

Technical Guide for Determining Income and Allowances for the HOME Program

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Preface

The HOME Investment Partnerships (HOME) Program is a flexible and versatile funding resource for affordable housing. A fundamental component of using HOME funds effectively is ensuring that they are targeted to households that are low- and very low-income.

The HOME Program requires that participating jurisdictions (PJs) use one of three definitions of annual income in order to determine the income eligibility of applicants to their programs. PJs can choose from these options:

- *Annual income as used in HUD programs like Section 8 and defined in 24 CFR 5.609,*
- *Annual income as reported on the Census long form for the most recent decennial census, and*
- *Adjusted gross income as defined by the Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax reporting purposes.*

This guide will be useful for most PJs, since all PJs must verify the income eligibility of every HOME program participant. Using this guide provides an opportunity for a PJ to review and understand the differences in each of the three income definitions and to determine which definition(s) is most appropriate for each of the HOME activities the PJ undertakes. In addition, some PJs may be familiar with the process of determining income eligibility for one or two of the three allowable income definitions. As a result of staff turnover, or other circumstances, other PJs may need to develop expertise in understanding all of the possible definitions. Regardless of the PJ's experience level, PJs will find that there are certain rules unique to each of the three definitions, but in general the rules are understandable and relatively easy to work with.

This self-study guide provides explanations of each of the three definitions of income, and describes what sources of income must be included or excluded when conducting income verification. In addition to a description of these basic requirements, the guide provides exercises and case studies to enable readers to test their understanding of the key concepts. This HOME model program guide is a companion to other guides published by the Office of Affordable Housing Programs of the U.S. Department of Housing and Urban Development. These guides are available through the HOME Program's Model Program Guides website at: <http://www.hud.gov/offices/cpd/affordablehousing/library/modelguides/index.cfm>.

Contents

Chapter One – Overview

Chapter Two – General Requirements

Chapter Three – Calculating Annual (Gross) Income

Chapter Four – Calculating Adjusted Income

Chapter Five – Calculating Assistance Amounts

Appendices

Appendix A: Glossary of Terms

Appendix B: Sample Format for Computing Part 5 Annual Income

Appendix C: Sample Format for Computing Census Long Form Annual Income

Appendix D: Sample Format for Computing IRS Form 1040 Adjusted Gross Income

Appendix E: Sample Format for Computing Part 5 Adjusted Income

Appendix F: Sample Format for Computing Total Tenant Payment and PJ Subsidy –
Rental Voucher Method

Appendix G: Sample Format for Computing Total Tenant Payment and PJ Subsidy –
Rental Certificate Method

Appendix H: Sample Verification Forms for Determining Annual (Gross) Income

Appendix I: Sample Verification Forms for Determining Part 5 Adjusted Income

Appendix J: Sample Annual Recertification of Income Forms

The HOME Investment Partnerships (HOME) Program has historically required that participating jurisdictions (PJs) use the Section 8 program definition of annual (also referred to as gross) income to measure the eligibility of applicants to their HOME programs. However, with the publication of the HOME Final Rule, effective October 16, 1996, PJs were given the flexibility to choose one of three definitions of annual income – annual income as defined in 24 CFR 5.609,¹ annual income as reported on the Census long form for the most recent decennial census, and adjusted gross income² as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

This change in the HOME regulations is consistent with a similar change to the Community Development Block Grant (CDBG) regulations, which went into effect December 11, 1995. The change in the HOME regulations was intended to ease administration for PJs when projects are funded by multiple sources, including CDBG.

In several specific circumstances, PJs are required to adjust the income of households participating in the HOME Program. Chapter Four details these circumstances and the process of adjusting household income using the rules at 24 CFR 5.611. When PJs are required to use adjusted income, they must use the HUD rules at 24 CFR 5.611 *regardless of the definition of annual income originally used* to qualify the household for participation in the HOME Program. Throughout this guide, the term “annual income” will be used to refer to annual income as calculated using one of the three definitions allowed under the HOME Program, unless otherwise specified. The term “Part 5 annual income” will be used to refer to annual income as defined at

24 CFR 5.609. This was formerly called the “Section 8” definition of income. Further, “adjusted income” will be used to refer to adjusted income calculated according to the rules at 24 CFR 5.611.

