

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR-4998-P-01]

RIN 2501-AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's public and assisted housing program regulations to implement the process of upfront income verification (UIV) of applicants and participants in assistance programs by public housing agencies (PHAs), including through use of the Enterprise Income Verification (EIV) system. HUD believes that this process would help cure deficiencies in public and assisted housing rental subsidy determinations identified through quality control studies and internal audits. The rule is consistent with HUD's comprehensive strategy under the Rental Housing Integrity Improvement Project (RHIP) initiative to reduce by half the number and dollar amount of errors in HUD's rental assistance programs. The new verification process would be applicable to all assistance applicants and participants in the public housing, tenant-based housing choice voucher (HCV), and multifamily housing programs. This proposed rule would also make one conforming change to the HOME program regarding income determinations.

DATES: *Comment Due Date:* August 20, 2007.

ADDRESSES: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the

public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nicole Faison, Office of Public and Indian Housing, or Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-0744 and (202) 708-3000, respectively (these are not toll-free numbers). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes the Secretary to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. The regulations implementing this authority are located in part 5 of Title 24 of the Code of Federal Regulations. As part of the procedures for determining proper rent subsidies, HUD and PHAs must conduct income verifications for applicants and participants in covered HUD programs. As a condition of obtaining assistance, HUD requires the disclosure and verification of Social Security Numbers (SSNs), Employer Identification Numbers, and citizen or eligible immigration status. With few exceptions, HUD cannot make financial assistance available to applicants and participants who do not have eligible status with respect to citizenship or

noncitizen immigration status. However, temporary deferrals of assistance termination may be allowable in limited circumstances.

In addition to these eligibility requirements, HUD requires the determination of annual and adjusted income of applicants and participants who apply for or receive assistance in the Section 8 and public housing programs. "Annual income" means, in part, all income amounts that a family anticipates to receive in the 12-month period following either admission to the covered HUD program or the participant's annual income examination effective date. Furthermore, PHAs that operate public housing or housing choice voucher (HCV) programs are required to electronically submit family characteristics data to HUD through certain forms.

II. This Proposed Rule

This proposed rule would address HUD's priority of reducing errors, including overpayment of subsidy to PHAs, caused by incorrect income determinations and rent calculations in HUD's public and assisted housing programs. This proposed rule would make several significant revisions to the regulations that govern the public housing, tenant-based, and project-based rental assistance programs, as described below.

Proposed Changes to Part 5

The proposed revisions to § 5.216 would eliminate the threshold that sets 6 years of age as the minimum age that triggers the requirement for documentation of SSNs. The revisions would require any individual applying for or participating in the public housing, HCV, or multifamily housing project-based programs to disclose his or her SSN. Further, the rule would remove the provision allowing certification that a child who is at least 6 years of age has not been assigned an SSN, or that a particular SSN submitted has been assigned to an individual, but that acceptable documentation to verify the SSN cannot be provided.

Each applicant and participant family would be required to submit a complete and accurate SSN assigned to each family member in the household. Additionally, the applicant would be required to submit valid documentation, such as a Social Security card or other documentation, necessary to verify the SSN of an individual. The requirement is consistent with the Housing and Community Development Act of 1987 (42 U.S.C. 3543), the Internal Revenue Code (IRC), and with SSN disclosure

requirements for other federally assisted programs such as Temporary Assistance for Needy Families (TANF), the Food Stamp Program, Social Security (SS), and Supplemental Security Income (SSI). This requirement would significantly enhance HUD's ability to prevent and detect fraud, waste, and abuse in HUD's programs, without appreciably increasing the administrative burden on PHAs and private owners of multifamily housing projects, or causing a hardship to applicants or participants.

The proposed changes to § 5.218 would clarify that the penalty for failure to provide required documentation is denial or termination of individual assistance.

The proposed new § 5.233 would mandate the use of UIV techniques for PHAs. Multifamily owners and management agents would be required to use UIV, subject to the availability of EIV or computer matching agreements with federal, state, and local government agencies or private agencies. UIV is the verification of income, before and during a family's reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. UIV allows entities to validate the accuracy of a family's self-reported household income and reduces the incidence of fraud, waste, and abuse in public and assisted housing programs.

Under this proposed rule, UIV will be required and replaces the more time-consuming and less accurate third-party verification process. That process involves contacting individual employers identified by the family and reviewing handwritten documents reporting income. Under proposed § 5.233, processing entities (as defined in § 5.214) will be required to use one of the prescribed UIV methods, which may include computer matching agreements with a federal, state, or local government agency or private agencies; use of HUD's systems such as EIV; or direct requests to federal, state, or local government agencies or private agencies. Proposed § 5.233(b) also provides penalties for failure to implement a UIV process.

