rule, a general exclusion of "nonrecurring income." To address some of the issues that have arisen under the previous broad exemption, HUD is defining nonrecurring income as income that will not be repeated in the coming year, based on information that the family provides. The exclusion also specifically states that income earned as an independent contractor, day laborer,

or seasonal worker does not count as "nonrecurring" income.

Additionally, to address other forms of sporadic income that would have been excluded under the previous blanket exclusion, HUD is including additional information on what "nonrecurring income" consists of and offering specific examples: payments from the U.S. Census Bureau for work on the decennial Census or the American Community Survey that is less than 180 days and does not result in a permanent position; direct Federal or State payments intended for economic stimulus or recovery; amounts received directly by the family as a result of State or Federal refundable tax credits or refunds at the time they are received; gifts for holidays, birthdays, or significant life events or milestones; non-monetary, in-kind donations from food banks or similar organizations; and lump-sum additions to assets such as lottery or other contest winnings.

Under 26 U.S.C. 6409, Federal tax refunds are excluded from the calculation of income for Federal programs. HUD is therefore adding Federal refundable tax credits and Federal tax refunds at the time they are received to the exclusions from annual income at § 5.609(b)(24)(iv), as they are a form of nonrecurring income that is specifically excluded from family income by statute. Until this rulemaking, refunds of State taxes have not been specifically identified as excluded from a family's annual income in HUD's regulations. HUD is clarifying that this is a form of nonrecurring income that must be excluded from a family's annual income. HUD is now excluding amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time that they are received in § 5.609(b)(24)(iii).

HUD notes that the reason why the passages at § 5.609(b)(24)(iii) and (iv) read as refundable tax credits or tax refunds "at the time they are received" is because a family's annual income may have already included the amounts the family received in the year that the taxes were paid. In those instances, the refund of taxes paid does not represent any new or additional money paid to the family. Moreover, there are some forms of refundable tax credits that may be provided to a family in advance of filing taxes. In order to avoid any confusion and to ensure that PHAs and owners are not counting the same income more than once, HUD has added the modifier "at the time they are received" for the exclusion of both Federal and State refundable tax credits and refunds.

HUD has used the current exclusion in § 5.609(c)(3) to exclude from income lump-sum additions to assets that the family may have received as a result of a resolution of a civil rights matter. This may include amounts received as a result of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement. HUD does not intend to change the practice of excluding this income, but because there has been confusion, HUD is adding a new income exclusion in § 5.609(b)(25) that broadly excludes from income any amounts the family may receive from civil rights settlements or judgments regardless of how the settlement or judgment is structured. This reflects the fact that sometimes settlements or judgments of this nature are not lump-sum payments but instead may have a payment schedule.

HUD is also adding at § 5.609(b)(25) language stating that back pay received by the family pursuant to a civil rights settlement or judgment is excluded from income. HUD believes it would be unfair to treat back pay received by a family pursuant to a civil rights settlement or judgment differently than other amounts received under such settlements or judgments. The treatment of back pay is different from the future payments the family receives as a result of the raise or promotion under the terms of the civil rights settlement or judgment, which would be included in income.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family).

Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received. As an example, consider a family with no net family assets that receives a civil rights settlement in the amount of \$20,000. Upon receiving the settlement, the family's assets increased to \$20,000, but the \$20,000 settlement is not included

in the family's income. At the family's next income examination, any actual income earned from the \$20,000 (e.g., interest or investment income) will be included in the family's income. For instance, if at the family's next annual income examination after the family received the \$20,000 civil rights settlement, the actual income earned from investing the \$20,000 is \$500, then \$500 will be included in the family's income.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2) in this final rule. If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by ten percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last 3 months of the family's income certification period and the PHA or owner chooses not to conduct the examination.

Finally, a large addition to net family assets may impact the family's eligibility for public housing or Section 8 assistance if the net family assets exceed \$100,000 (as annually adjusted by an inflationary factor) per 24 CFR 5.618.

In this final rule, HUD adds new income exclusions at § 5.609(b)(26) and (b)(27). Section 5.609(b)(26) excludes income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals. However, any distribution of periodic payments from these retirement accounts shall be income at the time they are received by the family. This revision aligns with, and clarifies, HUD's current policy regarding the treatment of income earned and distributions from retirement accounts. For example, current § 5.609(b)(4) states that income includes the full amount of periodic amounts received by retirement funds and pensions. A new income exclusion at § 5.609(b)(27) excludes income earned on amounts placed in a family's FSS account. This exclusion is consistent with how HUD currently treats income earned on FSS accounts. The exclusion does not address distributions from a family's FSS account, because such distributions (either as a final or interim distribution under the terms of the Contract of Participation) will be excluded from

income under § 5.609(b)(24)(vii) as a lump-sum addition to net family assets.

With these revisions and additions, HUD intends to exclude from income sources of funds that cannot be relied upon to pay for a family's housing needs, while providing additional clarity to PHAs and owners about what funds must still be considered income, given the broad definition contained in HOTMA.

In § 5.609(b)(28), HUD is codifying the current requirements for considering self-employment income and income from the operation of a business, which are currently codified in § 5.609(b)(2). Under § 5.609(b)(28), gross income that a family member receives through self-employment or operation of a business is excluded from a family member's income, as gross income is not reflective of the costs of operating a business of being self-employed. Instead, HUD is requiring that the net income from the operation of a business be considered income in § 5.609(b)(28)(i). As provided by currently codified § 5.609(b)(2), HUD does not consider expenditures for business expansion or amortization of capital indebtedness to be deductible when determining the new income from a business. An allowance for depreciation of assets used in a business or profession may be deducted, based on a straight-line depreciation, as provide in IRS regulations, as is the case under the current rule. Under § 5.609(b)(28)(ii), HUD shall consider the withdrawal of cash or assets from the operation of a business to be income except to the extent that such withdrawal is to reimburse the family member for cash or assets that the family has invested in the operation of the business. This treatment is no different than the current treatment under the regulations and represents a continuation of existing policy.

Student Financial Assistance

HOTMA mandates the exclusion of certain earned income for full-time dependent students and grant-in-aid, or scholarship amounts for such students. Although not required by the HOTMA statute, the proposed rule proposed the previous exclusion of financial aid, which also codified the treatment of financial assistance under longstanding appropriations act provisions for Section 8 families (including persons over the age of 23 with dependent children). However, the proposed rule was still not entirely clear regarding what constitutes financial assistance. Furthermore, the proposed rule did not codify a Federally mandated income exclusion in section 479B of the Higher Education Act of 1965 (20 U.S.C.

1087uu) (HEA). This exclusion is currently included in the list of Federally mandated exclusions from income, which HUD published on May 20, 2014 (79 FR 28938). HUD has determined this exclusion should be codified in the final rule because of the extent of its impact in calculating family incomes. Finally, considering the required exclusion in section 479B of the HEA, HUD concludes it cannot, as part of this rulemaking, codify the Section 8 student financial assistance limitations provided annually in HUD appropriations (see Section 210(b) of Division L of Public Law 117–103 for the provision in the 2022 Consolidated Appropriations Act), although these limitations will continue to apply to funds from any year in which the limitations are enacted in an appropriations act.⁶

Therefore, in this final rule, in § 5.609(b)(9), HUD codifies the Federally mandated income exclusion in section 479B of the HEA. HUD also expands on the proposed regulatory language, calling upon interpretations of the previous regulatory text, IRS definitions, and relevant statutory language. Section 5.609(b)(9) includes two income exclusions related to assistance provided to students. First, § 5.609(b)(9)(i) excludes any assistance that section 479B of the HEA requires to be excluded from a family's income. Second, § 5.609(b)(9)(ii) excludes student financial assistance, not otherwise excluded by § 5.609(b)(9)(i), for tuition, books, and supplies, room and board, and other fees required and charged to a student by an institution of higher education.

Section 5.609(b)(9)(i) addresses the mandatory income exclusion in section 479B of the HEA, which states

⁶The HEA is an authorizing statute whereas appropriations acts are temporary in nature, applying only to the funds from the year that the appropriations are in effect. HUD acknowledges that HUD's current rule at 24 CFR 5.609(b)(9) codifies the Section 8 student financial assistance appropriations language, notwithstanding section 479B of the HEA, but notes that this rulemaking was authorized by the FY 2006 Appropriations Act (Pub. L. 109–115); section 327 of that Act directed HUD to issue a final rule to “to carry out” the Section 8 appropriations student restrictions. Since 2006, HOTMA passed without the language from the student restrictions in the annual appropriations text, and a newer version of the HEA passed. Moreover, recent appropriations acts do not include a requirement that would enable HUD to codify a requirement in this final rule contradicting this latest version of the HEA, an authorizing statute. Notwithstanding the foregoing interpretation about the treatment of student assistance under section 479B of the HEA as excluded income, HUD's current Section 8 eligibility rule at 24 CFR 5.612, also codified pursuant to the FY 2006 Appropriation Act rulemaking authority, is not part of this rulemaking and is therefore still in effect.

“[n]otwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.” Under Section 701 of Division FF of Public Law 116–260, entitled “FAFSA Simplification Act,” Section 479B of the HEA has been modified slightly to exclude student financial assistance under the Bureau of Indian Education (instead of the Bureau of Indian Affairs) and to expand the forms of excluded income to include income earned in employment and training programs under Section 134 of the Workforce Innovation and Opportunity Act (WIOA) (29 U.S.C. 3174 *et seq.*). As per Section 101 of Division R of Public Law 117–103, this revised provision shall become effective on July 1, 2024. Until July 1, 2024, PHAs, owners, and grantees shall exclude from income amounts received for the forms of assistance listed in the current version of Section 479B of the HEA. Beginning July 1, 2024, PHAs, owners, and grantees shall exclude from income amounts received for the forms of assistance listed in the revised version of Section 479B of the HEA. Current examples of student financial assistance received under Title IV of HEA include but are not limited to: Federal Pell Grants, Teach Grants, Federal Work-Study Programs, Federal Perkins Loans, among many others. Current examples of student financial assistance under the Bureau of Indian Education include the Higher Education Tribal Grant and the Tribally Controlled Colleges or Universities Grant Program. Current employment training programs under Section 134 of the WIOA that are to be excluded from income when the revised statute comes into effect are workforce investment activities for adults and workers dislocated as a result of permanent closure or mass layoff at a plant, facility, or enterprise, or a natural or other disaster that results in mass job dislocation, in order to assist such adults or workers in obtaining reemployment as soon as possible.

Section 479B of the HEA requires that all assistance under Title IV of the HEA (as well as Bureau of Indian Affairs student financial assistance), even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations. However, for more than a

decade, enacted on a year-by-year basis, HUD appropriations have included a provision that has created an exception to section 479B for Section 8 income calculations. For example, the FY2022 Appropriations Act (Pub. L. 117–103) states that, “[f]or purposes of determining the eligibility of a person to receive assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition and any other required fees and charges) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.” Thus, for any year that this language appears in HUD appropriations, it requires that certain assistance, including assistance under Title IV of the HEA, in excess of tuition and other required fees and charges, be included in income calculations for Section 8 students who are age 23 and under or without dependent children. In a notice titled *Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance*, HUD interpreted this limitation as applying when the student is the head of household or spouse, but not when the student resides with parents in a Section 8 unit. (April 10, 2006, 71 FR 18146).

Although the proposed rule sought to codify this appropriations requirement, HUD has since determined that it does not have the authority to publish a rule that contradicts section 479B of the HEA without explicit statutory authority.

For any funds from a year where HUD's appropriations acts include Section 8 student financial assistance limitations similar to those in FY2022, those limitations will still apply with respect to Section 8 participants, even if the appropriations contradict section 479B of the HEA. As discussed directly below, any student financial assistance that is not excluded pursuant to § 5.609(b)(9)(i) is subject to § 5.609(b)(9)(ii). Thus, a PHA or owner must perform the calculation for a Section 8 student head of household or spouse who is either 23 and under or without dependent children in 5.609(b)(ii) *including* the student assistance that would have been excluded in 5.609(b)(i) but is not because the Section 8 funds come from a year where the HUD appropriations act provisions included the Section 8

student financial assistance limitations. HUD plans to issue guidance about how to treat student financial assistance in income calculations.

Section 5.609(b)(9)(ii) of the final rule recognizes that student financial assistance can take a variety of forms and come from a variety of sources to both full and part-time students. For example, HUD considered that not all assistance provided to students is assistance provided under Title IV of the HEA or through the Bureau of Indian Affairs. The final rule provides that student financial assistance, for purposes of § 5.609(b)(9)(ii), means a grant or scholarship received from the Federal government, a State, Tribal, or local government, a private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3), a business entity (such as a corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity), or an institution of higher education. A grant would include a qualified tuition remission, reduction, waiver, or reimbursement (*i.e.*, amounts received as reimbursement for the student's paid costs of tuition, books, and fees, etc.) by the educational institution, such as for an employee of the institution of higher education or an eligible family member of that employee. A grant would also include assistance provided by an employer as part of an employee educational assistance program or tuition reimbursement program. The final rule also states that student financial assistance, for purposes of § 5.609(b)(9)(ii), does not include any assistance that is excluded from income pursuant to § 5.609(b)(9)(i). Thus, assistance provided to students under Title IV of the HEA or under Bureau of Indian Affairs student assistance programs is not subject to § 5.609(b)(9)(ii).

The language included in the final rule is also intended to clarify that student financial assistance excluded from income under § 5.609(b)(9)(ii) must be for educational expenses and does not include payments obtained through work study, money from friends or family, or funds that exceed the actual education expenses to the student. Amounts received under work study may still be excluded under § 5.609(b)(9)(i) (if provided pursuant to Title IV of the HEA) or § 5.609(b)(14) (to the extent that the work study is being performed by a dependent full-time student). Loan proceeds for educational expenses, though considered student financial assistance if provided under a loan program in Title IV of the HEA, are

not considered student financial assistance for purposes of § 5.609(b)(9)(ii) and are already excluded from income under § 5.609(b)(20). In addition, HUD is adding language in § 5.609(b)(9)(ii)(D) that states if student financial assistance is paid to the student, the responsible entity (as defined in §§ 5.100 and 5.603) must verify that the assistance meets the requirements in the paragraph.

HUD sought in this final rule to craft regulatory text that provides for the consistent treatment of students receiving student financial assistance, as defined in § 5.609(b)(9)(ii). HUD's goal in this regard was primarily to provide for the equitable treatment of such students. The current regulation, consistent with Section 8 appropriations limitations, provides that financial assistance in excess of amounts received for tuition and any other required fees and charges (hereafter "excess" amounts) was excluded from income to an individual unless the individual was a Section 8 participant who was either age 23 or under or without dependents.

In the final rule, such "excess" amounts are not considered student financial assistance to be excluded from income under § 5.609(b)(9)(ii). Though the change will have the effect of eliminating an income exclusion for certain families (*i.e.*, all non-Section 8 families, and Section 8 families with a head of household or spouse that is student who is over 23 with dependent children), HUD believes that this change is justified in terms of fairness. For example, consider two public housing residents who are both part-time students over the age of 18 and receive student financial assistance that is not excluded pursuant to § 5.609(b)(9)(i). One receives "excess" amounts of student financial assistance and the other does not, instead earning the same amount of income from employment (that is not excluded from income calculations). Before HUD changed the rule through this rulemaking, the student that had the excess amount of student financial assistance would have had that excess amount of student financial assistance excluded from their family's income. On the other hand, the student with an equal amount of wages (that are not excluded from income) would have had those wages included in their family's income. The result would have been that the family of the student who worked and received wages would pay a higher rent than the family of the student that received an equal amount of excess student financial assistance. The rule, as revised, would treat both the excess amounts of student financial assistance and the earned

income of the students in the example above as income.

Specifically, the final rule provides at § 5.609(b)(9)(ii)(B)(4) that student financial assistance (other than assistance provided to students under Title IV of the HEA or under Bureau of Indian Affairs student assistance programs) does not include any amount of the scholarship or grant that either by itself or when in combination with the excluded financial assistance under 479B of the HEA, exceeds the actual cost of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit (*i.e.*, the student is living in off-campus/non-college owned housing while away at school instead of a dorm or college owned housing). HUD refers to all of these costs as the "actual covered costs" in the regulation and preamble.

The final rule includes a new paragraph at § 5.609(b)(9)(ii)(E) that explains how to determine the amount of assistance that exceeds these actual covered costs when the student is receiving assistance excluded from income under section 479B of the HEA as well as student financial assistance from other sources. As noted earlier, all assistance under section 479B of the HEA is excluded from income, regardless of whether those amounts exceed the actual covered costs described above. The new paragraph at § 5.609(b)(9)(ii)(E) provides that when determining the amount of assistance in excess of actual covered costs, as required under § 5.609(b)(9)(ii)(B)(4), the assistance provided under section 479B of the HEA will be the first assistance deducted from the actual covered costs. This is because assistance under section 479B of the HEA is intended to pay the actual covered costs, and so HUD has determined that these amounts must be the first amounts subtracted from actual covered costs before any student financial assistance that HUD is excluding under HUD's discretionary exclusion authority.

If the amount of assistance excluded under section 479B of the HEA exceeds the student's actual covered costs, then all of the amounts received from all other grants or scholarships the student is receiving from other sources would be in excess of actual covered costs and would not be considered student

financial assistance that is excluded from income. For example, assume a student received \$26,000 in assistance excluded under section 479B of the HEA and another \$5,000 from a scholarship that is not excluded under section 479B of the HEA. If the student's actual covered costs were \$25,000, the entire \$26,000 in assistance excluded under section 479B of the HEA would still be excluded from income. However, the \$5,000 from the other scholarship would not be considered student financial assistance under § 5.609(b)(9)(ii), because it is assistance in excess of actual covered costs and would not be excluded from income under that paragraph.

On the other hand, if the amount of assistance excluded under section 479B of the HEA is less than the student's actual covered costs, then some or all of the other scholarships and grants would be excluded from income. The amount that HUD considers student financial assistance under § 5.609(b)(9)(ii) excluded from income is the lower of either (1) the total amount of scholarships and grants the student received that are not excluded under section 479B of the HEA or (2) the amount by which the student's actual covered costs exceeds the assistance the student received that is excluded under section 479B of the HEA. For example, assume a student received \$15,000 in assistance from assistance excluded under 479B of the HEA and another \$5,000 from a scholarship not excluded under section 479B of the HEA. The entire \$15,000 excluded under section 479B of the HEA is excluded from income. If the student's actual covered costs are \$22,000, then the entire amount of the \$5,000 scholarship that is not excluded under section 479B of the HEA would also be student financial assistance that is excluded from income, as the amount of the scholarship combined with the assistance excluded under section 479B of the HEA (\$20,000) is still less than the student's actual covered costs (\$22,000). But if the student's actual covered costs are only \$18,000, the amount of the scholarship that is considered student financial assistance under § 5.609(b)(9)(ii) and excluded from income would be \$3,000. This is because the \$3,000 by which the student's actual covered cost exceeds the assistance excluded under section 479B (\$18,000–\$15,000) is less than the scholarship amount that is not excluded under 479B of the HEA (\$5,000). Consequently, the amount of that scholarship that is in excess of the student's actual covered costs (\$2,000)

is not student financial assistance and is not excluded under § 5.609(b)(9)(ii).

Safe Harbor

This final rule revises the provision in § 5.609(c)(3) that states that PHAs and owners may, but are not required to, use income calculation information from other programs or agencies to determine a family's income prior to applying deductions under § 5.611. Based on suggestions received in public comments, HUD adds the following to the list of means-tested forms of public assistance that PHAs and owners may rely upon: the Low-Income Housing Credit (LIHTC); the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); and Supplemental Security Income (SSI). In addition to these specific forms of public assistance, HUD is including other HUD programs, other means-tested forms of Federal public assistance for which HUD establishes a memorandum of understanding, and other means-tested forms of Federal public assistance that HUD may announce through a **Federal Register** notice.

In response to questions received in public comments, HUD is also adding regulatory language specifying how PHAs or owners that choose to use income determinations from other programs are to verify the information. PHAs or owners are to use third-party verification, which must include the tenant's family size and composition and state the family's annual income. The verification must also be dated within the time frame specified for the type of verification, including within the previous 12-month period for purposes of the specified means-tested forms of Federal public assistance. If the PHA or owner cannot obtain the required third-party verification, or if the family disputes the determination, the PHA or owner must calculate the family's annual income using the methods established in § 5.609(c)(1) and (2) or in the applicable program regulations.

Permissive Deductions

This final rule clarifies that PHAs administering the public housing, HCV, and Section 8 moderate rehabilitation programs are authorized to adopt additional deductions under HOTMA in accordance with the terms and conditions at § 5.611(b). Additionally, the final rule states that only PHAs, not owners that happen to also be PHAs, may adopt additional deductions. The proposed rule stated that permissive deductions could be adopted when a PHA is an owner in the Section 8

project-based rental assistance (PBRA) program, but HUD has since determined that such a policy would not comport with HOTMA. Even if a PHA owns a PBRA property, it does so as any other PBRA owner, and without any special status conveyed upon it just because it is a PHA. Thus, because HOTMA permits only PHAs, and not owners, to adopt additional deductions, HUD concludes that a PBRA owner that is a PHA is precluded from adopting permissive deductions at a PBRA property.

This final rule updates § 5.611(b) to explain how permissive deductions are established under each applicable program and splits § 5.611(b)(1) into paragraphs (i) and (ii) for the public housing and the applicable Section 8 programs (HCV, moderate rehabilitation, and moderate rehabilitation Single-Room Occupancy (SRO) programs), respectively.

HUD is also adding additional language clarifying how HUD will ensure compliance with the amended 1937 Act's requirement that permissive deductions not "materially increase Federal expenditures." PHAs can respond to community needs by using a wide range of permissive deductions, including permissive deductions to provide incentives to work. However, given the statutory requirement that permissive deductions may not materially increase Federal expenditures, HUD does not want to reduce funding for all PHAs by factoring in permissive deductions prior to allocating PHA Operating Funds or Section 8 funds. Therefore, HUD will not be revising the public housing Operating Fund formula to account for any decrease in PHA revenue attributable to implementing permissive deductions in accordance with § 5.611. The subsidy costs attributable to permissive deductions will not be taken into consideration in determining the PHA's HCV renewal funding or moderate rehabilitation funding. When establishing permissive deductions, PHAs are still subject to Federal nondiscrimination requirements, including the obligation to provide reasonable accommodations that may be necessary for households with family members with disabilities.

These permissive deductions impact the calculation of the family's adjusted income that is then used to determine the Total Tenant Payment (TTP), which is then used to calculate the tenant rent in the public housing and moderate rehabilitation programs and the family share in the HCV program. Permissive deductions do not affect the family's annual income and consequently have

no impact on the family's income eligibility for the public housing, HCV, or moderate rehabilitation programs.

Hardship Exemptions

As discussed in section III of this preamble, HUD received numerous comments on the structure and form of hardship exemptions for unreimbursed health and medical care and reasonable attendant care and auxiliary apparatus expenses and child care expenses in § 5.611(c). HUD therefore is revising the language in this final rule to provide additional clarity and to ease burdens on families experiencing financial hardships, including reorganizing the financial hardship exemption sections from what was included in the proposed rule. Hardship exemptions for unreimbursed health and medical care and reasonable attendant care and auxiliary apparatus expenses are now defined in § 5.611(c). Hardship exemptions for child care expenses are now defined in § 5.611(d). Finally, hardship policy requirements are now described in § 5.611(e).

The final rule provides two types of hardship exemptions to the new ten percent threshold for unreimbursed health and medical care expenses (for elderly and disabled families) and reasonable attendant care and auxiliary apparatus expenses (for families that includes a person with disabilities).

The first category, defined in § 5.611(c)(1), is for families eligible for and taking the unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses deduction in effect prior to this final rule. The second category, defined in § 5.611(c)(2), is for families that can demonstrate that the family's health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased, or the family's financial hardship is a result of a change in circumstances that would not otherwise trigger an interim reexamination.

HUD is adding this second category in the final rule in recognition that the change from the three percent threshold to the new ten percent threshold for unreimbursed health and medical care expenses and/or reasonable attendant care and auxiliary apparatus expenses may result in financial hardship for families, including those families who were not receiving the deduction or may not even have been receiving housing assistance at the time this rule went into effect. For example, a family may have had health and medical care and reasonable attendant care and auxiliary apparatus expenses that did not exceed three percent on the effective date of the

rule, but their health and medical care expenses may have subsequently increased although those expenses do not exceed the now effective ten percent threshold. This family may receive temporary hardship relief if their health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses exceed 5 percent of the family's income, as discussed in detail below. Another example is a case where the family's health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses have not increased, but the family has had a decrease in income or increase in other expenses that has resulted in the family's financial hardship. In such a circumstance the family may receive temporary hardship relief if their health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses exceed 5 percent of the family's income. The second category may also include families that either qualified under the first category but have exhausted the relief in that exemption or have chosen to apply for relief under the second category before completing the transition to the ten percent threshold in accordance with the terms and conditions discussed below, so long as they independently qualify under § 5.611(c)(2).

Under the first category at § 5.611(c)(1), the responsible entity must deduct eligible expenses exceeding 5 percent of the family's income for the first year. The second year, the responsible entity must deduct expenses exceeding 7.5 percent of the family's annual income. However, beginning with the third year, the responsible entity must deduct only the expenses that exceed ten percent of the family's annual income, unless the family qualifies for a new exemption under the other eligible category of health and medical care and reasonable attendant care and auxiliary apparatus expense hardships defined in § 5.611(c)(2).

Under the second category defined in § 5.611(c)(2), a family may also qualify for hardship exemptions for health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses if the family can demonstrate that the family's applicable health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased or the family's financial hardship is a result of a change in circumstances (as defined by the responsible entity). For these families, the responsible entity deducts the eligible expenses in excess of 5 percent of the family's income for a period of up to 90 days. Responsible entities may extend such exemptions for additional

90-day periods at their discretion, based on the family's circumstances. As in the proposed rule, a responsible entity may also terminate the hardship exemption if the responsible entity determines that the family no longer needs the exemption.

In some circumstances, a family that is still receiving the health and medical care and reasonable attendant care and auxiliary apparatus expense hardship relief under the first category (a family that was receiving the health and medical care and/or reasonable attendant care and auxiliary apparatus expense deduction on the effective date of the rule and is transitioning to the new ten percent threshold) may request relief under the second category of hardship relief. During the second year of the transition, the responsible entity deducts expenses exceeding 7.5 percent of the family's annual income if they are obtaining relief under § 5.611(c)(1). If the family can demonstrate that the family's applicable health and medical care and/or reasonable attendant care and auxiliary apparatus expenses increased or the family's financial hardship is a result of a change in circumstances (as defined by the responsible entity) other than the transition to the higher threshold under the hardship relief policy of § 5.611(c)(1), the family may be granted hardship relief under the second category of hardship relief in § 5.611(c)(2). In this case, the responsible entity would deduct expenses exceeding 5 percent of the family's annual income instead of 7.5 percent. However, § 5.611(c)(2) provides relief only for a period of up to 90 days (unless extended by the responsible entity at their discretion), and a family granted hardship relief under the second category is no longer eligible for relief under the first category, as per § 5.611(c)(1)(D). In other words, at the end of the relief period for the second category that is defined in § 5.611(c)(2), the family would be subject to the regular health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses deduction threshold of ten percent, regardless of whether they fully transitioned to the ten percent threshold under § 5.611(c)(1) before receiving hardship relief under the second category.

HUD reminds responsible entities that they must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine eligibility

for a financial hardship exemption for unreimbursed health and medical care expenses. Responsible entities may not request documentation beyond what is sufficient to determine anticipated health and medical care and/or reasonable attendant care and auxiliary apparatus costs or when a change in circumstances took place. Before placing bills and documentation in the tenant file, the responsible entity must redact all personally identifiable information. Responsible entities must also comply with all Federal nondiscrimination and civil rights statutes and requirements, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504, and the Americans with Disabilities Act, as applicable. Among other obligations, this includes providing for reasonable accommodations that may be necessary for persons with disabilities.

HUD also includes language in § 5.611(d) creating a 90-day time frame for the hardship exemption to the child care income deduction in this final rule. Responsible entities may extend the hardship for additional 90-day periods if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction, and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The 90-day time frame for the child care hardship in § 5.611(d) is similar to the 90-day time frame for the second hardship exemption for health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses and is also consistent with the 90-day length of time provided for minimum rent hardship exemptions under § 5.630(b)(2). As in the proposed rule, responsible entities may also terminate the hardship exemption if the responsible entity determines that the family no longer needs the exemption. HUD believes that this 90-day term is fairer to families than the proposed rule's reliance on the family's next regular reexamination, where the applicability of the child care hardship exemption could vary significantly in length depending on when the event requiring the child care hardship occurred in relationship to the effective date of the family's next regular reexamination.

For example, assume a family no longer qualifies for the child care deduction because the child care is no longer necessary to enable a member of the family to be employed or to further his or her education. The family

member who was employed has left their job in order to provide uncompensated care to an elderly friend who is severely ill and lives across town. Under the proposed rule, the length of time that the hardship exception for the child care deduction could continue (assuming the need continued to exist) would depend on the timing of the next regular reexamination. Under the final rule, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days, regardless of the relationship of the timing of the circumstance to the need for the hardship exemption and the next regular reexamination. In addition, the final rule provides that responsible entities have the discretion to extend the hardship exemption for additional 90-day periods based on family circumstances.

In what is § 5.611(e) in this final rule, HUD has included the proposed provisions related to how responsible entities are to establish hardship policies and requirements for notifying families, which are moved but largely unchanged from what was included in the proposed rule. In addition to correcting some cross citations that have changed, the only difference is that HUD has revised the provision to reflect that hardship exemptions are either phased (§ 5.611(c)(1)) or expire within 90 days (§ 5.611(c)(2) and (d)), rather than at the next regular income reexamination, or when the responsible entity determines the hardship exemption is no longer necessary.

C. Assets

Income From Assets

HOTMA specifically includes actual income from assets in the definition of income. Therefore, any actual income received must be counted as family income. In § 5.609(a)(2) of this final rule, HUD clarifies the regulatory language regarding income from assets to help PHAs and owners determine what income from assets should be included in the family's annual income, while also minimizing the burden on PHAs, owners, and families. This final rule includes language in § 5.609(a)(2) to indicate that the imputed return on assets of a combined value of more than \$50,000 must be calculated if no actual income can be computed. In addition, if the actual income can be computed for some assets, but not all assets, housing providers must compute the actual income for those assets, calculate the imputed income for all remaining assets where the actual income cannot be computed, and combine both amounts

to account for assets of a combined value of over \$50,000.

Limitation on Eligibility for Assistance Based on Assets

Per requirements in HOTMA, § 5.618 creates a restriction on the eligibility of a family to receive assistance if the family owns real property that is suitable for occupancy by the family as a residence or has assets in excess of \$100,000, as adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers. The proposed rule included an exception to the restriction against owning real property suitable for occupancy by the family as a residence if the property does not meet the disability-related needs for all members of the family, including physical accessibility requirements. In response to public comment, HUD is adding language clarifying that the example of physical accessibility requirements is not the sole type of disability-related need that the property must meet for all family members. There are various circumstances where a property may not be suitable for occupancy for a household with a household member with disabilities. Other examples include, but are not limited to, a disability-related need for additional bedrooms, proximity to accessible transportation, etc.

HUD is also adding clarifying language throughout the section, including in § 5.618(a), on the programs covered by the section. In § 5.618(a)(1)(ii), the final rule adds language that clarifies the ability to sell is based on the State and local laws of the jurisdiction where the property is located. HUD has revised § 5.618(a)(1)(ii)(B) to clarify that asset limitations do not apply to a member of a family that jointly owns real property with another non-household member that does not reside with the family when that non-household member lives in the jointly owned property. This can apply in instances where a family member owns a fractional interest of a property with other relatives that do not reside with the family.

HUD has revised § 5.618(a)(2) since the proposed rule to add clarifications and examples of different ways in which a property will be considered "suitable for occupancy" under the amended 1937 Act. These clarifications and examples indicate that if a property is geographically located so that the distance or commuting time between the property and the family's place of work or a family member's educational institution would create a hardship for the family, as determined by the PHA or

owner, it may not be suitable. These clarifications and examples also specify that a property is considered unsafe to reside in when the property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied. This could include where environmental factors outside the control of the family are contributing to the unsafe condition or where the alterations necessary to make the physical condition of the property safe are cost prohibitive.

HUD is also adding a new provision at § 5.618(a)(2)(v) to clarify that, for purposes of the asset limitation, a property that a family may not reside in under State or local laws of the jurisdiction where the property is located is not a property that is suitable for occupancy by the family as a residence. This can happen when an assisted family owns a commercial property that cannot legally be occupied as a residence by the family, such as a convenience store or a retail establishment. While owning such a property is not the form of property ownership prohibited under HOTMA, HUD notes that the real property would be considered an asset for purposes of determining: net family assets under § 5.603; annual income from net family assets under § 5.609(a)(2); and for purposes of determining if the family owns net family assets in excess of \$100,000 under 5.618(a)(1)(i). The real property's value under these regulations is the net cash value of the real property after deducting reasonable costs that would be incurred in disposing of the family's real property, which would include repayment of any mortgage debt or other monetary liens on the real property.

HUD is changing the paragraph header in § 5.618(b) from "*Self-certification*" to "*Acceptable documentation; confidentiality*" for clarity.

Finally, in § 5.618(d), HUD adds language that states that while the PHA or owner has six months to begin eviction or termination proceedings for families that have excess or prohibited assets, the PHA or owner is still bound by other provisions of law.

For clarity, HUD is also adding a cross-reference to the new restrictions in § 5.618 in the regulations for denial or termination of assistance for the Section 8 moderate rehabilitation, HCV, and public housing programs at §§ 882.515(d), 982.552(b), 960.201(a) and 966.4(l)(2), respectively.

D. HOME Investment Partnerships Program (HOME) Changes

Definitions

Section 92.2 is being amended to add the term *Live-in aide*, which has the same meaning given that term in § 5.403. Section 92.2 is also amended by adding the terms *Foster adult*, *Foster child*, *Full-time student*, and *Net family assets*, which are defined in § 5.603. HUD believes that this will help participating jurisdictions (PJs) locate the applicable regulatory definitions for these new or revised terms.

Use of Annual Income in the HOME Program

To determine whether a family is eligible to participate in HOME program activities, a PJ must calculate a family's annual income. HOME program activities include the support and development of affordable rental and homeownership housing, homebuyer downpayment assistance, rehabilitation of owner-occupied housing, and tenant-based rental assistance (TBRA) for very low-income and low-income families as defined in § 92.2. A PJ uses a family's annual income to determine eligibility for: occupancy of HOME-assisted rental unit, purchase of a homeownership unit, receiving homebuyer downpayment assistance, and obtaining rental assistance in TBRA.

The HOME regulations at § 92.203 permit a PJ to use one of two definitions for annual income for each rental project or program assisted with HOME funds: (1) adjusted gross income in IRA Form 1040 Individual Income Tax Return (IRS Form 1040) or (2) annual income as defined at § 5.609. The definition of adjusted gross income in the IRS Form 1040 is not changed in this rulemaking and will continue to align with the definition of adjusted gross income developed by the Department of Treasury. HUD is revising the definition of annual income at § 5.609 as part of this rulemaking and the changes will apply to income calculations made after the effective date of this final rule.

In this final rule, HUD is revising §§ 92.203 and 92.252 to align with the income and net family assets provisions amended by HOTMA and to reduce the administrative burden of calculating income when HOME funds are layered with other HUD programs. The final rule also clarifies who is considered a member of the family for the purpose of calculating income; identifies three cases where a PJ must calculate a tenant's adjusted income; and removes references to and the applicability of the disallowance of earned income at

§ 5.617 from the HOME program regulations two years after the effective date of the rule in conformity with the revisions to program regulations subject to the 1937 Act.

Use of Adjusted Income in the HOME Program

Under certain circumstances, the HOME program also uses the definition of adjusted income in § 5.611. This definition is used for the calculation of the maximum subsidy allowable for a family receiving TBRA, for the calculation of a family's Low HOME rent in accordance with § 92.252(b)(2), and for the calculation of rent for over-income tenants, in accordance with § 92.252(i)(2).

Annual Income Determinations in the HOME Program

HUD is amending paragraph § 92.203(a) to add the subheading "*Methods of determining annual income*" to clarify the section's intent and add new paragraphs (a)(1), (a)(2), and (a)(3) to describe new requirements for how a PJ must determine the annual income of families living in HOME-assisted rental units.

In accordance with new § 92.203(a)(1), a PJ must accept a PHA, owner, or rental subsidy provider's income determinations, in accordance with § 5.609, if a family is applying for or living in a HOME-assisted rental unit and the unit is being assisted by Federal project-based rental subsidy. Similarly, a PJ must accept a State project-based rental subsidy provider's income determination under the rules of that State program. Prior to this rulemaking, this requirement was only described in § 92.252(b)(2). This aligns the calculation of a family's income under the HOME program with the calculation of a family's income in other rental assistance or subsidy programs that assist the same unit. The requirement to accept a PHA's or owner's income determination applies when HOME funds are used in a project where units also receive a Federal project-based rental subsidy such as Section 8 Project-Based Rental Assistance, PBV, project-based assistance under HUD-VASH Vouchers, or rental assistance provided in conjunction with the Section 202 Supportive Housing for the Elderly Program (Section 202) or the Section 811 Supportive Housing for Persons with Disabilities Program (Section 811). For these units, the family's income must be calculated in accordance with the rules of the program providing the rental assistance or subsidy.

In accordance with § 92.203(a)(1), PJs must accept the PHA, owner, or rental

subsidy provider's determinations of annual and adjusted income conducted at initial occupancy, interim reexaminations, and annual reviews of eligibility, as applicable under that program's rules. For subsequent income determinations during the HOME affordability period, a PJ must continue to accept the income determinations performed by the PHA, owner, or rental subsidy provider in accordance with the rules of those programs.

In an effort to further align HOME with the HCV Program as well as other forms of Federal tenant-based rental assistance, HUD is providing a new flexibility for PJs in § 92.203(a)(2). This new flexibility allows a PJ to accept a Federal tenant-based rental assistance provider's income determinations if the family is applying for or living in a HOME-assisted rental unit and the family is being assisted by a Federal tenant-based rental assistance program. This flexibility is an option when tenants in HOME-assisted units are assisted by programs that provide Federal tenant-based rental assistance such as the HCV program (including special purpose vouchers such as HUD-VASH vouchers), HOME-American Rescue Plan (HOME-ARP) Program, Emergency Solutions Grants Program (ESG), and the Housing Opportunities for Persons with AIDS (HOPWA) Program. For these units, the PJ may accept the income determinations made for the family in accordance with the rules of the program providing the rental assistance. When exercising this option, the PJ may accept determinations of annual and adjusted income conducted at initial occupancy, interim reexaminations, and annual reviews of eligibility, as applicable under that program's rules. However, a PJ must ensure these units comply with HOME rent limitations at § 92.252 (*e.g.*, High HOME, Low HOME, and SROs).

This rule does not change the requirement that a PJ enter into agreement with the owner, developer, or sponsor of rental housing to commit HOME funds and impose the HOME affordability restrictions. However, HUD recommends that a PJ also enter into an agreement with the PHA, owner, or rental subsidy provider for Federal or State project-based rental subsidy programs, or with the rental assistance provider for Federal tenant-based rental assistance programs, to facilitate the sharing of income and rent determinations when income will be calculated in accordance with § 92.203(a)(1) or (2). This will ensure the project is able to meet the HOME rental occupancy requirements established in the HOME written agreement and 24

CFR part 92 (*e.g.*, fixed or floating, High HOME, and Low HOME unit mix).

For HOME-assisted units not assisted by Federal or State project-based rental subsidy or where a PJ has chosen not to accept a PHA, owner, or rental subsidy provider's determination of annual income, the PJ is subject to § 92.203(a)(3) and must continue to comply with the HOME requirements regarding determination of income in § 92.203(b) through (f), as applicable.