Income-Related Program Requirements

Exhibit 1.1 summarizes the uses of the income definitions under the HOME Program.

Household income must be calculated for a number of different uses under the HOME Program, including:

- **Eligibility.** To receive HOME assistance, households must have incomes at or below 80 percent of the area median household income, adjusted for household size, and determined annually by HUD. This is commonly referred to as “the Section 8 Low-Income Limit.” To determine whether a household is eligible, a PJ must determine its annual income using one of the three allowable income definitions and comparing that income to the Section 8 Low-Income Limit. For HOME rental projects and tenant based rental assistance (TBRA) programs, income eligibility must be re-established annually (refer to Chapter 2).
- **Targeting of Funds.** Income determinations are also necessary to comply with HOME targeting requirements. For each annual HOME allocation a PJ receives, ninety percent of the occupants of HOME-funded rental housing units and households assisted with TBRA must have annual incomes at or below 60 percent of the area median income.
- **Occupancy of Rental Projects.** In addition to the program targeting requirements, at least 20 percent of the

HOME-assisted units in rental projects with five or more HOME-assisted units must be occupied by households with incomes at or below 50 percent of the area median income.

- **Subsidy Amounts.** For HOME-funded TBRA programs, annual income is used to determine eligibility and adjusted income is used to determine the amount of subsidy an eligible household can receive.
- **Displacement Activities.** Income calculations are also used to determine assistance to families who may be displaced as a result of HOME-funded activities. Exhibit 1.1 provides additional detail on these calculations.

Using this Guide

This guide has been organized to help the reader absorb income rules one at a time. Within each chapter, examples and exercises provide the opportunity to think about the practical applications of the rules.

- **Chapter Two.** This chapter reviews the general requirements that relate to determining and calculating income. These rules apply regardless of the definition of annual income used by the PJ.
- **Chapter Three.** Chapter Three provides detailed information on how to calculate income using each of the three allowable income definitions. This chapter also discusses and illustrates the differences between the three definitions.
- **Chapter Four.** This chapter discusses the circumstances under which PJs must adjust annual household income and describes how to do so.
- **Chapter Five.** Chapter Five provides detailed guidance on calculating assistance amounts in HOME TBRA programs and when conducting displacement activities.

A number of appendices follow Chapter Five, including a glossary of terms and sample forms.

Additional Resources

In addition to this guide, there are several other HUD resources PJs can use as reference material:

- **HOME Program Regulations.** The HOME Program regulations can be found at 24 CFR Part 92.
- **General HUD Program Requirements found at 24 CFR Part 5.** The requirements pertaining to annual and adjusted income for HUD programs are found in this regulation. These regulations are updated periodically, with notification provided through the Federal Register.³ Agencies are given 60 days from the date of publication to implement changes.
- **HUD Handbook 4350.3.** This handbook, entitled “Occupancy Requirements of Subsidized Multifamily Housing Programs,” applies to many of HUD’s multifamily housing programs, including Section 8 and Section 236. The HOME Program does not require the use of this handbook, but many PJs will find the information in it, particularly Chapter 5, helpful in understanding and clarifying the Part 5 income rules and requirements. The handbook is updated whenever changes are made to the regulations.

The HOME Program statute, regulations, notices, and waivers can be obtained through the HOME Program page of the HUD web site. This site is located at www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm. Federal regulations, HUD handbooks, and notices can be obtained through HUD offices or on the Internet at www.hud.gov and www.hudclips.org.

Further guidance on the calculation of annual income under the HOME Program is available online at www.hud.gov/offices/cpd/affordablehousing/training/calculator/index.cfm.