Independent third-party verification will be used to complement upfront verification of income using the EIV system, such as when a tenant disputes the EIV data. Income data older than 12 months contained in the EIV system must not be used in verifying annual income. The mandate to use upfront verification of income will reduce errors and incidences of unreported and

underreported family household income. UIV also will help to streamline the verification process, making it easier for responsible entities to verify family-reported income.

As proposed, the rule would provide PHAs the option of upfront verification of income for assistance applicants and participants using either the EIV system or obtaining such data through direct computer matching agreements with a federal, state, or local government agency or a private agency. Since multifamily owners and management agents may not be able to easily enter into such computer matching agreements and can only use the current EIV system for residents already receiving subsidy, the Department is considering limiting their use of the EIV system to verify income for recertification of existing families in multifamily project-based rental assistance programs. If the Department adopts this position, multifamily owners and management agents would continue to use third-party verification for applicants at move-in certification. The Department is interested in receiving public comment regarding this proposed position.

Under the proposed revisions to § 5.508(b), with respect to individuals applying for assistance, responsible entities would be required to obtain adequate proof of U.S. citizenship or legal status, which includes, but is not limited to, a U.S. birth certificate, U.S. passport, Social Security card, Alien Registration card, Employment Authorization card, Temporary Resident card, or other appropriate documentation. The revision would help to ensure that only eligible families will be able to receive assistance in HUD's rental assistance programs.

Under the proposed revisions to § 5.516, temporary deferral of termination of assistance may be available to families receiving assistance under a program covered by section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) and who either include a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or an individual seeking asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158).

In § 5.518, the rule proposes to eliminate temporary deferrals of termination of assistance for families with noncitizen members. Those families who include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, may continue to be eligible for temporary deferral of termination of

assistance. The deferral period for all other families with noncitizen members has expired.

The revisions proposed to § 5.609 would change the definition of annual income from anticipated future income to actual income received. The existing regulations at 24 CFR 5.609 require responsible entities to calculate a family's rent payment and subsidy amount using anticipated annual income. Under this proposed rule, actual annual income will be used in determining a family's eligibility and assistance level in assisted programs, and will be based on amounts received from a source outside the family during the 12-month period prior to admission or prior to the effective date of the annual reexamination. If, however, the processing entity believes more current verified income data exists, the entity must use and annualize this income data to determine annual income. HUD notes that a substantial number of administrators of assisted housing programs are basing annual income on the prior year's income. The rationale in support of this approach is that past income is a known amount, whereas anticipated future income is a projected amount, based on predictions and future circumstances, which are susceptible to error and fraud.

The proposed change in the definition of annual income will both simplify the family income verification process and significantly eliminate associated costs of income verifications. This is because the EIV system containing quarterly wage, employer information, weekly/bi-weekly unemployment benefit payments, monthly SS and SSI benefits, and Medicare deductions and/or buy-ins can be used at no cost to the processing entities.

Proposed Changes to 24 CFR Part 92

A conforming revision to § 92.203 of HUD's regulations implementing the HOME program (24 CFR part 92) would change the method for determining the income eligibility of participants in the HOME program from projected annual income to actual income received in the 12-month period prior to the income eligibility determination. Participating jurisdictions must use the most recent verified income data for the family.

Proposed Changes to 24 CFR Part 908

Under § 908.101 of HUD's regulations implementing electronic transmissions of required family data (24 CFR part 908), PHAs that operate public housing and/or HCV programs are required to electronically submit family characteristics data to HUD through HUD forms 50058 and 50058-FSS. This

proposed rule would require in § 908.101 that PHAs retain Form HUD-50058 file documentation, during the term of each assisted lease, and for at least 3 years thereafter, for use as the official source document to support all billings by the PHA to HUD. This requirement is expected to facilitate a speedy and effective confirmatory review or audit by HUD and/or independent auditors and strengthen HUD controls.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review"). This rule was determined to be economically significant under E.O. 12866. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

The Economic Analysis prepared for this rule is also available for public inspection and on HUD's Web site at <http://www.hud.gov>. A summary of the findings contained in the Economic Analysis follows.

A. Rulemaking Goals and Focus of Economic Analysis. This proposed rule clarifies ambiguous language in program regulations, strengthens internal controls in programs, and facilitates the full implementation of the process of UIV of the income of assisted families, including requiring the use of the Enterprise Income Verification (EIV) system.

B. Basis for Economically Significant Determination Under E.O. 12866. HUD determined that the proposed rule would be an economically significant rule under E.O. 12866 because the rule

would result in transfers of funding levels to and among stakeholders of \$100 million more a year.