In applying § 92.203(a)(1) and (2), the PJ must accept a PHA's, owner, rental subsidy provider, or rental assistance provider's determination of annual and adjusted income under the rules of the applicable program. For HUD project-based rental subsidy programs, this includes but is not limited to the determination to: make the deductions under § 5.611(a), provide any permissive deductions under § 5.611(b), grant financial hardship exemptions to the family under § 5.611(c) through (e), and allow for any disallowance of earned income made under those program rules in accordance with § 5.617 (while those provisions remain in place). HUD also reminds PJs that, when applying § 92.203(a)(1) and (2), there are new flexibilities in § 5.609(c)(3) allowing PHAs administering HCV and owners of projects with project-based rental subsidies a safe harbor that allows them to accept annual income determinations made by administrators of means-tested forms of Federal public assistance such as Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP). To reduce burden and preserve program alignment, HUD is requiring that where the PHA or owner has accepted such a determination pursuant to § 5.609(c)(3), the PJ must also accept the PHA or owner's determination of annual and (as applicable) adjusted income regardless of whether the safe harbor was used in making that determination.

Furthermore, HUD similarly reminds PJs that though the HOME program does not incorporate asset limitations because there is no statutory basis to exclude families from the HOME program based upon the amount of assets that are held by those families, families that are subject to the asset limitations under § 5.618 because of their participation in a different program may be denied continued assistance under that program. PJs are under no requirement under the HOME program to exclude these families from participation and must continue to follow the tenant protection requirements in § 92.253(c) even if the families may no longer receive

assistance under other HUD programs because of the family's assets. A HOME PJ may only terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds for good cause, as defined in § 92.253(c), which does not include having the type of assets or an amount of assets in excess of the limitations in § 5.618.

Where the PHA or owner enforces the asset limitations and terminates assistance to the unit or the family because the family's net family assets exceed the asset limitations in § 5.618, the family may remain in the HOME-assisted rental unit and the PJ must determine the family's annual income in accordance with § 92.203(b) through (e); calculate the family's adjusted income, if applicable, in accordance with § 92.203(f); and charge a rent in accordance with § 92.252(a) through (i).

Required Documentation for Annual Income Calculations in the HOME Program

Unless a PJ falls into one of the exceptions listed in § 92.203(a)(1) or (2), a PJ must calculate annual and (as applicable) adjusted income each year for HOME-assisted families in accordance with § 92.203(a)(3) and (f). HUD is not changing the requirements for what evidence a PJ must use for the first year the family is assisted or the documentation options available to the PJ in subsequent years. However, due to the changes discussed above, HUD is redesignating these options from § 92.203(a)(1) and (a)(2) to paragraphs § 92.203(b)(1) and (b)(2) and redesignating the introductory text to a new paragraph (b) and revises the new paragraph (b)(1) to update the reference to the new paragraph § 92.203(b)(1)(i). HUD also revises the paragraph to add the heading "*Required Documentation for Annual Income Calculations.*"

Defining Income for Eligibility in the HOME Program

While HUD is not changing the two options of calculating annual income as part of this rulemaking, HUD is redesignating the paragraph explaining the two options of calculating annual income from § 92.203(b) to § 92.203(c), is revising new paragraph § 92.203(c) to add subheading *Defining income for eligibility*, and is incorporating revisions made to the definitions of annual income at § 5.609(a) and (b). Notably, this revision in § 92.203(c)(1) does not incorporate § 5.609(c), which describes how to calculate annual income in the public housing or Section 8 programs and is therefore not applicable to the HOME program. Section 92.203(c)

retains the reference to the definition of net family assets at § 5.603 used to determine the imputed income on assets over \$50,000 based on the current passbook savings rate in § 5.609(a), as the new definition has no impact on HOME-funded owner rehabilitation activities. For HOME-assisted owner-occupied rehabilitation activities, a PJ would continue to exclude the value of a homeowner's principal residence pursuant to new paragraph § 92.203(c)(1) from the calculation of net family assets, as defined in § 5.603.

Using Income Definitions in the HOME Program

HUD is also redesignating the paragraph explaining that PJs have the option of using one of these two income definitions from § 92.203(c) to § 92.203(d), and adding a clarification of existing policy in the redesignated § 92.203(d). This clarification explains that though a PJ has the option to use either the definition of adjusted gross income contained in the IRS Form 1040 or the definition of annual income in § 5.609 as the definition of annual income for each rental project, there are some cases where a PJ will be required to use the definition of annual income in § 5.609 for the calculation of income for a rental project. This is because for rental housing projects containing units assisted by a Federal or State project-based rental subsidy, the PJ must accept the determination of annual and adjusted income made by the PHA, owner, or rental subsidy provider under that program's rules. Moreover, in cases where the PJ is accepting the calculations of a rental assistance provider's determination of annual and adjusted income for tenants receiving Federal tenant-based rental assistance, the PJ must calculate income in accordance with the rules of that program. For HUD-assisted tenant-based rental assistance and project-based rental subsidy programs, this would generally be the calculation of annual income under § 5.609. While this has been a longstanding HUD policy contained in § 92.252, HUD is making this clarification in the income regulations at § 92.203 to help PJs align the HOME program with project-based rental assistance programs.

Determining Family Composition and Projecting Income in the HOME Program

HUD is redesignating paragraph (d) in § 92.203 as paragraph (e) and adding the heading "*Determining Family Composition and Projecting Income*" to the redesignated paragraph (e). HUD is also adding clarifications of existing

policy that annual income includes income from all persons living in the household except live-in aides, foster children, and foster adults. PJs must project annual income based on the requirements in § 92.203(e) regardless of which definition of annual income in § 92.203(c) the PJ applies to its HOME-funded programs or to each HOME-assisted rental project (§ 5.609 or IRS Form 1040).

In § 92.203(e)(1), HUD is also permitting grantees to use the certification process established in § 5.618(b) when imputing income for families whose net family assets, as defined in § 5.603, do not exceed \$50,000 without taking further steps to verify the accuracy of the declaration. HUD is also clarifying that when families are homeowners applying for homeowner rehabilitation assistance under the HOME program, they may also exclude the value of their principal residence from the calculation of their Net Family Assets for purposes of the certification. This rule also clarifies, in § 92.203(e)(1), that the PJ must exclude the Federal tenant-based rental assistance provided to the family or any Federal or State project-based rental subsidy provided to the HOME rental housing unit from the calculation of annual income when determining eligibility for occupancy of HOME-assisted rental housing units.

The redesignated paragraph § 92.203(e)(3) restates the requirement that PJs continue to disallow increases in earned income of persons with disabilities occupying HOME-assisted rental units or receiving TBRA in accordance with § 5.617 until the elimination of the requirement. This requirement is derived from § 5.617(e). As § 5.617 will lapse two years after the effective date of this rule, HUD is revising paragraph § 92.203(e)(3), to explain that the requirements of § 92.203(e)(3) shall lapse on January 1, 2026.

Determining Adjusted Income in the HOME Program

In § 92.203, HUD redesignates paragraph (e) as paragraph (f), revises new paragraph (f), and adds subheading *Determining Adjusted Income*. HUD also clarifies the three scenarios in which the PJ must calculate a tenant's adjusted income and added new paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(2). The new paragraph (f)(1)(i) incorporates the revisions to the definition of adjusted income at § 5.611(a) and (c) and requires the PJ to apply the deductions at § 5.611(a) for families in HOME TBRA. The PJ may grant financial hardship exemptions

according to the requirements of the revised § 5.611(c) through (c) to families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expenses deductions from annual income under § 5.611(a)(3), as well as families that apply for a continued child care expense deduction. To use the authority, the PJ must develop policies and procedures for qualifying and granting hardship exemptions in accordance with the requirements contained in § 5.611(e).

The new paragraph (f)(1)(ii) requires the PJ to apply the mandatory deductions from income established at § 5.611(a) when determining a family's adjusted income for the purpose of calculating the rent applicable to a tenant in Low HOME Rent unit that is subject to the provisions of new paragraph § 92.252(b)(2)(i). Furthermore, the PJ may grant financial hardship exemptions according to the requirements of § 5.611(c) through (e) to families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expenses deductions from annual income under § 5.611(a)(3), as well as families that apply for a continued child care expense deduction. To use the authority, the PJ must develop policies and procedures for qualifying and granting the hardship exemptions in accordance with the requirements contained in § 5.611(e).

The new paragraph (f)(1)(iii) requires the PJ to apply the mandatory deductions from income established at § 5.611(a) when determining a family's adjusted income for the purpose of calculating the rent applicable to over-income tenants in accordance with § 92.252(i)(2).

Similar to earlier sections of the rule, the new paragraph (f)(2) clarifies that for Low HOME Rent units that receive Federal or State project-based rental subsidy, the PJ does not have to calculate the family's adjusted income and must accept the PHA, owner, or rental subsidy provider's determination of adjusted income under that program's rules.

Qualification as Affordable Housing: Rental Housing in the HOME Program

While HUD is not changing the definitions of the High or Low HOME rents, HUD is revising § 92.252(b)(2) by splitting it into two paragraphs. Section 92.252(b) states that a PJ has the option of charging a family either (1) a rent that does not exceed 30 percent of the annual income of a family whose

income equals 50 percent of the median income for the area, as determined by HUD, or (2) a rent that is equal to 30 percent of a family's adjusted income. This final rule separates into new § 92.252(b)(2)(ii) the conditions that a HOME-assisted unit that also receives Federal or State project-based rental subsidy must meet in order for a project owner to charge the maximum rent allowable under the Federal or State project-based rental subsidy program.

To conform HOME requirements for subsequent income determinations, HUD is revising paragraph (h) of § 92.252 to update the cross references from § 92.203 to § 92.203(b)(1), from § 92.203(a)(1)(i) to § 92.203(b)(1)(i), and from § 92.203(a)(1)(ii) to § 92.203(b)(1)(ii). In the sixth year of a HOME rental project's affordability period, a PJ is not required to review source documentation for families whose incomes are determined in accordance with § 92.203(a)(1) and (2). HUD further specifies that if rental housing projects contain units assisted by a Federal or State project-based rental subsidy, the PJ must accept the determination of annual and adjusted income made by the PHA, owner, or rental subsidy provider under that program's rules. The revisions also permit a PJ to accept a rental assistance provider's income determination if the family is living in a HOME-assisted rental unit and the family is being assisted by Federal tenant-based rental assistance.

E. Housing Trust Fund (HTF) Changes Definitions

Section 93.2 is being amended to add the term *Live-in aide*, which has the same meaning given that term in § 5.403. Section 93.2 is also amended by adding the terms *Foster adult*, *Foster child*, *Full-time student*, and *Net family assets*, which are defined in § 5.603. HUD is also adding a definition of *Public Housing Agency (PHA)* that provides that this term has the same meaning as the definition provided in § 5.100. HUD believes that this will help HTF grantees locate and use the applicable regulatory definitions in calculating income.

Use of Annual Income in the HTF Program

To determine whether a family is eligible to participate in HTF program activities, the HTF grantee must calculate the family's annual income. HTF program activities include the support and development of affordable rental and homeownership housing and homebuyer downpayment assistance for

extremely low-income and very low-income families as defined in § 93.2. An HTF grantee uses a family's annual income to determine eligibility for occupancy of an HTF-assisted rental unit, purchase of a homeownership unit, and receiving homebuyer downpayment assistance.

In this final rule, HUD is revising § 93.151 and § 93.302 to align with HOTMA's income and net family assets provisions and reduce the administrative burden of calculating income when HTF funds are layered with other HUD programs. This final rule also codifies existing program requirements regarding income calculations, establishes who is considered a member of the family, explains how to determine the annual income of a family (projecting income), sets a limit on how long income determinations are good for, and clarifies that income or assets enhancement derived from the investment of HTF funds in a project cannot be included when calculating annual income. Although HUD aligned HTF with other HUD rental programs as much as possible, the Department codified these requirements to avoid confusion on which income requirements in the final rule applied to the HTF program.

Annual Income Determinations in the HTF Program

HUD is revising § 93.151(a) to describe how grantees must determine the annual income of families living in HTF-assisted rental units. In § 93.151(a)(1), HUD specifies that if a family is applying for or living in an HTF-assisted rental unit, and the unit is assisted under the PHP, then an HTF grantee must accept the PHA's determination of the family's annual income and adjusted income under §§ 5.609 and 5.611, respectively. This requirement applies when HTF funds are used in projects that also include public housing funding in accordance with § 93.203.

In § 93.151(a)(2), HUD explains that if a family is applying for or living in an HTF-assisted rental unit, and the family is assisted under a Federal tenant-based rental assistance program, then an HTF grantee must accept the rental assistance provider's determination of the family's annual income and adjusted income under the rules of that program. This requirement applies when HTF funds are used in projects that also include families that receive Federal tenant-based rental assistance such as HOME TBRA, HOME-ARP TBRA, HCVs, ESG, CDBG-CV, HUD-VASH, and HOPWA assistance.

Section 93.151(a)(3) explains that if a family is applying for or living in an HTF-assisted rental unit and the unit is assisted with a Federal or State project-based rental subsidy, then an HTF grantee must accept the PHA, owner, or rental subsidy provider's determination of the family's annual income and adjusted income under that program's rules. This requirement applies when HTF funds are used in projects that also receive Federal or State project-based rental subsidy such as Section 8 Project-Based Rental Assistance, PBV, project-based assistance under HUD-VASH Vouchers, or rental assistance provided in conjunction with the Section 202 and Section 811 Programs. This aligns the calculation of a family's income under the HTF program with the calculation of a family's income in other rental assistance or project-based rental subsidy programs that assist the same family or unit as the HTF assistance.

In accordance with § 93.151(a)(1) through (3), HTF grantees must accept examinations of a family's annual and adjusted income conducted at initial occupancy, interim reexaminations, and annual reviews of eligibility, as applicable under that program's rules. This includes but is not limited to the determination to: make the deductions under § 5.611(a), provide any permissive deductions under § 5.611(b), grant financial hardship exemptions to the family under § 5.611(c) through (e), and allow for any disallowance of earned income made under those program rules in accordance with § 5.617 (while those provisions remain in place).

This rule does not change the requirement that an HTF grantee enter into an agreement with the recipient (owner or developer) of rental housing to commit HTF funds and impose the HTF affordability restrictions. However, HUD recommends that an HTF grantee also enter into agreement with the PHA, rental assistance provider, rental subsidy provider, or owner, as applicable, to facilitate the sharing of income and rent determinations to ensure the project is able to meet the HTF rental occupancy requirements established in the HTF written agreement and 24 CFR part 93 (e.g., fixed or floating and applicable HTF rents).

HUD also reminds HTF grantees that § 5.609(c)(3) contains new flexibilities allowing PHAs administering HCV and public housing and owners of projects with project-based rental subsidies a safe harbor that allows them to accept annual income determinations made by administrators of means-tested forms of Federal public assistance such as TANF

or SNAP. To reduce burden and preserve program alignment, HUD is requiring that where the PHA or owner has accepted such determination pursuant to § 5.609(c)(3), the HTF grantee must also accept the PHA or owner's determination of annual and (as applicable) adjusted income regardless of whether the safe harbor was used in making that determination.

HUD similarly reminds HTF grantees that though the HTF program does not incorporate asset limitations because there is no statutory basis to exclude families from the HTF program based upon the amount of assets that are held by those families, families that are subject to the asset limitations under § 5.618 because of their participation in a different program may be denied continued assistance under that program. HTF grantees are under no requirement under the HTF program to exclude these families from participation and must continue to follow the tenant protection requirements in § 93.303(c) even if the families no longer receive assistance under other HUD programs because of the family's assets. An HTF grantee may only terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HTF funds for good cause under § 93.303(c), which does not include having the type of assets or an amount of assets in excess of the limitations in § 5.618.

Where the PHA or owner enforces the asset limitations and terminates assistance to the unit or the family because the family's net family assets exceed the asset limitations in § 5.618, the family may remain in the HTF-assisted rental unit and the grantee must determine the family's annual income in accordance with § 93.151(b) through (e) and charge a rent in accordance with § 93.302(b).

Under § 93.151(a)(4), for HTF-assisted units not assisted by the PHP or Federal or State project-based rental subsidy, and for families that are not assisted by Federal tenant-based rental assistance, a grantee must (a) continue to comply with the HTF requirements to determine annual income of families by examining at least 2 months of source documents at initial occupancy and every six years of the HTF period of affordability, (b) project the prevailing rate of income of the family, (c) specify which of three methods to determine annual income (*i.e.*, source, self-certification, written statement) will apply to subsequent income determinations (other than at initial occupancy and every six years) during the HTF affordability period.

While HUD is not changing the two options of calculating annual income as

part of this rulemaking, HUD is revising § 93.151(b)(1) to incorporate HUD's revisions to the definition of income at § 5.609(a) and (b), which is the definition of income provided by HOTMA. Notably, this requirement does not fully incorporate § 5.609(c), which describes how to calculate annual income in the public housing or Section 8 programs. The section does incorporate revisions to the definition of Net Family Assets at § 5.603 that are used to determine the imputed income on assets over \$50,000 based on the current passbook saving rate in § 5.609(a).

HUD is also revising § 93.151(b)(2) to add a clarification of existing policy. An HTF grantee has the option to use either the definition of adjusted gross income contained in the IRS Form 1040 or the definition of annual income in § 5.609 as the definition of annual income for each rental project. While the provisions addressing the use of the IRS Form 1040 are not changing, HUD is revising the provisions allowing grantees to use the definition of annual income in § 5.609 to specify that there are some cases where an HTF grantee will be required to use the definition of annual income in § 5.609 for the calculation of income for a rental project. This is because for rental housing projects containing units assisted through the PHP, a Federal or State project-based rental subsidy, or through a Federal tenant-based rental assistance program, the HTF grantee must accept the determination of annual and adjusted income made under that program's rules. While this has been a HUD policy in § 93.302(b)(2) for units assisted by a Federal or State project-based rental subsidy, HUD is expanding this policy to also align HTF with the public housing and other Federal tenant-based rental assistance programs in response to public comment and HUD's policy of aligning HUD programs. HUD is making this clarification in the income regulations at § 93.151 to better help HTF grantees in complying with HTF program requirements.

HUD is also revising the header for paragraph (d) of § 93.151 to read as "*Required documentation for Annual Income calculations*" to clarify the intent of the paragraphs and align with the HOME income rules.

Determining Family Composition and Projecting Income in the HTF Program

HUD is revising § 93.151 to add a new paragraph (e), entitled "*Determining Family Composition and Projecting Income*" to clarify existing HUD policy that grantees must calculate annual income by projecting the prevailing rate

of income of the family at the time the grantee determines that the family is income eligible. In addition, HUD clarifies that annual income includes income from all persons living in the family except live-in aides, foster children, and foster adults regardless of which definition of annual income the grantee applies to its HTF-assisted programs or projects. HUD also clarifies that income determinations made in the HTF program are valid for a period of 6 months. Unless the HTF grantee is exempt from projecting a family's annual income because it is accepting the annual income calculation performed pursuant to § 93.151(a)(1) through (3), the grantee may not assist a family whose income determination was made more than 6 months prior to the provision of HTF assistance. In § 93.151(e)(1), HUD is also permitting grantees to use the certification process established in § 5.618(b) when imputing income for families whose net family assets, as defined in § 5.603, do not exceed \$50,000, without taking further steps to verify the accuracy of the declaration. Lastly, HUD clarifies that for families living in HTF-assisted rental housing units, any rental assistance provided to the family under a Federal tenant-based rental assistance program or any Federal or State project-based rental subsidy provided to the HTF rental housing unit is not tenant income for purposes of determining annual income.

Use of Adjusted Income in the HTF Program

HUD also revises § 93.151 to add a new paragraph (f) to clarify that grantees do not have to calculate adjusted income in the HTF program. This paragraph explains that the only time a tenant's adjusted income is relevant to the HTF program is if a family or unit is assisted with Federal tenant-based rental assistance (*e.g.*, HCV program, HOME tenant-based rental assistance, etc.), public housing, or by a Federal or State project-based rental subsidy. In those cases a grantee must then accept the determination of adjusted income made under that program's rules.

Qualification as Affordable Housing: Rental Housing Under the HTF Program

HUD revises § 93.302(e)(1) to update the reference to § 93.151(c) to read as § 93.151(d). In addition, HUD revises § 93.302(e)(2) to conform to the new requirement that grantees must continue to accept annual and adjusted income determinations performed under the rules of those programs for subsequent income determinations during the HTF affordability period for HTF-assisted

units where the unit is assisted by the PHP, through Federal or State project-based rental assistance subsidies, or where the tenant is assisted by Federal tenant-based rental assistance. In the sixth year of an HTF rental project's affordability period, a grantee is not required to review source documentation for families assisted under the PHP, a Federal tenant based rental assistance program, or by a Federal or State project-based rental subsidy. Additionally, HUD notes that § 93.302(b) of the HTF regulation already specifies that for projects with project-based rental subsidies, the HTF grantee may continue to permit the project owner to charge the maximum rent allowable under the Federal or State project-based rental subsidy program. Lastly, HUD amends the last sentence of paragraph (e) to update the reference to § 93.151(a)(1)(iii) to read as § 93.151(d)(2).

F. HOPWA Program Changes

HOPWA Income Determinations

This final rule makes various changes to clarify how jurisdictions should make income determinations for the HOPWA program for resident rent payments. As explained in the proposed rule's preamble, Section 859 of the AIDS Housing Opportunity Act (42 U.S.C. 12908) requires that HOPWA rental assistance "be provided to the extent practicable in the manner" of the Section 8 program. Accordingly, the changes this final rule makes to the HOPWA regulations in 24 CFR part 574 generally track the changes this final rule makes regarding income determinations, income examinations, income reexaminations, net family asset requirements, and de minimis errors for the HCV program, the Section 8 program that is the most practicable for the largest share of HOPWA-funded projects to track. Accordingly, HOPWA has adopted most of the provisions in §§ 5.609, 5.611, 5.617, and 5.618, where practicable, in addition to many of the changes in part 982. Although HUD recognizes additional regulatory changes could be made to bring HOPWA rental assistance into closer alignment with the Section 8 program, HUD has determined some changes are not practicable to implement in HOPWA, as explained below, and other changes would require a separate rulemaking because they are beyond the scope of this particular rulemaking.

As discussed in the proposed rule, this final rule revises part 574 to apply the part 5 definition of net family assets in HOTMA as applied to the Section 8 program, except the value of a home of

a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other assistance for which homeowners are eligible under the HOPWA program is excluded from the definition.

Section 574.310(d) is being revised to clarify the use of annual and adjusted income in the calculation of resident rent payments for persons receiving rental assistance or residing in any rental housing assisted under the HOPWA program, excluding short-term supported housing. Section 574.310(d) requires that the resident rent payments shall be the higher of three options. HUD is clarifying that for option one, the rent payment including utilities would be 30 percent of the family's monthly adjusted income. Option two is clarified as ten percent of the family's monthly income. Option three, which applies if a family receives welfare assistance from a public agency, remains unchanged.

As stated in § 574.310(e)(1)(i), references to PHAs and responsible entities in §§ 5.609 and 5.611 are understood to refer to the grantees or project sponsors that are determining income. This provision has been added to provide clarity to the HOPWA grantees on their roles and responsibilities.

HUD has determined that it is not practicable to permit permissive deductions in the HOPWA program as this final rule permits PHAs to do in the HCV program under § 5.611(b). HOTMA amends section 3 of the 1937 Act to provide PHAs with the ability to apply permissive deductions in the public housing, HCV, and Section 8 moderate rehabilitation programs. Other entities, even when administering the 1937 Act programs, were not provided this statutory authority. Likewise, HUD does not see any intent or justification in either HOTMA or the HOPWA program statute to give all HOPWA grantees and project sponsors the same ability and accountability as PHAs with developing and administering permissive deductions. Moreover, unlike in the HCV program, PHAs are just one subset of the entities that may administer HOPWA-funded rental assistance and housing, and HUD sees no intent or justification in HOTMA or the HOPWA program statute to provide PHAs with greater ability or accountability than other HOPWA grantees in administering HOPWA assistance. Accordingly, the HOPWA rule does not incorporate the part 5 provision on permissive deductions.

Additionally, unlike the Section 8 programs that make hardship exemptions mandatory, this final rule

allows HOPWA grantees to make their own determination on whether to grant hardship exemptions. If a grantee implements hardship exemptions in their program, the grantee must follow the requirements of the revised § 5.611(c) through (e) for families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expenses deductions from annual income under § 5.611(a)(3), as well as families that apply for a continued child care expense deduction. To use the authority, the grantee must develop policies and procedures for qualifying and granting hardship exemptions in accordance with the requirements contained in § 5.611(c) through (e). Given the amount of administrative work required to institute these hardship exemptions as provided for the Section 8 programs, HUD has determined that it is practicable only to apply § 5.611(c)–(e) to HOPWA grantees who determine they have the capacity and choose to make available the hardship exemption as provided by § 5.611(c)–(e). In addition to the grantee's discretion to grant hardship exceptions, grantees are subject to Federal nondiscrimination requirements, including the obligation to provide reasonable accommodations that may be necessary for households with family members with disabilities.

This rule also revises part 574 to incorporate HOTMA's provisions for restrictions on assistance to families with certain assets but only for activities subject to the resident rent payment requirements.

Section 574.310(e)(1)(vi) restates the requirement that grantees disallow increases in earned income of persons with disabilities occupying HOPWA-assisted rental units as stated in § 5.617(e). As HUD is removing the requirement in § 5.617 two years after the effective date of this rule, HUD is only requiring that grantees follow § 5.617 during that time period.

Section 574.310(e)(3) details requirements for obtaining and documenting third-party income verification consistent with the provisions in § 982.516(a), aligning HOPWA requirements with the HCV program to the extent practicable. HUD recognizes that grantees do not have access to the same information that PHAs do; however, HUD believes the flexibility built into the regulation still makes it practicable for HOPWA grantees and project sponsors to comply with third-party verification requirements.

Lastly, § 574.310(e)(4)(v) allows a HOPWA grantee to provide a family with retroactive rent decreases in the event that the family fails to provide a grantee with timely information about a decrease in income that would trigger an interim reexamination. In these instances, just as in the HCV program, HOPWA grantees will have the option of retroactively adjusting rent as of the date of the change leading to the interim reexamination of family income or the effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination). To provide a retroactive rent decrease to an eligible family, the HOPWA grantee must develop a written policy allowing for retroactive rent decreases. HUD believes that these revisions may be made to the HOPWA regulations because they are consistent with changes in the HCV program and because HUD has determined that it is practicable to allow HOPWA grantees the same discretion to apply rent decreases retroactively, as is performed in the HCV program. For more information on how this provision operates, please see the extended Preamble discussion on Interim Reexaminations below.

G. Supportive Housing for the Elderly (Section 202) and Supportive Housing for Persons With Disabilities (Section 811) Programs

Definitions

This final rule updates certain definitions in the Section 202 and Section 811 program regulations to revise outdated references, clarify ambiguous terms, and consistently apply Section 8 provisions in part 5 of this title to the Section 202 and Section 811 programs. HUD is adding a definition of "Net family asset" to § 891.105 and defining it consistently with § 5.603. HUD is also revising the defined term "Tenant payment to Owner" at § 891.105 to "Tenant rent" while maintaining its definition. HUD is updating the corresponding instances of "tenant payment" (in part 891 that do not mean "Total tenant payment") to "Tenant rent." This change does not affect the use of the defined term and merely avoids confusion between "tenant payment" and "Total tenant payment." HUD is defining "Gross rent" for all Section 202 and Section 811 projects at § 891.105 consistent with the Section 8 Housing Assistance Payment program at § 880.603(c)(3). HUD is therefore removing the project-specific definitions of "Gross rent" for Section

202/8 projects at § 891.520 and for Section 202/162 projects at § 891.655.

Use of Section 8 Income Reexamination and Eligibility Requirements in the Section 202 and Section 811 Programs

The Section 202 and Section 811 programs have income eligibility requirements, including income reexamination requirements, that follow Section 8 requirements. In this final rule, HUD is revising §§ 891.410(g)(1) and (3) (Section 202 program) and §§ 891.610(g)(1) and (3) (Section 811 program) to replace outdated cross references to part 813 of this chapter, which HUD removed in a final rule that took effect November 18, 1996 (61 FR 54492), with references to the Section 8 project-based assistance program at § 5.657. These references provide the regular income reexamination requirements as well as the income eligibility requirements. HUD is further revising the interim reexamination requirements at § 891.410(g)(2) and § 891.610(g)(2) by replacing the references to lease provisions with references to the Section 8 project-based assistance program at § 5.657. These changes provide for consistent application of Section 8 requirements in part 5 to the Section 202 and Section 811 programs and do not substantively change the requirements for grantees. Finally, HUD is revising § 891.410(g)(3)(i) to clarify that termination of eligibility for project rental assistance payment does not mean removal of the unit or residential space from the Project Rental Assistance Contract (PRAC).

Technical Amendments

HUD is making several technical amendments to part 891 in this final rule. This final rule updates outdated citations in the Section 202 and Section 811 program regulations. HUD is removing and reserving § 891.230 because it purports to apply selection preferences in part 5, subpart D, but there are no longer selection preferences defined in part 5 (including subpart D). HUD is making editorial revisions to § 810.410(g)(1) to discuss changes to payment amounts in one sentence and changes to the unit size in another sentence. HUD is also removing the reference to § 5.410(g) for informal review provisions for the denial of a Federal preference at § 891.610(e) because § 5.410(g) was removed. These changes will not affect grantees in a substantive manner, because the references are to provisions previously eliminated by statute and removed by HUD in a final rule that took effect April 28, 2000 (65 FR 16720).

This final rule also clarifies that the new "Net family assets" definition this rule adds to § 5.603 is applicable to the Section 202 and Section 811 programs, and there is no discretion to use the IRS income definition as suggested in the "HOTMA Section 102" chart in the proposed rule. The proposed rule's chart referenced the IRS definition; this was a drafting error. This final rule also clarifies that the hardship exemptions provided at § 5.611(c) through (e) are applicable to the Section 202 and Section 811 programs. The "HOTMA Section 102" chart in the proposed rule mistakenly stated that the hardship exemptions were not applicable; this error resulted from HUD conflating "adjusted income" and "minimum rent."

Finally, this final rule replaces "should" with "must" in § 891.440 regarding Section 202/811 owners providing utility data as part of a utility allowance analysis. This change clarifies that providing these data is a requirement, which is not a substantive change because the utility allowance analysis has always treated this as a requirement.

H. PHA Requirements

Over-Income Families in Public Housing

Based on the public comments received during the reopened comment period, HUD makes changes to the new § 960.507, adds a new § 960.509, and inserts cross-references accordingly in §§ 5.520, 5.628, 960.253(a)(3) and (f)(1), 960.257(a)(5) and (b)(4) and 966.4(a) and (l). HUD also adds new or amended definitions at § 960.102, including "alternative non-public housing rent" (alternative rent), "covered person," "non-public housing over-income family" (NPHOI family), and "over-income family" (OI family) which are discussed above. Small additional changes for clarity are also added throughout. Additionally, HUD adds a sentence regarding compliance for NPHOI families to § 960.600.

In § 960.206, HUD adds a new paragraph (b)(6) stating that the PHA may adopt a preference for admission of current NPHOI families who become a low-income family as defined in § 5.603(b) and are eligible for admission to the PHP. PHAs whose policy is to terminate OI families after the 24 consecutive month grace period may not use this preference because this preference may not be applied to current public housing families or families who have vacated the public housing project.

In § 960.253(a), HUD adds a new paragraph (3) in relation to the choice of rent for NPHOI families. The intent of this new paragraph is to make clear that, if allowed by PHA policy to remain in a public housing unit, NPHOI families will not have a choice in rent and instead must pay the alternative rent as defined in § 960.102. Paragraph (f)(1) of § 960.253 has been revised to address the new requirements for PHAs when conducting reexamination of family income for families paying the flat rent after a family is determined to be OI. Currently, the PHA conducts a reexamination of family income and composition at least once every three years for a family paying the flat rent. In the proposed rule, this paragraph had been modified to make clear that once a PHA determines a family is OI, the PHA must follow the income examination, documentation, and notification requirements under § 960.507(c) including conducting a reexamination of family income annually instead of once every three years.

In § 960.257(a)(5), HUD makes clear that the PHA may not conduct an annual reexamination of family income for NPHOI families. In § 960.257(b)(4), HUD clarifies that when OI families are in the period of up to six months before their tenancy is terminated, the PHA must conduct an interim reexamination of family income as otherwise required because the OI family is still a program participant prior to termination. However, the resulting income determination will not make the family eligible to remain in the PHP beyond the period defined by PHA policy.

HUD is making extensive changes to the proposed § 960.507. Throughout the sections addressing OI families, HUD clarifies that the period of time a family has to reside in their unit before having to vacate or pay a higher rent is 24 consecutive months, rather than 2 years.

HUD also includes a new § 960.509, covering the provisions that must be in leases provided to NPHOI families paying the alternative rent. HUD also makes conforming edits to use defined terms or terms more understood as part of the PHP, rather than introducing new terminology.

In § 960.507(a)(1), HUD clarifies that the OI provisions at § 960.507 apply to all families in the PHP, including families in the FSS program, or receiving the Earned Income Disregard (EID). In paragraph (a)(1), HUD has added language specifying the following: (1) mixed families (as defined in § 5.504) who are NPHOI families pay the alternative rent in accordance with the continued occupancy policy for OI

families; (2) NPHOI families cannot participate in public housing resident councils; (3) NPHOI families cannot participate in programs only for public housing or low-income families; and (4) NPHOI families cannot receive Federal assistance, including a utility allowance, from PHAs.

In paragraph (a)(2), HUD states that PHAs must implement the requirements of § 960.507 by amending all applicable admission and continued occupancy policies according to the provisions in 24 CFR part 903. All PHAs must have effective OI policies, consistent with § 960.507, no later than 120 days after the date of publication of this final rule in the **Federal Register**. HUD has determined that this requirement is fair to PHAs considering PHAs have had years of prior notice that these policies will be required as detailed in HUD's July 26, 2018 notice (83 FR 35490) (2018 FR Notice) and Notice PIH-2019-11(HA) issued May 3, 2019.⁷ The 2018 FR Notice announced the official applicable effective date of the provisions of Section 103 of HOTMA as September 24, 2018, and instructed PHAs to complete the process for amending their OI policy within six months after the applicable date of the 2018 FR Notice or by March 24, 2019.

It should be noted that OI families who have already exceeded the 24 consecutive month grace period, in accordance with a continued occupancy policy established in compliance with the 2018 FR Notice, are not entitled to another 24 consecutive month grace period when the rule is published. However, until this rule is effective, HUD will not enforce any requirement to terminate OI families who exceed the OI limit for 24 consecutive months. If a PHA chooses not to enforce an established termination policy, then the PHA must continue to treat such OI families as public housing families and offer the option of paying the income-based rent or a flat rent. For PHAs that adopted OI related waivers under HUD's CARES Act notice (Notice PIH 2021-14),⁸ guidance on the status of OI families and the amount of rent to charge the family is detailed in the Navigating CARES Act Waiver Expiration factsheet.⁹

Consistent with the proposed rule, § 960.507(b) describes how to determine the OI limit. The OI limit is determined by multiplying the applicable income

limit for a very low-income family as defined in § 5.603(b), by a factor of 2.4. In paragraph (c), HUD provides additional details on the procedures a PHA must follow in notifying OI families of their status. HUD is removing proposed language referring to multiple ways for the PHA to become aware of a family's OI status, instead specifying that OI procedures are triggered by annual or interim reexaminations, in order to reduce burden on PHAs and provide clarity on exactly how a PHA is to determine that a family is OI. When a PHA determines that a family is OI, the PHA must notify the family in writing of the family's OI status at that time, in accordance with paragraph (c)(1).

If a family continues to exceed the income limit for 12 consecutive months after receiving the first OI determination, the PHA must provide a second notice in accordance with § 960.507(c)(2). This second notice informs the family that they have been OI for 12 consecutive months and, if the family continues to be OI for another 12 consecutive months, the PHA will follow its continued occupancy policies for OI families in accordance with § 960.507(d). This notification must be provided within 30 days after the income examination that led the PHA to determine that the family has been OI for 12 consecutive months. The notice must also include the estimated alternative rent (*i.e.*, based on data current to the date of the notice), when a PHA's OI policy permits NPHOI families to remain in a public housing unit paying the alternative rent.

For families that maintain their OI status for a further 12 consecutive months (24 consecutive months in total), the PHA must provide the family with a third notice in accordance with § 960.507(c)(3). The third notice informs the family that it has exceeded the OI limit for 24 consecutive months. The third notice also states that the family must either pay the alternative rent as an NPHOI family or have their tenancy terminated in no more than six months, depending on the PHA's continued occupancy policy for OI families. If the family is allowed to stay as a NPHOI family under the PHA's OI policy, the PHA must also present the family with a new NPHOI lease under the terms contained in the new § 960.509 and inform the family that the least must be executed no later than 60 days of the date of the notice or at the next lease renewal, whichever is sooner.

Furthermore, HUD specifies in § 960.507(c)(4) that if a family falls below the OI limit at any time during the 24 consecutive months, the family is

⁷ Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-11pihn.pdf>.

⁸ Available at: <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-14.pdf>.

⁹ Available at: https://www.hud.gov/sites/dfiles/PIH/documents/CaresAct_Occupancy_Policiesv2.pdf.

entitled to a new 24 consecutive month grace period, and the notification cycle starts over.

HUD is modifying and clarifying, in what is now § 960.507(d), the requirements for PHAs after a family has exceeded the OI limit for 24 consecutive months. Rather than specify how to determine the alternative non-public housing rent in that provision, HUD has moved that detail into the definition of the term “alternative non-public housing rent” (or “alternative rent”) and instead simply states that the PHA must charge NPHOI families the alternative rent within 60 days of, or terminate the family’s tenancy within six months after, the third notification to the family (pursuant to § 960.507(c)(3)), in accordance with the PHA’s policies and State and local laws. If a PHA is terminating the family’s tenancy, the PHA must continue to charge the families their public housing rent during the period prior to the termination.

In § 960.507(e), HUD clarifies the status of OI families once the 24-month grace period ends. The family’s status will depend on the continued occupancy policy of the PHA. For PHAs that have a policy to terminate OI families, those families will still be PHP participants until their tenancy is terminated in the time frame established by the PHA (up to 6 months). During that time, the family may request an interim reexamination of income to potentially reduce their rent burden. However, the resulting income determination will not make the family eligible to remain in the PHP beyond the period before termination as defined by PHA policy.

For PHAs that have a policy to allow OI families to pay the alternative rent, those families will no longer be PHP participants once the 24-month grace period ends, and they execute a NPHOI lease. In other words, the OI family members will continue to be PHP participants until their tenancy is terminated or they execute the NPHOI lease. Section 960.509(a) states that the OI family must execute a NPHOI lease no later than the earlier of the next lease renewal or 60 days after the PHA notifies the family, pursuant to § 960.507(c)(3), that they have been OI for 24 consecutive months. If the family does not execute the NPHOI lease within this period, per § 960.509(a), the PHA must terminate the tenancy of the family no more than 6 months after the notification under § 960.507(c)(3) in accordance with § 960.507(d)(2). Notwithstanding, pursuant to § 960.509(a), the PHA may permit, in accordance with its OI policies, an OI

family to execute the lease after the deadline, but before termination of the tenancy, if the OI family pays the PHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the lease execution deadline. HUD largely retains the reporting requirements in the proposed rule, now found in § 960.507(f), for PHAs. HUD has only added language that would allow HUD to request other information on OI families from PHAs.

As a response to requests and comments that HUD received, both upon the initial proposed rule and the reopening of public comment, HUD is adding in this final rule a new § 960.509, which sets forth the lease requirements for OI families that are remaining in a public housing unit and paying the alternative rent as NPHOI families. This new section pulls heavily from existing regulations governing public housing leases in § 966.4, with adjustments made as needed to accommodate the fact that these families are not public housing participants. Notwithstanding, PHAs must still comply with Federal nondiscrimination requirements, including but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504, and Title II of the Americans with Disabilities Act (ADA), as applicable. In response to the public comment regarding reasonable accommodations, PHAs still have a legal obligation to provide for reasonable accommodations that may be necessary for individuals with disabilities. PHAs do not have discretion whether to provide reasonable accommodations. Moreover, in the context of unit transfers for a family when repairs to improve the life, health, or safety of a resident cannot be made within a reasonable time, consistent with fair housing and civil rights obligations, PHAs must provide comparable alternative accommodations having the appropriate number of bedrooms based on the family’s need and accessible accommodations and reasonable accommodations for persons with disabilities.