Census publications, including sample forms and instructions, are available on the Census Bureau's website (www.census.gov) or by calling its customer service center at (301) 763-4636. IRS forms, instructions and other publications are also available online at www.irs.ustreas.gov, or by calling the IRS at 1-800-829-3676.

Exhibit 1.1 – Summary of Uses of Income Definitions in the HOME Program

HOME Program Activities	Uses of Income Definitions
Homeowner Rehabilitation	Use one of three definitions of annual (gross) income ⁴ .
Homebuyer Activities	Use one of three definitions of annual (gross) income.
Rental Activities	Use one of three definitions of annual (gross) income for initial determination and at recertification. Use adjusted income ⁵ to determine rent for tenants whose income increases above 80% of median. Can use annual (gross) income and adjusted income to determine project rents for tenants below 50% of median and occupying at least 20% of the units in a project with five or more HOME-assisted units, although most PJs use standard High and Low HOME rents.
TBRA	Use one of three definitions of annual (gross) income to determine income initially and at annual recertification. Use one of three definitions of annual (gross) and Part 5 adjusted income to determine the tenant's share of the rent.
Relocation and Displacement Activities	
Uniform Relocation Act	Use Part 5 annual (gross) ⁶ and adjusted income to determine if a low-income household is economically displaced. Use Part 5 annual (gross) income to compute Replacement Housing Payments.
Section 104(d) – Displacement, Relocation Assistance, and Real Property Acquisition for HUD and HUD-Assisted Programs	Use Part 5 annual (gross) income to determine Replacement Housing Payments.

as a basis for developing their procedures. These forms of verification are third party verification and review of documents. (The third method provided to PHAs, applicant certification, does not provide adequate source documentation for the HOME Program.)

Third-Party Verification

Under this form of verification, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information to verify income. Although written requests and responses are generally preferred, conversations with a third party are acceptable if documented through a memorandum to the file that notes the contact person, information conveyed, and date of call. In addition, a PJ may obtain third party written verification by facsimile, email, or Internet. The PJ must make adequate effort to ensure the sender is a valid third-party source.

To conduct third-party verifications, a PJ must obtain a written release from the household that authorizes the third party to release required information. (See Appendix H for a sample release form, "HOME Program Eligibility Release Form.")

Third-party verifications are helpful because they provide independent verification of information and permit the PJ to determine if any changes to current circumstances are anticipated. Some third-party providers may, however, be unwilling or unable to provide the needed information in a timely manner.

Some third-party providers (such as banks) may charge a fee to provide the information. In such cases, the PJ should attempt to find suitable documentation without the third-party verification – for example, bank statements or a savings passbook. If suitable documentation is not available, costs associated with third party verifications are eligible administrative or project expenses under the HOME Program; however, low-income

beneficiaries must not be required to pay for verifications as a condition of receiving assistance.

Review of Documents

Documents provided by the applicant (e.g., pay stubs, tax returns, etc.) may be most appropriate for certain types of income and can be used as an alternative to third party verifications. (Note, however, that if a copy of a tax return is needed, IRS Form 4506 "Request for Copy of Tax Form" must be completed and signed.) Copies of documents should be retained in project files.

Although easier to obtain than third-party verifications, a review of documents provided by the applicant often does not provide all necessary information. For instance, an employed applicant's pay stubs may not provide sufficient information about the average number of hours worked, overtime, tips, and bonuses. In this case, the PJ may also need to contact the employer to accurately project annual income.

Assessing Information

PJs must assess all the facts underlying the income information collected. Below are some of the considerations PJs must take into account.

Pay period. The PJ should determine the basis on which employees are paid (hourly, weekly or monthly, and with or without overtime). An employee who gets paid "twice a month" may actually be paid either twice a month (24 times a year) or every two weeks (26 times a year).

An annual salary is counted as annual income regardless of the payment schedule. For example, if a teacher's annual salary is \$30,000, this is the annual income regardless of whether the teacher is paid over a nine- or 12-month period.