C. Findings. This economic analysis finds that, while the implementation of the proposed rule would improve on the integrity of the programs, it is unclear if it would lead to a reduction or increase in subsidy. It is not entirely clear how those currently benefiting from over subsidy will react to the correct level of subsidy; *i.e.*, formerly over-subsidized households may withdraw from the programs and be replaced by households with lower incomes. Furthermore, there is likely to be neither a reduction in outlay for rent subsidies nor an increase in the number of program participants as a result of this rule.

Although recent studies suggest that the EIV and other third-party verification help to identify overpaid subsidy and rent determination errors due to underreported or unreported income, and that actions taken against the households with income discrepancies would result in savings in subsidy and result in the recovery of a portion of the overpaid subsidy, HUD's experience indicates that its program integrity improvement efforts are likely to result in some higher-income tenants leaving assisted housing and being replaced with lower-income tenants.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is concerned with those entities that are responsible for making eligibility determinations and income reexaminations under sections 3 and 5 of the United States Housing Act of 1937 and tenant-based and project-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would strengthen HUD's internal controls, refine regulations where unclear, and facilitate the full implementation of UIV techniques. Under the definition of "small governmental jurisdiction" in section 601(5) of RFA, the provisions of RFA are

applicable only to those few PHAs that are part of a political jurisdiction with a population of fewer than 50,000 persons. Therefore, the number of entities potentially affected by this rule is not substantial.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6), this proposed rule involves statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost estimates, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. Interested persons are invited to submit comments regarding the information collection requirements contained in this rule. Comments must be received within 60 days from the date of this rule.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
908.101, 960, 982, 984, Part 5; Form HUD-50058 (New Admission)	4127	69	60	284,763
908.101, 960, 982, 984, Part 5; Form HUD-50058 (Recertification)	4127	934	31	1,991,553
908.101, 960, 982, 984, Part 5; Form HUD-50058 MTW (New Admission) ..	18	814	60	14,652
908.101, 960, 982, 984, Part 5; Form HUD-50058 MTW (Recertification)	18	10,985	31	102,161

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

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

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

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

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

Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR-4998) and be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6974, and

Aneita Waites, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an

agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does 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) (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 proposed rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.855.

List of Subjects

24 CFR part 5

Administrative practice and procedure, Aged, Claims, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR part 92

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

24 CFR part 908

Computer technology, Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 92, and 908 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS

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

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

2. Revise § 5.216 to read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(b) *Disclosure required of individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSNs assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify the SSNs.

(c) *Disclosure required of certain officials of entity applicants.* Each officer, director, principal stockholder,

or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure required of participants.* (1) Initial disclosure. Each participant whose initial determination of eligibility under the program involved was begun before *[INSERT EFFECTIVE DATE OF FINAL RULE]* must submit the following information to the processing entity at the next interim or regularly scheduled income reexamination for the program involved:

(i) The complete and accurate SSN assigned to the participant and to each member of the participant's family; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure.* Once a participant has disclosed and the processing entity has verified every SSN, the following rules apply:

(i) If the participant's household adds a new member, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new members:

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN for each new member.

(ii) If the participant or any member of the participant's household obtains a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next interim or regularly scheduled income reexamination:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such individual.

(iii) Additional SSN disclosure and verification requirements, including the nature of the disclosure, the verification required, and the time and manner for making the disclosure and verification, may be specified in administrative instructions by:

(A) HUD; and

(B) In the case of the public housing program or the programs under 24 CFR parts 882 and 982, the PHA.

(e) *Disclosure required of entity applicants.* Each entity applicant must submit the following information to the

processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN.

(f) *Required documentation.* (1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration (SSA), or such other evidence of the SSN as HUD and, where applicable, the PHA may prescribe in administrative instructions.

(2) *Employer Identification Numbers.* The documentation necessary to verify any EIN of an entity applicant that is required to disclose its EIN under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(g) *Effect on assistance applicants.* (1) If the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may become a participant in the program, provided it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(3) of this section. During such period, the assistance applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including its place on any waiting list maintained for the program, if applicable.

(2) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation may continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(3) of this section.

(3) *Time for submitting documentation.* The time period referred to in paragraphs (g)(1) and (2) of this section is 60 calendar days from the date of application submission or the effective date of the reexamination, except that the processing entity may, at its discretion, extend this period for up to an additional 60 days if the individual is at least 62 years of age and is unable to submit the required

documentation within the initial 60-day period.

(h) *Rejection of documentation.* The processing entity may reject documentation referred to in paragraph (f) of this section only for such reasons as HUD and the PHA may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local SSA Office or consulting SSA regulations.