Section 960.509(a) states that families who will remain as tenants paying the alternative rent must execute the lease for the NPHOI family no later than the earlier of the next lease renewal or 60 days after the third OI notification as described in § 960.507(c)(3). If the family does not execute the lease within this time, the PHA shall terminate the tenancy of the OI family pursuant to § 960.507(d)(2).

In paragraph (b), HUD specifies the various provisions that must be in leases for NPHOI families, such as information

on who is a party to the lease, how long the lease is for, what the costs covered by the lease are, how the lease is to be renewed or terminated, the tenant’s rent and possible charges, tenant rights for use, the responsibilities of both the PHA and the tenant, repair and access obligations, procedures around lease termination and grievances, and how leases are to be modified.

The regulations at § 960.600 have been revised to include an additional sentence confirming that NPHOI families are not required to comply with the Community Service and Self-Sufficiency Requirements (CSSR). In the revised § 960.601, the definition of individuals exempt from the community service requirements is updated to reflect that members of NPHOI families are also exempt from those requirements. It should be noted that OI families, in the period before termination of tenancy or prior to becoming NPHOI families, are still PHP participants and so must remain compliant with all PHP requirements including the community service and self-sufficiency requirements (CSSR). New language in an amended § 964.125 clarifies that members of a NPHOI family are not eligible to be members of a public housing resident council organized in accordance with 24 CFR part 964, subpart B.

HUD has made conforming changes to the lease requirements provision under § 966.4(a)(2) regarding the term of the public housing lease for PHAs that have a continued occupancy policy under § 960.507(d)(2). This change requires the public housing lease to convert to a month-to-month term to account for the period before tenancy termination as determined by PHA policy.

The regulation at § 966.4(l)(2)(ii) has also been revised to remove the reference to § 960.261 as one of the grounds for termination of tenancy and replaced it with a reference to § 960.507. To conform to HOTMA, this final rule also removes the existing § 960.261 from HUD’s regulations, which provides that PHAs may not evict or terminate the tenancy of a family that is over the income limit for public housing if the family is participating in the FSS program, or if they receive EID.

Section 960.261 has been removed as a part of the rulemaking process for two reasons. First, the reference made in § 960.261 to families who are over income is currently understood to mean a family whose annual income exceeds the limit for a low-income family at the time of initial occupancy which is 80 percent of the area median income (AMI) or lower. However, with HOTMA, Congress established a statutory

framework of how PHAs must treat OI families. Additionally, HOTMA does not establish the OI limit at 80 percent of AMI. Therefore, HUD has determined that § 960.261 must be removed because the HOTMA OI limitations, as well as these implementing regulations, supersede the prior regulation provision at § 960.261. As a result of removing § 960.261, a PHA may not evict or terminate the tenancy of OI families in the PHP based on income until they have been over 120 percent AMI for 24 consecutive months and the PHA has implemented an OI policy in their written policies. Some PHAs may need to amend their written policies if they previously had a policy to not allow families to stay in the PHP if their income exceeded 80 percent of AMI.

Second, § 960.261 has been deleted to remove the exception to evict or terminate the tenancy of a family solely because the family is OI provided the family has a valid contract for participation in an FSS program under part 984 or if the family receives EID. With this final rule, HUD intends for there to be no exceptions to the HOTMA OI provision.

Enterprise Income Verification (EIV)

This final rule revises § 5.233(a)(2)(i) to clarify that the use of EIV is required only at annual reexaminations, and not at interim reexaminations. However, PHAs and owners may use EIV for interim reexaminations if desired. Prior to this final rule, HUD interpreted “reexaminations” in § 5.233(a)(2)(i), which required the use of EIV at all reexaminations, to include interim reexaminations. However, since the EIV Income Report can take up to 90 days to be updated, it often is not helpful during an interim reexamination. This change also decreases PHAs’ and owners’ administrative burden.

Consent Forms

The final rule changes § 5.230 to clarify that, except in enumerated circumstances, on or after this final rule’s effective date, once an applicant has signed and submitted a new consent form, they are not required to do so again at the next interim or regularly scheduled income examination.

Additionally, this rule retains in large part the new paragraph (c) added by the proposed rule to § 5.232 but removes the reference to the PHA’s Annual Plan as the proper place for a PHA to establish policies regarding an applicant, participant, or family member’s revocation of consent to access financial records. Since the PHA’s Annual Plan is not the appropriate place for such a policy, the final rule changes this and

allows PHAs to address this within an admission and continued occupancy policy instead. As discussed in the preamble to the proposed rule, HOTMA provides PHAs with the discretion to determine whether applicants or recipients are ineligible for benefits if they, or their family members, refuse to provide or revoke the authorization to obtain financial records. The revision to § 5.232 is therefore necessary to clarify that the penalties described in that section will not apply if applicants or participants or their family members revoke their consent for the PHA to access financial records unless the PHA has established a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission.

I. General Requirements

Inflationary Index

For consistency, this final rule specifies in the following regulatory provisions that the inflationary index for all necessary adjustments will be based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W):¹⁰ §§ 5.603(b)(3)(ii); 5.609(a)(2) and (b)(1); 5.611(a)(1) and (2); 5.618(a)(1)(i) and (b)(1); 5.659(e); 574.310(e)(3)(ii) and (f); 882.515(a), 882.808(i)(1), 960.259(c)(2); and 982.516(a)(3). HUD has chosen to use the CPI-W based on public comments and because HUD believes this publicly available index is an accurate measure of inflation to use in making income and asset determinations in HUD programs. Moreover, the Cost-of-Living Adjustment (COLA) adjustment for Social Security and SSI benefits for approximately 70 million Americans is based on increases in the CPI-W and consequently many PHAs, owners, grantees, and families are familiar with it.

In this final rule, annual inflationary adjustments will be established by rounding to the nearest dollar except that annual inflationary adjustments for the dependent deduction (§ 5.611(a)(1)) and the elderly or disabled family deduction (§ 5.611(a)(2)) will be rounded to the next lowest multiple of \$25. HUD makes this differentiation because HOTMA requires HUD to determine the dependent and elderly or disabled family deductions for each year by “rounding such amount to the next lowest multiple of \$25.” HUD notes that the amounts described in the income exclusions in § 5.609(b)(14) and (15) both reference the dependent deduction,

which is required to be rounded to the lowest multiple of \$25. HUD declines to round to the next lowest multiple of \$25 elsewhere in this final rule.

In general, HUD expects to make the revised amounts effective January 1st of each year for the following requirements in accordance with the inflationary adjustments covered by this final rule: the value cap on net family asset cap for imputing returns (§ 5.609(a)(2) and (b)(1)); the mandatory deduction for elderly and disabled families (§ 5.611(a)(2)); the restriction on the net family assets (§§ 5.618(a)(1)(i), 574.310(f)); the amount of net assets the PHA or owner may determine based on a certification by the family (§§ 5.618(b)(1), 5.659(e), 92.203(e), 93.151(e); 574.310(e)(3)(ii); 960.259(c)(2), and 982.516(a)(3)); and the mandatory deduction for a dependent (§ 5.611(a)(1)), which is also used to calculate the income exclusion for earned income of dependent students (§ 5.609(b)(14)) and adoption assistance payments (§ 5.609(b)(15)).

De Minimis Errors

HUD revises provisions in this final rule (in §§ 5.609(c)(4), 5.657(f), 574.310(h), 882.515(f), 882.808(i)(5), 960.257(f), and 982.516(f)) to define a de minimis error as an error that results in a difference in the determination of a family’s adjusted income of \$30 or less per month. This change from defining a de minimis error as a percentage error will enable a PHA or owner to make de minimis determinations on a family-by-family basis rather than having to do a full portfolio review to determine if a PHA, owner, or grantee exceeds the threshold. In addition, using a dollar amount instead of a percentage will make de minimis errors easier to calculate. However, HUD also provides that through issuance of a **Federal Register** notice for comment, HUD may re-define de minimis errors.

In addition, to clarify that the de minimis protections apply to all calculations of income, not just during interim reexaminations, HUD moves the language about the de minimis safe harbor into its own paragraph in each location in which it is included in the regulations.

HUD also adds language to clarify that where a PHA or owner has made a mistake resulting in the family underpaying their rent, the family will not be held liable for the underpaid rent. This is in addition to language that was included in the proposed rule that would require PHAs and owners to repay families that were overcharged due to miscalculation errors.

¹⁰ Social Security Administration, *CPI For Urban Wage Earners And Clerical Workers*, <https://www.ssa.gov/oact/STATS/cpiw.html>.

Interim Reexaminations

In response to public comments asking for additional clarification on interim reexaminations, this final rule ensures that the language in §§ 5.657(c), 574.310(e)(4), 960.257(b), 882.515(b), and 982.516(c) is as consistent as possible. HUD also revises the language to clarify that the threshold for when a PHA, owner, or grantee must conduct a reexamination due to decreases in a family's income is a change of ten percent or a lower threshold set by the PHA or owner. Further, in most circumstances, PHAs, owners, or grantees must conduct interim reexaminations if a family's income has increased by ten percent or more, or such other amount established by HUD through notice.

HUD also adds language in each instance clarifying that "reasonable" interim reexamination processing time should be based on the amount of time it takes to verify information, but generally should not be longer than 30 days after changes in income are reported. HUD does not add more specific language in § 960.253(g), which addresses the ability of a public housing tenant to switch from flat rents to income-based rents due to a hardship, as it is beyond this rulemaking's scope. However, HUD expects that PHAs will follow a similar time frame for changing rent determination methods due to hardship as they do for other hardship evaluations. HUD also did not add the more specific language to § 574.310(e)(4) because the HOPWA program rule does not provide for flat rents.

Finally, HUD adds language in each location regarding the effective dates of any changes in rent due to an interim reexamination. If the tenant complies with the interim reporting requirements, the PHA, owner, or grantee must give the tenant 30 days advance notice of any rent increase, and the rent increase will be effective the first of the month commencing after the end of the 30-day period. If the tenant has complied with the interim reporting requirement and the tenant's rent will decrease, the change in rent is effective on the first day of the month after the date of action that caused the interim certification, for example the first of the month after the date of loss of employment. A 30-day notice is not required for these rent decreases.

If the tenant does not comply with the interim reporting requirements, and the PHA, owner, or grantee discovers the tenant has failed to report changes as required, the PHA, owner, or grantee must initiate an interim reexamination and implement rent changes as

follows: PHAs, owners, or grantees must implement any resulting rent increase retroactive to the first of the month following the date that the action occurred, and any resulting rent decrease must be implemented no later than the effective date of the first rent period following completion of the reexamination.

However, rent or family share decreases may also be applied retroactively at the PHA's, owner's, or grantee's discretion, in accordance with the conditions established by the PHA, owner, or grantee in written policy. For example, a PHA, owner, or grantee may adopt a policy that would make the effective date of an interim reexamination retroactive to the first of the month following the date of the actual decrease in income as opposed to the first of the month following the interim reexamination. However, the final rule clarifies that a retroactive rent or family share decrease may not be applied prior to the later of the first of the month following the date of the change leading to the interim reexamination or the first of the month following the effective date of the family's most recent previous income examination (either interim or annual reexamination, or the first of the month following the family's initial examination if that was family's only income examination before the interim reexamination in question). In other words, a family's failure to report the change at a previous examination or reexamination may not be taken into consideration in applying the effective date of the interim reexamination.

The PHA, owner, or grantee may also choose to establish conditions or requirements for when such a retroactive application would apply (for example, where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to the PHA's, owner's, or grantee's management operations). In applying a retroactive change in rent or family share as the result of an interim reexamination, the PHA or owner must clearly communicate the impact of the retroactive adjustment to the family so there is no confusion over the amount of the rent that is the family's responsibility. In the HCV program, moderate rehabilitation program, and HOPWA's project- or tenant-based rental assistance programs, the PHA or grantee must also clearly communicate the impact of the retroactive adjustment to the owner as well. These policies may reduce the potential hardship on families and eliminate or significantly

reduce the amount a family may owe for back rent if the family has had difficulty in making timely rent payments during the time between loss of income and the interim reexamination.

HUD anticipates that questions may arise about whether the retroactive rent regulations may apply back to decreases in income occurring before the effective date of this final rule. Any interim reexamination conducted under this final rule may not be applied retroactively to any period of time prior to the effective date of the final rule.

HUD intends to issue additional guidance in the future on retroactively applying interim reexaminations for PHAs and owners that may be interested in permitting retroactive rent decreases.

In § 960.257(c) and (d), HUD inserts the word "continued" to clarify that the policies PHAs are required to adopt regarding annual and interim reexaminations are part of the PHA's admission and continued occupancy policies. This brings the language in those paragraphs in line with language referring to the same policies in § 960.507(d) to create consistency when referring to the same things.

HUD intends to publish additional guidance to PHAs and owners on how they may use self-certifications from tenants and how PHAs and owners may help their tenants determine if any income change meets the threshold. HUD does acknowledge, however, that depending on the PHA's or owner's policies, the PHA or owner may be required to do extensive reviews of income to determine if the change in income meets the relevant threshold to trigger an interim reexamination.

Other Guidance

This final rule and this preamble reference additional guidance that HUD will publish relating to implementation. Such guidance will be issued for the various HUD programs impacted by this final rule and will also include the applicable requirements for PHAs and owners, including fair housing and civil rights requirements, to ensure administration and implementation of HOTMA's statutory mandates and this final rule.

In addition to the HOTMA Section 102 provisions implemented through this final rule, Section 102 further provides in section 3(a)(7)(e) of the USHA that HUD shall develop a mechanism for disclosing information to a PHA for the purpose of verifying the employment and income of individuals and families in accordance with section 453(j)(7)(E) of the Social Security Act (42 U.S.C. 653(j)(7)(E)), and shall ensure PHAs have access to information

contained in the 'Do Not Pay' system established by section 5 of the Improper Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. 112–248; 126 Stat. 2392). HUD will issue guidance on this provision regarding how and what information PHAs may access consistent with the Section 102 effective date established by this final rule of January 1, 2024.

J. Conforming Changes to Section 8 Moderate Rehabilitation Regulations at 24 CFR Part 882

HUD is using this final rule to conform its moderate rehabilitation program and moderate rehabilitation SRO programs to HOTMA Section 102 and 104. While HUD's proposed rule inadvertently omitted proposed conforming changes to the moderate rehabilitation regulations at § 882.515 and the moderate rehabilitation SRO regulations at § 882.808 that it included for the public housing and other Section 8 programs, HUD has a solid justification for making these changes in this final rule.

Initially, Sections 102 and 104 of HOTMA amend the 1937 Act, respectively, to revise the frequency of family income reviews and calculations of income in HUD's public housing and Section 8 programs and to set limits on the assets that families residing in public housing and families receiving assistance under Section 8 may own. These HOTMA changes impact all Section 8 programs, including the Section 8 moderate rehabilitation program and the Section 8 moderate rehabilitation SRO program. Equally important, with respect to the income calculations, income reexaminations, and eligibility determinations, HUD's moderate rehabilitation programs function in the same manner as its HCV program. Specifically, the PHA (as opposed to the owner) is responsible for conducting income reviews and adjusting the tenant rent and housing assistance payment accordingly and is likewise responsible for issues related to a tenant's eligibility for admission to the program and continued assistance under the program. The owner does not have any role in income calculations, reexaminations, and eligibility determinations. Because of this similarity in functional roles and responsibilities to the HCV program, HUD believes that the public comments submitted in response to the proposed rule on these topics, which were presented as uniform policies impacting the public housing and all Section 8 programs in the same manner in the preamble discussion, provide HUD with a solid basis to make conforming

changes to its moderate rehabilitation program and moderate rehabilitation SRO program regulations. In this regard, the interests of the parties most affected by HUD conforming changes—PHAs and program participants—are substantially identical to the parties impacted by the changes made to the HCV program. Finally, most of the HOTMA income changes impacting the moderate rehabilitation programs are implemented by revisions to part 5 of this final rule. The ability to use these part 5 changes in accordance with other interrelated HOTMA Section 102 and 104 requirements would be hindered without conforming changes to part 882. For example, while the PHA could apply the asset limitation under the new part 5, it could not rely on the statutorily permitted self-certification of the family that they have less than \$50,000 in assets.

As a result, this final rule makes conforming changes to HUD's moderate rehabilitation regulations. These conforming changes are largely identical to those made to HUD's HCV program regulations at § 982.516. A discussion of the specific revisions to §§ 882.515 and 882.880 follows.

§§ 882.515(a) and § 882.808(i)(1)—Self-Certification of Net Family Assets

HUD is making conforming amendments to § 882.515(a) and § 882.808(i) for the moderate rehabilitation programs regarding the amendments made by HOTMA to allow families to self-certify when their combined net family assets are \$50,000 or less, with that amount adjusted by an inflationary factor. As discussed in the preamble of the proposed rule, Section 104 of HOTMA not only establishes a limitation on the amount and type of assets that a family residing in public housing or assisted under the Section 8 programs may own but also provides that the PHA or owner could determine the net assets of a family based on a certification by the family that their net family assets do not exceed \$50,000. This self-certification is codified at § 5.618(b). Under this final rule, HUD is also adding language on the self-certification of net family assets to moderate rehabilitation program regulations, consistent with the language added to the regulations specific to the other Section 8 programs. For more information on these Section 8 program changes, please see the discussion of the public comments received on the asset limitation and the self-certification under Section III, Income—Income from Assets, and Assets—Value of Assets, of this preamble.

§§ 882.515(b) and (e), and 882.808(i)(4)—Timing of Interim Reexaminations

HUD is making conforming changes to § 882.515(b), adding a new paragraph (e) to § 882.515, and adding a new paragraph (4) to § 882.808(i) for the moderate rehabilitation programs regarding the amendments made by HOTMA on requirements related to the timing of interim reexaminations. As discussed in the proposed rule, Section 102 of HOTMA deals with income reviews in HUD's public housing and Section 8 programs, including interim reexaminations. HUD is revising these regulations, consistent with revisions made for the program specific regulations for public housing and the other Section 8 programs, to implement requirements related to when interim reexaminations are conducted under HOTMA, what qualifies as a reasonable time for the PHA to conduct the interim reexamination, and the effective date of the rent changes. For more information on these Section 8 program changes, please see the discussion of public comments received related to interim reexamination issues under Section III—Interim Reexamination of Income, of this preamble.

§§ 882.515(f) and § 882.808(i)(5)—De Minimis Errors

HUD is making conforming changes by adding new paragraphs at § 882.515(f) and § 882.808(i)(5) for the moderate rehabilitation program and moderate rehabilitation SRO program regarding the amendments made by HOTMA for de minimis errors made by the PHA in calculating income. As discussed in the proposed rule, HOTMA provides that a PHA or owner will not be out of compliance with the statute's new provisions regarding income review and income calculation solely due to any de minimis errors made by the agency or owner in calculating family income. HUD is revising these regulations, consistent with revisions made for the program specific regulations for public housing and other Section 8 programs. For more information on these Section 8 program changes, please see the discussion of public comments received related to de minimis errors under Section III—De minimis errors, of this preamble.

III. The Public Comments

General Comments

Commenters submitted comments that were not on a specific proposal, but about the rulemaking in general. Some commenters expressed general support,

while others expressed a general opposition to the changes.

Some commenters suggested that HUD should choose between competing priorities by choosing alternatives that most reduce burdens or increase the likelihood that tenants can pay their rent. A commenter also expressed concerns that the proposed changes will hurt those who access HUD programs, particularly those with disabilities, and will price them out of extremely low-income programs. One commenter stated that the proposed rule would increase the difficulty for low-income populations supported with Federal housing funding.

A commenter stated that HUD should start an analysis to model HOTMA to determine the extent of adverse changes in PHA funding sources resulting from the changes and report the results to Congress prior to the changes going into effect.

HUD Response: HUD appreciates all the members of the public who submitted comments. This rulemaking is required due to statutory changes brought about by the enactment of HOTMA. HUD is sensitive to the needs of all populations participating in HUD programs and has considered the needs of all groups when making any discretionary changes. HUD therefore believes that this final rule appropriately balances the need for flexibility in HUD programs with the interest of protecting the investment of government funding involved.

Effective Date

Commenters stated that HUD should create an extended time after publication of the final rule before the rule is effective. Some suggested allowing PHAs up to 2 years to enforce the rule, while allowing PHAs to proceed earlier if they wish. Others stated that HUD should make the effective date 120 days after publication to allow for revision of training materials and to ease the transition for households.

HUD Response: HUD agrees that additional time after this final rule's publication will be appropriate before the provisions are effective; HOTMA also specifies that some of the statutory changes are not effective until the beginning of the calendar year after HUD issues implementing regulations. In addition to allowing PHAs and owners time to decide on how to exercise their discretionary authorities, HUD will need time to adjust its systems to properly account for these changes. Therefore, HUD established an effective date for the majority of this final rule of January 1, 2024. However,

because HUD has taken extensive comments and issued previous implementation direction for the provisions regarding public housing tenants who exceed the income limit, those regulatory provisions will be effective 30 days after the publication of this final rule.

Program Alignment

A. General

Commenters supported the idea of HUD aligning rules and regulations across HUD programs where possible. The commenters stated that such alignment would ensure consistency, minimize errors and duplicate work, and reduce administrative burdens, particularly where projects blend multiple forms of assistance. Some commenters stated specifically that HUD should work with the IRS to streamline HUD programs with the LIHTC program.

Commenters also stated that when HUD cannot align rules across HUD programs, HUD should describe the differences between the programs and have a rule specifying what rule takes precedence when programs conflict and multiple funding sources are being used for the same household.

HUD Response: HUD agrees with commenters advocating for aligned regulations. In this rule, HUD, to the extent practicable and allowed by statute, is aligning programmatic regulations and requirements across HUD programs. Aligning with LIHTC is outside this rule's scope, but HUD would note that income for tenants occupying LIHTC projects is calculated in accordance with 26 U.S.C. 42(g)(4) (referencing 26 U.S.C. 142(d)(2)(B)), which says "income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937." Section 1.42-5(b)(1)(vii) of title 26, Code of Federal Regulations, has similar language that states, "[t]enant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ('Section 8')." Therefore, HUD believes that LIHTC and HUD program income calculations are currently aligned and will continue to be aligned when the changes in HOTMA are codified.

When a project is using multiple sources of HUD funding, HUD already has in place programmatic policies and requirements on how to combine and administer those multiple sources. For

example, MFH addresses tenant rent issues for units with LIHTC financing and HAP assistance in the Multifamily Occupancy Handbook. PHAs and owners should continue to follow such policies.

B. HOME

Generally, commenters were in favor of aligning requirements between the HOME and other programs. Commenters stated that HUD should apply all revisions to adjusted income when combining HOME and other Federal programs. Commenters stated that HUD should adopt financial hardship exemptions for families receiving HOME TBRA but should do so through a separate process to ensure that all interested stakeholders have the opportunity to comment.

Others wrote that HUD should apply asset restrictions for any program funded by HOME to align regulations across the programs. However, one commenter stated that agencies that combine HOME funds with other program funds should be allowed to not enforce asset limitations.

A commenter asked for clarity on which entities are required to determine rent for HOME units receiving Federal or State subsidy, as the proposed rule seemed to require participating jurisdictions to do so, rather than the subsidy provider.

A commenter stated that, when a unit receives a Federal or State project-based rental subsidy, participating jurisdictions should rely on the other program's determination of adjusted income and rent calculations rather than requiring the participating jurisdiction to determine adjusted income.

HUD Response: HUD agrees with commenters that, to the extent possible, requirements between HUD programs should be aligned. That is why at § 92.203(a)(1) of the final rule HUD requires the PJ to accept the income determinations (initial, interim, and annual reexaminations or recertifications) performed by the PHA, owner, or rental subsidy provider when families applying for or living in HOME-assisted units receive Federal or State project-based rental subsidies. In addition, at § 92.203(a)(2) of this final rule, HUD permits PJs to accept the rental assistance provider's income determinations when families are applying for or living in HOME-assisted units and are also assisted by a Federal tenant-based rental assistance program. These revisions align HOME with other HUD programs when a responsible entity has made hardship deductions pursuant to the process established in § 5.611(c) through (e), as PJs must accept

the determination of annual and adjusted income performed under those program rules. For HOME TBRA, the proposed rule included the option for PJs to provide hardship exemptions in accordance with the process established in § 5.611, and those provisions are still included in this final rule.

There is no HOME statutory requirement to limit a family's assets or to remove a family from the HOME program if the family's net family assets exceed a threshold. HUD solicited public comment on whether HUD should impose asset limitations in the proposed rule to align with other programs. However, after due consideration and examination of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*), HUD has determined that it will not impose asset limitations through this rulemaking. Section 225(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12755(b)), which provides tenant protections in the HOME program, states in relevant part that "[a]n owner shall not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted under this subchapter except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause." HUD has never interpreted holding a certain level or type of assets as sufficient good cause for an owner to terminate a tenancy under the HOME statute and declines to do so in this rulemaking.

Similarly, HUD has determined that there is no statutory basis for excluding families from participating in HOME homeownership activities because of the amount or types of assets they own, and that imposing an asset limitation for the HOME program would be counter to Congressional intent. The HOME program serves a broader group of beneficiaries through activities not authorized under many other HUD programs, and it is appropriate that potential homebuyers and homeowners seeking rehabilitation assistance have higher incomes and more assets than Section 8 families or public housing residents so that they can sustain homeownership. Applying an asset restriction to the HOME program would impact potential beneficiaries of HOME-funded activities and would result in fewer families being assisted. Also, applying an asset restriction to only one or two HOME sub-programs (*e.g.*, rental housing, HOME TBRA) would create inconsistencies within the HOME program, be administratively burdensome to implement, and cause potential noncompliance.

PJs are responsible for ensuring compliance with rent and income requirements applicable to rental housing assisted with HOME funds even if the rent and income eligibility determinations are conducted by entities under contract with the PJ or the PJ's housing partners (*e.g.*, owner of a HOME rental housing project, subrecipient administering HOME TBRA, etc.). In accordance with § 92.252(f)(2), which is unchanged in this final rule, owners of rental housing must annually provide the PJ with information on rents and occupancy of HOME-assisted units to demonstrate compliance and the PJ must review rents for compliance and approve or disapprove them every year. Under the newly revised § 92.203(a)(1) and (2), where a PJ must accept or chooses to accept the income determinations made in accordance with the rules of those programs, the PJ may rely upon that income determination and is not required to perform further income calculations under the remainder of § 92.203. The PJ must document the income determination made by the PHA, owner, rental subsidy provider, or rental assistance provider, as applicable, in their files to demonstrate compliance with §§ 92.203 and 92.508(a)(3)(v).

C. HOPWA

Commenters asked for the Housing Opportunities for Persons with AIDS (HOPWA) program to have flexibility to not adopt some of the changes to the larger Section 8 program. A commenter stated support for the idea of having discretion not to enforce restrictions based on net assets and ownership of properties; the commenter stated that supportive housing programs like HOPWA should remain focused on achieving positive health outcomes, not excluding households from participation based on an arbitrary definition of wealth. A commenter also opposed applying the calculation of income changes to HOPWA, as the proposed rule separates income eligibility certifications and recertifications from income examinations and reexaminations for rental assistance activities, which would create confusion for HOPWA project sponsors. The commenter specifically cited the example that it is unclear if current income should be used for annual income eligibility certification, but old income should be used to determine rental assistance calculations.

Commenters stated that with the final rule, HUD should release an updated HOPWA income resident rent calculation spreadsheet.

HUD Response: As discussed throughout HUD's responses to comment, HUD believes that it is in the public's best interest for HUD program requirements to be aligned, where practicable. Because HUD uses asset limitations in § 5.618, and the determination of net family assets to impute income for income determinations made in accordance with § 5.609(a)(2) in the HCV program, HUD is also adopting similar provisions at § 574.310(e) for HOPWA activities that use the income calculation method in 24 CFR part 5 to determine resident rent payment. However, the unique nature, purpose, and statutory basis of certain HOPWA activities, such as short-term supported housing, do justify limited exceptions, some of which are made in this rule and some of which may be proposed in a separate rulemaking.

HUD allows, but does not require, grantees to calculate income as provided by § 5.609 for the purposes of determining income eligibility. Due to the unique nature of the HOPWA program and its activities, HUD has determined that remaining flexible about the method used to determine income for eligibility purposes will best enable grantees to meet the needs of the program's intended beneficiaries regardless of the type of assistance an individual or family is seeking. However, HUD has determined it is generally practicable to align HOPWA with the HCV program in determining how to calculate resident rent payments. So § 574.310(e) will generally require HOPWA grantees to calculate income in accordance with § 5.609 for the purposes of determining the resident rent payment under 574.310(d). At initial occupancy, §§ 574.310 and 5.609(c)(1) require grantees to estimate a family's income for the upcoming 12-month period to determine the family's resident rent payment. For subsequent reexaminations of income, §§ 574.310 and 5.609(c)(2) require that a grantee calculate examine family's prior-year income (including any redetermination of income that took place during the year) and make adjustments to reflect current income if there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income. This process, which is also being used in the HCV program, is explained in greater detail in the section of this preamble entitled "Prior-year income."

HUD also agrees that additional guidance and support can be offered to HOPWA project sponsors to add clarity to this final rule and will be providing guidance after publication of the rule.

D. HTF

Commenters requested that HUD align the HTF program's income calculation with other HUD programs as many properties have combined HTF with HOME or Section 8 assistance.

Commenters were divided about whether asset restrictions should be applied to the HTF program. Some stated that homeownership programs should not have asset restrictions. Others supported adopting asset restrictions for housing programs funded with the HTF.

HUD Response: HUD agrees with commenters that, to the extent possible, requirements between programs should be aligned. That is why at § 93.151(a)(1) through (3) in the final rule HUD requires the HTF grantee to accept the income determinations (initial, interim, annual reexaminations or recertifications) performed by the PHA, owner, rental subsidy provider, or rental assistance provider when families applying for or living in HTF-assisted units are assisted under the PHP, a Federal or State project-based rental assistance program, or a Federal tenant-based rental assistance program. This should provide greater alignment between HTF, Section 8, and the HOME programs.

The HTF program serves beneficiaries through activities not authorized under many other HUD programs, and it is appropriate that potential homebuyers seeking homebuyer assistance have more assets than Section 8 families or public housing residents so that they can sustain homeownership. Applying an asset restriction to the HTF Program would impact potential beneficiaries of HTF-funded homebuyer activities and would result in fewer families being assisted. Because there is no statutory restriction on a family's assets in the HTF program, HUD declines to add any restrictions with this rulemaking.

Income

A. General

Commenters asked HUD to eliminate deductions and exclusions in income, in order to streamline determinations. A commenter stated that the proposed definition of "income" was too vague and asked for additional information on the interaction between seasonal and inconsistent income and its relationship to annual income for purposes of interim reexaminations. Another commenter stated that the suggested language defining "income" did not clarify anything.

A commenter stated that HOTMA's use of "determination of income" when referring to prior-year income instead of

"estimation of income" for the upcoming year indicates that PHAs and owners may be expected to use different income calculation methods based on the time period covered. The commenter stated that using two methods would lead to increased errors when performing reexaminations, increasing the burden of operating the voucher program.

HUD Response: The statutory language of the 1937 Act, as amended by HOTMA, requires that deductions and exclusions be applied to determinations of income. In addition, HOTMA creates a very broad statutory definition of income. Given that the statutory definition encompasses such a wide range of monetary receipts, HUD believes that it is more appropriate to use the broad definition of income, and instead define the specific items that are *excluded* from income.

HUD recognizes how the language surrounding income determinations in different circumstances may be confusing, and HUD will consider whether to issue further guidance with more information in the future. However, HOTMA requires a different method for calculating income at different stages. For initial occupancy, as well as for interim reexaminations, PHAs and owners must estimate the family's income for the upcoming year (see, § 5.609(c)(1)). However, for annual reexaminations, PHAs and owners must generally use the family's income from the preceding year (see, § 5.609(c)(2)(i)).

B. Income From Assets

Commenters stated that income from assets should be based on self-certification for all assets under \$50,000 after the family's admittance to the housing program.

Commenters also asked for additional guidance on what to do when there has been some change in the asset values (such as changes to the value of a stock portfolio) that cannot be computed.

Several commenters asked HUD to use the passbook savings rate, either by disregarding imputed returns on assets and only using the passbook rate on the totality of the family's assets or for imputing asset returns.

Commenters asked if HUD intended PHAs and owners to only use imputed income for assets if the PHA or owner cannot calculate any income from assets.

Commenters stated that the withdrawal of earned interest should continue to count as income.

HUD Response: HOTMA specifically includes actual income from assets in the definition of income. Therefore, any actual income received must be counted

as family income. In § 5.609(a)(2) of this final rule, HUD has worked to clarify the regulatory language regarding income from assets to help PHAs and owners determine what income from assets should be included in the family's annual income while also minimizing the burden on PHAs, owners, and families.

When the combined value of all net family assets has a total value of \$50,000 or less, the family must include, on its self-certification that the net family assets do not exceed \$50,000, the amount of actual income the family expects to receive from such assets, and that this amount is to be included in the family's income. The PHA or owner may determine both the value of the net family assets and the amount of actual income the family expects to receive from such assets based on the family's self-certification (see, § 5.618(b)).

When net family assets have a total value over \$50,000, if the PHA or owner can compute actual income for some assets, but not all assets, the PHA or owner must compute the actual income for those assets where possible, calculate the imputed income for all remaining assets where the actual income cannot be computed, and combine both amounts to determine the family's income for all assets. The PHA or owner must calculate the imputed return on all net family assets when net family assets are over \$50,000 if *no* actual income can be computed. In all cases where a return is to be imputed for some or all net family assets, the current passbook savings rate, as determined by HUD, must be used.

This final rule does not change the requirement that PHAs and owners count earned interest as income.

C. HOPWA

A commenter stated that any lack of clarity and standardization of the application of a COLA for streamlined income determinations will lead to inconsistent applications and errors in rent calculations, and therefore HUD should provide standardized, updated sources for COLA calculation, an updated HOPWA rent calculator, and training. Without these additional resources, the commenter stated that HUD should allow jurisdictions to continue to recertify based on documentation of fixed-income sources such as benefit letters.

HUD Response: HUD agrees that additional guidance will be useful for the consistent application of COLAs and that such guidance will assist in avoiding errors. Therefore, additional guidance is forthcoming.

In addition, throughout this final rule, HUD has specified that amounts that are statutorily required to change due to inflation will be adjusted by HUD using the CPI-W.

Outside Determinations of Income

A. General

Commenters stated that the use of income determinations from other programs should be discretionary. Other commenters stated that allowing PHAs and owners to use income determinations from other forms of assistance would reduce administrative burden and the time required to verify income. A commenter stated that the level of administrative relief from this policy will depend on the level of PHA discretion to determine which program information to use. A commenter stated that HUD should require PHAs and owners to adopt written, publicly available policies stating the circumstances under which they will use income determinations from other programs and then apply the policies consistently.

A commenter stated that it is not clear that HOTMA allows PHAs and owners to completely substitute another program's definition of income for the definition in the 1937 Act; allowing such a substitution would be a fundamental and far-reaching policy change.

A commenter stated that a PHA should not be required to recalculate income if the tenant has failed to provide the documentation needed within a timely manner and the PHA has had to use an outside determination of income. Another commenter stated that entitlement municipalities that provide rental assistance and non-PHA nonprofits should also be able to use outside income determinations.

Commenters asked if the ability to use an outside determination of income would allow a PHA or owner to obtain IRS records, including tax returns. A commenter stated that tenants should not be required to obtain the income determinations themselves. A commenter stated that HUD should add language to the consent form to authorize the PHA or owner to obtain income determination information from the relevant local administrators.

Another commenter stated that tenants should be made aware of what income reporting will affect their rent; specifically, the tenant should know whether reporting income changes to a LIHTC owner will result in that information being passed along to a PHA.

Commenters also expressed concerns about using income determinations by other agencies. One commenter stated that other forms of assistance may take income information at face value without additional verification and expressed concern that if there is a difference between information from EIV and the other agency, the PHA may receive an audit finding. Another stated that there may be errors or other inconsistencies in the income calculation by other agencies that may affect participation in HUD programs, especially if there was fraud involved in the original calculation of income. A commenter also stated that differences between States and between programs will result in inequities in determining rents.

HUD Response: HUD appreciates all the public comments. HOTMA added language to the 1937 Act that allows, but does not require, PHAs and owners to use determinations of a family's income prior to applying any deductions based on timely income determinations made for the purposes of means-tested Federal public assistance. Therefore, PHAs and owners have the discretion not to use this "safe harbor," and if a PHA or owner does take advantage of this flexibility and documents that determination with the appropriate third-party verification in accordance with the requirements of § 5.609(c)(3)(ii), they are not subject to penalties for doing so.

In this final rule, HUD is clarifying that PHAs and owners will be able to use income determinations received through established data sharing agreements, or PHAs or owners can obtain income determinations directly from administrators for means-tested public assistance specified on the approved list in the regulation at § 5.609(c)(3). A PHA or owner may also rely on third-party documentation provided to the PHA or owner by the tenant of a determination made by a form of assistance on the list in the regulatory text.

B. Additional Guidance

Commenters asked for additional information and guidance on how to use determinations of income made by other agencies. Some asked for general guidelines, while others specifically asked for additional information on what documentation would be acceptable evidence of the income determination, including whether it has to come from the other agency or if it can come from the tenants. A commenter stated that HUD should delay rulemaking on allowing outside determinations of income until HUD

provides additional information on how verification would work and the forms and sources of appropriate proof of the determinations.

Commenters asked HUD to provide additional information on how other agencies determine income and how the other determination can be used by PHAs or owners as a safe harbor. A commenter stated that HUD should provide information on how similar other agencies' definition of income is to HUDs, as using a calculation not aligned with HUD requirements may jeopardize a PHA's ability to provide fair determinations of income, leaving the PHA with legal vulnerabilities. The commenter further stated that having the list of the approved agencies' income sources will provide a safe harbor for PHAs. Commenters stated that HUD should delay rulemaking until it has conducted further research across programs and States to inform the rulemaking.

Many commenters stated that HUD should provide requirements on which determination to use when there is more than one available, and one suggested that if a discrepancy between determinations exists, PHAs should use the higher income. A commenter stated that if discretion lies with PHAs or owners, inconsistencies will arise, complicating the coordination of care between Continuums of Care providing case management. Others stated that HUD should give PHAs the discretion to determine which program's income information to use when more than one is available. A commenter stated that HUD should provide guidance on the best practices for resolving differences in determinations.

A commenter also asked for guidance on what to do if a participant disputes an income determination from another agency.

A commenter stated that HUD and Congress should work to eliminate duplicative, burdensome recertification requirements.

HUD Response: HUD's revision of the regulatory text in this final rule, discussed more fully above, should address commenters' concerns about what documentation is required. In addition, any PHA or owner using income determinations from the list of assistance in the regulatory text will meet the requirements for the statutory safe harbor. If third-party verification of the income determination is unavailable, or if the family disputes the determination, the PHA or owner must determine the family's annual income in accordance with 24 CFR part 5, subpart F.

Because many of the other forms of public assistance have definitions of income that vary from State to State, it is not practical for HUD to provide detailed information to PHAs and owners on how the other forms of assistance define income. However, HUD intends to offer further guidance to PHAs and owners containing best practices for choosing between multiple available determinations and on how to resolve any discrepancies.

HUD also appreciates the suggestion to continue to streamline reexamination requirements across Federal agencies administering means-tested public assistance, and hopefully the efforts in using this interagency flexibility will highlight additional areas where the government can seek alignment.

C. Eligible Forms of Assistance

Commenters responded to HUD's request for input on which types of assistance should be included in the list of outside determinations a PHA or owner may use. A commenter stated that HUD should establish a list of eligible programs, while others stated that HUD should allow PHAs to submit other methods to be approved by HUD or that HUD should not limit the forms of Federal assistance on the list. A commenter stated that HUD should give PHAs the flexibility to choose programs from a list provided by HUD and set out the choice in the administrative plan. Commenters also stated that HUD should not limit the number of programs that a PHA may use for determinations.