Variations in pay. For applicants whose jobs provide steady employment (e.g., 40 hours a week, 50 weeks a year), it can be assumed that there will only be slight

Chapter Two

General Requirements

While PJs have the option of choosing one of three definitions of annual (gross) income to determine income eligibility of applicants to their HOME Program activities, certain rules and requirements apply regardless of the definition used. These overarching requirements include how to determine whose income to count, anticipate and verify income, and compare income to HUD income limits. This chapter reviews these requirements.

Determining Whose Income to Count

The HOME Program regulations require that income of all family members be included in the determination of income.

The Part 5 definition of annual income provides specific guidance pertaining to whose income in a household must be included in that calculation. Chapter Three reviews this in detail.

Anticipating Income

The HOME regulations at 24 CFR 92.203(d)(1) require that, for the purpose of determining eligibility for HOME assistance, a PJ must project a household's income in the future. To do so, a "snapshot" of the household's current circumstances is used to project future income. In general, a PJ should assume that today's circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary. For example, if a head of household is currently working for \$7.00 per hour, 40 hours per week, the PJ should assume that this family member will continue to do so for the next year. Thus, estimated earnings will be \$7.00 per hour multiplied by 2,080 hours, or \$14,560 per year.

This method should be used even when it is not clear that the type of income received currently will continue in the coming year. For example, assume a family member has been receiving unemployment benefits of

\$100 per month for 16 weeks at the time of income certification. It is unlikely that the family member will continue on unemployment for another 52 weeks. However, because it is not known whether or when the family member will find employment, the PJ should use the current circumstances to anticipate annual (gross) income. Income would therefore be calculated as follows: \$100 per week x 52 weeks, or \$5,200.

The exception to this rule is when documentation is provided that current circumstances are about to change. For example, an employer might report that an employee currently makes \$7.50 an hour, but a negotiated union contract will increase this amount to \$8.25 an hour eight weeks from the date of assistance. In such cases, income can be calculated based on the information provided. In this example, the calculation would be as follows:

- $\$7.50/\text{hour} \times 40 \text{ hours/week} \times 8 \text{ weeks} = \$2,400$
- $\$8.25/\text{hour} \times 40 \text{ hours/week} \times 44 \text{ weeks} = \$14,520$
- $\$2,400 + \$14,520 = \$16,920$.

Verifying Income

The HOME regulations at 24 CFR 92.203(a) require that PJs determine income eligibility of HOME applicants by examining source documents (such as wage statements or interest statements) as evidence of annual income.

PJs may develop their own verification procedures provided that they collect source documentation and that this documentation is sufficient for HUD to monitor program compliance. (Sample verification forms are provided in Appendix H.)

PJs may use two of the three verification procedures provided to public housing agencies (PHAs) for the Section 8 Program

variations in the amount of earnings reflected in monthly or bi-weekly pay stubs. In such cases, three consecutive month's worth of income documentation is an appropriate amount upon which to base a projection of income over the following 12-month period.

For those whose annual employment is less stable or does not conform to a twelve-month schedule (e.g., seasonal laborers, construction workers, teachers), PJs should examine income documentation that covers the entire previous twelve-month period. Such workers can experience substantial variations in earned income over the course of a year. As such, an examination of three month's worth of income documentation may not provide an accurate basis upon which to project the applicant's income over the following 12 months.

Sources of earned income. In addition to hourly earnings, PJs must account for all earned income. In addition to the base salary, this will include annual cost of living adjustments (COLAs), bonuses, raises, and overtime pay. In the case of overtime, it is important to clarify whether overtime is sporadic or a predictable component of an employee's income. If it is determined that an applicant has earned and will continue to earn overtime pay on a regular basis, PJs should calculate the average amount of overtime pay earned by the applicant over the pay period the PJ is using to calculate income eligibility (3 months or 12 months). This average amount is then to be added to the total amount of projected earned income over the following 12-month period. Exhibit 2.1 provides a step-by-step explanation of the standard methodology for projecting annual income.

