

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-4635-F-02]

RIN 2501-AC77

Temporary Assistance for Needy Families (TANF) Program; Conforming Changes to Annual Income Requirements for HUD's Public Housing and Section 8 Assistance Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, the final rule clarifies that annual income includes payments under the Temporary Assistance for Needy Families (TANF) program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services (HHS) and are not otherwise excluded under HUD's regulation. This final rule follows publication of an April 20, 2001, proposed rule and takes into consideration public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* August 19, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Senior Programs Manager, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4222, Washington, DC 20410; telephone (202) 708-0744 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, 2001 (66 FR 20368), HUD published a proposed rule to update and clarify HUD's annual income requirements for its public housing and Section 8 assistance programs. The changes are intended to ensure greater conformity between HUD's annual income requirements and the TANF program regulations, and to make the annual income requirements easier to understand for both program participants and public housing agencies.

A. HUD's Annual Income Requirements

HUD's regulations at 24 CFR part 5, subpart F, establish requirements governing the determination of annual income of families who apply for, or receive assistance under, the Section 8 and public housing programs. The HUD regulations define "annual income" to mean all amounts, monetary or not, which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
- (2) Are anticipated to be received from a source outside the family during the upcoming 12 month period; and
- (3) Are not excluded under § 5.609(c).

Section 5.609(b)(6) establishes the requirements determining the amount of income when the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual costs of these items. The term "welfare assistance" is defined at § 5.603. Specifically, this term is defined to mean "[w]elfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State, or local governments."

B. "Assistance" Under the Temporary Assistance for Needy Families (TANF) Program

HUD's definition of "welfare assistance" at § 5.603 includes assistance provided under the Temporary Assistance for Needy Families (TANF) program. The TANF block grant program replaced the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

II. HUD's Proposed Rule

On April 20, 2001, HUD published a proposed rule that would make two changes designed to clarify the relationship between HUD's annual income requirements for its Section 8 and public housing programs, and the TANF program definition of "assistance." First, the rule would clarify that the term "welfare assistance," for purposes of calculating annual income, includes TANF payments, but only to the extent such payments meet the definition of "assistance" under 45 CFR 260.31 and

are not otherwise excluded under § 5.609(c).

Second, the rule would clarify the definition of "welfare assistance" at § 5.603. Specifically, the April 20, 2001, rule proposed to clarify that welfare assistance includes TANF "assistance," as that term is defined by the HHS regulation at 45 CFR 260.31.

HUD proposed these clarifications to make the annual income requirements easier to understand for program participants and public housing agencies. The amendments were also designed to ensure greater conformity between the annual income requirements and the TANF program regulations.

III. This Final Rule

This final rule follows publication of the April 20, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. This final rule adopts the proposed rule and makes no changes.

IV. Discussion of Public Comments on the April 20, 2001, Proposed Rule

The public comment period on the April 20, 2001, proposed rule closed on June 19, 2001. HUD received three comments, two from public housing agencies (PHAs) and one from a nonpartisan research organization.

This section of the preamble presents a summary of the significant issues raised by the public commenters on the April 20, 2001, proposed rule and HUD's responses to these comments.

One commenter wrote to express support for the proposed change to the definition of the term "welfare assistance" to include the TANF program definition of "assistance" under HHS regulation 45 CFR 260.31. The commenter wrote that the proposed changes will reduce conflicting interpretations of "welfare assistance" given to families who receive both TANF and housing assistance.

Comment: Modification to exclude TANF-funded food assistance for legal immigrants. One commenter, who expressed support for the proposed rule, recommended one modification to the proposed rule. The suggested modification was to exclude TANF-funded food assistance for legal immigrants that some states have chosen to provide after the 1996 restrictions.

HUD Response: HUD declines to adopt the suggestion to specifically exclude this type of assistance. The purpose of this rule is to clarify the relationship between HUD's annual income requirements for assisted housing purposes and the TANF

program definition of assistance, not to add additional exclusions to the definition of annual income. The rule provides that annual income includes TANF payments, but only to the extent such payments meet the definition of "assistance" under regulations promulgated by HHS at 45 CFR 260.31, and are not otherwise excluded under 24 CFR 5.609(c). Therefore, if a specific type of assistance does not meet the definition of assistance under the TANF regulation, then it would be excluded for HUD purposes.