A commenter stated that PHAs or owners should be allowed to use Federal tax return information, particularly if the family was eligible for an earned income tax credit (EITC) or child tax credit. Others stated that HUD should not use EITC determinations, because tax returns contain a lot of personal information or because the data will be at least a year out of date. Another commenter stated that the calculations to determine EITC eligibility exclude substantial sources of income that the 1937 Act includes, which would increase program costs and would have varying effects on different groups of participants in HUD programs.

Commenters stated that HUD should allow determinations for Social Security or Supplemental Security Income. Others suggested including VA benefits or Social Security Disability Insurance (SSDI). A commenter stated that the income definition for SNAP is similar to the 1937 Act and is national, so it would be appropriate to use. Commenters stated that the programs in the 1937 Act

should be allowed to use income determinations made for the HOME program, or determinations used for LIHTC. Commenters also suggested using determinations for the Head Start program or determinations made by child support enforcement agencies.

Other commenters stated that HUD should not allow PHAs and owners to use determinations for TANF, as States have wide leeway in setting the formula to determine income, and therefore there would be a wide range of different income determinations making it harder for HUD to provide effective oversight.

HUD Response: HOTMA mandates that HUD allow PHAs and owners to use income determinations from TANF block grants, Medicaid, and SNAP assistance. In addition, HUD believes that the definition of adjusted gross income used for the EITC is similar enough to the definition of income used by HUD to justify the inclusion of the EITC on the list.

In this final rule, HUD is adding several forms of assistance to the list of means-tested public assistance that a PHA or owner may rely upon for an alternative income determination under § 5.609(c)(3): LIHTC; WIC; the SSI program; and other HUD programs, such as the HOME program. In addition, PHAs or owners may use income determinations from other forms of means-tested Federal public assistance if HUD has established a memorandum of understanding with the agency administering the assistance.

Because the use of outside income determinations is permissive for PHAs or owners, PHAs or owners must specify in their written admission and continued occupancy policies, HCV administrative plan, or House Rules, as applicable, the policies that they are adopting, including which programs from the HUD-approved list, if any, they will accept and their method for choosing between potentially competing determinations from different programs.

D. Data Sharing

Commenters stated that using determinations by other agencies would be useful if the PHA could obtain the information the other agency used for verification. A commenter stated that the level of administrative relief from this policy will depend on the PHA's ability to develop and implement data-sharing agreements. Commenters wrote that HUD should facilitate data sharing to allow PHAs and owners to obtain information from other programs, because without such data sharing, the ability of PHAs and owners to use outside determinations would be limited. Some stated that HUD should

provide capacity development and technical assistance to PHAs and owners for data sharing.

Commenters stated that PHAs should have the freedom to create their own data-sharing partnerships, and PHAs should have the freedom to create such partnerships with as many programs as possible. A commenter stated that local PHAs will have a better understanding of the accuracy of different program administrators and may have better relationships for sharing information.

Commenters stated that HUD should prioritize agreements with the Social Security Administration, given the number of families receiving Social Security, or the Department of Agriculture, due to the number of families receiving SNAP benefits.

Commenters stated that HUD should determine a way to share information electronically and asked for details about whether administrators of other programs would be willing to supply the information. A commenter stated that getting information from other agencies means that additional privacy protections will be needed.

HUD Response: HUD agrees that the ability of PHAs and owners to have data sharing agreements will be crucial for this safe harbor provision to relieve administrative burden. As stated above, in this final rule, HUD amends the regulatory text in § 5.609(c)(3) to provide that a PHA or owner is allowed to use the safe harbor flexibility only if HUD has included it on the approved list of means-tested Federal public assistance or established a memorandum of understanding. If assistance has been listed in § 5.609(c)(3) and the PHA wishes to obtain a data sharing agreement with an agency administering that assistance, this is allowable so long as the data sharing agreement allows the PHA access to the necessary third-party documentation required under § 5.609(c)(3)(ii).

HUD is prioritizing MOUs with the Social Security Administration and the Veterans' Administration, given existing agreements in other contexts, but HUD cannot guarantee which agreements will be in place first.

E. Timely Income Determinations

Many commenters stated that HUD should define "timely" with respect to a determination of income made by another agency; a commenter said that a time limit will prevent improper payments that might otherwise occur if a tenant does not honor reporting obligations to an outside agency. Some stated that the outside determination should be no older than 120 days, while

others stated that the determination by the other agency should be made within the previous 12 months. A commenter stated that the determination should be made no more than 180 days prior to the effective date of the rents set using the outside determinations of income.

Another commenter stated that HUD should not establish a firm definition of timeliness, but HUD should publicize best practices, as PHAs and owners often consider determinations more than 90 days old to be stale.

HUD Response: HUD is revising the text of this final rule in § 5.609(c)(3) to remove the inclusion of the word “timely.” The final rule provides that the verification must meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.

Annualization of Income

Commenters stated that HOTMA does not eliminate the current practice of some PHAs of conducting more frequent income reviews of sporadic income sources and annualizing income. These commenters asked that HUD ensure the revised regulations do not preclude these practices and asked for HUD to provide explicit guidance permitting such actions.

Commenters also asked for additional clarity from HUD on what the revisions to annualizing income mean for PHAs and owners practically, so it will be clear what will happen when a PHA or owner cannot project long-term income.

HUD Response: The HOTMA statutory revisions require that for annual income reviews, PHAs and owners must use a family’s income from the preceding year, taking into account any adjustments the PHA or owner has made due to an interim reexamination. Therefore, PHAs and owners are no longer projecting long-term income for annual reviews, and more frequent income reviews will not be necessary.

This final rule retains changes from the proposed rule that eliminate the provision on annualizing income. PHAs and owners will look at the income for the previous 12 months for annual reexaminations.

Prior-Year Income

Some commenters stated that shifting from anticipated income to actual income from the prior year was an important and positive change.

Other commenters stated that HUD’s interpretation of the HOTMA language about prior-year income was not correct. Instead of referring to the prior 12 months of income, the commenters

wrote, the intent was to use the family’s income from the prior calendar year, which would allow the use of year-end documents and would create an incentive to increase earnings by delaying the impact of increased earnings on rent obligations.

Commenters also asked for additional guidance on how to use past income, particularly when a family’s income may have started and stopped during the year or when there were multiple income changes during the prior year, since either may present significant difficulty for PHAs or owners. A commenter suggested allowing PHAs to use documentation from the immediately preceding 60 to 90 days.

Commenters stated that PHAs and owners must be given instructions to retain information submitted in the prior 12 months to determine if the annual review finds a change in income not accounted for previously. Others stated that HUD should provide PHAs with clear guidance on what would be acceptable forms of income verification.

Commenters opposed the idea of using past income, stating that using the income in the preceding year would not provide the most accurate and current family income. Instead, the commenters stated that PHAs should be given the most flexibility to determine accurate income, including just taking the prior-year determinations into consideration. A commenter stated that the regulation did not seem to reflect the HOTMA statutory language that allows PHAs and owners to make other adjustments to prior-year income that the PHA or owner considers appropriate to reflect current income.

HUD Response: HUD appreciates the comments on how to implement the statutory requirement that PHAs and owners use the prior year’s income at annual certifications. HUD is maintaining the language that PHAs and owners must use the income the family received over the preceding 12 months, because this is the most reasonable reading of section 3(a)(6)(A)(ii) of the 1937 Act, as amended by HOTMA. The statute states that PHAs and owners must “use the income of the family as determined by the agency or owner for the preceding year, taking into consideration any redetermination of income during such prior year . . .” (42 U.S.C. 1437a(a)(6)(A)(ii)). HUD believes that a plain language reading of “preceding year” is the 12 months prior to the income calculation. If “preceding year” were to mean “preceding calendar year,” this would deviate from the plain language reading of the statute. Using a calendar-year cycle would provide recent information for families with

annual examinations earlier in the year, and a much larger gap of time for families with annual examinations later in the year. This would result in families being treated differently from one another merely due to when the family’s income certification cycle began, which HUD does not believe Congress intended by the statutory language.

Moreover, reading “preceding year” to mean the “preceding calendar year” creates contradictions in the statute and the rule. Consider the scenario where a family had an interim reexamination of income that took place in the current calendar year but preceding income calculation cycle: Under the statute, the PHA or owner must take “into consideration any redetermination of income during such prior year” when performing an annual income reexamination. If HUD interpreted “such prior year” to mean the “preceding calendar year,” the PHA or owner would ignore any interim reexaminations of income performed in the current calendar year and only consider interim reexaminations that took place in the preceding calendar year. This result runs counter to clear Congressional intent that PHAs and owners take the most recent calculation of income into consideration when performing an annual income reexamination. As a result, HUD concludes that the most reasonable reading of the statute is that “preceding year” means the 12 months preceding the calculation of income.

If a PHA or owner determines that the family’s prior-year income does not reflect the family’s current income, the PHA or owner is required to adjust the income determination under § 5.609(c)(2)(ii) and (iii).

While the existing procedures related to the order of hierarchy or acceptability for verification for income, assets, and expenses¹¹ is not changed as part of this rulemaking, HUD may make adjustments to those procedures in the future as warranted. HUD does not believe it is necessary for the final rule to specifically require PHAs and owners to retain information submitted by the family in the prior 12 months in order to complete the annual reexamination. The family is required to provide information to the PHA or owner in order for the PHA or owner to complete the annual reexamination, regardless of whether the family submitted information related to an increase or

¹¹ See PIH Notice 2018–18 and chapter 5 of Handbook 4350.3.

decrease in income prior to the annual reexamination.

Income Inclusions

A. General

Commenters stated that HUD should not rely on broad language to define what is included as income but should continue to have a list of what is specifically included, as the broader language may create confusion and increase the risk of litigation, while the specific list provides answers to questions from the public and individuals.

Some commenters asked that HUD specifically include certain payments as income, such as per capita payments to Native Americans from gaming operations and tribal kinship or guardianship payments or net income from businesses.

A commenter also stated that HUD should specify that funds only count as income if the family actually receives the income, not just because the family is entitled to it, such as child support payments.

HUD Response: Given the wide range of receipts that would count as income and the broad language included in HOTMA, HUD continues to believe that it is more appropriate to define income very broadly and only specify what is *not* included as income. Generally, per capita payments to Native Americans that are not derived from interests held in trust or restricted lands are considered income unless such payments satisfy the requirements of another exclusion in this regulation or are specifically excluded from being considered income under Federal statutes. However, HUD is revising § 5.609(b)(4), which, as proposed, would exclude from income payments to care for foster children or adults, to also exclude Tribal kinship payments from being considered income under the rule. This change aligns the regulation's treatment of Tribal kinship payments with that of State kinship payments, which were already excluded from income in the proposed rule.

HUD declines to specify in this final rule that income excludes payments not actually received by a family, such as child support payments that the family is entitled to but does not receive. It is HUD's position that such an exclusion is not necessary because § 5.609(a) states that all amounts "received from all sources" that are not excluded in paragraph (b) are income.

B. Gifts

Commenters asked for HUD to define what a "gift" is for purposes of

including it in income. Commenters also requested information on how HUD defines sporadic income for inclusion, and what types of funds would fall into this category.

HUD Response: HOTMA specifically provides that income includes recurring gifts. As discussed more fully below, in response to public comments, HUD is retaining the current exclusion for nonrecurring income, with some modifications for clarification in § 5.609(b). This revised exclusion specifies that gifts for holidays, birthdays, or other significant life events or milestones are excluded from income. However, other gifts that are simply provided to the family on a regular and routine basis (*e.g.*, a relative or friend provides a member of the family with cash gifts on a weekly or monthly basis) would be included in income.

Interim Reexaminations of Income

A. General Policies

Commenters stated that PHAs should not have to perform interim reexaminations for decreases in income if the family never had to report the change and the PHA used the family's prior 12 months of income to determine rent. While some commenters supported the elimination of interim reexaminations in the final 3 months of a certification period, others stated that PHAs and owners should still be required to conduct interim reexaminations for decreases in income.

A commenter suggested creating an expedited process, with a lower level of verification and a strict deadline, for downward adjustments in tenant rents. Another commenter stated that HUD should require providers to prioritize interim reexaminations for decreases over interim reexaminations for increases in income. A commenter stated that it would be appropriate for a PHA to inform an HCV owner that there is a potential adjustment being discussed, along with a timeline, to allow the owner to make an informed decision on whether to hold off on a lease enforcement action or whether a solution from the PHA is likely.

A commenter pointed out that there is inconsistency in certain language in the proposed §§ 5.657, 960.257, and 982.516. The commenter stated that the use of both "must" and "may" as well as both "make [the interim reexamination]" and "conduct [an interim reexamination]" within the proposed regulations regarding interim recertifications may be confusing and misinterpreted.

HUD Response: HUD reiterates that, under this final rule, interim reexaminations for income decreases would only be conducted at the request of the family so PHAs will not have to conduct interim reexaminations for a decrease if the family does not report the change. HOTMA requires interim reexaminations be conducted whenever the PHA, grantee, or owner has estimated that the family's income has increased by ten percent or more. When conducting its estimate, the PHA, owner, or grantee must also consider whether the increase is due to earned income, and whether a previous interim reexamination already occurred due to a decrease in income. Only where the PHA, owner, or grantee estimates that such increase is not attributable to earned income does HUD require that a PHA, owner, or grantee perform an interim reexamination of income for a family. If the family has undergone an interim reexamination for a decrease in income, the PHA owner, or grantee has discretion regarding whether or not to count increases in earned income when estimating or calculating whether the family's adjusted income has increased. Further, the HOTMA statutory language allows PHAs and owners to decline to conduct interim reexaminations due to increased income only in the final 3 months of an annual certification cycle; PHAs and owners are still required to conduct interim reexaminations for income decreases. In the case of zero-income families, PHAs and owners will estimate whether they must conduct interim reexaminations whenever there is an increase in income because the family's change in income is greater than ten percent. If the increase in a zero-income family's income is entirely from unearned income then the PHA or owner must conduct an interim reexamination of family income. However, just as in all other cases, the PHA or owner may choose not to conduct an interim reexamination of a family's income in the last 3 months of a family's income certification period.

HUD is already creating in this final rule, at § 5.233(a)(2)(i), a simplified process for interim reexaminations by removing the requirement to use EIV, and HUD does not feel additional flexibilities are needed. In addition, because the changes made by HOTMA are intended to relieve burdens on PHAs and owners, HUD is declining to impose additional restrictions on PHAs and owners. A PHA and owner already prioritize interim reexaminations based on the order in which families request them, and HUD further declines to add notification requirements to HCV

owners to what is already a short timeline for conducting interim reexaminations.

HUD thanks commenters for pointing out where the regulatory language could be clearer. In some cases, different language is required. For example, families have the option (“may”) to request an interim, while PHAs and owners must perform the interim reexamination when requested if the changes in income or deductions meet the interim threshold percentage. However, HUD has revised the language referring to interim reexaminations in this final rule (in §§ 5.657(c), 574.310(e), 960.257(b), and 982.516(c)) to be consistent about the obligations of PHAs, owners, and grantees to “conduct” interim reexaminations.

B. Errors

Commenters stated that if there is an error in a downward adjustment, repayment can be arranged as with EIV.

HUD Response: HUD agrees with the commenters, and therefore has added language to this final rule to clarify the issue, in §§ 5.609(c)(4), 5.657(f), 574.310(h), 960.257(f), and 982.516(f). When mistakes result in rent being erroneously decreased, the error must be corrected but the family is not responsible for repayment if the PHA or owner made the error. If the tenant provided inaccurate information, the family must repay the PHA or owner per the established repayment agreement.

C. Treatment of Earned Income

A commenter opposed the prohibition on considering increased earned income when estimating if a family’s income has increased; the commenter stated that this was equivalent to keeping the earned income disregard and would complicate administrative workflows by creating a different definition of income for interim and annual reexaminations. Another commenter stated that HUD should clarify that the reason a PHA would be required to take into account the family’s actual decreased adjusted income over the previous 12 months on a prospective basis would be because the PHA would be determining the family’s actual adjusted income over the previous 12 months.

HUD Response: HOTMA amends the 1937 Act so that PHAs and owners may not consider a family’s increases in earned income for the purposes of an interim reexamination unless the family had previously undergone an interim reexamination during the year for any decrease in income. If the family has undergone an interim reexamination for a decrease in income after the completion of the last annual

reexamination, the PHA or owner has discretion regarding whether or not to count increases in earned income when estimating or calculating whether the family’s adjusted income has increased. Under this final rule, annual reexaminations will be based on income from the preceding 12 months. If, during an annual certification period, the family’s income decreases from the prior year, the family may be due an adjustment, per § 5.609(c)(2).

D. Payment Standards

Commenters stated that HUD should require PHAs to apply mid-year payment standard increases as promptly as possible. A commenter stated that if the payment standard is increased and the landlord increases rent before the next regular certification, the revised Section 8(o)(2)(A) of the 1937 Act requires the PHA to provide tenants with the benefit of the new payment standard immediately instead of waiting for the next regular examination. Commenters stated that HUD should revise the payment standard regulations to clarify that tenants who request a reasonable accommodation for an increase in payment standards are not required to pay 40 percent of their income in rent to see the benefits of the accommodation.

Commenters also stated that HUD should be explicit that PHAs and owners have the authority to adjust the total tenant payment (TTP) to account for the amount and timing of changes in income.

HUD Response: HUD appreciates the comments, but changes to payment standards requirements were not contemplated by the proposed rule and are consequently beyond the scope of this rulemaking. HUD did propose changes to the payment standard requirements in the HCV regulations in another proposed rule (Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes; (85 FR 63664, October 8, 2020)) and received similar comments in response to that proposed rule, which will be taken into consideration as part of the development of that final rule.

E. Effective Date of Rent Changes

Commenters made suggestions regarding when rent calculations from interim reexaminations should take effect. A commenter stated that the effective date should be aligned with the next month. Another stated that HUD should clarify that the effective date of any change in rent would be based on

the actual change in income and would be dependent on appropriate notice to the PHA of that change in income. A commenter suggested HUD adopt the provisions in the HUD Handbook 4350.3 “Occupancy Requirements of Subsidized Multifamily Housing Programs” that makes changes from increases effective on the first of the month after the end of a 30-day notice period, while changes from decreases in income are effective on the first day of the month after the date of the action that led to the interim reexamination.

Commenters also stated that HUD should prohibit housing providers from requiring retroactive increases in rent where a tenant has timely reported an increase in income.

HUD Response: With this final rule, HUD is adopting regulatory text similar to the guidance previously included for Multifamily programs regarding the effective date of interim reexaminations, in §§ 5.657(c)(5), 574.310(e)(4)(v), 960.257(b)(6), and 982.516(c)(4). If the tenant complies with the reporting requirements by timely reporting changes based on PHA or owner policy and the interim reexamination results in a rent increase, the PHA or owner must give the family 30 days advance notice of the increase, and the increase will be effective on the first of the month starting after that 30-day period. If the tenant’s rent will decrease, the change in rent is effective on the first day of the month after the date of the action that caused the interim certification (e.g., the first day of the month after the date of the loss of employment).

If the tenant does not timely report a change in income as required by the PHA or owner’s policy, any resulting rent increases from an interim reexamination will be retroactive to the first of the month following the date of the action resulting in an increased income and rent decreases will be effective no later than the first of the month following the completion of the interim reexamination.

F. Interim Reexamination Process

Commenters stated that HUD should adopt the process from the HUD Handbook 4350.3: *Occupancy Requirements of Subsidized Multifamily Housing Programs* on interim reexaminations. Specifically, commenters called out the handbook prohibitions on eviction or other adverse impacts while a request for a rent adjustment due to a loss of income is being processed, along with a 30-day cure period and the requirement of written advance notice of rent increases.

HUD Response: As stated above, HUD is adopting, with this final rule,

language similar to the guidance previously included for Multifamily programs regarding the effective date of interim reexaminations in §§ 5.657(c)(5), 574.310(e)(4)(v), 882.515(b)(4), 960.257(b)(6), and 982.516(c)(4). HUD agrees that tenants should experience no adverse impact for failure to pay rent when there is a pending interim adjustment if the family reports the income change in a timely manner according to PHA, owner, or grantee policies.

G. Threshold for Conducting Interim Reexaminations

Some commenters expressed support of the proposal that interim reexaminations would be triggered only by a ten percent change in income. Some stated that it is appropriate to move to percentages from a set dollar amount. Others stated that allowing a request for decreased rent when income falls ten percent is fair or will benefit families who need rental assistance. A commenter explicitly supported the grace period that allows families to benefit from earned income increases unless the family previously requested a decreased rent due to an income decrease.

Commenters stated that a PHA or owner should not be allowed to decline interim reexamination requests because the family's income change is below ten percent, especially if the change is for a decrease in income, to avoid creating a rent burden. Others stated that it should be up to the PHA's discretion to conduct interim reexaminations for income increases; commenters stated that some PHAs do not currently do interim reexaminations for income increases and requiring it now would increase their burden. Another commenter stated that instead of requiring reexaminations for families when the PHA or owner suspects an increased income, the need for interim reexaminations should be based on a family's self-reported monthly income at the request of families.

Some commenters opposed requiring PHAs to do interim reexaminations when a threshold change is met, because there is already a 90-day lag in EIV information and annualized income requires an even longer period of time; the commenters stated that it would not make sense to conduct interim reexaminations every time there is a fairly small change in income. A commenter stated that HUD should not implement requirements for interim reexaminations beyond what is statutorily required by HOTMA. Another commenter stated that HUD should be clear that PHAs and owners

have a wide range of discretion, but MTW agencies still cannot exceed the ten percent threshold.

Other commenters stated that estimating when income has changed by ten percent would be difficult and it would basically require the PHA or owner to do all the income determination work anyway. Commenters stated that households will report many more minor changes to confirm they have not reached the threshold.

Some commenters opined on what type of income should be used to determine whether an interim reexamination is justified. Commenters stated that HUD should base the threshold on gross income, even self-declared, rather than adjusted income. A commenter stated that tenants earning hourly wages should be subject to a full calculation of income and assets, while fixed-income participants should be able to submit just gross expected income.

Commenters stated that the percentage triggering reexaminations should be higher than ten percent, because at lower income levels, small dollar changes in income will meet the ten percent threshold. A commenter stated that HUD should set a higher threshold for increases in income to set an incentive for increased earned income.

A commenter stated that HUD should set a threshold lower than ten percent to be fair to the poorest recipients of HUD assistance and stated that setting a national threshold instead of allowing PHA or owner discretion would obviate different rules and levels of hardship.

Other commenters suggested setting the threshold at fixed dollar amounts. Commenters suggested that using dollar amounts would increase clarity and ease of administration for PHAs and owners, because using a percentage would require a PHA or owner to go through a full calculation to determine if the threshold has been met. Another commenter stated that percentage changes would result in a disparate impact on lower-income households versus higher-income families—the same dollar amount change could trigger an interim reexamination for a lower-income family but not for a family with a higher income. Commenters suggested a change of \$200 a month and suggested adjusting it for inflation. Others proposed a threshold of \$400–\$500 a month. A commenter pointed out that given that the Multifamily guidance currently suggests a threshold change of \$200, whether or not a PHA or owner experiences a decrease in burden

depends on the number of families served with income below \$20,000.

Some commenters stated that PHAs and owners should have the discretion to use a percentage change or fixed dollar amount to set the threshold. Commenters stated that HUD should spell out the exemption for interim reexaminations for increases in income more clearly. A commenter suggested how HUD could clarify how PHAs and owners could determine whether a family has met the threshold for an interim reexamination and stated that HUD could provide tools to help families to determine if their income changes meet the interim reexamination threshold. A commenter stated that HUD should clarify that participants are not held responsible for unreported increased income below the ten percent threshold or if the PHA has a policy that does not require reporting increased income between annual reexaminations.

Commenters stated that HUD should set a different threshold for increases in income than for decreases and suggested the Multifamily standard of \$200; a commenter stated that doing so would decrease interim reexaminations for very small increases in income, decreasing the burden on PHAs and owners. Another commenter suggested a threshold of \$500 for increases in income.

Commenters stated that HUD should lower the threshold for decreases in income. A commenter stated that the downward threshold should be the lower of \$100 per month or 5 percent of income to protect families and allow for easy determination that the family qualifies for an interim. Another commenter stated that the threshold should be 5 percent for income decreases for households with income less than 20 percent of AMI. Commenters stated that HUD should set a lower threshold because not decreasing rent when there is a significant income loss, which may be less than a ten percent change, could make a difference in being able to pay rent. A commenter suggested a threshold of \$25 for extremely low-income families with decreased income.

HUD Response: The language of HOTMA requires that interim reexaminations for decreases in income must be conducted by a PHA or owner at the request of the family when there is an estimated change of ten percent or more in a family's annual adjusted income, or such lower amount as the Secretary may establish. HUD has determined that adding a dollar threshold may add more administrative burden than it relieves, because the amendments made by HOTMA set the

threshold statutorily at ten percent; therefore, HUD would have to incorporate the percentage threshold into any dollar limitation provided. However, the final rule allows HUD to establish a lower amount by notice in accordance with HOTMA, which could include establishing a lower threshold percentage in general or in certain circumstances (e.g., in cases where a family has requested a hardship exception for unreimbursed health and medical care and reasonable attendant care and auxiliary apparatus expenses or child care expenses in accordance with §§ 5.611(c) and 5.611(d).

However, there are some flexibilities built in for PHAs and owners. PHAs and owners may establish a lower threshold for changes in income or deductions resulting in a decrease of family income if they wish to do so and are willing to take on the additional administrative burden. In addition, with respect to income reviews for increases in income, PHAs or owners may elect not to conduct income reviews in the final 3 months of a certification period.

Unless the family has undergone an interim reexamination for a decrease in income after the completion of the last annual reexamination (or the family's initial income examination in the case where the family has not yet had its first annual reexamination), an interim reexamination is not triggered by an increase in the family's earned income, even if the increase is above the ten percent threshold. The PHA or owner has discretion regarding whether or not to conduct an interim reexamination based on any increases in earned income only if the family has undergone an interim certification for a decrease in income after the completion of the last annual reexamination (or initial examination, if the first annual reexamination has not yet occurred). The existence of the threshold also means that if there is an income change below the threshold, the tenant is not required to report the income change. Otherwise, only changes of more than ten percent of unearned income trigger an interim reexamination under the revised rule.

HUD notes that although there are flexibilities for PHAs and owners, entities must apply their policies uniformly and in compliance with all Federal nondiscrimination and fair housing requirements, including, but not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504, and Title II of the Americans with Disabilities Act, as applicable. This also includes, among other requirements, providing for reasonable

accommodations that may be necessary for individuals with disabilities.

Finally, HUD intends to publish additional guidance for PHAs and owners on how they may use self-certifications from tenants and how PHAs and owners may help their tenants determine if any income change meets the threshold. One objective of using self-certifications and other helpful guidance on estimating income changes that may meet the interim reexamination threshold is to alleviate the administrative burden on the PHA and owner of performing interim reexaminations where an interim reexamination will not lead to changes in income or amount the family must pay. HUD does acknowledge, however, that depending on the PHA's or owner's policies, the PHA or owner may be required to do extensive reviews of income to determine if the change in income meets the relevant threshold to trigger an interim.

H. Reasonable Period of Time

HUD received many comments on how long a PHA or owner should have to conduct an interim reexamination. Some commenters stated that HUD should provide a definition of "a reasonable period of time" to conduct an interim reexamination. A commenter suggested providing a time frame to start the interim reexamination but should leave out a timeline for completing the review. Other commenters opposed HUD providing a definition of "reasonable time" in favor of allowing PHAs and owners to define it. These commenters stated that getting information may be outside the control of a PHA or owner, and size or financial differences between PHAs and owners mean a one-size-fits-all solution would not work.

Commenters stated that HUD should provide clarity on what exactly is covered by any specified deadline. Commenters stated that timeliness has two components, including how soon a family must report a change and how soon the PHA or owner must act upon that knowledge. Commenters asked whether the deadline should cover the time between the request and when the review is completed or the request and when the change is effective or whether the deadline would cover only the time between the request and when the review is started. Some stated that the clock should start from the date the PHA or owner receives all the information, while another commenter stated that the clock should start from the date the family reports a change.

Some commenters stated that it is reasonable to require an interim

reexamination to be started within 2 weeks, but it is not enough time to complete the review.

Commenters supported following the Multifamily handbook, which states that, in general, interim reexaminations should not take longer than 4 weeks. However, these commenters stated that HUD should make this a more concrete deadline to avoid questions about whether the PHA or owner is compliant with the required time frame. Other commenters stated that it would take 30 days just to obtain all the needed information. Some pointed out that interim reexaminations are unexpected work that staff has to fit in around the regularly planned workload. A commenter stated that a PHA or owner may complete the review in less time if they prefer.

A commenter stated that the interim reexamination should be conducted in the same month that the information is received by the PHA, as long as it is not in the last 5 business days of the month.

Other commenters recommended a 60-day period, stating that such a time frame would give adequate time to receive required paperwork from tenants, review it, and calculate the revised income. A commenter stated that HUD should allow at least 60 days for PHAs with 30,000 or more vouchers, in line with the current time frame for annual reexaminations.

Other commenters stated that HUD should not set a time less than 90 days, as that would allow time to receive required documentation and to account for error corrections. A commenter also stated that this will lead to fewer interim reexaminations that only deal with small job changes. A commenter wrote that HOPWA should allow for 90 days to align with HOPWA assessment and service plan cycles and to minimize staff burden in reexaminations.

A commenter stated that 120 days was a reasonable time. Another suggested a time frame of 90–120 days to allow for the collection of 4 paystubs to demonstrate a long-term change, rather than just a short-term shift.

Some commenters distinguished between requests for changes due to increases in income and decreases in income. A commenter stated that HUD should specify a period to complete interim reexaminations for decreases in family income, as a failure to provide downward adjustments promptly could expose families to hardships and potential displacement and homelessness. The commenter stated that reexaminations for decreases in income should be completed in time to be effective before the family's next rent payment or one week, whichever is

later, and that a family should not be evicted or sanctioned if they have reported a decrease in income, but the review is pending. Another commenter stated that interim reexaminations for decreases should be effective the first of the following month, unless it is after the 20th of the month, in which case the PHA or owner would have the option to delay another month.

HUD Response: HUD does not feel that a set time frame is appropriate. Some of the proposed time frames from commenters are also too long for families experiencing a decrease in income and facing a potential inability to pay their rent. Therefore, in §§ 5.657(c)(1), 574.310(e)(4), 882.515(b)(1), 960.257(b)(1), and 982.516(c)(1) of this final rule HUD is adopting a policy similar to the existing Multifamily guidance. While the PHA or owner may determine a reasonable time frame based on the amount of time it takes to verify information, it generally should not be longer than 30 days after a change in income is reported. HUD also notes that PHAs and owners must ensure that the time frames established are consistent with requirements under Federal nondiscrimination requirements, including, but not limited to, the obligation to provide reasonable accommodations. Therefore, if families have a disability-related need for a different time frame, PHAs and owners may be required to accommodate that need by extending a time frame.

Earned Income Disregard

A. General

Some commenters explicitly supported the elimination of the EID, stating that it will reduce the burden on PHAs and reduce income calculation errors.

Others objected to the elimination. They cited the benefits of EID in helping families become self-sufficient. Others stated that it allows families to secure their homes while maintaining employment. One commenter stated that Congress did not properly remove the EID from the statute with the language in HOTMA. Another commenter recognized the statutory change, even as they oppose eliminating the EID.

A commenter stated that HUD should provide PHAs with viable alternatives to EID, such as a once-in-a-lifetime deduction for residents that experience an EID qualifying event, such as excluding a percentage of the increase due to new earned income over the baseline income prior to the event.

Some commenters stated that current recipients should not be allowed to

continue using the benefit until the end of their current period. However, many others stated that current participants should be allowed to continue to receive the EID benefit until their time ends. They stated that this would be fair to the current recipients, and some suggested that this would prevent the PHA from having to contact all affected families. A commenter even suggested that families in this group could have a limited form of the benefit, excluding the increased income of EID recipients during the 12-month period from when employment started, and then fully including all income after that period.

Commenters stated that HUD should continue to include families in EID if they had a qualifying event before the phase-out date of the EID, including if the family was not determined to be eligible until after the date the EID is fully phased out. Commenters stated that not allowing families that experience a qualifying event before the benefit is ended would upend the financial planning of those families.

HUD Response: HOTMA properly and correctly removed the statutory authority for EID, so HUD cannot retain the disallowance once the statutory change is in effect, which it will be upon the effective date of this final rule. However, HUD agrees that if a family is receiving a disallowance of increase in annual income in accordance with §§ 5.617(c) and 960.255(b) on this final rule's effective date, participants should be able to benefit from EID for the full 24 months. Therefore, this final rule retains the regulations for EID for this time period. However, the EID will be available only to families that are eligible for and participating in the program on the effective date of the final rule; no new families may be added. Additionally, in this final rule, HUD clarifies in § 960.255(e) that families eligible to receive the Jobs Plus program rent incentive, Jobs Plus Earned Income Disregard (JPEID) pursuant to the FY2023 notice of funding opportunity (NOFO) or earlier appropriation distributed through prior Jobs Plus NOFOs may continue to receive JPEID under the terms of the NOFO. This clarification is necessary to ensure that FY22 Jobs Plus grantees, as well as all prior Jobs Plus grantees, can offer JPEID as a rent incentive to individuals living at Jobs Plus target sites. The JPEID was established by HUD as an alternative requirement to EID for Jobs Plus grantees by waiving section 3(d) of the U.S. Housing Act of 1937 and § 960.255(b) and (d). For more information about JPEID waivers and alternative requirements, please review the March 13, 2015 (80 FR 13415) and

March 28, 2018 (83 FR 13506) **Federal Register** notices.

B. HOPWA and HOME EID

Some commenters supported ending EID for HOPWA. Many commenters, however, opposed ending the benefit. These commenters stated that removing the policy would create a disincentive to work for people who already face significant economic and affordable housing barriers. Commenters stated that EID affords recipients the ability and time to adequately transition and to adjust to higher cost burdens. Commenters stated that the loss of the EID will threaten participants' housing stability, thereby threatening their health.

Commenters also stated that if HUD ends EID for the HOPWA program, current recipients should continue to receive the benefit, as abrupt removal of the benefit could destabilize tenants, causing them to possibly lose their homes.

Some commenters stated that they disagreed with HUD's conclusion that EID must be eliminated for the HOPWA program. Commenters stated that the language of HOTMA does not eliminate HUD's regulatory authority to continue EID with HOPWA, stating that HUD, in applying EID to the HOPWA program initially, relied on its authority under the HOPWA statute, not the 1937 Act.

HUD Response: In general, HUD would agree that EID has helped improve employment, health, and housing stability among HOPWA program beneficiaries. HUD also agrees that abrupt termination of EID could adversely affect the housing stability and health of HOPWA beneficiaries who are currently benefiting from EID. Accordingly, HUD has revised the rule to extend EID in HOPWA to the same extent that HUD is extending EID in HUD's other programs.

However, the current statutory conditions for the HOPWA program (*i.e.*, Section 859 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12908(a)(1))) restrict HUD from continuing EID in HOPWA after ending EID in the 1937 Act programs, unless HUD can determine that it is not practicable to administer the HOPWA assistance without EID. HUD cannot make this determination because HOPWA was administered practicably without EID from the program's inception in 1992 until the program's adoption of EID in 2001. Therefore, HUD has determined that only a statutory change can enable the extension of EID in HOPWA beyond the elimination of EID in the 1937 Act programs.

For HOME, HUD is maintaining that there is no independent statutory basis for applying the EID in § 5.617 to persons with disabilities who are tenants in HOME-assisted rental housing or who are receiving HOME tenant-based rental assistance. HUD will continue to allow HOME tenants that have already taken advantage of the EID benefit upon the effective date of the final rule to continue to use EID for the full 24 months defined in § 5.617(c) but will not permit additional tenants to use EID in HOME after the effective date of the rule. HUD believes this is consistent with the statutory intent of removing EID from the 1937 Act and that this will maintain alignment between HOME and the Section 8 program.

Income Exclusions

A. General

Commenters wrote in favor of providing a comprehensive list of income that is excluded, stating that anything not on that list is considered income. Some commenters specified that HUD should consider using the IRS exclusion list. Similarly, commenters stated that HUD should include in the regulation the current list of forms of income other statutes require to be excluded, and HUD should update the list through a **Federal Register** notice, rather than using a **Federal Register** notice to contain the list.

There were many comments submitted offering suggestions on how HUD should exercise its flexibility in excluding certain funds from tenants' income. Some suggested that HUD exclude refunds from the EITC or even all tax refunds that are intended to alleviate poverty. A commenter suggested that HUD should exclude income taxes withheld by employers, child tax credits, adoption expense tax credits, or higher education tax credits.

Commenters stated that HUD should exclude all sporadic, nonrecurring gifts, with some writing that the statutory definition of income specifies "recurring gifts." Commenters also stated that requiring tenants to report such amounts would create confusion and would put tenants at risk for not reporting a one-time amount. Others stated that tracking these amounts would be administratively difficult, and that including them would also make SSI and SSDI calculations, which are usually simple, more complex. A commenter stated that including sporadic funds would trigger many more interim reexaminations, and PHAs and owners cannot annualize such one-time funds. Other commenters stated that it is unfair to include nonrecurring

amounts, because they are not consistent forms of income for which a family can budget, and tenants would be exposed to terminations for windfalls that may be depleted in months. A commenter stated that ending the exclusion of an inheritance could result in a family being OI and could affect asset calculations for subsequent years. A commenter stated, however, that it is administratively burdensome to determine if an amount is a sporadic gift, and therefore such amounts should be included in income.

A commenter suggested that as an alternative to fully including nonrecurring income, HUD should leave the sporadic income exclusion in place, allow rent to increase for a year (but prohibit terminations due to this type of income), and specify that previously terminated families will, after 30 days, be allowed back with a new income calculation; this would allow families with small inheritances to maintain support after 30, 60, or 90 days.

Commenters also wrote on the proposed exclusion for certain State Medicaid-managed care system payments to allow families to keep individuals with disabilities living at home. Some stated that HUD should explicitly exclude income from such payments, going beyond the proposed language that merely excludes "payments." Others stated that HUD should not limit the exclusion to Medicaid-managed care payments but should extend the exclusion to all payments to a family from a State agency. Commenters supported the exclusion of ABLE accounts and stated that HUD should exclude State-run savings programs for eligible persons with disabilities.

Commenters suggested that HUD should exclude payments into long-term care insurance. Others stated that HUD should exclude not only medical reimbursements, but also reimbursements for disability-related expenses. Commenters suggested that HUD should exclude: payments for participation in a research study; amounts the household pays in formal child support; earnings for full-time students 18 years of age or older other than heads of households, co-heads of household, or spouses; income of foster adults; and annual income replacement housing "gap" payments or loan proceeds. Commenters suggested excluding income derived from Census employment. Commenters stated that HUD should exclude child support income, as such payments are often sporadic and are meant to cover the needs of the child.

Some commenters stated that HUD should exclude all veterans' disability benefits. However, another commenter stated that this would be too big an exclusion, and HUD should exclude only a percentage of such payments.

A commenter stated that HUD should adjust income exclusions for inflation.

HUD Response: HUD agrees with commenters that it is cleaner and clearer to define what is *not* income, rather than list the almost infinite other types of money that should be considered income. HUD will continue to evaluate the list of exclusions in the IRS definition of income to determine if further regulatory changes are appropriate, but due to statutory restrictions on each definition, the lists of exclusions will necessarily be at least somewhat different. While certain programs, such as HOME and HTF, have statutory authority to allow grantees a choice about which definition may be used, *i.e.*, the definition of Adjusted Gross Income under the IRS Form 1040 or the definition of annual income under § 5.609, the 1937 Act programs do not have that same statutory provision. HUD also believes that the current practice of using publications in the **Federal Register** to list the types of funds that are excluded from HUD income calculations by other statutes is the appropriate way to handle a lengthy list that may need fairly regular updating. The most recent **Federal Register** notice can be found at 79 FR 28938, from May 20, 2014.

Under current policies, certain tax refund payments, such as the EITC, are already excluded from income, and this final rule does not change that. In addition, PHAs and owners will continue to base income determinations on gross income, which includes income before Federal and State taxes are paid. Any Federal refund (or advance payment, with respect to a refundable credit) is excluded from income by statute (26 U.S.C. 6409). As far as excluding specific other refundable tax credits from States, HUD is including in this final rule language to exclude from income amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received (§ 5.609(b)(24)(iii)).