Comparing Annual Income to Published Income Limits

Once household and income information has been established and verified, a PJ must compare the information to the appropriate HUD income limits to determine if the household is eligible for participation in the HOME Program.

To determine eligibility, PJs must use a copy of the most recent HUD income limits, adjusted for family size and by geographic area (county or metropolitan area). The income limits are updated annually and are available through HUD offices or on the Internet at

www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index.cfm.

Exhibit 2.2 provides a sample income limits table.

Determining Household Size

The income limits are adjusted by household⁷ size; therefore, one of the first steps in determining eligibility is to determine the size of the applicant household.

Some households may include persons who are not considered as family members for the purposes of determining household size and income eligibility, including:

- Foster children;
- Foster adults;
- Live-in aides; and
- Children of live-in aides.

These persons should not be counted as household members when determining household size, and their income, if any, is not included when calculating annual income.

A child who is subject to a shared-custody agreement in which the child resides with the household at least 50 percent of the time can be counted in the household.

Comparing Household Income to the HUD Limits

To compare a household's annual income information to the HUD income limits, follow these steps:

1. Find the geographic area in which the PJ is located on the HUD income limit chart.
2. Find the column that corresponds to the number of persons in the household (i.e., family size).

3. Compare the verified income of the household with the income limit for that household size.

Using the sample income limits chart in Exhibit 2.2, consider the following example:

Mr. and Mrs. Jackson have three children that permanently reside with them. It has been determined by the PJ staff that the Jackson's have an annual household income of \$48,500. Based on the income limits, the Jackson family must have an income of less than \$59,250 in order to participate in the HOME Program. Since the Jackson's income of \$48,500 is less than the Low-Income Limit of \$59,250, they are eligible for HOME assistance.

Timing of Income Certifications

All households that receive HOME assistance must be income-eligible at the time assistance is provided. Generally, the HOME Program permits income verification dated no earlier than six months prior to receipt of assistance. Households must qualify as low-income at the time of occupancy or at the time HOME funds are invested, whichever is later.

A preliminary determination of eligibility should, however, be made much earlier in the process. Application processing is labor intensive. Early screening for income eligibility can eliminate excessive work in processing an ineligible applicant. For example, when considering an application from a developer to rehabilitate an existing rental project, it is important for a PJ to know whether the current tenants will continue to be eligible once HOME funds are invested in the project.

Establishing a deadline for formal eligibility determinations is a challenging part of the planning process. The formal determination of income eligibility must be made shortly before a household receives assistance. Because eligibility determination involves verification of income, waiting too long can delay a project. Conducting income certifications too early in the process,

however, might mean that certifications become outdated and must be redone.

Income Certifications for Lease-Purchase or Contract-to-Purchase Housing

PJs have some flexibility when certifying the income of homebuyers in lease-purchase or contract-to-purchase programs.

Homebuyers are required to qualify as low-income:

- In the case of a contract to purchase existing housing, at the time of purchase;
- In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; or
- In the case of a contract to purchase housing to be constructed, at the time the contract is signed.

Income Recertification for Rental Housing

In addition to initial certifications at the time of eligibility determinations, tenants receiving TBRA or occupying HOME-assisted rental units must have their incomes recertified annually. Because new income certifications should be effective on each tenant's "anniversary date" (one year from the start of assistance or last recertification date), the income certification process should begin 60 to 90 days prior to that time.

For rental housing projects, the PJ must use one of the following three methods for recertifying tenant incomes:

- **Review of source documents.** This involves a review of source documentation, such as that done for a household's initial eligibility determination.
- **Statement and certification from the family.** This is a written statement from the family indicating family size and annual income. This must include a certification from the family that

information is complete and accurate, and must indicate that source documents will be provided upon request. A sample certification is provided in Appendix J.

- **Statement from another government program.** This is a written statement from the administrator of another government program under which the family receives benefits, and that examines the annual (gross) income of the family each year. The statement must indicate the family size, or provide the current income limit for the program and a statement that the family's income does not exceed that limit. A sample of this type of certification is found in Appendix J.