Comment: HUD should clarify the interaction of the revised definition of "welfare assistance" with existing rules. The commenter suggested that HUD clarify the interaction of the revised definition of "welfare assistance" with existing rules on exclusions from income. In addition, the clarification should be included in the preamble to the final rule as well as in the implementing instructions.

HUD Response: The preamble to the proposed rule clarified that "welfare assistance" included TANF payments, but only to the extent such payments meet the definition of "assistance" under 45 CFR 260.31 and are not otherwise excluded under 24 CFR 5609(c). This is also reflected in the revised regulation at 24 CFR 5.609(b)(6)(i)(B). HUD believes that this language is sufficient to address the interaction of the revised definition of "welfare assistance" with existing regulations. As a result, HUD has not adopted this suggestion.

Comment: HUD should give specific examples (without limitation) of the types of common TANF payments that would be excluded from income by the new rule. The commenter used as an example that the proposed rule would exclude TANF funded one-time payments such as utility arrears, because such one-time or short-term payments are excluded from the TANF definition of assistance. The commenter would like to see other specific examples of payments that are excluded.

HUD Response: HUD has not adopted this suggestion. HUD will not give specific examples within the regulation. The TANF program regulations are discussed in the preamble, and will only be referenced by citation in the HUD regulations. It is important that PHAs and local TANF agencies work closely if there are questions related to interpretation of HUD or TANF regulations. HUD will also consider developing additional guidance on this subject which would be available on the HUD website and in future issuances.

Comment: The proposed rule also invited comments on the utility of HUD's previous guidance (PIH 2000-11) on the development of cooperative agreements between PHAs and welfare offices, and on whether other guidance and training is needed to further public housing and welfare coordination. One commenter thought it would be helpful to request that PHAs, on a voluntary basis, submit to HUD copies of cooperative agreements to share ideas with other PHAs. Further, the commenter suggested that there is a great need for further guidance and training for PHAs and welfare agencies on areas of beneficial coordination such as Family Self-Sufficiency (FSS), earnings disregards and other rent-based work incentives, Section 3 requirements, etc.

HUD Response: HUD appreciates the comments and will take them into consideration.

Comment: The proposed clarification does not show the exclusions as defined under the new definition of "Welfare Assistance." One commenter noted that the "welfare assistance" definition underwent a change in the year 2000, which excluded (for the purposes of the FSS program only) the following:

- (1) Amounts solely directed to meet housing expenses.
- (2) Amounts for health care.
- (3) Food stamps and emergency rental and utilities assistance.
- (4) SSI, SSDI, or Social Security.

The commenter wrote that HUD's proposed clarification does not show any of the above line items as being excluded. The commenter stated, "welfare assistance, if once again included in the above items, may cause many families who are moving toward self sufficiency to be derailed." The commenter would like to see these items remain excluded from the definition of "welfare assistance" for the FSS program.

HUD Response: The definition for "welfare assistance" for purposes of the FSS program only (24 CFR 984.103) was changed by the final rule (Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs, published in the **Federal Register** on March 29, 2000 (65 FR 16692)), to refer only to cash maintenance payments for ongoing basic needs, funded under Federal or State welfare programs such as the TANF program. This definition, for purposes of the FSS program only, remains unchanged and is not affected by this final rule.

V. Findings and Certifications

Environmental Impact

This final rule involves the discretionary establishment of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, which does 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 rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule would not impose any Federal mandates on any State, local, or tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850 and 14.871.

List of Subjects in 24 CFR Part 5

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

Accordingly, for the reasons described in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

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

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

2. The authority citation for subpart F continues to read as follows:

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

3. In § 5.603(b), revise the definition of “Welfare assistance” to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

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4. Revise § 5.609(b)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

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Dated: July 8, 2002.

Mel Martinez,
Secretary.

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