In response to the public comments received, this final rule will no longer eliminate the exclusion from income of "temporary, nonrecurring, or sporadic" income. Rather, to address the concerns that the language in the existing regulation is unclear, HUD is modifying the language to exclude "nonrecurring" income received in the previous year that will not be repeated in

§ 5.609(b)(24). However, earnings as an independent contractor, day laborer, or seasonal worker are explicitly not within the category of excluded income. HUD is defining the terms day laborer, independent contractor, and seasonal worker in § 5.603 of this final rule. Some examples of a seasonal worker include a holiday gift wrapper, lifeguard, ballpark vendors, or snowplow driver.

Additionally, to address other forms of short-term payments that would have been excluded under the previous blanket exemption, HUD is specifying certain forms of income that are included in the category of “nonrecurring” income that would be excluded from the calculation of income: work on the decennial Census (less than 180 days and not resulting in a permanent position) (§ 5.609(b)(24)(i)); direct Federal or State payments or tax credits intended for economic stimulus or recovery (§ 5.609(b)(24)(ii)); amounts received directly by the family as a result of State or Federal refundable tax credits or refunds at the time they are received (§ 5.609(b)(24)(iii) and (iv)); gifts for holidays, birthdays, or special occasions (§ 5.609(b)(24)(v)); in-kind donations from food banks or other organizations (§ 5.609(b)(24)(vi)); and lump-sum additions to assets such as lottery or other contest winnings (§ 5.609(b)(24)(vii)). As discussed above, because there has been some confusion, HUD is adding an exclusion in § 5.609(b)(25) to make clear HUD’s existing practice of excluding civil rights settlements or judgments, including settlements or judgments for back pay. The wording of this exclusion reflects the fact that resolutions of civil rights matters may be structured settlements instead of lump-sum payments. With these revisions and additions, HUD intends to exclude from income sources of funds that cannot be relied upon to pay for a family’s housing needs, while providing additional clarity to PHAs and owners about what funds should still be considered income, given the broad definition contained in HOTMA.

However, other types of funds that commenters asked to be excluded from income will be included in income under these revisions. Income from research studies or money received for child support, for example, would not fall into any of the exclusions and would be considered income under the final rule, unless the family can demonstrate that the funds will not be received in the coming year. HUD believes that these funds are potentially reliable enough to not automatically assume they will not be repeated, and

they are funds that can be used to pay for a family’s housing needs. Therefore, under the broad definition of income in HOTMA, these sorts of funds should be included in the calculation of income. However, PHAs have the discretion to use permissive deductions for these payments based on their policies.

HUD intends these changes to reduce burden, both on tenant families and on PHAs and owners. Determining if a payment is nonrecurring is difficult and can be unclear. Using past income consistently will ensure that families that do not receive the income regularly will see the adjustment in their calculated income at the next interim or annual reexamination. For the voucher program, families are not immediately terminated if their income increases and they reach zero for the housing assistance payment (HAP). Under § 982.455 (which HUD is not amending in this final rule), the family’s HAP contract does not terminate until 180 days after the last payment has been made to the owner. Families are not likely to stop receiving assistance due to the inclusion of nonrecurring payments. Congress intended to streamline these requirements to reduce burden on PHAs and owners. Accepting proposed alternatives such as more frequent evaluations or temporary exclusions of certain types of income would limit the effect of that burden reduction.

HUD also appreciates comments about certain payments from States to allow families to keep individuals with disabilities living at home. If a family receives such a payment and it was already excluded from the family’s income under the current regulation at 24 CFR 5.609(c)(16), this final rule does not change that. The proposed rule eliminated the requirement that such payments offset the cost of services or equipment, and this final rule retains that change. However, HUD is expanding § 5.609(b)(19) to cover all payments to a family from a State agency, regardless of whether such a payment is through Medicaid, in response to public comments that pointed out the wording under the proposed rule was too limiting because some States use a source of funding other than Medicaid managed care to provide for in-home support. In response to these comments, the final rule includes funding through any Medicaid structure, not just managed care. Furthermore, it also excludes payments from, or authorized by, State agencies in states which use a source of funding other than Medicaid to provide for in-home support. In addition, as discussed previously in this preamble, HUD is also clarifying in the final rule

that payments may be made directly by a State Medicaid agency (including through a managed care entity) or other State agency or federal agency, or made by another entity authorized by the State Medicaid agency, or other State or Federal agency to do so on its behalf to enable a family member with a disability to remain living at home. HUD is also adding language in the final rule that payments to a member of the assisted family by the State Medicaid agency-managed care system or other State or Federal agency (or other entities authorized by those agencies to make such payments) for caregiving services to enable a family member who has a disability to live in the assisted unit are covered payments and would be excluded from the family’s income.

HUD will continue to count payments for long-term care insurance as an unreimbursed health and medical care expense for purposes of § 5.611(a)(3)(i), but HUD declines to exclude such payments from the family’s income. However, § 5.609(b)(6), which is not substantively changed by this final rule from the current regulatory text, excludes amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

Many other suggestions from commenters continue to be excluded from income under this final rule, such as the earned income of dependent full-time students and any income from foster adults and foster children. In addition, this final rule retains the language from the proposed rule excluding from income replacement housing “gap” payments in § 5.609(b)(23) and loan proceeds in § 5.609(b)(20). However, HUD declines to exclude payments either paid or received as child support from the family’s income or additional veterans’ disability payments not already excluded by another provision of § 5.609(b). PHAs still retain the ability to create permissive deductions from income.

The majority of income exclusions are categorical—funds that fit into one of the exclusions, regardless of amount, are excluded from income. However, to the extent that an exclusion is for a set dollar amount, almost all such amounts are to be adjusted annually according to the CPI-W.

B. Returns on Assets

A commenter stated that HUD should exclude income from assets from income, which would decrease labor costs for staff with a minimal impact on tenant rent payments. A commenter

stated that there may be assets an individual cannot access or benefit directly from, and therefore those assets should not count as income.

A commenter stated that the proposed regulation in § 5.609(b)(1) excluded only imputed returns on assets and asks how actual income on assets under \$50,000 should be treated.

HUD Response: The 1937 Act, as amended by HOTMA, specifically includes actual income from assets in the definition of income. Therefore, any actual income received must be counted as family income. However, if the family does not have access to a specific asset, as determined by the applicable State law, it should not be counted as belonging to the family, because the family would not own the asset as required under the definition of “net family assets” in § 5.603. This includes any funds held in escrow as a result of a family’s participation in the FSS program, as the family does not have access to those funds during their participation in the program.

In § 5.609(a)(2) of this final rule, HUD is clarifying the regulatory language regarding income from assets to help PHAs and owners determine what income from assets should be included in the family’s annual income while also minimizing the burden on PHAs, owners, and families. Under § 5.618(b)(1), when all net family assets have a combined value of \$50,000 or less, the family is to include on its self-certification that the combined value of net family assets do not exceed \$50,000, and the amount of actual income the family expects to receive from the family’s assets. This amount is to be included in the family’s income. The PHA or owner may rely on this self-certification to serve as verification for both assets and the amount of actual income the family expects to receive from such assets.

When all net family assets have a combined value over \$50,000, if the PHA or owner can compute the actual income for some assets, but not all assets, the PHA or owner must compute the actual income for those assets, calculate the imputed income for all remaining assets where the actual income cannot be computed, and combine both amounts to determine the income for all assets. The PHA or owner must calculate the imputed return on the combined value of all net family assets when the net family assets are more than \$50,000 if *no* actual income can be computed from any of the net family assets.

C. Student Financial Assistance

Commenters suggested that HUD should exclude the full amount of student financial assistance a tenant receives. Others stated that HUD should exclude only amounts paid to the educational institution while counting everything else as part of annual income.

Commenters asked for additional information and updated handbook guidance on the application of the student rule. Others asked for additional clarification on the definition of “grant-in-aid” and whether recurring gifts from family members to pay tuition and expenses would be included or excluded.

Commenters also stated that HUD should provide clarification on whether the financial aid exclusion applies to public housing as well as the HCV and PBRA programs.

A commenter also stated that HUD should ensure its policies do not create barriers to education or create undue hardships for part-time students.

HUD Response: In this final rule, HUD codifies a Federally mandated income exclusion under section 479B of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1087uu). Section 5.609(b)(9)(i) of the final rule excludes assistance that section 479B of the HEA requires to be excluded from a family’s income. This provision excludes from income assistance to students under Title IV of the HEA and under Bureau of Indian Affairs student assistance programs, even assistance in excess of tuition and required fees and charges.

Additionally, in response to the comments on the proposed rule, HUD has provided, in § 5.609(b)(9)(ii), additional language to define “student financial assistance” that is not otherwise excluded by the Federally mandated income exclusion in § 5.609(b)(9)(i). HUD defines “student financial assistance” in order to provide greater consistency of application. As discussed earlier in this preamble, the final rule provides that student financial assistance excluded by § 5.609(b)(9)(ii) is limited to financial assistance provided for the actual covered costs of the student, which are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education, and for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in

an assisted unit. Student financial assistance must be a grant or scholarship received from the Federal government; a State, Tribal, or local government; a private foundation registered as a nonprofit; a business entity; or an institution of higher education. Furthermore, the grant or scholarship must be either expressly for tuition, book, supplies, room and board, or other fees required and charged to the student by the education institution; expressly to assist a student with the costs of higher education; or expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

The final rule states that student financial assistance does not include gifts from family or friends. In other words, gifts that are recurring and otherwise do not meet the criteria for the income exclusion for gifts would be counted as income under the final rule, regardless of whether the recipient of the gift is a student. This ensures that the application of the student financial assistance exclusion is equitable as it does not advantage students with wealthy family members or friends over other students.

The income exclusions in § 5.609(b)(9) apply to all families in assisted housing, regardless of whether the family participates in public housing or Section 8 programs. However, as discussed in an earlier part of this preamble, the application of the income exclusion in § 5.609(b)(9)(i) to families in the Section 8 programs may be limited when using funding from years when HUD appropriations language contains overriding language that requires HUD to include student assistance listed in Title IV of the HEA in the calculation of student financial assistance in excess of tuition and required costs and fees for purposes of determining the income for Section 8 heads of household or spouses who are either age 23 and under or without dependent children.

In response to the comment that HUD avoid creating barriers or hardships for part-time students, HUD notes that the exclusion in § 5.609(b)(9)(i) applies to part-time and full-time students equally. Additionally, HUD is expanding the student financial assistance exclusion in § 5.609(b)(9)(ii) to include part-time as well as full-time students. HUD believes that that it is appropriate to exclude student financial assistance, as defined in § 5.609(b)(9)(ii), from income regardless of whether the student is full or part-time. The reason the family is

receiving the student financial assistance is to assist the family with actual educational expenses, and under § 5.609(b)(9)(ii) the student financial assistance is limited to costs required and charged to the student by the institution of higher education. Consequently, the student financial assistance should be excluded from income, regardless of whether the student is a full or part-time student. While HOTMA specifies that the student financial assistance exclusion is for full-time students, HUD is using its authority when defining income to provide the same student financial assistance exclusion for part-time students.

A noted elsewhere in this preamble, HUD intends to offer further guidance on the student financial aid exclusion under this final rule.

D. Lump-Sum Payments

Commenters weighed in on whether lump-sum payments should be counted as income. A commenter stated that HUD should maintain the current exclusion of lump-sum receipts from income because those lump sums cannot be annualized for income calculations.

Commenters stated that lump-sum insurance payments or settlements, which are meant to help recipients recover from significant financial losses, should not be included as income. Commenters stated that HUD should exclude damage awards from civil actions that do not result in disability other than such awards that represent lost wages, settlements for injuries resulting in disability but for which there is no declaration of culpability, or compensation for physical injuries recovered in various claims by injured people and their families, similar to IRS exemptions. Others stated that HUD should exclude only deferred disability lump-sum payments and current exclusions but should not add more blanket exemptions.

Others stated that it is fair to count as income settlements and subsequent drawdowns of funds meant to replace income or lump sums deposited into a bank account. A commenter said that lump sums deposited into trusts should not be counted as income unless it is drawn upon.

A commenter stated that the proposed exemption language would require a PHA to determine the specific legal claim under which the funds were awarded and would exclude settlements where the defendant avoids admitting to causing harm.

HUD Response: This final rule is including as an exclusion from income

lump-sum additions to family assets, including lottery or other contest winnings, in § 5.609(b)(24)(vii), as a type of nonrecurring income. PHAs and owners would consider any actual or imputed returns from assets as income at the next applicable income examination, as may be required by § 5.609(a)(2). In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by ten percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last 3 months of family's income certification period and the PHA or owner chooses not to conduct the examination.

In addition, this final rule in § 5.609(b)(5) and (7) retains language from the proposed rule that excludes from income insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability. This final rule is silent on requirements regarding culpability of the parties, so that is not a factor in whether or not the recoveries or settlements are excluded from income. HUD is also adding a clarification that the exclusion of settlements for personal or property losses covers insurance payments and settlements for personal or property losses. Finally, HUD is further clarifying that payments made pursuant to the resolution of civil rights matters, which have always been excluded from income, are now explicitly listed in new § 5.609(b)(25), as explained above.

E. Trust Distributions

Commenters stated that the proposed regulation exempting certain payments from special needs trusts (SNTs) is too narrow. Some stated that the regulation unfairly counts as income funds distributed for non-medical, quality-of-life expenses, and many tenants with disabilities may create SNTs to pay for a variety of future needs, not just medical expenses. Commenters stated that the proposed rule could result in people with disabilities being forced to choose between housing and other necessities, and including all distributions would harm the relationships sanctioned by other

means-tested programs between SNTs and other vendors.

Another commenter stated that limiting the exemption to only irrevocable trusts exclude payments that would qualify for the exemption other than the fact that they are in a different type of trust or account.

Commenters stated that requiring PHAs to verify the existence of the trusts and to project annual amounts received would be administratively burdensome.

Commenters stated that the plain meaning of the HOTMA amendments is that the distributions of the principal of trusts should not be income. Others stated that excluding only withdrawals for specific purposes would create operational and administrative challenges.

HUD Response: HOTMA amended the 1937 Act to codify in statute a very broad definition of "income," with limited exceptions to what is to be considered income. Section 104 of HOTMA, which amended Section 16 of the 1937 Act, excluded irrevocable trusts and trust funds that are not under the control of the family or household from being considered part of a family's net family assets. Section 104 of HOTMA amended the 1937 Act to explicitly require PHAs or owners to consider any income distributed from an irrevocable trust fund or a trust fund that is not under the control of a family or household member as annual income to the family unless the income distributed was used to pay for the health and medical care expenses of a minor. In considering the effect of the language, HUD recognizes that the corpus (or principal) of a trust is not new money coming in for the family. Therefore, HUD is clarifying § 5.609(b)(2) to exclude from a family's income any distributions of a trust's principal, regardless of the form of the trust, because this is not income for the family.

As a general rule, PHAs and owners must count any distributions of income from an irrevocable trust or a trust not under the control of the family (*e.g.*, distributions of earned interest) as income to the family. However, this general rule does not apply to distributions used to pay the health and medical care expenses of a minor. Distributions, even of trust income, are not considered part of family income if used for this purpose.

HUD notes that these rules apply equally to irrevocable SNTs or revocable SNTs not under the control of the family or household. HUD recognizes that individuals with disabilities rely on SNT distributions to pay for a variety of

needs. However, HUD has no discretion in applying the statutory requirements surrounding income distributions from irrevocable trusts and trusts held outside of the control of the family or household.

Finally, per the amendments made by Section 104 of HOTMA, revocable trusts under control of the family count as an asset under the definition of “net family assets” in § 5.603. Only trusts that are irrevocable or not under the control of a family or household member are excluded from a family’s net family assets. Since revocable trusts under the control of the family or household are considered part of the net family assets, the final rule clarifies at § 5.609(b)(2)(ii) that distributions from these trusts are not used to calculate annual income. Instead, the PHA or owner must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable, under § 5.609(a)(2).

F. Withdrawals From Assets

Some commenters stated that HUD should count as income any amount drawn against a payment from a bank or trust fund, including insurance payments or settlements. A commenter stated that the proposed regulations regarding distributions from trusts are complex, prone to error, and subject to subjective interpretations, and would privilege or penalize certain forms of income over other comparable incomes, often hinging on details such as whether or not there was a lawsuit, the type of account into which the funds were deposited, and whether the expenses are for a minor, none of which seem relevant to the availability of the funds to the family.

Others stated that HUD should exclude from income all withdrawals from insurance payments or settlements. A commenter stated that withdrawals from existing assets included in asset determinations should not be considered income; only “new money” to the family is income. A commenter stated that limiting the exclusion to disability-related withdrawals specifically related to the settlement would lead to confusion about what counts and what documentation is required, making things more complex and time-consuming, in direct opposition to the purpose of HOTMA. Others stated that insurance settlements are meant to compensate the family for a loss and verifying the circumstances around the payment or settlement

would greatly add administrative burden to PHAs and owners. A commenter stated that the exclusion should apply regardless of whether the payment or settlement is related to a minor.

A commenter stated that both the lump sum and any interest earned from the lump sum should be counted as income if the sum is placed in a bank account.

Commenters stated that withdrawals of principal from accounts should not be counted as income if the original source is excluded from income. However, other commenters stated that including withdrawals as income in specific circumstances would increase the administrative burden on staff and residents to allow PHAs and owners to determine whether a withdrawal is included in the exclusion or not.

With respect to SNTs, commenters stated that all withdrawals from such trusts established for tenants with disabilities should be excluded from income. A commenter stated that all funds pulled from irrevocable trusts should be counted as income, as the trusts provide documentation on amounts distributed, but it would be difficult or impossible to track or prove the purpose of the distribution.

HUD Response: Withdrawals of a family’s assets (e.g., money deposited in a bank account under the name of a family member) are not considered new income to the family or part of a family’s annual income unless the family’s assets are held in a trust that is not revocable by or under the control of a member of the family or household. In those rare instances, PHAs or owners must consider income that is distributed to a family member as part of a family’s annual income unless the withdrawal is for the health and medical care expenses of a minor (as discussed above).

However, unless the amount meets one of the exceptions in § 5.603, i.e., is a specific type of recovery or placed in a specific type of trust, the money in the bank account would still count as a family asset. Therefore, any actual returns (such as interest) on those funds will be considered family income, or barring any actual returns, if the net family assets exceed \$50,000 (as adjusted annually by CPI-W), any imputed income will be considered family income.

Please see the discussion under “Trust Distributions,” above, for a discussion of the treatment of distributions of income or principal from trusts.

Deductions From Income

A. Attendants Deduction

Commenters stated that HUD should restore the deduction of attendant care and auxiliary apparatus expenses in excess of the earnings of the family member who can work because of such expenses, as the amendments in HOTMA do not require removing the deduction, and the deductions may pay for themselves over time by allowing higher earnings.

HUD Response: These deductions are currently located in § 5.611. There is no change from the current regulations in this final rule other than the statutory change from 3 to 10 percent of annual income for the threshold that applies to unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus deductions.

B. Child Care Deduction

Commenters expressed concern that increasing the threshold for deductions will make it more difficult for families. Commenters suggested that expenses should qualify as a deduction at 4 percent of a family’s income. Another commenter stated that child care deductions should be treated the same way as medical deductions, with a reasonable threshold before the allowance applies.

Commenters asked HUD to clarify that child care deductions are available year-round to a household with seasonal employment or education, otherwise PHAs or owners may limit the deduction only to months when the family member is working or taking classes.

HUD Response: While the 1937 Act, as amended by HOTMA, sets a threshold for health and medical care and reasonable attendant care and auxiliary apparatus expenses deductions, it does not do so for child care deductions. Rather, the statute requires only that the expenses be reasonable and necessary to enable a member of the family to be employed or attend classes. Therefore, requiring a threshold of expenses is inconsistent with the statute.

HUD will consider providing additional guidance clarifying how to determine what expenses are deductible and how to determine such amounts.

C. Deductions for Elderly Families or Families With a Person With Disabilities

Commenters supported increasing the deduction for elderly families or families with persons with disabilities. Some asked HUD to consider a more realistic increase, such as up to \$750.

However, some commenters stated that HUD has not done the study required by Section 102(i) of HOTMA, and HUD should defer any rulemaking until the report is completed and submitted to Congress.

HUD Response: Because the HOTMA statute mandates the deduction of \$525, HUD cannot change it. HUD will conduct the study required by Section 102(i) of HOTMA 12 months after this final rule is effective, which will allow HUD to determine the effects of the new deductions as mandated by the statute.

D. Inflation

Commenters stated that adjusting the annual dependent deduction by inflation would create a hardship on PHAs, because HUD does not specify the inflation factor.

HUD Response: HUD has specified that the CPI-W will be the inflation factor used to adjust the deduction amounts for elderly and disabled families and for minors, students, and persons with disabilities. In accordance with HOTMA, HUD will annually recalculate these deductions and make the revised amounts available to PHAs. HOTMA requires that HUD recalculate the deductions by rounding the inflated amount to the next lowest multiple of \$25.

E. Health and Medical Care and Reasonable Attendant Care and Auxiliary Apparatus Expense Deductions

Some commenters supported raising the threshold for medical deductions, as it would reduce burdens on PHA and owner staff. Others opposed the increase. Some stated that it would eliminate the deduction for many households or would create an untenable situation for families already facing financial challenges due to health or disability. A commenter stated that the higher threshold would result in PHAs having to process many hardship exemptions.

Commenters expressed concern that increasing the threshold for deductions will make it more difficult for families. Commenters suggested that expenses should qualify as a deduction at 4 percent of a family's income. Others stated that increasing the threshold from 3 percent to 10 percent at one time is not fair to those who need the medical deduction; instead, the commenters suggested that HUD stagger the increase, either by relating increases only to inflation or doing a set amount each year for 3 to 7 years. Others suggested creating a maximum rent increase every year.

Some commenters had specific suggestions on how to ease the difficulties on families. One suggested a threshold of 6.5 percent. Another stated that HUD should make the current medical allowance available to all households, regardless of age or disability status.

HUD Response: HUD agrees that raising the threshold will reduce burdens on staff of PHAs and owners. In addition, HUD believes that the increased deductions for elderly families or families with a person with disabilities may help to offset the increased threshold for deductions due to health and medical care and reasonable attendant care and auxiliary apparatus expenses. Families still experiencing a hardship may be eligible for hardship exemptions.

Deductions for health and medical care expenses for elderly or disabled families are statutorily mandated, including the threshold that must generally be met for a family to receive the deductions. Therefore, HUD may not change the deduction to a different percent, as some commenters have requested. However, PHAs may adopt additional deductions from annual income for all families as a permissive deduction, though they will not be eligible for an increase in subsidy amounts to cover the costs of such permissive deductions, as discussed further later in this preamble. HUD has also provided hardship exemptions in accordance with HOTMA's requirements, thereby providing relief to affected families.

F. Permissive Deductions

Some commenters were opposed to the use of permissive deductions. Some stated that they could result in disparate impacts, such as if a PHA creates a permissive deduction only for earned income, which would result in a discriminatory effect on certain protected classes with unearned income, such as persons with disabilities. Some stated that additional deductions, and proving such deductions did not materially increase subsidy, would be burdensome to the PHAs. One commenter requested that subsidy be increased if additional deductions are required.

Commenters stated that HUD should allow PHAs to adopt additional deductions based on the needs of their communities. One commenter stated that the standard for what is permitted should be broad enough not to discourage PHAs from exploring innovative solutions to the goals of HUD, PHA, and the community. A commenter stated that extending

permissive deductions to Section 8 programs would add equity between programs and would reduce the complexity of administering different programs.

Commenters wrote that HUD should find ways to encourage the use of permissive deductions to encourage work. One stated that the statutory limitation on material increases in subsidy was a missed opportunity to provide such a work incentive. Others supported the idea of using permissive deductions to encourage tenants to work but stated that funding support from HUD is needed to make it work. A commenter also stated that even if HUD permits some subsidies for work incentives, it should still be left to PHAs to decide whether to implement them.

Commenters also wrote about allowing additional subsidy. Some stated that HUD should not allow additional subsidy to cover permissive deductions. Other commenters stated that requiring PHAs to bear all costs will result in very few permissive deductions being used and may even disincentivize PHAs from providing necessary deductions for residents. A commenter stated that allowing permissive deductions as described in the proposed rule could result in reduced funding resources for all agencies in the medium term. A commenter stated that the statute does allow some added subsidy costs because it only prohibits "material" increases.

Commenters spoke to how HUD proposed to define whether an increase in subsidy is "material." A commenter stated that HUD should define "materially increase Federal expenditures" in such a way as to allow PHAs to create an earned income deduction, excluding 15 percent of earned income to remove disincentives for work and creating parity between families with earned income and families with fixed-income sources. Another suggested defining materially at 5 percent, as it is a figure HUD uses elsewhere. A commenter stated that HUD should clearly communicate the standard, and that it should be measured at a PHA's portfolio level, rather than at the family level. A commenter suggested that it may be more administratively burdensome for PHAs to demonstrate that there is no increased subsidy cost than it is worth it to the PHA to provide the additional deduction.

HUD Response: Amendments made by HOTMA explicitly permit PHAs to adopt permissive deductions, so PHAs may do so for public housing and for the HCV program and moderate rehabilitation programs (including the

moderate rehabilitation Single-Room Occupancy (SRO) program). Permissive deductions were already allowed in the regulations for public housing, so it is not new for that program. This discretion is only available for PHAs, not for non-PHA owners. When establishing permissive deductions, PHAs are still subject to Federal nondiscrimination requirements, including the obligation to provide reasonable accommodations that may be necessary for households with family members with disabilities.

PHAs can respond to community needs by using a wide range of permissive deductions, including permissive deductions to provide incentives to work. However, given the statutory requirement that permissive deductions may not materially increase Federal expenditures, HUD does not want to reduce funding for all PHAs by factoring in permissive deductions prior to allocating PHA Operating Funds. Consequently, the final rule provides that a PHA that adopts such deductions for public housing will not be eligible for an increase in Capital Fund and Operating Fund formula grants and the costs of permissive deductions must be covered by each individual PHA rather than by HUD. Likewise, for the HCV, moderate rehabilitation, and moderate rehabilitation SRO programs, the final rule provides that the subsidy costs attributable to permissive deductions will not be taken into consideration in determining the PHA's HCV renewal funding or moderate rehabilitation funding.

Assets

A. Cap

Commenters expressed support for there being a cap on assets held by families receiving assistance under the 1937 Act. Some asked that the cap be raised to \$250,000, because the cap of \$100,000 may make elderly families with retirement savings ineligible for assistance. Commenters also requested that HUD permit PHAs to defer termination of families that are over the asset cap until the next annual reexamination to allow the family to demonstrate that the owner of the asset is selling the asset or is moving out of the household.

HUD Response: HUD appreciates the public comments. Under the new definition of *Net family assets* in both the proposed rule and this final rule, in § 5.603(b), the value of any retirement accounts recognized as such by the IRS are not included in net family assets. In addition, pursuant to § 5.618(c), PHAs and owners are given discretion in

enforcing the asset limitation on eligibility for assistance at reexamination in § 5.618(a). HUD will issue additional guidance on the use of this discretionary authority. PHAs and owners are reminded that they may not create policies, criteria, or methods of administration that result in discrimination against individuals with protected characteristics under fair housing and civil rights laws and regulations. As such, PHAs and owners may need to provide reasonable accommodations to policies established under this provision to ensure equal access to their programs and activities by individuals with disabilities.

B. Exclusions

While some commenters agreed with the exclusion of IRAs from family assets, commenters also requested additional exclusions. Some suggested that HUD exclude disability-related durable medical equipment (such as electronic wheelchairs, lifts, or disability-adapted vehicles). Commenters stated that HUD should exclude any assets that are inaccessible to the tenants and provide no income. Commenters suggested that HUD exclude inheritances, or insurance payments, or amounts recovered for personal or property losses.

Commenters also stated that HUD is required to exclude equity in units bought under public housing homeownership programs when determining a family's eligibility for assistance. Others stated that HUD should exclude homes with negative equity.

HUD Response: Medical equipment such as described by commenters would count as necessary personal property, and therefore would be excluded from assets under § 5.603(b). If the household does not have control of a trust fund asset or the effective legal authority to sell real property, both as defined by the applicable State or local law, neither the fund nor the real property will be counted as part of the net family assets. Irrespective of whether an asset generates income, if the asset is not excluded, then the asset must be included in net family asset calculations.

HUD believes that insurance payments should continue to be counted as an asset. The 1937 Act, as amended by HOTMA, has a provision that a civil recovery or settlement for claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a family member becoming disabled is excluded from net family assets. Given the specificity of the statutory

language, HUD believes the intent of the statute is that other payments or settlements are to be counted as assets.

Under the amended 1937 Act, families that have a present ownership interest in, a legal right to reside in, and the legal authority to sell real property that is suitable for occupancy for the family (unless the person is a victim of domestic violence or if the family is offering the property for sale) are not eligible to receive rental assistance. A present ownership interest would include any title to a home, any ownership of membership shares in a cooperative, and any lease or other right to occupy a home or cooperative, all as defined by the State or local laws of the jurisdiction where the property is located. It would not include the right to purchase title to a residence under a lease-purchase agreement. In addition, the statutory language excludes from net family assets (1) real property for which the family does not have the effective legal authority to sell in the jurisdiction in which the property is located and (2) equity in property for which the family is currently receiving homeownership assistance through the HCV program from a PHA. These exclusions are contained in the definition of *Net family assets* in § 5.603(b). HUD will provide PHAs and owners additional guidance on how to calculate the value of real property with negative equity for those families who meet one of the exemption categories.

C. Inclusions in Assets

Commenters asked HUD for clear and comprehensive guidelines on what constitutes "net family assets." Commenters suggested that HUD specify in the definition of assets that it includes lump-sum items like insurance payments, settlements, and inheritances to prevent PHAs and owners from counting such funds as income.

Commenters requested clear guidance on the difference in treatment between whole life insurance and term life insurance, as community-based service providers experience barriers in getting vulnerable individuals housed due to life insurance issues.

HUD Response: Given that there are many categories of funds that would be considered assets and should be included in asset calculations, HUD does not believe that the regulation should specify every form of asset. Instead, any type of asset not specifically excluded should be included in the calculation of net family assets. However, HUD believes that guidance may be an appropriate vehicle for providing additional information on

what can constitute an asset and how to calculate its value.

This final rule does not change current practice regarding the treatment of different forms of life insurance. The cash value of an insurance policy is considered an asset, but the face value of any policy is not. Similarly, the final rule does not change current practices regarding the valuation of any form of real property owned by a family (e.g., commercial real property) for purposes of calculating net family assets. The value of real property included in net family assets is the net cash value after deducting reasonable cost that would be incurred in disposing of the family's real property, which would include repayment of any mortgage debt or other monetary liens on the real property.

D. Personal Property

Some commenters supported the proposed exclusion of personal property valued at \$50,000 or less from assets. A commenter stated that allowing PHAs to determine whether specific items are assets allows too much "fluidity" in making income determinations. In addition, commenters stated that the proposal aligns with the asset self-certification threshold, reducing the verification burden on staff.

Other commenters objected to the proposed exclusion of personal property from the determination of assets.

Commenters stated that HUD should define "necessary items" to prevent confusion of what they are, as PHAs and owners determine whether families are over the income and asset caps. Some commenters suggested that HUD include a non-exclusive list of necessary items in guidance.

Commenters suggested items to include in the list of "necessary items." Some stated that the term should include items like home furniture or cars that are necessary for work or getting children to school. Commenters asked whether all cars would be considered "necessary" and whether the term "necessary" meant that there were, by implication, items that would be considered "non-necessary" (such as jewelry) that would then have to be included as assets. Some commenters suggested that HUD define "necessary" to include cars (or other forms of personal transportation), medical equipment, and other items essential for daily living (including furniture), education, and employment.

Some commenters also stated that HUD should not limit the exception to "necessary items." Commenters stated that requiring PHAs or owners to determine the value of items like collectibles or jewelry, which may not

be considered "necessary," would be burdensome because values may differ based on local market conditions. Other commenters stated that it would be administratively burdensome to determine what items were "necessary" and what items would be included as an asset.

Commenters also stated that HUD should make it explicit that the PHA has the right to establish different levels of personal property to exclude from assets, in line with PHAs' ability to exercise flexibility in enforcement on asset restrictions or to establish other exceptions. Other commenters asked for clarity on whether the \$50,000 cap is per item or total value of necessary items.

Commenters suggested that HUD should allow families to self-certify that their personal property is valued under \$50,000, eliminating the burdensome requirement that PHAs itemize such property. Commenters stated that HUD should not require PHAs to document the value of personal property that is excluded from the calculation of net family assets.

HUD Response: Determining what is a "necessary item" for personal property is a highly fact-specific determination, and therefore creating a list in the regulation would be inappropriate. However, HUD will issue additional guidance for PHAs, owners, and grantees to determine whether an item is a "necessary item of personal property" or whether the value of the item should be included in calculating the value of all non-necessary items of personal property for the \$50,000 exclusion. In this final rule, in paragraphs (3)(i) and (ii) of the definition of *Net family assets* in § 5.603(b), HUD is clarifying that all necessary items are excluded from any calculations of personal property value; items of personal property not counted as "necessary items" must have a combined total value of \$50,000 or less (as such amount is adjusted by CPI-W annually) for the PHA, owner, or grantee to exclude the property value from the family's assets.

In addition, the regulation, at § 5.618(b), allows PHAs, owners, grantees, and responsible entities to determine the worth of a family's personal property by accepting a family's self-certification that their property falls under the cap. This will reduce the burden on PHAs and owners to determine the value of any specific item.

E. Real Property

Many commenters reacted to HUD's proposed implementation of the new

prohibition imposed by HOTMA on providing rental assistance to families with a present ownership interest in real property that is suitable for occupancy. Some commenters stated that HUD should not prohibit families that own real property from being assisted, as the family may not be able to afford upkeep, insurance, or taxes on the property. Others suggested that HUD could allow families to keep any properties worth less than \$50,000 or stated that HUD could exclude equity in a property for which a family receives homeownership assistance or units that were purchased under public housing homeownership programs. Commenters also stated that HUD should ensure that PHAs have discretion in whether or not to enforce the prohibition on real property ownership. Commenters asked HUD to provide additional clarity on how PHAs and owners should approach properties that the family is renting out.

Commenters asked HUD to provide additional clarity on what documentation a family must provide in order to qualify for an exception to the prohibition. Commenters stated that leaving it up to a PHA to determine what is acceptable documentation would invite litigation and suggested that HUD use the existing Multifamily Occupancy Handbook (4350.3) to allow for owners and PHAs to collect information in a broad range of formats. Other commenters stated that HUD should provide guidance for PHAs and owners, but not prescribe standards for determining suitability of the property. Some commenters suggested that families should be allowed to self-certify that they qualify for an exception. Commenters suggested that HUD could establish a hierarchy of acceptable verification.

Commenters also asked how PHAs and owners are to determine whether a family owns real property. Commenters suggested that families should be allowed to self-certify that they do not own property, stating that it would be counterproductive to require more. Some commenters stated that requiring PHAs to establish ownership relationships would be extremely onerous, and HUD should defer rulemaking on this issue until HUD can issue clear and comprehensive guidelines. Some commenters suggested that local auditor websites could be a way to determine ownership interests in real property.

Commenters also responded to the proposed list of types of ownership interests a family may have without affecting the family's eligibility to receive assistance. Some commenters stated that there are multiple forms of

ownership that may be particular to a certain State and suggested that HUD expand the list of exceptions in the rule. Commenters stated that the burden of proof needed to demonstrate ownership will make this provision hard to implement; instead, the commenters stated that the question should be whether the family legally owns the home and has the ability to liquidate.

Commenters made suggestions regarding determining whether a property is suitable for the family's occupancy. Some commenters stated that allowing exceptions to the prohibition on owning real property would cause PHAs to be out of compliance with the intention of the proposed rule. Other commenters stated that suitability of the property should not be limited to circumstances around a physical disability, as there may be circumstances where disability-related needs for a family may not be related to a physical disability. Commenters also stated that it would be beyond the expertise of owners or PHAs to make determinations of whether a property owned today will meet the needs of an older adult as they seek to age in place in their community.

HUD Response: When it comes to real property, HUD is bound by the terms of the amendments made by HOTMA, which prohibit families from receiving rental assistance if they have a present ownership in real property in which they have the legal right to reside and the effective legal authority to sell, unless such property is not suitable for occupancy by the family as a residence, the family is receiving HCV homeownership assistance for the property, the owner of the property is a victim of domestic violence, or the family is selling the property. These are statutory restrictions. Based on certain factual circumstances, as described above, though, PHAs and owners have discretion when enforcing the restrictions.

However, the documentation to determine whether a family qualifies for one of the real property exemptions can vary widely according to the family's circumstances or what may be available. Therefore, specifying in the rule what documentation a PHA or owner may accept would be inappropriate. HUD will issue additional guidance with details on what forms of documentation may be appropriate under different circumstances, including how a PHA or owner may determine whether a family has a present ownership interest in or the effective legal authority to sell or whether the property is suitable for the family to occupy as a residence.

HUD also notes that the regulatory language regarding suitability due to disability *includes* unsuitability due to physical needs, but it does not exclude other, non-physical reasons why a property may not be suitable for a family member with a disability. HUD agrees that there may be various circumstances where a property may not be suitable for occupancy for a household with a member with disabilities. Examples include, but are not limited to, disability-related need for additional bedrooms, proximity to accessible transportation, etc.

Finally, § 5.618 provides that PHAs and owners can determine that a family does not have any present ownership interest in any real property based on a certification by the family. By statute, the family certification only addresses whether or not the family has any current ownership interest in any real property. Thus, PHAs and owners must be aware that this certification only addresses one aspect of the general real property ownership limitation. A PHA and owner must still inquire whether or not the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell real property that is suitable for occupancy by the family as a residence. For instance, a PHA or owner could use a form that includes both the certification as well as questions for the family to answer regarding the other restrictions.

F. Residential Real Property (Domestic Violence)

Commenters supported the idea that HUD would also allow exceptions to the prohibition on owning real properties for survivors of domestic violence, dating violence, sexual assault, or stalking. Commenters stated that HUD should follow the procedures already established under the Violence Against Women Act (VAWA), including the documentation requirements and ability of survivors to self-certify their eligibility.

Some commenters stated that HUD should modify its existing forms (Forms 5380 and 5382) to allow families to identify the location of real property and to document their exemption from the real property prohibition due to being a survivor.

Other commenters stated that HUD should do a separate rulemaking for domestic violence survivors, perhaps waiting until after VAWA is reauthorized.

HUD Response: HUD appreciates the commenters indicating support for the exceptions to the prohibition on owning real properties for survivors of domestic violence, dating violence, sexual

assault, or stalking. As indicated in the regulation, the real property restriction does not apply to any person who is a victim of domestic violence, dating violence, sexual assault, or stalking. For example, if such person has an ownership interest that otherwise would make the family ineligible, the prohibition will not apply.

Additionally, HUD interprets this provision such that if a minor child within the family is a victim of domestic violence, dating violence, sexual assault, or stalking, an ownership interest held by that child's parent or guardian within the household will not trigger the prohibition. HUD agrees with commenters that the confidentiality requirements and restrictions on documentation requests associated with protections under VAWA should be extended to protect families seeking the domestic violence-related exception to the real property restriction in this rule. Therefore, this final rule adds language to § 5.618 to require the PHA or owner to comply with the confidentiality requirements and restrictions on requesting documentation under § 5.2007 whenever a family asks for or about an exception to the real property restriction because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking.

HUD also appreciates the commenters' concerns with HUD's VAWA forms. In accordance with the Paperwork Reduction Act, HUD will at a later date update its VAWA forms and the relevant information collection requests. Rulemaking related to VAWA reauthorization is beyond the scope of this HOTMA final rule, and HUD has determined that this final rule is the appropriate vehicle to implement the exception to the prohibition on owning real properties for survivors of domestic violence, dating violence, sexual assault, or stalking.