(2) Information regarding EINs may be obtained by contacting the local office of the IRS or consulting the appropriate regulations for the IRS.

3. Amend § 5.218 by revising paragraph (a), the introductory text of paragraph (b), and paragraph (c) to read as follows:

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

* * * * *

(c) *Termination of assistance or tenancy of participants.* The processing entity must terminate the assistance or tenancy, or both, of a participant, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216. For assistance or tenancy under the Section 8 Housing Choice Voucher (HCV) and Public Housing programs, the PHA must prorate the family's assistance, as described in 24 CFR 5.520(c)(2) and 24 CFR 5.520(d), respectively. Processing entities shall prorate the family's assistance, in accordance with 24 CFR 5.520(b) for the Rent Supplement program authorized under section 101 of the Housing and Urban Development Act of 1965, the Section 236 program authorized under section 236 of the National Housing Act, and 24 CFR 5.520(c) for the assistance

programs under section 8 of the 1937 Act.

* * * * *

4. Add a new § 5.233 to read as follows:

§ 5.233 Mandated use of upfront income verification (UIV) techniques.

(a) *Programs subject to this section and requirements.* Entities administering Public Housing, Housing Choice Voucher (HCV), moderate rehabilitation, project-based voucher, project-based certificate, project-based rental assistance, and programs administered by the Office of Housing must verify tenant income data, before or during a family's initial examination and reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. This technique is known as the UIV technique. Income data older than 12 months contained in the EIV system must not be used in verifying annual income. Processing entities must obtain data for upfront verification of income through the following methods:

(1) Via use of HUD systems (such as the EIV system), or

(2) By submitting direct computer matching agreements with a federal, state, or local government agency or a private agency.

(b) *Penalties for noncompliance.* Failure to implement a UIV process may result in the assessment of disallowed costs and/or sanctions against the processing entity.

5. Amend § 5.508 by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) Evidence of citizenship or eligible immigration status. * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity must request verification of the declaration by requiring presentation of a U.S. passport, U.S. birth certificate, Social Security card, Alien Registration card, Employment Authorization card, Temporary Resident card, or other appropriate documentation, as provided by Section 214.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214-covered program on September 30, 1996, or applying for assistance on or after that date, adequate evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, adequate evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) One of the Section 214 documents listed in § 5.508(b)(1) and referred to in § 5.510.

6. Amend § 5.516 by revising paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* In accordance with § 5.518, temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214-covered program on June 19, 1995, and who either include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

7. Amend § 5.518 by revising paragraph (b), removing paragraph (c), and redesignating existing paragraph (d) as paragraph (c) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

* * * * *

(b) *Temporary deferral of termination of assistance.* (1) *Eligibility for this type of assistance.* If a family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard; that is of appropriate size for the family; and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing-covered programs: Conditions for granting temporary deferral of termination of assistance.*

The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing-covered program and the family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

8. Amend § 5.609 by revising paragraph (a), removing existing paragraph (d), redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 5.609 Annual income.

(a) *Annual income* means 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; or

(2) Are amounts received from a source outside the family during the 12-month period prior to admission or the annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (d) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) If the processing entity believes that the most recent income data documents a change in the family's annual income, the entity must use and annualize this income data to determine the family's annual income for the 12-month period.

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PART 92—HOME INVESTMENT PARTNERSHIP PROGRAM

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

Authority: 42 U.S.C. 3535(d) and 12701–12839.

10. Amend § 92.203 by revising paragraph (d)(1) to read as follows:

§ 92.203 Income determination.

* * * * *

(d)(1) The participating jurisdiction must calculate the annual income of the family based upon the income received by the family during the 12-month period preceding the time the participating jurisdiction determines the family is income-eligible. However, the participating jurisdiction must obtain the most recent verified income data

available. If the participating jurisdiction determines that this data would change the family's annual income (e.g., due to an increase or decrease in hourly wages), the participating jurisdiction must use this data to determine the family's income for the 12-month period. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

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**PART 908—ELECTRONIC
TRANSMISSION OF REQUIRED
FAMILY DATA FOR PUBLIC HOUSING,
AND THE SECTION 8 RENTAL
CERTIFICATE, RENTAL VOUCHER,
AND MODERATE REHABILITATION
PROGRAMS**

11. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

12. Revise § 908.101 to read as follows:

§ 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Housing

Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms HUD-50058, Family Report; and HUD-50058-FSS, Family Self-Sufficiency Addendum. Applicable program entities must retain Form HUD-50058 during the term of each assisted lease, and for at least 3 years thereafter, to support billings to HUD and permit an effective audit.

Dated: May 18, 2007.

Roy A. Bernardi,
Deputy Secretary.

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