G. Value of Assets

Many commenters spoke to how PHAs and owners should determine the value of assets of a family. Some stated that assets should be given the value assigned by the local tax assessor and applying inflation rates would be unfair and too burdensome to tenants. Other comments suggested that residents should be allowed to report the value of their assets, without requiring PHAs to do further research.

Commenters said that there should be a way to avoid itemization and valuation of assets and allowing self-certification that the family assets are below \$50,000 would reduce the burden on staff and tenants. Commenters further stated that PHAs and owners

should be allowed to accept self-certification that net family assets are below the \$100,000 limit for eligibility for assistance.

Commenters stated that allowing families to self-certify that their assets are under \$50,000 is an “extreme” jump from the current self-certification amount of \$5,000.

Commenters stated that HUD should not require PHAs to verify all assets triennially, since the income from assets is negligible in most cases and verifying and calculating assets requires a great deal of staff time.

Commenters also stated that HUD should round valuation figures down to the nearest \$1,000 for assets so that staff have round numbers to use when applying inflation adjustments.

HUD Response: The amendments made by HOTMA allow families to self-certify when their combined net family assets are \$50,000 or less, with that amount adjusted annually by an inflationary factor. In this final rule, HUD specifies, in § 5.618(b), that the inflation factor used to adjust the self-certification cap of \$50,000 annually will be the CPI-W. HUD does not believe that it is permitted to round asset valuation amounts, given the definition of assets created by HOTMA as the net cash value of all assets after deducting reasonable costs for disposing of an asset.

However, it is statutory that PHAs and owners are required to redetermine a family’s income on an annual or triennial basis, and those income reexaminations include valuation and returns of assets.

Hardships

While commenters submitted comments that covered a range of topics on hardships in general in HUD programs, most of the comments focused on the hardship provisions around the new deductions for healthcare and child care expenses.

A. General

Some commenters stated that it was premature for HUD to be issuing this rule. Commenters stated that HUD has not submitted the certification to Congress as required by Section 102(b) of HOTMA. Others stated that Congress contemplated more than normal notice-and-comment rulemaking regarding hardship exceptions. Commenters also stated that HUD should defer rulemaking on hardships for deductions until HUD can perform the study of the impact of HOTMA on tenants.

A commenter stated that there should not be hardship exemptions to rent requirements because the reduction in

deductions for participants will be partially offset by the increase in the standard elderly/disabled deduction. A commenter also pointed out that having a different threshold for receiving deductions for some participants will be confusing for staff members and software providers, increasing the chance for error.

Commenters stated that placing the burden of determining whether a family should get a hardship on the PHA or owner would require residents to share personal information, and it would require owners to make determinations and subjective judgments based on deep levels of financial considerations, like credit card debt and budgeting priorities. Others stated that requiring families to demonstrate that the hardship is due to the decrease in deduction places too great a burden on the families, even potentially creating a litigation risk for PHAs because they are making subjective decisions. A commenter stated that allowing hardship exemptions when someone is attending school or is out of work would add burden and extra work to the PHA.

A commenter stated that HUD should adopt hardship exemptions for families consistently in all HUD-funded programs.

HUD Response: HUD does not believe that it is too early to issue this rule. In addition to receiving input from HHS during an interagency clearance process, HUD received input from a wide array of interested parties as part of the public comment process for the proposed rule, including: individuals; PHAs; public housing and tenant interest groups; health advocates; and legal services organizations. In addition, HUD cannot perform the study of the impact of the changes made by HOTMA on tenants until all the changes are in place.

The 1937 Act, as it existed both before and after HOTMA, requires that tenants who are facing financial difficulties receive hardship exemptions for the amount of rent that they owe. In 2019, HUD submitted the certification pursuant to Section 102(b) of HOTMA that hardship and tenant protections in the 1937 Act, as amended by HOTMA, are being fully provided to tenants.

Determining whether a family is facing a financial difficulty, and what is causing that financial difficulty, is a very fact-specific determination, and therefore it is a determination best left up to an individual PHA or owner. HUD reminds PHAs and owners, however, that in undertaking the fact-specific determination relating to a family’s financial difficulty, they must comply with Federal fair housing and nondiscrimination requirements,

including but not limited to Title VI of the Civil Rights Act, Section 504, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, which may include providing reasonable accommodations. However, the HOTMA amendments do require that HUD, by regulation, specifically provide hardship exemptions when the financial difficulty faced by the family is due to specific circumstances around child care or health and medical care and reasonable attendant care and auxiliary apparatus expenses. For the child care deduction, it is necessary, in those circumstances, for PHAs and owners to perform detailed analyses of what is causing the family’s inability to pay rent.

HUD does agree that it would be beneficial for hardships to apply across HUD programs as much as possible, so, as discussed below, HUD is revising § 5.601 to be sure that all of § 5.611, including the hardship provisions in paragraphs (c) through (e), apply to the other HUD programs listed in § 5.601 that use the determination of adjusted income in § 5.611.

B. 202/811

Commenters stated that it is unclear why there were no hardship provisions provided for residents in Section 202/811 properties.

HUD Response: HUD agrees with the commenters. Therefore, in this final rule, HUD has revised § 5.601 to be sure that § 5.611(a) and (c) through (e) apply to the Section 202 and Section 811 programs.

C. Child Care

Commenters stated that the hardship exemption as proposed for the child care deduction is appropriate. Others stated that HUD should allow PHAs to establish a time limit for families to receive child care exemptions in their hardship policy. A commenter also stated that it is unclear if the proposed rule would allow the child care hardship exemption to continue after the next regular reexamination if the PHA finds that the family’s hardship still exists.

HUD Response: HUD agrees that the hardship exemption language for the child care deduction could be clarified and is revising the language regarding the duration of the hardship exemption. Therefore, in § 5.611(d) of this final rule, HUD is adding language to the child care hardship exemption to specify that the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. The final rule further provides that

responsible entities, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

D. Hardship Criteria

Commenters stated that HUD should set the criteria for what constitutes a hardship and what the relief should be, rather than leaving it up to PHAs and owners. Some stated that allowing local decisions would create inconsistency and would create demand for certain apartments with more relaxed policies. Others stated that allowing discretion would create an atmosphere for litigation and the resulting variation would make it more difficult to audit and monitor PHAs and owners. A commenter stated that without set parameters for what is a hardship, the added research, paperwork, and time required for a PHA to determine the accuracy of a hardship claim would not fit within the Paperwork Reduction Act guidelines.

A commenter suggested that HUD should provide parameters for what constitutes a hardship and a skeleton framework of what would be required, such as how often it would need to be verified, how to verify, and what the family must provide to demonstrate the hardship.

Commenters suggested how HUD may define that a family is facing a hardship. One suggested that HUD define a hardship to be when rent and allowable expenses exceed 40 percent of adjusted income. Another suggested that if the household's housing payment exceeds 30 percent of adjusted household income, the family should be eligible for a hardship exemption.

Other commenters stated that HUD should continue to leave the definition of hardship up to the PHAs, remaining consistent with how the PHA defines it in other related contexts. Commenters stated that PHAs have already developed policies and procedures to document and provide hardship relief. A commenter stated that HUD should require PHAs and owners to include a procedure for exemptions in local policies and procedures along with resident notices.

HUD Response: HUD agrees with commenters that PHAs and owners should continue to be able to determine when a family is eligible for a hardship exemption to their rent. However, given the language of the hardship requirement added by HOTMA, HUD believes that it is appropriate to provide additional parameters on when a family may qualify for a hardship specifically due to HOTMA amendments on the child care and health and medical care

and reasonable attendant care and auxiliary apparatus expenses deductions.

Therefore, in § 5.611(c)(1) of this final rule, HUD is creating two ways by which a family may qualify for a health and medical care and reasonable attendant care and auxiliary apparatus expenses hardship. First, a family may qualify for a lower threshold for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses to be deducted from income if the family, at the time of the effective date of this final rule, is receiving the unreimbursed health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction at the 3 percent threshold. The form of that deduction is discussed in more detail below.

However, even families not receiving a deduction for health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses at the time that this final rule is effective may still qualify for a hardship exemption if the family is experiencing a change in circumstances (as determined by the responsible entity) that would not otherwise trigger an interim reexamination. Families seeking a hardship exemption in this category must have eligible expenses that exceed 5 percent of the family's annual income in order to receive the benefit of the hardship exemption.

The reason behind creating these two categories is two-fold. First, HUD would like to relieve the financial burden placed on families currently receiving the health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction that would be affected by the increase in the threshold for such a deduction to be applied by providing a transition period to the new higher ten percent of family annual income threshold. Second, HUD recognizes that families may face financial hardships apart from changes made by HOTMA, where allowing the family to have a lower threshold to take such a deduction may be beneficial to the family. Determinations of what constitutes a financial hardship are fact-based determinations, however, and HUD feels that such determinations are best handled by the responsible entity that is closest to the family, rather than through regulatory text.

HUD is not making changes to the eligibility criteria proposed for hardship exemptions for child care but, as discussed above, is revising the length of time that the hardship exemption for child care may remain in effect.

E. Forms of Hardship Exemptions

Commenters had many suggestions on the form of relief that a hardship exemption should offer. Some suggested keeping the threshold for expenses at 3 percent for as long as the household demonstrates the hardship. Others stated that the PHA or owner should suspend the payment of the difference between what the family would have owed with a threshold of 3 percent and the new amount, allowing the household to repay when it can.

Commenters supported setting a ten percent cap on annual rent increases due to statutory changes in the medical deduction. Others stated that HUD should allow families experiencing a hardship to deduct their full health and medical expenses. One commenter stated that, at the least, HUD should allow for exemptions from the full increase required by amendments made by HOTMA.

Some commenters suggested phasing in the new thresholds for everyone, perhaps by setting the threshold at 6.5 percent for the first year for everyone.

HUD Response: In § 5.611(c)(1) of this final rule, HUD is changing the hardship exemption for health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses for affected families that receive the 3 percent unreimbursed health and medical care expense and reasonable attendant care and/or auxiliary apparatus expense deduction as of the effective date of this final rule from what was proposed in the proposed rule. Rather than simply setting a flat exemption by allowing deductions for expenses meeting or exceeding 6.5 percent of the family's income, the exemption contained in this final rule is a gradually increasing percentage each year so that annual reexaminations beginning after the effective date of this final rule should have the threshold increased to 5 percent the first year, 7.5 percent the second year, and reaching the new statutory standard of 10 percent in the third year.

In addition, this final rule revises the health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction hardship exemption for elderly or disabled families or families that include a person with disabilities that may not have been receiving the health and medical care and reasonable attendant care and auxiliary apparatus expense deduction on the effective date of the final rule but are experiencing a financial hardship. The family must demonstrate that the family's applicable medical expenses and/or reasonable

attendant care and auxiliary apparatus expenses increased, or the family's financial hardship is a result of a change in circumstances (defined by the responsible entity) that would not otherwise trigger an interim reexamination. A family would only benefit from the exemption in § 5.611(c)(2) if the sum of eligible expenses in 5.611(a)(3) exceed 5 percent of the family's annual income. In such a case, the family will receive a deduction for the eligible expenses that exceed 5 percent of the annual income. The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. However, the responsible entity may choose to extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

HUD is not making any changes from the proposed rule to the form of the hardship exemption for child care expenses but, as discussed above, is revising the length of time that the hardship exemption for child care may remain in effect.

F. Duration of Hardship Exemptions

Commenters also opined on how long a family should be eligible to receive a hardship exemption. Some suggested that families should be allowed to retain the exemption as long as it is needed, with no time limit. Commenters stated that the amendments in HOTMA do not limit the hardship provision to only the first year of implementation or to an interim reexamination. Others stated that, with older families, it is unlikely the family will be able to access any additional resources to make them able to afford the full increase in the deduction threshold.

Some commenters stated that allowing hardship exemptions to expire when the PHA or owner determines the family can pay would permit inconsistent and arbitrary determinations. Others stated that the hardship exemption should be extended for at least a year after the need for the exemption is established to allow the family to recover financially. Another commenter stated that HUD should provide a definite duration for exemptions, such as 90 or 180 days, not tied to annual reexaminations.

HUD Response: In this final rule, HUD is providing a financial hardship exemption in § 5.611(c) for families that were receiving the health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction on the effective date of the final rule that gradually phases out over

a 24-month period. Other financial hardship exemptions for health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses will remain in place for a period not to exceed 90 days. However, housing providers may provide exemptions beyond 90 days based on family circumstances at their discretion. Similarly, HUD is placing the same 90-day time restrictions on hardship exemptions available for child care expenses. As a reminder, in addition to the grantee's discretion to provide for longer exemptions, grantees are subject to Federal nondiscrimination requirements, including the obligation to provide reasonable accommodations that may be necessary for households with family members with disabilities.

Over-Income Families in Public Housing

As discussed above, HUD collected public comments in the proposed rule on regulatory provisions regarding the new statutory income restrictions in public housing. However, HUD also re-opened public comments regarding the treatment of OI families and lease provisions for families remaining in a public housing unit and paying the alternative rent as a NPHOI family. This summary includes comments received in both solicitations and responses to those comments.

A. OI Families as Public Housing Residents

Some commenters objected to HUD's statement that OI families should not be considered residents of public housing. A few commenters simply stated that families should be allowed to remain in the PHP.

Other commenters stated that HUD's interpretation that all OI families remaining in their units can no longer participate in the PHP is an incorrect interpretation of the HOTMA amendments. These commenters stated that the statutory text explicitly allows PHAs to either terminate the family's tenancy or to charge the family a higher rent; the termination of tenancy is an alternative to allowing the family to stay. Commenters stated that the interpretation put forth by HUD in the proposed rule is inconsistent with its earlier proposed rule and other publications, including PIH Notice 2019-11, which seemed to support the idea that OI families remaining in a public housing unit would continue to be PHP participants.

A commenter stated that if HUD continues with the proposed interpretation, additional rule changes in parts 5, 960, 966, and 983 (plus changes to the Rental Assistance

Demonstration (RAD) notice) would be required to effectuate new requirements impacting the remaining OI families, and that required termination would also impact many provisions dealing with public housing administration in general. Another commenter stated that other requirements on the physical unit would support the idea that the families living in them must be PHP participants: HUD must continue to treat the physical unit as a unit of public housing; the PHA remains obligated to lease the unit to an income-eligible public housing family upon turnover, and the unit remains part of the PHA's Faircloth limit and subject to a HUD Declaration of Trust and an Annual Contributions Contract.

A commenter stated that requiring an end to program participation, even for those families that stay in their units would be disruptive to the family. The commenter stated that if the family experiences a drop in income, they may not be able to find replacement housing that they can afford nearby, disrupting school, employment, and family obligations. The commenter also stated that wage-earning household members may opt to move out of the unit because of the loss of rights due to the end of PHP participation, and any remaining seniors in the family would be hurt because they would lose the support of their family members and would face additional uncertainty.

Several commenters also stated that requiring PHAs to end the program participation of remaining OI families would likely induce families to leave their units, thereby going against the income-mixing goals of various HUD statutes and policies, including Section 16 of the 1937 Act.

HUD Response: HUD agrees that in the proposed rulemaking in 2019 and other publications, such as the July 26, 2018, **Federal Register** notice implementing the public housing OI limit (83 FR 35490), HUD was silent on the status of OI families remaining in a public housing unit after the 24 consecutive month grace period. It was due to HUD's silence on this status that it became necessary to obtain additional public comments on the implementation of the OI limit for public housing. HUD's interpretation of the changes made by Section 103 of HOTMA is that the unit of an OI family must no longer be subsidized and therefore the family can no longer be PHP participants if they stay and pay the alternative non-public housing rent (alternative rent) once the 24 consecutive month grace period ends. In response to concerns that other requirements on the physical unit

conflict with the new statutory requirements, HUD assures the commenters that the current requirements related to the obligation to lease public housing units to income eligible families when units turn over (24 CFR 960.201) as well units continuing to be subject to the Declaration of Trust (42 U.S.C. 1437g(d)(3); 24 CFR 905.108, 905.304), Annual Contributions Contract (42 U.S.C. 1437d(a)) and the PHA's Faircloth limit (42 U.S.C. 1437g(g)(3)) remain unchanged. Furthermore, HUD would like to remind the public that housing OI families is not unique to the PHP and that PHAs can continue to house otherwise ineligible OI families in certain circumstances as per § 960.503. Section 103 of HOTMA simply creates new limitations on tenancy and program participation for formerly income-eligible families who become consistently OI.

While HUD appreciates the public's concern that termination from the public housing program may be disruptive to families; such disruptions caused by implementing this policy will be addressed by requiring adequate notice to families of their status and the effects of such status as stipulated in the final rule. Furthermore, this rule also provides in § 960.507 a new 24 consecutive month grace period once a family becomes OI and allows the OI family to maintain its status in public housing should an OI family experience a drop in income below the OI limit while in the grace period. If a family's income drops below the OI limit before exhausting the 24 consecutive month grace period, this final rule provides in § 960.507(c)(4) that the family shall be entitled to another 24 consecutive month grace period if its income again goes above the OI limit. Additionally, the specific risk to seniors can be mitigated by updates to other HUD regulations made by HOTMA, such as the elderly family deduction, the health and medical care and reasonable attendant care and auxiliary apparatus expense deduction and associated hardship exemptions, as well as the continued use of permissive deductions as applicable. If a family continues to be OI for 24 consecutive months, HUD reasonably believes that their income will continue to be stable and the disruption due to termination or having to pay the alternative rent would be minimal.

In response to the concerns that HUD's HOTMA OI interpretation goes against the income-mixing goals of various HUD statutes and policies, including Section 16 of the 1937 Act, HUD believes that this final rule

appropriately balances the need for local flexibility in HUD programs with the interest of meeting the new requirements in HOTMA. It should be noted that income-mixing goals are met at admissions. Per § 960.202(b)(1), 40 percent of the families admitted to the PHP must be 30 percent of AMI or lower. As a result, the income-mixing goals of the PHA are based on the families entering the program, not those exiting the program. Additionally, income-mixing goals will continue to be met by families whose income falls below the OI limit for the jurisdiction.

B. Tenant Protection Vouchers

Commenters stated that the PHA's allotment of tenant protection vouchers (TPVs) should not change simply because some of the families on the property are non-public housing OI families. Commenters stated that HUD should continue to provide a TPV for every occupied unit, regardless of the family's OI status. One commenter stated that PHAs should be able to provide the TPV to the family and offer it to the first available income-eligible family on their waiting list, as the OI family would not be able to use the voucher.

HUD Response: HUD appreciates the concerns raised about the possibility of PHAs having reduced allotments of TPVs. This would only occur in cases where a public housing unit has been unsubsidized for 2 years (e.g., occupied by a NPHOI family for 2 or more years). HUD intends to provide guidance to PHAs to ensure they are aware of this factor should they choose to permit families to remain in a public housing unit as a NPHOI family. The authority of Section 103 of HOTMA is limited to the PHP so the suggestion to provide additional TPVs for all PHAs goes beyond the scope of this provision. Lastly, the ability to issue allotted TPVs to income-eligible families on the PHA's voucher waiting list if the NPHOI family living in the public housing project is not eligible for TPV assistance is already permitted.

C. Preferences for Over-Income Families

Commenters stated that OI families that fall below the OI threshold during their 2-year grace period should not have to start as a new applicant for public housing, as they have not yet transitioned out of the program. Another commenter suggested also including OI families during the period before they have to vacate their tenancy.

Commenters supported the idea that PHAs should be allowed to easily readmit families to the PHP if they fall below the eligible income threshold

again. A commenter stated that families that have already finished their grace period but remain on the property should be readmitted to public housing. Commenters stated that it should be up to the PHA to determine whether or not to create a preference for OI families that remain in the property, including whether or not to immediately readmit such families. Another commenter stated that allowing PHAs to adopt policies to facilitate timely (whether immediate or on another timeline set by the PHA) admittance of OI households remaining in their units that requalify for subsidy would help keep people housed and potentially prevent homelessness.

One commenter stated that OI families remaining in their unit should continue to be public housing residents and therefore should not have to face issues of readmittance or waiting lists.

HUD Response: Neither HOTMA nor this final rule requires that families who fall below the OI threshold during the 24 consecutive month grace period become new applicants for public housing. Section 960.507(c)(4) of this final rule provides that if a family's income falls below the OI threshold at any point during the 24 consecutive month grace period, the family's status as a PHP participant remains unchanged. In the event the family becomes OI again, the family would be entitled to a new 24 consecutive month grace period per § 960.507(c)(4). As suggested by the commenters, at § 960.206(b)(6), this final rule allows PHAs to give preference to former public housing program participants paying the alternative rent who once again become income-eligible. PHAs whose policy is to terminate OI families after the 24 consecutive month grace period may not use this preference and this preference may not be applied to current public housing families (e.g., OI families facing termination of tenancy pursuant to PHA policies, consistent with § 960.507(e)) or families who have vacated the public housing project. PHAs will have the discretion to adopt this preference consistent with § 960.206(a) and (b)(6). PHAs must implement this preference consistent with all other program requirements and Federal nondiscrimination requirements.

D. Repositioning

A commenter stated that because many OI families remaining on the public housing property would not be eligible for admission into a Section 8 program, PHAs will need to factor in alternative units within their redevelopment/repositioning plans,

including allowing OI families to transfer to a unit in a non-converting property. Another commenter stated that it is still unclear how PHAs should deal with in-place OI families when the family is ineligible for assistance after conversion under RAD, or how their priority for Section 8 assistance should be handled. A commenter asked about the effect that conversion under RAD would have on OI tenants. The commenter asked whether such family would be considered “continuously assisted” and be able to benefit from tenant protections available to other public housing residents after conversion.

A commenter stated that special considerations should be afforded during the period before termination, or after the two-year grace period, if a PHA chooses to allow OI families to stay.

A commenter stated that PHAs should be able to allow remaining OI families to receive similar protections as in-place public housing-assisted families who are not OI when units have assistance converted under RAD or Section 18 of the 1937 Act. According to the commenter, PHAs should have the discretion to (i) allow OI families the right to remain in the unit post-conversion; (ii) permit them a right to return (if displaced due to work in the unit); (iii) allow them the right to be admitted immediately if they become income eligible in the future, delayed only by the time it takes to make an eligibility determination; and (iv) phase in the contract rent post-conversion.

Some commenters stated that HUD should not provide any special consideration to OI households if a PHA repositions their public housing property. One commenter opposed considerations because the families are no longer public housing families. However, the commenter stated that PHAs should be allowed to revisit the landlord-tenant relationship with such families upon repositioning. Another commenter opposed special considerations because the existing requirements for repositioning are sufficient, and policies specific to OI families can be set forth in the applicable relocation plan documents, which are reviewed by HUD. This commenter also stated that HUD should not use this proposed rule to promulgate new requirements for RAD, Section 18, and Section 22 programs; instead, existing program-specific guidance may provide protections, otherwise the URA would govern.

HUD Response: HUD agrees that PHAs need to factor in the presence of OI families and NPHOI families in public housing projects when

developing any redevelopment or repositioning plans. However, this final rule implements Section 103 of HOTMA, and HUD agrees with the comment that this provision does not create new requirements for RAD and other repositioning or removal authorities (e.g., Section 18 or Section 22 of the 1937 Act). Thus, most of the comments regarding RAD and other repositioning authorities are outside the scope of this rulemaking. For example, this final rule does not address how PHAs should deal with NPHOI families in RAD conversions. PHAs converting public housing projects under RAD must follow the RAD statute and notices. HUD intends to provide further RAD guidance regarding treatment of OI families who remain public housing participants as well as NPHOI families who are unassisted. This rule does not alter existing RAD and Section 18 requirements regarding OI public housing families. For example, sections 1.6.C.1 (PBV) and 1.7.B.1 (PBRA) of the RAD Notice (revision 4) (H–2019–09 PIH–2019–23 (HA)) address the treatment of OI public housing families (but not NPHOI families) upon conversion, and this rulemaking does not amend either provision. This rulemaking also does not amend Section 18 relocation and “comparable housing” requirements in § 970.21. This final rule gives consideration to an NPHOI family paying the alternative rent who becomes income-eligible again. PHAs have the option to adopt a local preference for NPHOI families pursuant to § 960.206(b)(6). However, this rule makes no changes to existing rules and requirements surrounding Section 8 preferences, including RAD PBV and RAD PBRA preferences.

For OI families that must relocate due to a RAD conversion action, the URA may apply, depending upon the fact-specific determinations made under the URA’s regulations at 49 CFR part 24 and PIH Notice 2016–17 (“Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component—Public Housing Conversions”).

However, the URA does not apply to Section 18 actions nor does the RAD ‘right to remain.

E. Community Service and Self-Sufficiency

Commenters stated that if OI families are allowed to stay in the unit, they should still be considered public housing families and should be afforded all the rights and responsibilities as any other public housing family, including

being subject to the community service requirements.

Other commenters stated that CSSR should not be mandated by HUD. One commenter stated that requiring families not in public housing to perform community service would put a strain on families that are likely already struggling, including possibly already working more than one job.

Some commenters stated that because OI families are not public housing residents, HUD cannot require a PHA to ensure the household meets community service or self-sufficiency requirements. Commenters stated that PHAs should be allowed to choose to add any such requirements to the new lease after the grace period, including CSSR. Another commenter stated that the family is no longer receiving a subsidy, and ostensibly no longer requires support from the PHA to develop marketable skills and a work history, so the household should not be obligated to meet with additional requirements such as CSSR but should have a more traditional landlord-tenant relationship with the PHA.

A commenter stated that OI families still in the FSS program should be allowed to continue to finish their FSS participation, even if they are no longer part of public housing or able to contribute additional money to the escrow, as continued access to the FSS service coordinator may still be beneficial, particularly when HUD allows non heads of households to participate in FSS.

A commenter stated that CSSR is outdated because it requires residents to prove they are worthy of aid, and staff time to administer the requirements would be better spent doing other things; therefore, the commenter advocated that HUD work with Congress to end the requirement entirely.

HUD Response: In this final rule, HUD is clarifying in § 960.507(e) that OI families that the PHA has allowed to remain in a public housing unit, paying the alternative non-public housing rent, are no longer public housing program participants and thus, pursuant to §§ 960.600 and 960.601, are no longer subject to the community service requirements. However, pursuant to § 960.507(e), OI families, in the period before termination, are still considered public housing program participants and so must remain compliant with all public housing program requirements including the community service and self-sufficiency requirements. HUD appreciates that some members of the public disagree with CSSR; however, HOTMA did not alter these existing provisions for public housing program

participants. Families participating in the FSS program who become over-income would also be entitled to the 24 consecutive month grace period after which, if they remain over-income, they would then be subject to their respective PHA's over-income policy. As noted in § 960.507(a)(1), there are no exceptions for families participating in the FSS program.

F. Lease Requirements

Some commenters stated that because remaining OI families would not be public housing families and would not be receiving any subsidy, HUD does not have authority to mandate lease provisions outside of what the 1937 Act, as amended by HOTMA, specifies. One commenter cited section 2 of the 1937 Act, which states that PHAs should be given "the maximum amount of responsibility and flexibility in program administration" and stated that PHAs should be allowed to apply all of the requirements in 24 CFR part 966 to remaining OI families.

Other commenters advocated for allowing PHAs broad discretion in setting the terms of leases for remaining OI families, as long as they are in accordance with State and local laws. A commenter stated that allowing PHAs discretion would allow them to administer OI tenancies in the manner that is most efficient and least disruptive to their operations and to the families involved.

A commenter stated that PHAs should have the discretion to treat remaining OI families as public housing families in all non-rent aspects because all families living in the same building should be treated consistently, including the termination of tenancy process; the transfer process; reasonable accommodation requests; and succession rights. The commenter stated that a family should not be deprived of administrative hearing rights because of their OI status, nor should the PHA have to create a new series of rules and regulations for these families.

Commenters stated that HUD should mandate minimum lease provisions for conduct and occupancy restrictions related to drugs or sex offender status, but a commenter also stated that there should not be any additional grievance or due process rights because the families are choosing to remain as non-public housing residents.

Commenters stated that PHAs should have the discretion to determine whether to conduct income reviews. A commenter stated that HUD should not impose requirements because the HOTMA amendments already set the families' rents separate from their

income. Another commenter stated that allowing PHAs to conduct annual and interim examinations would help provide a safety net to families in case their income falls again. A commenter stated that PHAs should specifically be allowed to conduct interim reexaminations for household additions.

A commenter stated that PHAs should be given discretion on how often to conduct unit inspections.

Some commenters felt that over-income residents should be given the same rights as other public housing families in the property, either because the property itself is remaining public housing, or because the families should stay in the public housing program.

A commenter also stated that increased rental charges to remaining OI families will not pay for increased administrative costs if their public housing tenancies are terminated, and HUD should provide additional tools to the PHA to assist administration of non-public housing units.

HUD Response: HUD appreciates all public comments received and agrees that mandated lease provisions for OI families remaining in a public housing property should be minimal outside of the alternative non-public housing rent required by the amended 1937 Act. As a result, in § 960.509 in the final rule PHAs are given the maximum amount of flexibility in deciding what lease requirements (drawn largely from § 966.4 public housing lease requirements) should apply to OI families. Where possible, PHAs are given broad discretion in setting the terms of leases for remaining NPHOI families in accordance with State and local laws to allow PHAs to administer NPHOI tenancies in the manner that is most efficient and least disruptive to their operations and to the families involved. Given this discretion, HUD believes that there should be no increased administrative costs. However, HUD is clarifying in the final rule that NPHOI families are not required to comply with CSSR (§§ 960.600, 960.601), and NPHOI families cannot be subject to income reexaminations (§ 960.257(a)(5)) and are not provided utility allowances (§ 960.507(a)(1)(iv)). PHAs will have discretion in extending certain public housing policies to NPHOI families such as administrative hearing rights (§ 960.509(b)(13)). PHAs have no discretion on lease provisions for NPHOI families remaining in a public housing property concerning requirements related to conduct and occupancy restrictions affecting the health and safety of residents, particularly those pertaining to drugs,

drug-related criminal activity, or State registered lifetime sex offenders (see § 960.509(b)(6) and (b)(11)).

PHAs must still comply with Federal nondiscrimination requirements, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act, Section 504, and Title II of the ADA, as applicable. In response to the public comment regarding reasonable accommodations, PHAs still have a legal obligation to provide for reasonable accommodations that may be necessary for individuals with disabilities. PHAs do not have discretion whether to provide for reasonable accommodations. Moreover, in the context of unit transfers for a family when repairs to improve the life, health, or safety of a resident cannot be made within a reasonable time, consistent with fair housing and civil rights obligations, PHAs must provide comparable alternative accommodations having the appropriate number of bedrooms based on the family's need and accessible accommodations and reasonable accommodations for persons with disabilities.

G. Impact of OI Families on PHAs

A commenter stated that as long as OI households are following the same rules as everyone else, there will not be additional burdens on the PHA. Another commenter stated that even if there are additional burdens on a PHA from allowing OI families to stay, the PHA has the option to not allow the families to stay, so the extra burdens will be willingly assumed by the PHA. A commenter stated that there would be no consequences to PHAs or to OI families who elect to remain in their public housing unit.

A commenter stated that requiring termination of public housing tenancy will impose administrative burdens on PHAs by requiring PHAs to administer different tenancy types within the same development and to develop and translate new forms of leases and develop new procedures for these tenants.

In addition, a commenter stated that keeping OI families in public housing also reduces subsidy costs for HUD. A commenter stated that allowing OI families to stay will decrease PHA administrative burdens, and families will have greater success in achieving self-sufficiency. Another commenter stated that permitting OI families to stay helps maintain a sense of community, rewards self-sufficiency, promotes mixed-income communities, and allows families to live in areas that may be among the least affordable areas in the country that they may not be able to

find suitable housing on the private rental market. A commenter stated that there is a value in allowing OI families to stay as an incentive to other families to gain employment and self-sufficiency, and there is an economic benefit to the PHA and HUD to allow the family to stay.

A commenter stated that allowing OI families to stay will reduce or delay the availability of public housing units for additional families.

HUD Response: HUD agrees that the administrative burden to PHAs should be minimized where possible and HUD believes that this final rule appropriately balances the need for local flexibility in HUD programs with the interest of meeting the requirements in HOTMA. With PHA discretionary flexibility, the PHA could choose to eliminate any additional administrative burden by treating all families the same while also having the ability to make any policy changes deemed necessary to meet their financial goals and community needs of their jurisdiction.

HUD appreciates that some members of the public believe that allowing OI families to stay will lead to greater success in achieving self-sufficiency, help maintain a sense of community, reward self-sufficiency, promote mixed-income communities, and allow families to live in areas that may be among the least affordable areas in the country. However, given the variety of circumstances throughout the country, these priorities are best set by local PHAs. HUD understands that allowing OI families to stay in a public housing unit may reduce or delay the availability of public housing units for additional families; however, HOTMA has made this a matter of PHA discretion.

H. Other OI Comments

Some commenters stated that it is unreasonable to allow OI families to continue to reside in public housing, especially for a period of over 12 months.

A commenter stated that HUD should issue guidance for PHAs on calculating the amount of monthly subsidy provided to the unit as set forth in Section 103 of HOTMA and should develop sample notices that PHAs could provide to OI families, informing them about their right to remain in public housing at the end of the six-month grace period. Commenters also asked for further guidance on the impacts of allowing OI families to stay. Some stated that additional guidance on how the subsidy for the unit is calculated is needed, as that information would be needed to allow families to calculate how much rent they will have to pay if

they stay. Others stated that HUD should clarify if the subsidy amounts for the PHA would be decreased if OI families remain and pay higher rent.

Commenters stated that HUD should provide model notices, with translations, for PHAs to give to families once their incomes are over the limit for 2 consecutive years so that there is nationwide uniformity in such documents.

Commenters stated that PHAs should be able to defer termination for a family until the next annual reexamination if there is no housing in the geographic area that would not create a rent hardship or a hardship due to its distance from work, school, medical needs, or other essential services for the family. Commenters also stated that HUD should, in § 960.507(a), allow OI families to stay in public housing as a reasonable accommodation.

Commenters opposed the proposal that would not exempt families participating in FSS or EID from the over-income policy. One commenter stated that not allowing such an exemption would violate the intent of the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174, 132 Stat. 1296).

Other commenters submitted comments on the requirement that PHAs submit certain information for HUD to report to Congress. Some commenters asked for the opportunity to review and comment on the tool to report the number of over-income families and the families on the waiting list. Others stated that HUD has not yet developed the reporting system to collect the needed information.

HUD Response: The limit on OI families residing in public housing is statutory, and therefore required. However, PHAs can consider specific circumstances in which they would provide for flexibility in the administration of over-income requirements, provided such policies are in compliance with the 1937 Act, all public housing regulations, and all applicable fair housing requirements. PHAs are subject to, among other fair housing and civil rights authorities, Section 504, the Fair Housing Act, and Title II of the ADA, which include, among other requirements, the obligation to grant reasonable accommodations that may be necessary for persons with disabilities.

Guidance on calculating the amount of monthly subsidy provided to the unit will be provided by HUD annually. The final rule also provides detailed guidance on the notices PHAs are required to provide to OI families. For this reason, HUD does not plan to

develop sample notices for PHAs to provide to OI families. However, HUD will continue to evaluate the need for further guidance on OI policies and procedures.

HUD is modifying the regulatory language in § 960.102(b) to include a definition of alternative non-public housing rent, *i.e.*, the amount a NPHOI family pays in rent. Alternative non-public housing rent is defined as a monthly rent equal to the greater of: (i) The applicable fair market rent, as defined in 24 CFR part 888, subpart A, for the unit; or (ii) The amount of the monthly subsidy provided for the unit, which will be determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund. For the Public Housing Capital Fund, the amount of Capital Funds provided to the unit will be calculated as the per unit Capital Fund assistance provided to a PHA for the development in which the family resides for the most recent funding year for which Capital Funds have been allocated. For the Public Housing Operating Fund, the amount of Operating Funds provided to the unit will be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding obligation determination has been made. In the proposed rule, the rent for a NPHOI family was described in § 960.507(d)(1), and paragraphs (d)(1)(ii)(A) and (B) explained how the monthly subsidy amount for Public Housing Capital Fund and Operating Fund was to be calculated. In the proposed rule, for the Public Housing Operating Fund, HUD proposed that the amount of Operating Funds provided to the unit be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding eligibility determination has been made. However, as noted above, the final rule revises the Operating Fund monthly subsidy amount to be calculated based on the final funding obligation amount, not the eligibility amount. Because such amounts are based on appropriations, HUD will publish the specific amounts annually. If PHA policy allows NPHOI families to remain in the unit and pay the alternative non-public housing rent, the PHA will no longer receive subsidy for these units.

While HUD appreciates the public's concern about the hardships a family whose tenancy is terminated may face, the amendments in HOTMA state that if

a PHA chooses to adopt a policy to terminate families that have been over-income for 24 consecutive months, the family must have their tenancy terminated within no more than 6 months. In addition, whether an OI family is allowed to remain in public housing is determined by the local PHA's policy decision. Federal nondiscrimination requirements under the Fair Housing Act, Title VI, Section 504, and Title II of the ADA continue to apply. Federal nondiscrimination laws that require, among other things, PHAs and owners to make reasonable accommodations for individuals with disabilities continue to exist notwithstanding any changes by HOTMA.

Because the determination of a family's OI status is based on the determination of their income, PHAs must not include income that is excluded from income calculations, such as amounts based on participation in an EID or FSS program when determining if a family is OI.

HOTMA requires PHAs to submit an annual report on the number of OI families in public housing and the number of families on the PHA's waiting list for admission into public housing. HUD recognizes that there are needed system updates, and these updates will be put into place over the time period between the publication of this rule and the overall effective date of January 1, 2024.

De Minimis Errors

Commenters made many suggestions on how HUD should determine "de minimis" errors that would not cause a PHA or owner to be out of compliance with HOTMA provisions regarding income review and calculation. Some commenters stated that disregarding errors below a set amount may mask larger problems, such as improper application of regulations, that need to be systematically investigated and corrected.

Many commenters stated that HUD should use the Section Eight Management Assessment Program (SEMAP) de minimis threshold of 5 percent of all income determinations made during a calendar year. A commenter stated that structuring the de minimis protections in this way would avoid penalizing a PHA or owner for a large number of tiny errors or a few substantial errors. Other commenters stated that the threshold should be ten percent of all income determinations during a calendar year and noted that ten percent would match the proposed threshold for interim reexaminations. Some suggested that HUD could set a

threshold using determinations made at a property during the year. However, some commenters stated that using a threshold as a percentage of all determinations would require reviewers to conduct a 100 percent file review to determine if the errors were de minimis, creating a large administrative burden.

Many commenters also asked how HUD will determine whether an error fits within the de minimis allowance. Some commenters asked whether the error rate was per file or per total income determinations. Commenters stated that HUD should not aggregate errors on a calendar year, because rent calculation compliance has historically been made at the participant level. Others asked for clarification on the additional activities to which the de minimis threshold might apply.

Several commenters stated that HUD should not use 5 percent of individual income determinations. Others, however, agreed that HUD should use 5 percent of the family's adjusted income. Some suggested that the threshold should be lower, at 1 to 2 percent of household income.

Some commenters stated that HUD should set the threshold at a specific dollar amount instead of a percentage. Other commenters stated that using a percentage standard was more appropriate than using a set dollar amount because a specific dollar amount would not allow that error to scale to meet the income thresholds of families or localities, based on family income and the area cost of living.

Some stated that the threshold should be \$30, others \$50. Commenters that suggested a \$50 threshold stated that it would ease the strain on the PHA. Some commenters stated that, following the requirements of the EIV discrepancy report, HUD should count as de minimis those errors that do not exceed \$200 a month for any family.

Some commenters suggested de minimis be defined as a difference less than or equal to \$10 per month in the assistance payment. Others suggested a combination approach of allowing errors less than the greater of \$50 per month per household or 5 percent per month per household. Commenters also suggested the greater of \$5 or 5 percent.

Some stated that every file should demonstrate that the owner or PHA has taken appropriate corrective action to repay the family for any overpayments for purposes of audits. Others stated that HUD should retain language in the regulation that makes it clear an owner or PHA must still repay overcharged families. Commenters asked for clarification on how owners or PHAs should proceed when a de minimis

error results in an over-income family being approved for assistance. Commenters also stated that the regulation should be clear that the de minimis protection applies both for upward and downward adjustments.

Commenters also stated that HUD should also allow for de minimis errors made by tenant families. Commenters stated that HUD should work within the Management and Occupancy Review (MOR) process and with industry partners to find a reasonable alternative.

HUD Response: HUD understands that it is important for income determinations to be accurate in its rental assistance programs; however, HUD also recognizes that there are minor calculation errors that an owner, PHA, or grantee may make that result in minimal effects on the rent paid by a family, and HUD does not believe that a PHA or owner or renter would be negatively affected by such small differences. In addition, the amendments to the 1937 Act made by HOTMA explicitly state that PHAs and owners are not considered to be failing to comply with provisions dealing with the determination of income solely due to de minimis errors made by the PHA or owner, nor small errors made by the family in reporting income. The de minimis threshold applies to all income reviews and calculations of a family's adjusted income for PHAs or owners in 1937 Act programs, 202 and 811 programs, or HOPWA grantees and project sponsors subject to 24 CFR part 574.

HUD is revising this final rule (in §§ 574.310(h), 960.257(f), and 982.516(f)) so that rather than defining a de minimis error as a percentage error, de minimis errors will be errors that result in a difference in the determination of a family's adjusted income of \$30 or less per month. This change will allow de minimis determinations to be made on a family-by-family basis and will avoid having to do a full portfolio review to determine if a PHA, owner, or grantee exceeds the threshold. In addition, using a dollar amount instead of a percentage will make de minimis errors easier to calculate. However, HUD may issue a **Federal Register** notice for comment in the future to re-define de minimis errors.

HUD is also adding language to clarify that where a PHA, owner, or grantee has made a mistake resulting in the family underpaying their rent, the family will not be held liable for the underpaid rent, regardless of whether the mistake resulted in a de minimis error. This is in addition to language that was included in the proposed rule that

would require PHAs, owners, and grantees to repay or credit families who were overcharged due to miscalculation errors. Improper payments must be reconciled pursuant to existing program requirements, as HOTMA did not change the requirements currently in place.

Enterprise Income Verification (EIV)

Some commenters stated that HUD should continue to require the use of EIV at interim reexaminations. Commenters stated that allowing PHAs the choice would expose PHAs to litigation risks over their decisions on how to verify income, and it could increase fraud and the misreporting of income. Commenters also stated that the information in the reports is significant and is needed to capture potential income changes.

Other commenters agreed with the proposal to make the use of EIV optional at interim reexaminations. Commenters stated that the information is too out of date to be useful and eliminating EIV as a requirement will reduce the burden on PHAs and owners. Commenters stated that they did not believe eliminating the requirement would result in an increase of incorrect income calculations or improper payments.

Commenters wrote that if EIV reveals at an annual examination that there was inaccurate information, the PHA can retroactively charge the family as needed. Commenters also stated that unreported income can be captured at annual reexaminations. Commenters stated that tenants should be advised that inaccurate reporting at interim reexaminations, discovered later, can lead to a requirement to repay any underpayments attributable to errors.

Commenters also stated that the Income Validation Tool (IVT) is redundant of EIV and therefore should not be required, either.

HUD Response: HUD agrees with commenters that eliminating the requirement that PHAs and owners use EIV for interim reexaminations would reduce the burden on PHAs and owners without sacrificing the accuracy of the interim reexaminations. Therefore, HUD is including in this final rule, in § 5.233(a)(2)(i), language that EIV must be used for annual and streamlined reexaminations only and not interim certifications, which replaces the less specific existing regulatory text that EIV must be used for “mandatory reexaminations or recertifications.” While a PHA or owner may opt to use EIV at interim reexaminations, it is not required to do so by this final rule.

HUD appreciates the suggestion to eliminate the required use of the IVT.

While that is beyond the scope of this current rule, HUD will continue to evaluate what guidance must be updated to reflect these decisions.

In addition, HUD agrees that tenants should be aware that inaccurately reporting income at an interim reexamination could result in the family having to repay the PHA or owner, which is discussed in current HUD guidance. HUD will evaluate the guidance to see if additional clarifications are warranted.

Financial Disclosures

Commenters weighed in on the proposed changes to the financial disclosure requirements. One requested that the changes to the consent form be made effective immediately upon the effective date of the final rule. A commenter also stated that the termination of residency or subsidy should be pursued if a family member revokes consent.

HUD Response: Section 104 of HOTMA amended the 1937 Act to allow for PHA discretion to determine if applicants or recipients are ineligible for assistance if the family revokes its authorization to obtain financial records. The final rule, in § 5.232(c), provides that, in order to exercise this authority, PHAs must establish an admission and continued occupancy policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in order to exercise this authority. Changes to the Authorization for the Release of Information form will coincide with the effective date of this final rule.

Inflation

Commenters suggested that HUD should use the Consumer Price Index (CPI) as the inflation factor when various amounts in the statute are to be adjusted by inflation. Commenters stated that HUD uses it for other data purposes. Some stated that HUD should use the CPI-W, as that affects the Social Security COLA. A commenter opposed using Chained CPI-U, as the commenter stated it underestimates the official poverty measure and the costs that people below the poverty line face.

Commenters stated that HUD should have a “hold harmless” provision in the case of a decrease, and that HUD should release the imputed passbook rate information with the release of updated income limits.

Some commenters stated that HUD should allow PHAs to use an inflationary index that is relevant to their geographic location.

Commenters also differed on whether HUD should use a single index for all inflationary adjustments. Some stated that HUD should use a commonly available and understood index for inflating all elements of the income calculation. Another commenter stated that HUD should use different inflationary indexes for different provisions. The commenter stated that passbook savings should be used to impute asset returns, while deductions should be adjusted by no less than the SSI COLA.

Commenters stated that prior to applying inflation factors, HUD should round figures down to the nearest \$1,000 for assets and \$50 for income to reduce administrative burden by providing round numbers for calculation of value after inflation.

Commenters also weighed in on when inflationary factors should be implemented. One commenter stated that HUD should allow PHAs to use Social Security and Veterans Affairs letters documenting the COLA when the COLA takes place, rather than requiring families to get a letter dated within 60 days of the PHA’s request for information, as that would reduce burdens and speed up reexaminations. Others stated that HUD should provide a clear implementation date of when the inflation index is effective. A commenter asked for additional information on how long PHAs and owners have to apply the new amounts. Another recommended that inflationary changes be effective on January 1 of each year, applied on the family’s next annual certification. A commenter also asked for specific guidance on inflationary adjustments for reexaminations that do not occur annually.

Commenters stated that adjusting annual dependent deductions based on inflation would create a hardship, because a national factor would generate inequalities but creating localized factors would require too much data.

HUD Response: HUD agrees with commenters that it will be less administratively burdensome and fairer to specify which inflationary factor is appropriate to adjust various amounts, as mandated by the HOTMA amendments. Therefore, HUD has added language throughout this final rule specifying that, where baseline amounts are to receive annual inflationary adjustments, HUD will adjust the amounts using the CPI-W, which HUD believes to be the most appropriate inflationary factor to apply consistently throughout the final rule. The COLA adjustment for Social Security and SSI benefits for approximately 70 million

Americans is based on increases in the CPI-W and consequently many PHAs, owners, grantees, and families are familiar with it.

MTW

A commenter stated that any regulatory changes due to HOTMA should not undercut the flexibility of the MTW program and the ability of MTW agencies to design and test innovative strategies.

HUD Response: Existing MTW agreements allow for significant program flexibility. Those agreements continue to be in place and in effect. HUD remains committed to the significant program flexibility of the MTW program. However, as is stated in the MTW Agreement, MTW agencies remain subject to statutory and regulatory provisions not waived by the MTW Agreement and those statutory and regulatory provisions outside the scope of MTW waiver authority, including any changes thereto. Any provisions of the 1937 Act and its implementing regulations that are amended by HOTMA and already explicitly waived by the MTW Agreement will continue to be waived by the relevant provisions of the MTW Agreement.

RAD

Commenters also submitted comments regarding conversions due to RAD. Some stated that streamlining income and rent rules, both within HUD and with the LIHTC program would reduce confusion and make rent calculations predictable.

A commenter also stated that PHAs need to be able to earn an administrative fee in the first year to be able to pay for additional RAD-related tasks.

HUD Response: HUD agrees that streamlining income and rent rules would benefit tenants and owners, and HUD is seeking to align programs within HUD, but many of the differences with LIHTC are outside the scope of this rulemaking. In addition, changes to funding under RAD are bound by the notices governing that program and are outside the scope of this rule.

Other Miscellaneous Comments

Commenters stated that changing income and asset limits will likely cause an influx of individuals looking for State and local rental assistance and shelter.

Commenters also wrote on the fact that PHAs and owners would have many more flexibilities under the new regulations. Some stated that HUD should require that owners have a policy on how they are implementing

voluntary policies, to allow for consistent auditing. Others stated that it is not good to allow PHAs and owners discretion over program eligibility, because income, assets, and deductions should be uniform.

Commenters advocated for additional administrative fees beyond those for RAD, asking for an increase in Section 8 administrative fees to ten percent and to allow for training HOPWA project sponsors on the new regulations. One commenter pointed out that PHAs will have to pay for changes in software programs.

A commenter also asked for additional programmatic changes beyond what is required by HOTMA, such as repealing annual or agency plan requirements, eliminating the utility allowance schedule requirement, mandating enrollment in the FSS program, allowing computer-generated documents for verification to expire in 180 days instead of 60 days, allowing PHAs to charge minimum rents based on market conditions, eliminating the community service requirement, allowing triennial reexaminations for everyone, lowering payment standards when Congress reduces funding, reforming HCV portability, allowing a percentage of HAP and net restricted assets to supplement administrative fees lowered due to proration, reserving HCV funding for fully leased PHAs that have exhausted their budget authority and cannot maintain the lease-up capacity, or establishing a consistent timeline for releasing and finalizing HUD regulatory changes.

HUD Response: HUD does not expect a significant decrease in those eligible for HUD assistance, as the vast majority of participants do not have assets over \$100,000 or real property that is suitable for occupancy by the family as a residence. PHAs and owners will be required to update all relevant policy documents and plans, to reflect both new requirements from HOTMA and any new discretionary policies.

HUD will keep the suggestions for additional funding and programmatic changes in mind for future budgetary, statutory and legislative efforts, but they are beyond the scope of this rule.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the

order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” The rule would update HUD regulations for various programs to conform to sections 102, 103, and 104 of HOTMA by listing specific criteria for triggering family income reviews, providing methods for calculating family income, revising the definition of income and adjusted income, setting a limit on the amount and type of assets that assisted families may have, revising the definition of net family assets, and requiring that applicants for and recipients of assistance provide authorization to PHAs to obtain financial records. This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). HUD prepared a Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the final rule. HUD’s RIA is part of the docket file for this rule at <http://www.regulations.gov>. HUD strongly encourages the public to view the docket file at www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact

on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have Federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

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

Unfunded Mandates Reform Act

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

Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0133, 2577–0083, 2506–0215, and 2506–0171. HUD offices will conform the burden estimates associated with these control numbers to changes in this final rule. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection

displays a currently valid OMB control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.157, 14.181, 14.195, 14.218, 14.239, 14.241, 14.275, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, and Reporting and recordkeeping requirements.

24 CFR Part 93

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

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands

24 CFR Part 574

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

24 CFR Part 882

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

24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

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

24 CFR Part 964

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

24 CFR Part 966

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

24 CFR Part 982

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

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 92, 93, 570, 574, 882, 891, 960, 964, 966, and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2396; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

■ 2. Effective January 1, 2024, in § 5.100, add alphabetically the definitions “Earned income”, “Real property”, and “Unearned income” to read as follows:

§ 5.100 Definitions.

* * * * *

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned

income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

* * * * *

Real property as used in this part has the same meaning as that provided under the law of the State in which the property is located.

* * * * *

Unearned income means any annual income, as calculated under § 5.609, that is not earned income.

* * * * *

■ 3. Effective January 1, 2024, in § 5.210, revise the second sentence in paragraph (a) and the first sentence in paragraph (b)(2) to read as follows:

§ 5.210 Purpose, applicability, and Federal preemption.

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

(b) * * *

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

* * * * *

■ 4. Effective January 1, 2024, in § 5.230, revise paragraphs (b)(1), (b)(2), and (c)(4), and add paragraph (c)(5) to read as follows:

§ 5.230 Consent by assistance applicants and participants.

* * * * *

(b) * * *

(1) *Applicants.* The assistance applicant must submit the signed consent forms to the processing entity when eligibility under a covered program is being determined.

(2) *Subsequent consent forms.* Prior to January 1, 2024, participants signed and submitted consent forms at each regularly scheduled income reexamination. On or after January 1, 2024, a participant must sign and submit consent forms at their next

interim or regularly scheduled income reexamination. After all applicants or participants over the age of 18 in a family have signed and submitted a consent form once on or after January 1, 2024, family members do not need to sign and submit subsequent consent forms at the next interim or regularly scheduled income examination except under the following circumstances:

(i) When any person 18 years or older becomes a member of the family, that family member must sign and submit a consent form;

(ii) When a member of the family turns 18 years of age, that family member must sign and submit a consent form; or

(iii) As required by HUD or the PHA in administrative instructions.

(c) * * *

(4) A provision authorizing PHAs to obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits; and

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

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

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

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

■ 5. Effective January 1, 2024, in § 5.232, add paragraph (c) to read as follows:

§ 5.232 Penalties for failing to sign consent form.

* * * * *

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

■ 6. Effective January 1, 2024, in § 5.233, revise paragraph (a)(2)(i) to read as follows:

§ 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) * * *

(2) * * *

(i) As a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income, in accordance with § 5.236 and administrative guidance issued by HUD; and

* * * * *

■ 7. Effective January 1, 2024, in § 5.403, revise the definition of "Family" to read as follows:

§ 5.403 Definitions.

* * * * *

Family includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

(1) A single person, who may be:

(i) An elderly person, displaced person, disabled person, near-elderly person, or any other single person;

(ii) An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

(2) A group of persons residing together, and such group includes, but is not limited to:

(i) A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);

(ii) An elderly family;

(iii) A near-elderly family;

(iv) A disabled family;

(v) A displaced family; and

(vi) The remaining member of a tenant family.

* * * * *

§ 5.520 [Amended]

■ 8. Effective March 16, 2023, in § 5.520(d)(1) introductory text, add " , except as provided in § 960.507 of this title," after "the family's assistance".

■ 9. Effective January 1, 2024, in § 5.601, revise paragraphs (d) and (e) to read as follows:

§ 5.601 Purpose and applicability.

* * * * *

(d) Determining adjusted income, as provided in § 5.611(a) and (c) through (e), for families who apply for or receive assistance under the following programs: Section 202 Supportive

Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E); and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in this paragraph (d) or in another regulatory section of this part 5, subpart F, then the regulations in part 5, subpart F, generally are not applicable to these programs; and

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

■ 10. Effective January 1, 2024, amend § 5.603(b) by:

■ a. Adding in alphabetical order definitions for “Day laborer”, “Foster adult”, “Foster child”, “Health and medical care expenses”, “Independent contractor”, and “Minor”;

■ b. Revising the definitions for “Net family assets”, and “Responsible entity”; and

■ c. Adding in alphabetical order the definition of “Seasonal worker”.

The additions and revisions read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Day laborer. An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

* * * * *

Dependent. A member of the family (which excludes foster children and foster adults) other than the family head or spouse who is under 18 years of age, or is a person with a disability, or is a full-time student.

* * * * *

Foster adult. A member of the household who is 18 years of age or older and meets the definition of a foster adult under State law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

Foster child. A member of the household who meets the definition of a foster child under State law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other

order of any court of competent jurisdiction.

* * * * *

Health and medical care expenses. Health and medical care expenses are any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

* * * * *

Independent contractor. An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

* * * * *

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

* * * * *

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

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

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

(i) The value of necessary items of personal property;

(ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers);

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

(iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located;

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

(vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government.

(vii) Interests in Indian trust land;

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

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

(x) Family Self-Sufficiency Accounts; and

(xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

* * * * *

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

(1) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;

(2) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities, the “Borrower” as defined in 24 CFR 891.505; and

(3) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “Owner” as defined in 24 CFR 891.305.

Seasonal worker. An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

* * * * *

■ 11. Effective January 1, 2024, revise § 5.609 to read as follows:

§ 5.609 Annual income.

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

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

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

(b) Annual income does not include the following:

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

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

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

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—

(1) The Federal government;

(2) A State, Tribe, or local government;

(3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

(4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

(5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

(1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;

(2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);

(3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)(E) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

(1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

(2) Expressly to assist a student with the costs of higher education; or

(3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph

(b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

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

(12)(i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (*e.g.*, special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family

member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

(14) Earned income of dependent full-time students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

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

(18) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (*e.g.*, proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the **Federal Register** to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies.

Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (*e.g.*, wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan

recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

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

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

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

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

(2) *Annual Reexaminations.* (i) The PHA or owner must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA or owner uses a streamlined income determination under §§ 5.657(d), 960.257(c), or 982.516(b) of this title.

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

(iii) The PHA or owner must make adjustments to reflect current income if

there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income.

(3) *Use of other programs' determination of income.* (i) The PHA or owner may, using the verification methods in paragraph (c)(3)(ii) of this section, determine the family's income prior to the application of any deductions applied in accordance with § 5.611 based on income determinations made within the previous 12-month period for purposes of the following means-tested forms of Federal public assistance:

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

(B) Medicaid (42 U.S.C. 1396 *et seq.*).

(C) The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 *et seq.*).

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

(E) The Low-Income Housing Credit (26 U.S.C. 42).

(F) The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).

(G) Supplemental Security Income (42 U.S.C. 1381 *et seq.*).

(H) Other programs administered by the Secretary.

(I) Other means-tested forms of Federal public assistance for which HUD has established a memorandum of understanding.

(J) Other Federal benefit determinations made in other forms of means-tested Federal public assistance that the Secretary determines to have comparable reliability and announces through the **Federal Register**.

(ii) If a PHA or owner intends to use the annual income determination made by an administrator for allowable forms of Federal means-tested public assistance under this paragraph (c)(3), the PHA or owner must obtain it using the appropriate third-party verification. If the appropriate third-party verification is unavailable, or if the family disputes the determination made for purposes of the other form of Federal means-tested public assistance, the PHA or owner must calculate annual income in accordance with 24 CFR part 5, subpart F. The verification must indicate the tenant's family size and composition and state the amount of the family's annual income. The verification must also meet all HUD requirements related to the length of time that is permitted before the third-party verification is considered out-of-date and is no longer an eligible source of income verification.

(4) *De minimis errors.* The PHA or owner will not be considered out of compliance with the requirements in this paragraph (c) solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA or owner determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

(i) The PHA or owner must still take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent or family share as a result of the de minimis error in the income determination, but families will not be required to repay the PHA or owner in instances where a PHA or owner has miscalculated income resulting in a family being undercharged for rent or family share.

(ii) HUD may revise the amount of de minimis error in this paragraph (c)(4) through a rulemaking published in the **Federal Register** for public comment.

■ 12. Effective January 1, 2024, revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

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

(a) *Mandatory deductions.* (1) \$480 for each dependent, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;

(2) \$525 for any elderly family or disabled family, which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25;

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

(i) Unreimbursed health and medical care 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 who is a person with a disability) to be employed. This deduction may not exceed the combined earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

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

(b) *Additional deductions.* (1) For public housing, the Housing Choice Voucher (HCV) and the Section 8 moderate rehabilitation programs (including the moderate rehabilitation Single-Room Occupancy (SRO) program), a PHA may adopt additional deductions from annual income.

(i) *Public housing.* A PHA that adopts such deductions will not be eligible for an increase in Capital Fund and Operating Fund formula grants based on the application of such deductions. The PHA must establish a written policy for such deductions.

(ii) *HCV, moderate rehabilitation, and moderate rehabilitation Single-Room Occupancy (SRO) programs.* A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding or moderate rehabilitation program funding for subsidy costs resulting from such deductions. For the HCV program, the PHA must include such deductions in its administrative plan. For moderate rehabilitation, the PHA must establish a written policy for such deductions.

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

(c) *Financial hardship exemption for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses.* (1) *Phased-in relief.* This paragraph provides financial hardship relief for families affected by the statutory increase in the threshold to receive health and medical care expense and reasonable attendant care and auxiliary apparatus expense deductions from annual income.

(i) *Eligibility for relief.* To receive hardship relief under this paragraph (c)(1), the family must have received a deduction from annual income because their sum of expenses under paragraph (a)(3) of this section exceeded 3 percent of annual income as of January 1, 2024.

(ii) *Form of relief.* (A) The family will receive a deduction totaling the sum of the expenses under paragraph (a)(3) of this section that exceed 5 percent of annual income.

(B) Twelve months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed 7.5 percent of annual income.

(C) Twenty-four months after the relief in this paragraph (c)(1)(ii) is provided, the family must receive a deduction totaling the sum of expenses under paragraph (a)(3) of this section that exceed ten percent of annual income and the only remaining relief that may be available to the family will be paragraph (d)(1) of this section.

(D) A family may request hardship relief under paragraph (c)(2) of this section prior to the end of the twenty-four-month transition period. If a family making such a request is determined eligible for hardship relief under paragraph (c)(2) of this section, hardship relief under this paragraph ends and the family's hardship relief shall be administered in accordance with paragraph (c)(2) of this section. Once a family chooses to obtain relief under paragraph (c)(2) of this section, a family may no longer receive relief under this paragraph.

(2) *General.* This paragraph (c)(2) provides financial relief for an elderly or disabled family or a family that includes a person with disabilities that is experiencing a financial hardship.

(i) *Eligibility for relief.* (A) To receive hardship relief under this paragraph (c)(2), a family must demonstrate that the family's applicable health and medical care expenses or reasonable attendant care and auxiliary apparatus expenses increased or the family's financial hardship is a result of a change in circumstances (as defined by the responsible entity) that would not otherwise trigger an interim reexamination.

(B) Relief under this paragraph (c)(2) is available regardless of whether the family previously received deductions under paragraph (a)(3) of this section, is currently receiving relief under paragraph (c)(1) of this section, or previously received relief under paragraph (c)(1) of this section.

(ii) *Form and duration of relief.* (A) The family will receive a deduction for the sum of the eligible expenses in paragraph (a)(3) of this section that exceed 5 percent of annual income.

(B) The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever comes earlier. However, responsible entities may, at their discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

(d) *Exemption to continue child care expense deduction.* A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to

continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction, and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days. Responsible entities, at their discretion, may extend such hardship exemptions for additional 90-day periods based on family circumstances.

(e) *Hardship policy requirements.* (1) *Responsible entity determination of family's inability to pay the rent.* The responsible entity must establish a policy on how it defines what constitutes a hardship under paragraphs (c) and (d) of this section, which includes determining the family's inability to pay the rent, for purposes of determining eligibility for a hardship exemption under paragraph (d) of this section.

(2) *Family notification.* The responsible entity must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family of when the hardship exemption will begin and expire (*i.e.*, the time periods specified under paragraph (c)(1)(ii) of this section or within 90 days or at such time as the responsible entity determines the exemption is no longer necessary in accordance with paragraphs (c)(2)(ii)(B) or (d) of this section).

■ 13. Effective January 1, 2024, amend § 5.617 by adding paragraphs (e) and (f) to read as follows:

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

* * * * *

(e) *Limitation.* This section applies to a family that is receiving the disallowance of earned income under this section on December 31, 2023

(f) *Sunset.* This section will lapse on January 1, 2026.

■ 14. Effective January 1, 2024, add § 5.618 to subpart F to read as follows:

§ 5.618 Restriction on assistance to families based on assets.

(a) *Restrictions based on net assets and property ownership.* (1) A dwelling unit in the public housing program may

not be rented, and assistance under the Section 8 (tenant-based and project-based) programs may not be provided, either initially or upon reexamination of family income, to any family if:

(i) The family's net assets (as defined in § 5.603) exceed \$100,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers; or

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

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

(B) Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;

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

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

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

(i) Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);

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

(iii) Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

(iv) Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or

(v) Is not a property that a family may reside in under the State or local laws of the jurisdiction where the property is located.

(b) *Acceptable documentation; confidentiality.* (1) A PHA or owner may determine the net assets of a family based on a certification by the family

that the net family assets (as defined in § 5.603) do not exceed \$50,000, which amount will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

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

(3) When a family asks for or about an exception to the real property restriction because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA or owner must comply with the confidentiality requirements under § 5.2007. The PHA or owner must accept a self-certification from the family member, and the restrictions on requesting documentation under § 5.2007 apply.

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

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

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

(d) *Delay of eviction or termination of assistance.* The PHA or owner may delay for a period of not more than 6 months the initiation of eviction or termination proceedings of a family based on noncompliance under this provision unless it conflicts with other provisions of law.

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

■ 15. Effective March 16, 2023 amend § 5.628(a) by:

■ a. Removing "or" at the end of in paragraph (a)(3);

■ b. Removing the period at the end of paragraph (a)(4) and add in its place "or"; and

■ c. Adding paragraph (a)(5);

The addition reads as follows:

§ 5.628 Total tenant payment.

(a) * * *

(5) For public housing only, the alternative non-public housing rent, as determined in accordance with § 960.102 of this title.

* * * * *

■ 16. Effective January 1, 2024, in § 5.657, revise paragraph (c) and add paragraphs (e) and (f) to read as follows:

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

* * * * *

(c) *Interim reexaminations.* (1) *Generally.* A family may request an interim reexamination of family income because of any changes since the last examination. The owner must conduct any interim reexamination within a reasonable time after the family request or when the owner becomes aware of an increase in family adjusted income under paragraph (c)(3) of this section. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but such time generally should not exceed 30 days from the date a family reports changes in income to an owner.

(2) *Decreases in the family's annual adjusted income.* The owner may decline to conduct an interim reexamination of family income if the owner estimates that the family's adjusted income will decrease by an amount that is less than ten percent of the family's annual adjusted income (or a lower amount established by HUD through notice), or such lower threshold established by the owner.

(3) *Increases in the family's annual adjusted income.* The owner must conduct an interim reexamination of family income when the owner becomes aware that the family's adjusted income (as defined in § 5.611) has changed by an amount that the owner estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(i) The owner may not consider any increase in the earned income of the family when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(1) of this

section during the certification period; and

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

(4) *Policies on reporting changes in family income or composition.* The owner must adopt policies consistent with this paragraph (c), prescribing when and under what conditions the family must report a change in family income or composition.

(5) *Effective date of rent changes.* (i) If the family has reported a change in family income or composition in a timely manner according to the owner's policies, the owner must provide the family with 30 days advance notice of any rent increase, and such rent increase will be effective the first day of the month beginning after the end of that 30-day notice period. Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

(ii) If the family has failed to report a change in family income or composition in a timely manner according to the owner's policies, owners must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, rent decreases may be applied retroactively at the discretion of the owner, in accordance with the owner's conditions as established in written policy, and subject to paragraph (c)(5)(iii) of this section.

(iii) A retroactive rent decrease may not be applied by the owner prior to the later of the first of the month following:

(A) The date of the change leading to the interim reexamination of family income; or

(B) The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

(e) *Other applicable requirements.* Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended (42 U.S.C. 3544), and any applicable privacy rules in subpart B of this part.

(f) *De minimis errors.* The owner will not be considered out of compliance with the requirements in this section due solely to de minimis errors in

calculating family income but is still obligated to correct errors once the owner becomes aware of the errors. A de minimis error is an error where the owner determination of family income varies from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

(1) The owner must take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination. Families will not be required to repay the owner in instances where the owner has miscalculated income resulting in a family being undercharged for rent or family share.

(2) HUD may revise the amount of de minimis error in this paragraph (f) through a rulemaking published in the **Federal Register** for public comment.

■ 17. Effective January 1, 2024, in § 5.659, revise paragraph (e) to read as follows:

§ 5.659 Family information and verification.

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

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 18. Effective January 1, 2024, the authority citation for part 92 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701—12839, 12 U.S.C. 1701x.

■ 19. Effective January 1, 2024 in § 92.2, add alphabetically the definitions "Foster adult", "Foster child", "Full-time student", and "Live-in aide" to read as follows:

§ 92.2 Definitions.

Foster adult has the same meaning given that term in 24 CFR 5.603.

Foster child has the same meaning given that term in 24 CFR 5.603.

Full-time student has the same meaning given that term in 24 CFR 5.603.

Live-in aide has the same meaning given that term in 24 CFR 5.403.

■ 20. Effective January 1, 2024, revise § 92.203 to read as follows:

§ 92.203 Income determinations.

(a) *Methods of determining annual income.* The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

(1) If a family is applying for or living in a HOME-assisted rental unit, and the unit is assisted by a Federal or State project-based rental subsidy program, then a participating jurisdiction must accept the public housing agency, owner, or rental subsidy provider's determination of the family's annual income and adjusted income under that program's rules.

(2) If a family is applying for or living in a HOME-assisted rental unit, and the family is assisted by a Federal tenant-based rental assistance program (e.g., housing choice vouchers, etc.), then a participating jurisdiction may accept the rental assistance provider's determination of the family's annual income and adjusted income under that program's rules.

(3) In all other cases, the participating jurisdiction must calculate annual income in accordance with paragraphs (b) through (e) of this section and calculate adjusted income in accordance with paragraph (f) of this section.

(b) *Required documentation for annual income calculations.* (1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (b)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):

(i) Examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families (*i.e.*, homeowners receiving rehabilitation assistance, homebuyers, and recipients of HOME tenant-based rental assistance), the participating jurisdiction must determine annual income by examining at least 2 months of source documents evidencing annual income (*e.g.*, wage statement, interest statement, unemployment compensation statement) for the family.

(c) *Defining income for eligibility.* When determining whether a family is income eligible, the participating jurisdiction must use one of the following two definitions of "annual income":

(1) Annual income as defined at §§ 5.609(a) and (b) of this title (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of net family assets, as defined in § 5.603 of this title); or

(2) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(d) *Using income definitions.* The participating jurisdiction may use only one definition of annual income for each HOME-assisted program (*e.g.*, downpayment assistance program) that it administers and only one definition for each rental housing project. A participating jurisdiction may use either of the definitions of "annual income" permitted in paragraph (c) of this section. For rental housing projects containing units assisted by a Federal or State project-based rental subsidy program or for rental housing projects where a participating jurisdiction is accepting a public housing agency, owner, or rental assistance provider's determination of annual and adjusted income for tenants receiving Federal tenant-based rental assistance, the participating jurisdiction must calculate annual income in accordance with paragraph (c)(i) of this section so that

only one definition of annual income is used in the rental housing project.

(e) *Determining family composition and projecting income.* (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income includes income from all persons in the household, except live-in aides, foster children, and foster adults. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income. Families may use the certification process in § 5.618 of this title to certify that their net family assets are below the threshold for imputing income used in § 5.609(a)(2) of this title, as applicable. Families using the certification process in § 5.618 of this title that are homeowners applying for an owner-occupied rehabilitation project may also exclude the value of the homeowner's principal residence from the calculation of their Net Family Assets for purposes of the certification. For families living in HOME-assisted rental housing units, any rental assistance provided to the family under a Federal tenant-based rental assistance program or any Federal or State project-based rental subsidy provided to the HOME rental housing unit shall not be counted as tenant income for purposes of determining annual income.

(2) The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

(3) The participating jurisdiction must follow the requirements in § 5.617 of this title when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive HOME tenant-based rental assistance. This paragraph (e)(3) will lapse on January 1, 2026.

(f) *Determining Adjusted Income.* (1) The three cases where a participating jurisdiction must calculate a tenant's adjusted income are as follows:

(i) A participating jurisdiction must calculate the adjusted income of a family receiving tenant-based rental assistance to determine the amount of assistance in accordance with § 92.209(h). To calculate the family's adjusted income for a family in tenant-based rental assistance, the participating jurisdiction must apply the deductions in § 5.611(a) of this title and may choose

to grant financial hardship exemptions in accordance with the process described in §§ 5.611(c) through (e) of this title.

(ii) A participating jurisdiction must calculate a tenant's adjusted income if the tenant is living in a Low HOME Rent unit and is subject to the provisions of § 92.252(b)(2)(i). To calculate a family's adjusted income to determine the Low HOME Rent in accordance with § 92.252(b)(2)(i), a participating jurisdiction must apply the deductions in § 5.611(a) of this title and may choose to grant financial hardship exemptions in accordance with the process described in §§ 5.611(c) through (e) of this title.

(iii) A participating jurisdiction must calculate a tenant's adjusted income if the tenant is over-income, and rent must be recalculated in accordance with § 92.252(i)(2). To calculate the family's adjusted income for an over-income family, the participating jurisdiction must apply the deductions in § 5.611(a) of this title.

(2) If a unit is assisted by a Federal or State project-based rental subsidy program, then a participating jurisdiction is not required to calculate the family's adjusted income and must accept the public housing agency, owner, or rental subsidy provider's determination of adjusted income under that program's rules.

■ 22. Effective January 1, 2024, in § 92.252, revise paragraphs (b)(2) and (h) to read as follows:

§ 92.252 Qualification as affordable housing: Rental housing.

* * * * *

(b) * * *

(2)(i) The rent does not exceed 30 percent of the family's adjusted income.

(ii) If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (*i.e.*, tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

* * * * *

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(b)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203(b)(1) selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of ten years or more who re-examines tenant's annual income

through a statement and certification in accordance with § 92.203(b)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(b)(1)(i), every sixth year of the affordability period, except that, for units that receive Federal or State project-based rental subsidy, the owner must accept the income determination pursuant to § 92.203(a)(1); and for a Federal tenant-based rental assistance program (e.g. housing choice vouchers, etc.) a participating jurisdiction may accept the income determination pursuant to § 92.203(a)(2). Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(b)(1)(ii) is not required to examine the income of tenants in multifamily or single-family projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

* * * * *

PART 93—HOUSING TRUST FUND

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

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

■ 24. Effective January 1, 2024, in § 93.2, add alphabetically the definitions “Foster adult”, “Foster child”, “Full-time student”, “Live-in aide”, and “Public Housing Agency (PHA)” to read as follows:

§ 93.2 Definitions.

* * * * *

Foster adult has the same meaning given that term in 24 CFR 5.603.

Foster child has the same meaning given that term in 24 CFR 5.603.

Full-time student has the same meaning given that term in 24 CFR 5.603.

* * * * *

Live-in aide has the same meaning given that term in 24 CFR 5.403.

* * * * *

Public Housing Agency (PHA) has the same meaning given that term in 24 CFR 5.100.

* * * * *

■ 25. Effective January 1, 2024, revise § 93.151 to read as follows:

§ 93.151 Income determinations.

(a) *General.* The HTF program has income-targeting requirements. Therefore, the grantee must determine that each family occupying an HTF-assisted unit is income-eligible by determining the family's annual income.

(1) If a family is applying for or living in an HTF-assisted rental unit, and the

unit is assisted under the public housing program, then a grantee must accept the public housing agency's determination of the family's annual income and adjusted income under §§ 5.609 and 5.611 of this title, respectively.

(2) If a family is applying for or living in an HTF-assisted rental unit, and the family is assisted under a Federal tenant-based rental assistance program (e.g., housing choice voucher program, HOME tenant based rental assistance, etc.), then a grantee must accept the rental assistance provider's determination of the family's annual income and adjusted income under the rules of that program.

(3) If a family is applying for or living in an HTF-assisted rental unit, and the unit is assisted with a Federal or State project-based rental subsidy program, then a grantee must accept the public housing agency, owner, or rental subsidy provider's determination of the family's annual income and adjusted income under the rules of that program.

(4) In all other cases, the grantee must calculate annual income in accordance with paragraphs (b) through (e) of this section.

(b) *Definition of “annual income.”* (1) When determining whether a family is income-eligible, the grantee must use one of the following two definitions of “annual income”:

(i) “*Annual income*” as defined at §§ 5.609 (a) and (b) of this title; or

(ii) “*Adjusted gross income*” as defined for purposes of reporting under the Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(2) The grantee may use only one definition of annual income for each HTF-assisted program (e.g., down payment assistance program) that it administers and only one definition for each rental housing project. For projects where either a family or unit is assisted under the public housing program, a Federal tenant-based rental assistance program (e.g., housing choice voucher program, HOME tenant-based rental assistance, etc.), or a Federal or State project-based rental subsidy program, the grantee must calculate annual income in accordance with paragraph (b)(1)(i) of this section so that only one definition of annual income is used in the project.

(c) *Determining annual income—(1) Tenants in HTF-assisted housing.* For families who are tenants in HTF-assisted housing, the grantee must initially determine annual income using the method in paragraph (d)(1) of this section. For subsequent income determinations during the period of

affordability, the grantee may use any one of the methods described in paragraph (d) of this section, in accordance with § 93.302(e).

(2) *HTF-assisted homebuyers.* For families who are HTF-assisted homebuyers, the grantee must determine annual income using the method described in paragraph (d)(1) of this section.

(d) *Required documentation for Annual Income calculations.* (1) Examine at least 2 months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(2) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(3) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(e) *Determining family composition and projecting income.* (1) The grantee must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the grantee determines that the family is income eligible. Annual income includes income from all persons in the household, except live-in aides, foster children, and foster adults. Income or asset enhancement derived from the HTF-assisted project shall not be considered in calculating annual income. Families may use the certification process in § 5.618 of this title to certify that their net family assets are below the threshold for imputing income used in § 5.609(a)(2) of this title. For families living in HTF-assisted rental housing units, any rental assistance provided to the family under a Federal tenant-based rental assistance program or any Federal or State project-based rental subsidy provided to the HTF rental housing unit shall not be counted as tenant income for purposes of determining annual income.

(2) The grantee is not required to re-examine the family's income at the time the HTF assistance is provided, unless

more than six months has elapsed since the grantee determined that the family qualified as income eligible.

(f) *Adjusted Income.* The HTF program does not require that adjusted income be used or calculated by HTF grantees. If a family or unit is assisted with public housing, Federal tenant-based rental assistance, (e.g., housing choice voucher program, HOME tenant-based rental assistance, etc.), or by a Federal or State project-based rental subsidy program, then a grantee must accept the determination of adjusted income made under the rules of that program in accordance with paragraphs (a)(1) through (3) of this section, as applicable.

■ 26. Effective January 1, 2024, in § 93.302, revise paragraph (e) to read as follows:

§ 93.302 Qualification as affordable housing: rental housing.

* * * * *

(e) *Tenant income.* (1) The income of each tenant must be determined initially in accordance with § 93.151. In addition, in each year during the period of affordability, the project owner must re-examine each tenant's annual income in accordance with one of the options in § 93.151(d) selected by the grantee.

(2) An owner who re-examines a tenant's annual income through a statement and certification in accordance with § 93.151(d)(2) must examine the source documentation of the income of each tenant every 6th year of the affordability period unless the tenant or unit is assisted under the public housing program, Federal or State project-based rental assistance program, or a Federal tenant-based rental assistance program (e.g., housing choice voucher assistance, HOME tenant-based rental assistance, etc.). For families or units that receive assistance under the public housing program, a Federal or State project-based rental subsidy program, or Federal tenant-based rental assistance program, the grantee must accept the calculation of a tenant's annual and adjusted income in accordance with the rules of those programs pursuant to § 93.151(a)(1) through (3). Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 93.151(d)(2) is not required to examine the income of tenants unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 27. The authority citation for part 570 continues to read as follows:

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

§ 570.3 [Amended]

■ 28. Effective January 1, 2024, in § 570.3, in paragraph (1)(i) of the definition of "Income," remove the citation "24 CFR 813.106" and add in its place "24 CFR 5.609".

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

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

■ 30. Effective January 1, 2024, in § 574.310, revise paragraphs (d)(1) and (2), redesignate paragraph (e) as paragraph (g), and add new paragraphs (e), (f), and (h) to read as follows:

§ 574.310 General Standards for eligible housing activities.

* * * * *

(d) * * *
(1) 30 percent of the family's monthly adjusted income;
(2) Ten percent of the family's monthly income; or

* * * * *

(e) *Calculating income to determine resident rent payment—(1) In general.* When determining resident rent payments, the family's monthly income and monthly adjusted income must be calculated as provided by §§ 5.609 and 5.611 of this title, respectively, except that:

(i) As with the references to "grantee" and "grantees" in paragraphs (e), (f), and (h) of this section, the references to "PHA" and "responsible entity" in §§ 5.609 and 5.611 of this title refer to the "grantee" or "project sponsor" that is determining income;

(ii) References in § 5.609(c) of this title to an interim reexamination of family income under §§ 5.657(c), 960.257(b), or 982.516(c) of this title refer to an interim reexamination provided under paragraph (e)(4) of this section;

(iii) References in § 5.609(c) of this title to a streamlined income determination under §§ 5.657(d), 960.257(c), or 982.516(b) of this title refer to a streamlined income determination provided under paragraph (e)(5) of this section;

(iv) Section 5.611(b) of this title does not apply;

(v) The grantee may choose to grant financial hardship exemptions in accordance with the process described in §§ 5.611(c) through (e);

(vi) During the period that § 5.617 of this title remains in effect, the calculation of monthly adjusted income must also include the disallowance of earned income as provided by § 5.617 of this title.

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

(3) *Third-party verification.* (i) Except as provided in paragraph (e)(3)(ii) of this section, the grantee must obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:

- (A) Reported family annual income;
- (B) The value of assets;
- (C) Expenses related to deductions from annual income; and
- (D) Other factors that affect the determination of adjusted income.

(ii) For a family with net family assets (as the term is defined in paragraph (f) of this section) equal to or less than \$50,000, which amount will be adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Worker, the grantee may accept, for purposes of recertification of income, a family's declaration under § 5.618(b) of this title, except that the grantee must obtain third-party verification of all family assets every 3 years.

(iii) The grantee must establish procedures that are appropriate and necessary to require that income data provided by applicant or participant families is complete and accurate.

(4) *Interim reexaminations—(i) Generally.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The grantee must make any interim reexamination within a reasonable period of time after the family's request or when the grantee becomes aware of an increase in family adjusted income under paragraph (e)(4)(iii) of this section. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but generally should not exceed 30 days from the date a family reports changes in income to a grantee.

(ii) *Decreases in the family's annual adjusted income.* Grantees may decline to conduct an interim reexamination of family income if the grantee estimates

that the family's adjusted income will decrease by an amount that is less than ten percent of the family's annual adjusted income (or a lower amount established by HUD through notice), or a lower threshold established by the grantee.

(iii) *Increases in the family's annual adjusted income.* Grantees must conduct the interim reexamination of family income when the grantee becomes aware that the family's adjusted income has changed by an amount that the grantee estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(A) The grantee may not consider any increase in the earned income of the family when estimating or calculating whether the family's adjusted income has increased unless the family has previously received an interim reduction under paragraph (e)(4)(i) of this section during the certification period; and

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

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

(v) *Effective date of rent changes.* (A) If the family has reported a change in family income or composition in a timely manner according to the grantee's policies, the grantee must provide the family with 30 days advance notice of any rent increase, and such rent increase will be effective the first day of the month beginning after the end of that 30-day period. Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

(B) If the family has failed to report a change in family income or composition in a timely manner according to the grantee's policies, grantees must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, rent decreases may be applied retroactively at the discretion of the grantee, in accordance with the grantee's conditions as established in written

policy, and subject to paragraph (e)(4)(v)(C) of this section.

(C) A retroactive rent decrease may not be applied by the grantee prior to the later of the first of the month following:

(1) The date of the change leading to the interim reexamination of family income; or

(2) The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

(5) *Streamlined income determinations*—(i) *Generally.* A grantee may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (e)(5)(iii) of this section.

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

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

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

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

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

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

(A) When 90 percent or more of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from the previous year. For non-fixed income, grantees may choose, but are not required, to make appropriate adjustments pursuant to paragraph (e)(2) of this section.

(B) When less than 90 percent of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Grantees must determine all other income pursuant to paragraph (e)(2) of this section.

(iv) *COLA rate applied by grantees.* Grantees using streamlined income

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

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

(f) *Net family assets and restriction on assistance to families based on assets.*

The "net family assets" definition in § 5.603 of this section applies for purposes of calculating resident rent payments under this section and applying the asset-based restrictions in §§ 5.618(a) through (d) this title. The "net family assets" definition in § 5.603 of this section may also apply where a grantee elects to apply § 5.609 of this title alone or in combination with § 5.611(a) of this title for other purposes under this part; however, the value of real property a family owns and occupies as its primary residence must be excluded from the calculation of "net family assets" for purposes of assistance for which homeowners are eligible under this part. The asset-based restrictions in §§ 5.618(a) through (d) of this title apply only to housing activities subject to the resident rent payment requirements in this section. References to "PHA" in §§ 5.618(a) through (d) of this title refer to the grantee or project sponsor that is determining the asset-based restrictions.

* * * * *

(h) *De minimis errors.* The grantee will not be considered out of compliance with the requirements in paragraphs (e)(2), (e)(4), or (e)(5) of this section due solely to de minimis errors in calculating family income but is still obligated to correct errors once the grantee becomes aware of the errors. A de minimis error is an error where the grantee's determination of family income varies from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

(1) The grantee must take any corrective action necessary to credit or repay a family if the family has been overcharged for their resident rent payment as a result of the de minimis error in the income determination.

Families will not be required to repay the grantee in instances where the grantee has miscalculated income resulting in a family being undercharged for their resident rent payment.

(2) HUD may revise the amount of de minimis error in this paragraph (h) through a rulemaking published in the **Federal Register** for public comment.

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 31. The authority citation for part 882 continues to read as follows:

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

■ 32. Effective January 1, 2024, amend § 882.515 by adding a sentence to the end of paragraph (a), revising paragraphs (b) and (d), and adding paragraphs (e) and (f) to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * For a family with net family assets (as the term is defined in § 5.603 of this title) equal to or less than \$50,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, a PHA may accept, for purposes of recertification of income, a family's declaration under § 5.618(b) of this title, except that the PHA must obtain third-party verification of all family assets every 3 years.

(b) *Interim reexaminations.* (1) A family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must conduct any interim reexamination within a reasonable period of time after the family request or when the PHA becomes aware of an increase in family adjusted income under paragraph (b)(3) of this section. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but generally should not be longer than 30 days after changes in income are reported.

(2) The PHA may decline to conduct an interim reexamination of family income if the PHA estimates the family's adjusted income will decrease by an amount that is less than ten percent of the family's annual adjusted income (or a lower amount established by HUD through notice), or a lower threshold established by the PHA.

(3) The PHA must conduct an interim reexamination of family income when the PHA becomes aware that the family's adjusted income (§ 5.611 of this title) has changed by an amount that the PHA estimates will result in an increase

of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(1) of this section during the certification period; and

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

(4)(i) If the family has reported a change in family income or composition in a timely manner according to the PHA's policies, the PHA must provide the family with 30 days advance notice of any increase in the Total Tenant Payment and Tenant Rent, and such increases will be effective the first day of the month beginning after the end of that 30-day period. Total Tenant Payment and Tenant Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

(ii) If the family has failed to report a change in family income or composition in a timely manner according to the PHA's policies, PHAs must implement any resulting Total Tenant Payment and Tenant Rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting Total Tenant Payment and Tenant Rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, a PHA may apply a Total Tenant Payment and Tenant Rent decrease retroactively at the discretion of the PHA, in accordance with the conditions established by the PHA in the administrative plan and subject to paragraph (c)(4)(iii) of this section.

(iii) A retroactive Total Tenant Payment and Tenant Rent decrease may not be applied prior to the later of the first of the month following:

(A) The date of the change leading to the interim reexamination of family income; or

(B) The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

(5) The PHA must adopt policies consistent with this section prescribing how to determine the effective date of a change in the housing assistance

payment resulting from an interim redetermination.

* * * * *

(d) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title, or because of the restrictions on net assets and property ownership as provided by § 5.618 of this title. For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

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

(f) *Accuracy of family income data.* The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate. The PHA will not be considered out of compliance with the requirements in this section solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in

monthly adjusted income (\$360 in annual adjusted income).

(1) The PHA must take any corrective action necessary to credit or repay a family if the family has been overcharged for their Tenant Rent or Total Tenant Payment as a result of an error (including a de minimis error) in the income determination. Families will not be required to repay the PHA in instances where the PHA has miscalculated income resulting in a family being undercharged for Tenant Rent or Total Tenant Payment.

(2) HUD may revise the amount of de minimis error in this paragraph (f) through a notice published in the Federal Register for public comment.

■ 33. Effective January 1, 2024, amend § 882.808 by adding a sentence at the end of paragraph (i)(1) and adding paragraphs (i)(4) and (5) to read as follows:

§ 882.808 Management.

* * * * *

(i) * * *

(1) Regular reexaminations. * * * For an individual with net family assets (as the term is defined in § 5.603 of this title) equal to or less than \$50,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, a PHA may accept, for purposes of recertification of income, an individual's declaration under § 5.618(b) of this title, except that the PHA must obtain third-party verification of all family assets every 3 years.

* * * * *

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

(5) Accuracy of family income data. The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant individuals is complete and accurate. The PHA will not be considered out of compliance with the requirements in this section solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income).

(A) The PHA must take any corrective action necessary to credit or repay an

individual if the individual has been overcharged for their Tenant Rent or Total Tenant Payment as a result of an error (including a de minimis error) in the income determination. Individuals will not be required to repay the PHA in instances where the PHA has miscalculated income resulting in an individual being undercharged for Tenant Rent or Total Tenant Payment.

(B) HUD may revise the amount of de minimis error in this paragraph (i)(5) through a rulemaking published in the Federal Register for public comment.

* * * * *

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 34. The authority citation for Part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 35. Effective January 1, 2024, amend § 891.105 by:

- a. Adding in alphabetical order the definitions "Gross rent" and "Net family assets";
■ b. Removing the definition of "Tenant payment to Owner"; and
■ c. Adding the definition of "Tenant rent".

The additions read as follows:

§ 891.105 Definitions.

* * * * *

Gross rent means contract rent plus any utility allowance.

* * * * *

Net family assets is defined in § 5.603 of this title.

* * * * *

Tenant rent equals total tenant payment less utility allowance, if any.

* * * * *

§ 891.230 [Removed]

■ 36. Effective January 1, 2024, remove § 891.230.

■ 37. Effective January 1, 2024, in § 891.410, revise paragraphs (g)(1), (2), and (3)(i) to read as follows:

§ 891.410 Selection and admission of tenants.

* * * * *

(g) * * * (1) Regular reexaminations. The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with § 5.657 of this title and must adjust the tenant rent. The Owner must also request an appropriate adjustment to the project rental assistance payment.

Further, the Owner must determine whether the household's unit size is still appropriate and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination, the Owner must require the household to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms by families for obtaining wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B.

(2) Interim reexaminations. The household must comply with the provisions in § 5.657 of this title regarding interim reporting of changes in income. If the Owner receives information concerning a change in the household's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the household and make any adjustments determined to be appropriate. See 24 CFR part 5, subpart B, for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for obtaining wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. Any change in the household's income or other circumstances that result in an adjustment in the total tenant payment, tenant rent, or project rental assistance payment must be verified.

(3) * * * (i) A household shall remain eligible for subsidy until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the household's other rights under its lease, nor will the unit or residential space be removed from the PRAC. Project rental assistance payments may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the PRAC, the household meets the income eligibility requirements of § 5.657 of this title (as modified in § 891.105) and project rental assistance is available for the unit or residential space under the terms of the PRAC. The household will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

* * * * *

■ 38. Effective January 1, 2024, in § 891.435, revise paragraphs (a) and (c)(2) to read as follows:

§ 891.435 Security deposits.

(a) *Collection of security deposits.* At the time of the initial execution of the lease, the Owner (or Borrower, as applicable) will require each household (or family, as applicable) occupying an assisted unit or residential space in a group home to pay a security deposit in an amount equal to one month's tenant rent or \$50, whichever is greater. The household (or family) is expected to pay the security deposit from its own resources or other available public or private resources. The Owner (or Borrower) may collect the security deposit on an installment basis.

(c) * * *
 (2) One month's per unit operating cost (or contract rent, if applicable), minus the amount of the household's (or family's) security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for any unpaid tenant rent for the period after termination of the tenancy. The Owner (or Borrower) may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 891.445 (or §§ 891.650 or 891.790, as applicable).

§ 891.440 [Amended]

■ 39. Effective January 1, 2024, in § 891.440, in the third sentence, remove the word "should" and add in its place "must," and in the fifth sentence, remove the phrase "tenant payment (or rent, as applicable)" and add in its place "tenant rent".

§ 891.445 [Amended]

■ 40. Effective January 1, 2024, in § 891.445(d), remove "tenant payment" and add in its place "tenant rent".

§ 891.520 [Amended]

■ 41. Effective January 1, 2024, in § 891.520, remove the definition of "Gross rent."
 ■ 42. Effective January 1, 2024, in § 891.610, revise paragraphs (e), (g)(1), (2), and (3)(i) to read as follows:

§ 891.610 Selection and admission of tenants.

(e) *Ineligibility determination.* If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will

promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the Borrower or managing agent to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(g) * * * (1) *Regular reexaminations.* The Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with § 5.657 of this title and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the housing assistance payment and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of reexamination, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) *Interim reexaminations.* The family must comply with the provisions in § 5.657 of this title regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, or housing assistance payment must be verified.

(3) * * * (i) A family shall remain eligible for housing assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Housing assistance payments may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the HAP contract, the family meets the income eligibility requirements of § 5.657 of this title and housing assistance is available for the unit under the terms of the HAP contract. The family will not be required to establish

its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

* * * * *

§ 891.655 [Amended]

■ 43. In § 891.655, remove the definition of "Gross rent."

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

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

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

■ 45. Effective March 16, 2023, in § 960.102 amend paragraph (b) by adding, in alphabetical order, the definitions of "Alternative non-public housing rent", "Covered person", "Non-public housing over-income family", "Over-income limit", and revising the definition of "Over-income family" to read as follows:

§ 960.102 Definitions.

* * * * *

(b) * * *
Alternative non-public housing rent. A monthly rent equal to the greater of—
 (i) The applicable fair market rent, as defined in 24 CFR part 888, subpart A, for the unit; or
 (ii) The amount of the monthly subsidy provided for the unit, which will be determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.

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

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

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

* * * * *

Covered person. For purposes of this part, covered person means a tenant, any member of the tenant's household,

a guest or another person under the tenant's control.

* * * * *

Non-public housing over-income family. A family whose income exceeds the over-income limit for 24 consecutive months and is paying the alternative non-public housing rent. See subpart E of this part.

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

Over-income limit. The over-income limit is determined by multiplying the applicable income limit for a very low-income family, as defined in § 5.603(b) of this title, by a factor of 2.4. See § 960.507(b).

* * * * *

■ 46. Effective January 1, 2024, in § 960.201, revise paragraph (a)(1) to read as follows:

§ 960.201 Eligibility.

(a) * * * (1) Basic eligibility. An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, must be income-eligible, as described in this section, and must meet the net asset and property ownership restriction requirements in § 5.618 of this title. Such eligible applicants include single persons.

* * * * *

■ 47. Effective March 16, 2023, amend § 960.206 by adding paragraph (b)(6) to read as follows:

§ 960.206 Waiting list: Local preferences in admission to public housing program.

* * * * *

(b) * * *

(6) *Preference for non-public housing over-income families.* The PHA may adopt a preference for admission of non-public housing over-income families paying the alternative non-public housing rent and are on a NPHOI lease who become an income-eligible low-income family as defined in § 5.603(b) of this title and are eligible for admission to the public housing program.

* * * * *

■ 48. Effective March 16, 2023, in § 960.253, add paragraph (a)(3) and revise paragraph (f)(1) to read as follows:

§ 960.253 Choice of rent.

(a) * * *

(3) *Relation to non-public housing over-income families.* Non-public housing over-income families must pay the alternative non-public housing rent,

as applicable, as determined in accordance with § 960.102.

* * * * *

(f) * * *

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years, except for families a PHA determines exceed the over-income limit described in § 960.507(b). Once a PHA determines that a family has an income exceeding the over-income limit, the PHA must follow the income examination and notification requirements under § 960.507(c).

* * * * *

■ 49. Effective January 1 2024, in § 960.255, add paragraphs (e) and (f) to read as follows:

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

* * * * *

(e) *Limitation.* This section applies to a family that is:

(1) Receiving the disallowance of earned income under this section on December 31, 2023 or

(2) Eligible to receive the Jobs Plus program rent incentive pursuant to the Jobs Plus FY2023 notice of funding opportunity (NOFO) or earlier appropriations and distributed through prior Jobs Plus NOFOs.

(f) *Sunset.* This section will lapse on January 1, 2030.

■ 50. Effective March 16, 2023 amend § 960.257 by:

■ a. Adding paragraph (a)(5); and

■ b. In paragraph (d) by adding the word “continued” before “occupancy policies”.

The addition reads as follows:

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

(a) * * *

(5) For all non-public housing over-income families, the PHA may not conduct an annual reexamination of family income.

■ 51. Effective January 1, 2024, amend § 960.257 by revising paragraph (b) and adding paragraphs (e) and (f) to read as follows:

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

* * * * *

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

increase in family adjusted income under paragraph (3) of this section. What qualifies as a “reasonable time” may vary based on the amount of time it takes to verify information, but generally should not be longer than 30 days after changes in income are reported.

(2) The PHA may decline to conduct an interim reexamination of family income if the PHA estimates the family’s adjusted income will decrease by an amount that is less than ten percent of the family’s annual adjusted income (or a lower amount established by HUD by notice), or a lower threshold established by the PHA.

(3) The PHA must conduct an interim reexamination of family income when the PHA becomes aware that the family’s adjusted income (as defined in § 5.611 of this title) has changed by an amount that the PHA estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating or calculating whether the family’s adjusted income has increased, except that, based on the PHA’s established written policy, the PHA may consider increases in earned income if the PHA has processed an interim reexamination for a decrease in the family’s income under paragraph (b)(1) of this section within the same annual or biennial reexamination cycle; and

(ii) The PHA may choose not to conduct an interim reexamination in the last three months of a family’s certification period, in accordance with the PHA’s established written policy.

(4) For over-income families in the period of up to six months before their tenancy termination pursuant to § 960.507(d)(2), the PHA must conduct an interim reexamination of family income as otherwise required under this paragraph. However, the resulting income determination will not make the family eligible to remain in the public housing program beyond the period before termination as defined by PHA policy.

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

(6) *Effective date of rent changes.* (i) If the family has reported a change in family income or composition in a timely manner according to the PHA’s policies, the PHA must provide the family with 30 days advance notice of any rent increases, and such rent

increases will be effective the first day of the month beginning after the end of that 30-day period. Rent decreases will be effective on the first day of the first month after the date of the actual change leading to the interim reexamination of family income.

(ii) If the family has failed to report a change in family income or composition in a timely manner according to the PHA's policies, PHAs must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting rent decrease must be implemented no later than the first rent period following completion of the reexamination. However, a PHA may apply rent decreases retroactively at the discretion of the PHA, in accordance with the conditions established by the PHA in written policy and subject to paragraph (b)(6)(iii) of this section.

(iii) A retroactive rent decrease may not be applied by the PHA prior to the later of the first of the month following:

(A) The date of the change leading to the interim reexamination of family income; or

(B) The effective date of the family's most recent previous interim or annual reexamination (or initial examination if that was the family's last examination).

(e) Reviews of family income under this section are subject to the provisions in section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended (42 U.S.C. 3544).

(f) *De minimis errors.* The PHA will not be considered out of compliance with the requirements in this section solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income varies from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income).

(i) The PHA must take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent as a result of an error (including a de minimis error) in the income determination. Families will not be required to repay the PHA in instances where the PHA has miscalculated income resulting in a family being undercharged for rent or family share.

(ii) HUD may revise the amount of de minimis error in this paragraph (f) through a rulemaking published in the **Federal Register** for public comment.

■ 52. Effective January 1, 2024, in § 960.259, revise paragraph (c)(2) to read as follows:

§ 960.259 Family information and verification.

* * * * *

(c) * * *

(2) For a family with net family assets (as the term is defined in § 5.603 of this title) equal to or less than \$50,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, a PHA may accept, for purposes of recertification of income, a family's declaration under § 5.618(b) of this title, except that the PHA must obtain third-party verification of all family assets every 3 years.

* * * * *

§ 960.261 [Removed]

■ 53. Effective March 16, 2023, remove § 960.261.

■ 54. Effective March 16, 2023, add §§ 960.507 and 960.509 to subpart E to read as follows:

§ 960.507 Families exceeding the income limit.

(a) *In general.* Families participating in the public housing program must not have incomes that exceed the over-income limit, as determined by paragraph (b) of this section, for more than 24 consecutive months.

(1) This provision applies to all families in the public housing program, including FSS families and all families receiving EID.

(i) Mixed families (as defined in § 5.504 of this title) who are non-public housing over-income families pay the alternative non-public housing rent (as defined in § 960.102), as applicable.

(ii) All non-public housing over-income families are precluded from participating in a public housing resident council.

(iii) Furthermore, non-public housing over-income families cannot participate in programs that are only for public housing or low-income families.

(iv) PHAs cannot provide any Federal assistance, including a utility allowance, to non-public housing over-income families.

(2) PHAs must implement the requirements of this section by amending all applicable admission and continued occupancy policies according to the provisions in 24 CFR part 903. All PHAs must have effective over-income policies, consistent with the requirements of this section, no later than June 14, 2023.

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

(c) *Notifying over-income families.* (1) If the PHA determines the family has exceeded the over-income limit pursuant to an income examination, the PHA must provide written notice to the family of the over-income determination no later than 30 days after the income examination. The notice must state that the family has exceeded the over-income limit and continuing to exceed the over-income limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families in accordance with paragraph (d) of this section. Pursuant to 24 CFR part 966, subpart B, the PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

(2) The PHA must conduct an income examination 12 months after the initial over-income determination described in paragraph (c)(1) of this section, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination. If the PHA determines the family has exceeded the over-income limit for 12 consecutive months, the PHA must provide written notification of this 12-month over-income determination no later than 30 days after the income examination that led to the 12-month over-income determination. The notice must state that the family has exceeded the over-income limit for 12 consecutive months and continuing to exceed the over-income limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families in accordance with paragraph (d) of this section. Additionally, if applicable under PHA policy, the notice must include an estimate (based on current data) of the alternative non-public housing rent for the family's unit. Pursuant to 24 CFR part 966, subpart B, the PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

(3) The PHA must conduct an income examination 24 months after the initial over-income determination described in paragraph (c)(1) of this section, unless the PHA determined the family's income fell below the over-income limit

since the second over-income determination. If the PHA determines the family has exceeded the over-income limit for 24 consecutive months, then the PHA must provide written notification of this 24-month over-income determination no later than 30 days after the income examination that led to the 24-month over-income determination. The notice must state:

(i) That the family has exceeded the over-income limit for 24 consecutive months.

(ii) That the PHA must either terminate the family's tenancy or charge the family the alternative non-public housing rent, in accordance with its continued occupancy policy for over-income families in accordance with paragraph (d) of this section.

(A) If the PHA determines that under its policy the family's tenancy must be terminated in accordance with paragraph (d)(2) of this section, then the notice must inform the family of this determination and state the period of time before tenancy termination.

(B) If the PHA determines that under its policy the family must be charged the alternative non-public housing rent in accordance with paragraph (d)(1) of this section, then the notice must inform the family of this determination and state that the family be charged the alternative non-public housing rent in accordance with paragraph (d)(1) of this section. The PHA must also present the family with a new lease, in accordance with the requirements at § 960.509, and inform the family that the lease must be executed no later than 60 days of the date of the notice or at the next lease renewal, whichever is sooner.

(iii) Pursuant to 24 CFR part 966, subpart B, the PHA must afford the family an opportunity for a hearing if the family disputes within a reasonable time the PHA's determination that the family has exceeded the over-income limit.

(4) If, at any time during the consecutive 24-month period following the initial over-income determination described in paragraph (c)(1) of this section, a PHA determines that the family's income is below the over-income limit, the family is entitled to a new 24 consecutive month period of being over-income and new notices under paragraphs (c)(1), (c)(2), and (c)(3) of this section if the PHA later determines that the family income exceeds the over-income limit.

(d) *End of the 24 consecutive month grace period.* Once a family has exceeded the over-income limit for 24 consecutive months, the PHA must, as detailed in its admissions and continued occupancy policies—

(1) Require the family to execute a new lease consistent with § 960.509 and charge the family the alternative non-public housing rent, as defined in § 960.102, no later than 60-days after the notice is provided pursuant to paragraph (c)(3) of this section or at the next lease renewal, whichever is sooner; or

(2) Terminate the tenancy of the family no more than 6 months after the notification under paragraph (c)(3) of this section as determined by the PHA's continued occupancy policy. PHAs must continue to charge these families the family's choice of income-based, flat rent, or prorated rent for mixed families during the period before termination. The PHA must give appropriate notice of lease tenancy termination (notice to vacate) in accordance with State and local laws.

(e) *Status of families.* An over-income family will continue to be a public housing program participant until their tenancy is terminated by the PHA in accordance with paragraph (d)(2) of this section or the family executes a new non-public housing lease in accordance with paragraph (d)(1) of this section.

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

§ 960.509 Lease requirements for non-public housing over-income families.

(a) *In general.* If a family, when permitted by written PHA's continued occupancy policy, elects to remain in a public housing unit paying the alternative non-public housing rent, the PHA and each non-public housing over-income (NPHOI) family (referred to as the "tenant" in this section) must enter into a lease. The tenant and the PHA must execute the lease, as presented by the PHA pursuant to § 960.507(c)(3)(ii)(B) no later than 60 days after the notice provided pursuant to § 960.507(c)(3) or at the next lease renewal, whichever is sooner. If the tenant does not execute the lease within this time period, the PHA must terminate the tenancy of the tenant no more than 6 months after the notification under § 960.507(c)(3) in accordance with § 960.507(d)(2). Notwithstanding, a PHA may permit, in accordance with its policies, an over-income family to execute the lease beyond this time period, but before

termination of the tenancy, if the over-income family pays the PHA the total difference between the alternative non-public housing rent and their public housing rent dating back to the point in time that the over-income family was required to execute the lease.

(b) *Lease provisions.* The non-public housing over-income lease must contain at a minimum the following provisions.

(1) *Parties, dwelling unit, and term.* The lease must state:

(i) The name of the PHA and names of the tenants.

(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit).

(iii) The term of the lease (lease term and renewal in accordance with paragraph (b)(2) of this section).

(iv) A statement of the utilities, services, and equipment to be supplied by the PHA without additional cost, and the utilities and appliances to be paid for by the tenant.

(v) The composition of the household as approved by the PHA (family members, foster children and adults, and any PHA-approved live-in aides). The family must promptly inform the PHA of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

(2) *Lease term and renewal.* (i) The lease must have a term as determined by the PHA and included in PHA policy.

(ii) At any time, the PHA may terminate the tenancy in accordance with paragraph (b)(11) of this section.

(3) *Payments due under the lease.* (i) *Tenant rent.* (A) The tenant must pay the amount of the monthly tenant rent determined by the PHA in accordance with § 960.507(e)(1).

(B) The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA must comply with State or local law in giving the tenant written notice stating any change in the amount of tenant rent.

(ii) *PHA charges.* The lease must provide for charges to the tenant for repair beyond normal wear and tear and for consumption of excess utilities. The lease must state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for excess utility consumption, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

(iii) *Late payment penalties.* The lease may provide for penalties for late payment of rent.

(iv) *When charges are due.* The lease must provide that charges assessed under paragraphs (b)(3)(ii) and (b)(3)(iii) of this section are due in accordance with PHA policy.

(v) *Security deposits.* The lease must provide that any previously paid security deposit will be applied to the tenancy upon signing a new lease. The lease must also inform the tenant of the circumstances under which a security deposit will be returned to the tenant or when the tenant will be charged for damage to the unit, consistent with State and local security deposit laws.

(4) *Tenant's right to use and occupancy.* The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, as well as their guests. The term *guest* is defined in § 5.100 of this title.

(5) *The PHA's obligations.* The PHA's obligations under the lease must include the following:

(i) To maintain the dwelling unit and the project in decent, safe, and sanitary condition.

(ii) To comply with requirements of applicable State and local building codes, housing codes, and HUD regulations materially affecting health and safety.

(iii) To make necessary repairs to the dwelling unit.

(iv) To keep project buildings, facilities, and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition.

(v) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities, and appliances, including elevators, supplied, or required to be supplied by the PHA.

(vi) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish, and other waste removed from the dwelling unit by the tenant in accordance with paragraph (b)(6)(vii) of this section.

(vii) To supply running water, including an adequate source of potable water, and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage), except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control

of the tenant and supplied by a direct utility connection.

(viii) To notify the tenant of the specific grounds for any proposed adverse action by the PHA as required by State and local law.

(ix) To comply with Federal, State, and local nondiscrimination and fair housing requirements, including Federal accessibility requirements and providing reasonable accommodations for persons with disabilities.

(x) To establish necessary and reasonable policies for the benefit and well-being of the housing project and the tenants, post the policies in the project office, and incorporate the regulations by reference in the lease.

(6) *Tenant's obligations.* The lease must, at a minimum and consistent with State and local law, provide that the tenant must:

(i) Not assign the lease or sublease the dwelling unit.

(ii) Not provide accommodations for boarders or lodgers.

(iii) Use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not use or permit its use for any other purpose.

(iv) Abide by necessary and reasonable policies established by the PHA for the benefit and well-being of the housing project and the tenants, which must be posted in the project office and incorporated by reference in the lease.

(v) Comply with all applicable State and local building and housing codes materially affecting health and safety.

(vi) Keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition.

(vii) Dispose of all waste from the dwelling unit in a sanitary and safe manner.

(viii) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities, including elevators.

(ix) Refrain from, and cause members of the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or housing project.

(x) Pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the housing project (including damages to buildings, facilities, or common areas) caused by the tenant, a member of the household or a guest.

(xi) Act, and cause household members and guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive

to maintaining the project in a decent, safe, and sanitary condition.

(xii) Assure that no tenant, member of the tenant's household, guest, or any other person under the tenant's control engages in:

(A) *Criminal activity.* (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.

(2) Any drug-related criminal activity on or off the premises; or

(B) *Civil activity.* For non-public housing over-income units that are not within mixed-finance projects, any smoking of prohibited tobacco products in the tenant's unit as well as restricted areas, as defined by § 965.653(a) of this chapter, or in other outdoor areas that the PHA has designated as smoke-free.

(xii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

(7) *Tenant maintenance.* The lease may provide that the tenant must perform seasonal maintenance or other maintenance tasks, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary, as long as such provisions are not for the purpose of evading the obligations of the PHA. In cases where a PHA adopts such lease provisions, the PHA must exempt tenants who are unable to perform such tasks because of age or disability.

(8) *Defects hazardous to life, health, or safety.* The lease must set forth the rights and obligations of the tenant and the PHA if to the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants. The lease must provide that:

(i) The tenant must immediately notify project management of the damage.

(ii) The PHA must repair the unit within a reasonable time. The PHA must charge the tenant the reasonable cost of the repairs if the damage was caused by the tenant, the tenant's household, or the tenant's guests.

(iii) The PHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time, subject to paragraph (b)(5)(ix) of this section; and

(iv) The lease must allow for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (b)(8)(ii) of this section or alternative accommodations not provided in

accordance with paragraph (b)(8)(iii) of this section, except that no abatement of rent may occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(9) *Entry of dwelling unit during tenancy.* The lease must set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession and must include the following requirements:

(i) The PHA is, upon reasonable advance notification to the tenant, permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry is reasonable advance notification.

(ii) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(iii) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA must leave in the dwelling unit a written statement specifying the date, time, and purpose of entry prior to leaving the dwelling unit.

(10) *Notice procedures.* The lease must provide procedures, in accordance with State and local laws, the PHA and tenant must follow when giving notices, which must include:

(i) Except as provided in paragraph (b)(9) of this section, notice to a tenant must be provided in a form to allow meaningful access for persons who are limited English proficient and, in a form, to ensure effective communication with individuals with disabilities; and

(ii) Notice to the PHA can be in writing, hand delivered, or sent by prepaid first-class mail to PHA address provided in the lease, orally, or submitted electronically through a communications system established by the PHA for that purpose.

(11) *Termination of tenancy and eviction.* (i) *Procedures.* The lease must state the procedures to be followed by the PHA and the tenant to terminate the tenancy.

(ii) *Grounds for termination of tenancy.* The PHA must terminate the tenancy for good cause, which includes, but is not limited to, the following:

(A) Criminal activity or alcohol abuse as provided in paragraph (b)(11)(iv) of this section.

(B) Failure to accept the PHA's offer of a lease revision to an existing lease: with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.

(iii) *Lease termination notice.* The PHA must give notice of lease termination in accordance with State and local laws.

(iv) *PHA termination of tenancy for criminal activity or alcohol abuse.* (A) *Evicting drug criminals.* (1) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of Federally assisted housing.

(2) *Drug crime on or off the premises.* The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(B) *Evicting other criminals.* (1) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

(2) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

(C) *Eviction for criminal activity.* (1) *Evidence.* The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA

determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

(2) *Notice to Post Office.* When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

(D) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing, as applicable, or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(E) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(F) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

(1) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(2) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

(G) *PHA action, generally.* (1) *Consideration of circumstances.* In a manner consistent with policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the nature and severity of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity, the extent to which the leaseholder has taken steps to prevent or mitigate the offending action, the amount of time that has passed since the criminal conduct occurred, whether the crime or conviction was related to a disability, and whether the individual has engaged in rehabilitative or community services.

(2) *Exclusion of culpable household member.* The PHA may require a tenant to exclude a household member to

continue to reside in the dwelling unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

(3) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C. 13662). For this purpose, the PHA may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(4) *Nondiscrimination limitation.* The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

(12) *No automatic lease renewal.* Upon expiration of the lease term, the lease shall not automatically renew.

(13) *Grievance procedures.* The lease may include hearing or grievance procedures and may explain when the procedures are available to the family.

(14) *Provision for modifications.* The lease may be modified at any time by written agreement of the tenant and the PHA. The lease must provide that modification of the lease must be evidenced by a written rider or amendment to the lease, executed by both parties, except as permitted under § 966.5 of this chapter, which allows modifications of the lease by posting of policies, rules and regulations.

(15) *Signature clause.* The lease must provide a signature clause attesting that the lease has been executed by the parties.

■ 55. Effective March 16, 2023, revise § 960.600 to read as follows:

§ 960.600 Implementation.

PHAs and residents must comply with the requirements of this subpart beginning with PHA fiscal years that commence on or after October 1, 2000. Unless otherwise provided by § 903.11 of this chapter, Annual Plans submitted for those fiscal years are required to contain information regarding the PHA's compliance with the community service requirement, as described in § 903.7 of this chapter. Non-public housing over-

income families are not required to comply with the requirements of this subpart.

■ 56. Effective March 16, 2023, in § 960.601(b), revise the definition of *Exempt individual* to read as follows:

§ 960.601 Definitions.

* * * * *

Exempt individual. An adult who:
(1) Is 62 years or older;
(2)(i) Is a blind or disabled individual, as defined under Section 216(i)(1) or Section 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or
(ii) Is a primary caretaker of such individual;

(3) Is engaged in work activities;
(4) Meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program;

(5) Is a member of a family receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such a program; or
(6) Is a member of a non-public housing over-income family.

* * * * *

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

■ 57. The authority citation for part 964 continues to read as follows:

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

§ 964.125 [Amended]

■ 58. Effective March 16, 2023, amend § 964.125(a) by inserting “, not including members of a non-public housing over-income family as defined in § 960.102 of this chapter,” after “public housing household”.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

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

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

■ 60. Effective March 16, 2023, amend § 966.4 by:

- a. Revising paragraph (a)(2)(iii);
- b. Adding paragraph (a)(2)(iv);
- c. In paragraph (1)(2)(ii) by removing the citation to “24 CFR 960.261” and adding “24 CFR 960.507” in its place, and
- d. By redesignating paragraph (1)(2)(iii) as (1)(2)(iv), and adding new paragraph (1)(2)(iii);

The revision and addition read as follows:

§ 966.4 Lease requirements.

(a) * * *

(2) * * *

(iii) The lease shall convert to a month-to-month term for families determined to be over-income whose tenancy will be terminated in accordance with § 960.507(d)(2) of this chapter as of the date of the notice provided under § 960.507(c)(3) of this chapter. PHAs must charge these families, who continue to be public housing program participants, the family's choice of income-based, flat rent, or prorated rent for mixed families during the period before termination.

(iv) At any time, the PHA may terminate the tenancy in accordance with paragraph (l) of this section.

* * * * *

(1) * * *

(2) * * *

(iii) No longer meeting the restrictions on net assets and property ownership as provided in § 5.618 of this title.

* * * * *

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

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

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

■ 62. Effective January 1, 2024, in § 982.516, revise paragraphs (a)(3), (c), (d), (e)(1), and (f) and add paragraph (h) to read as follows:

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

(a) * * *

(3) For a family with net family assets (as the term is defined in § 5.603 of this title) equal to or less than \$50,000, which amount will be adjusted annually by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, a PHA may accept, for purposes of recertification of income, a family's declaration under § 5.618(b) of this title, except that the PHA must obtain third-

party verification of all family assets every 3 years.

* * * * *

(c) *Interim reexaminations.* (1) A family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must conduct any interim reexamination within a reasonable period of time after the family request or when the PHA becomes aware of an increase in family adjusted income under paragraph (c)(3) of this section. What qualifies as a “reasonable time” may vary based on the amount of time it takes to verify information, but generally should not be longer than 30 days after changes in income are reported.

(2) The PHA may decline to conduct an interim reexamination of family income if the PHA estimates the family’s adjusted income will decrease by an amount that is less than ten percent of the family’s annual adjusted income (or a lower amount established by HUD through notice), or a lower threshold established by the PHA.

(3) The PHA must conduct an interim reexamination of family income when the PHA becomes aware that the family’s adjusted income (as defined in § 5.611 of this title) has changed by an amount that the PHA estimates will result in an increase of ten percent or more in annual adjusted income or such other amount established by HUD through notice, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating or calculating whether the family’s adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(1) of this section during the certification period; and

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

(4) *Effective date of rent changes.* (i) If the family has reported a change in family income or composition in a timely manner according to the PHA’s policies, the PHA must provide the

family with 30 days advance notice of any family share and family rent to owner increases, and such increases will be effective the first day of the month beginning after the end of that 30-day period. Family share and family rent to owner decreases will be effective on the first day of the first month after the date of the reported change leading to the interim reexamination of family income.

(ii) If the family has failed to report a change in family income or composition in a timely manner according to the PHA’s policies, PHAs must implement any resulting family share and family rent to owner increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income. Any resulting family share and family rent to owner decrease must be implemented no later than the first rent period following completion of the reexamination. However, a PHA may apply a family share and family rent to owner decrease retroactively at the discretion of the PHA, in accordance with the conditions established by the PHA in the administrative plan and subject to paragraph (c)(4)(iii) of this section.

(iii) A retroactive family share and family rent to owner decrease may not be applied prior to the later of the first of the month following:

(A) The date of the change leading to the interim reexamination of family income; or

(B) The effective date of the family’s most recent previous interim or annual reexamination (or initial examination if that was the family’s last examination).

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

(e) * * *

(1) The PHA must adopt policies consistent with this section prescribing how to determine the effective date of a change in the housing assistance payment resulting from an interim redetermination.

* * * * *

(f) *Accuracy of family income data.* The PHA must establish procedures that are appropriate and necessary to assure that income data provided by applicant or participant families is complete and accurate. The PHA will not be considered out of compliance with the requirements in this section solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income).

(i) The PHA must take any corrective action necessary to credit or repay a family if the family has been overcharged for their rent or family share as a result of an error (including a de minimis error) in the income determination. Families will not be required to repay the PHA in instances where the PHA has miscalculated income resulting in a family being undercharged for rent or family share.

(ii) HUD may revise the amount of de minimis error in this paragraph (f) through a rulemaking published in the **Federal Register** for public comment.

* * * * *

(h) Reviews of family income under this section are subject to the provisions in section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended (42 U.S.C. 3544).

■ 63. Effective January 1, 2024, in § 982.552, add paragraph (b)(6) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(b) * * *

(6) The PHA must deny or terminate assistance based on the restrictions on net assets and property ownership when required by § 5.618 of this title.

Adrienne Todman,
Deputy Secretary.

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