If the PJ chooses to allow rental project owners to accept the written statement from the family or other governmental entity at income recertification, it must require owners to review full source documentation every sixth year of the affordability period. For a rental project with a 20-year affordability period, for example, source documentation must be used to certify all tenants' income at initial lease-up, and in years six, 12 and 18 of the affordability period. In the other years, the family or government program statement may be accepted without further verification of income.

Exhibit 2.1 – Step-by-Step Methodology for Projecting Annual Income

Steps	Instructions
Step 1: Collect appropriate income documentation.	Appropriate documentation includes pay stubs, third-party verification, bank statements (checking and/or savings), or certified copies of tax returns. (These can be acquired by submitting an IRS Form 4506, "Request for Copy of Tax Form.")
Step 2: Calculate the applicant household's projected income based upon documentation.	This calculation must include hourly wage figures, overtime figures, bonuses, anticipated raises, COLAs, or other anticipated changes in income. Other specific inclusions must also be reflected in the calculation, depending upon which definition of annual income the PJ has elected to use for its program. Specific instructions for each of the three definitions of income under HOME are provided later in this guide.
Step 3: Compare the amount of projected income against current HOME income limits.	Once the PJ has calculated the household's income, based on its selected definition, it must compare the household's final projected figure to annual HOME income limits, which are adjusted according to household size. These limits are posted online at: www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/index/cfm . This information is also available through the CPD office of your state or local HUD Field Office. Households whose projected annual income is less than the current HOME income limits are eligible for HOME assistance.

**Exhibit 2.2 – Sample Income Limits Schedule (FY 2004)
Area: Baltimore, MD**

	Adjusted Income Limits							
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% Limits	\$14,400	\$16,450	\$18,500	\$20,600	\$22,250	\$23,850	\$25,500	\$27,150
Very Low- Income (50% Limits)	\$24,000	\$27,450	\$30,850	\$34,300	\$37,050	\$39,800	\$42,550	\$45,300
60% Limits	\$28,800	\$32,940	\$37,020	\$41,160	\$44,460	\$47,760	\$51,060	\$54,360
Low-Income (80% Limits)	\$38,400	\$43,900	\$49,400	\$54,900	\$59,250	\$63,650	\$68,050	\$72,450

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Chapter Three

Calculating Annual (Gross) Income

As discussed in Chapter One, the HOME Program gives PJs the flexibility to choose one of three definitions of annual income to determine whether households are eligible for participation in the HOME Program. The three definitions are:

1. Annual income as defined in 24 CFR Part 5 (Part 5 annual income);
2. Annual income as reported under the Census long form for the most recent decennial census; and
3. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

PJs may use different definitions of income for each of the different HOME activities it administers. For example, a PJ may decide to use the Part 5 definition of income for its rental projects and TBRA program, and use the Census long form definition within its homebuyer and owner-occupied rehabilitation programs. However, PJs must ensure that applicants to their HOME-funded programs and activities are treated equitably. For this reason, the same income definition must be used within a particular program or activity. For example, if a PJ decides to use the Part 5 definition of annual income for its homebuyer program, it must use this definition for all applicants to the homebuyer program. It may not use the Census definition for one applicant and the Part 5 definition for another applicant.

Chapter Two discussed how and when income information must be verified. This chapter provides detailed guidance about calculating annual (gross) income using each of the three allowable definitions.

Definition 1: Annual Income as Defined in 24 CFR Part 5

The annual income definition found at 24 CFR Part 5 is used by a variety of Federal programs including Section 8, public housing and the Low-Income Housing Tax Credit Program. Annual income is used to determine program eligibility and, in some programs, the level of assistance the household will receive. This definition was formerly commonly referred to as the Section 8 definition.

The Part 5 definition of annual income is the *gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period*. Each of the italicized phrases in this definition is key to understanding the requirements for calculating annual income:

- **Gross amount.** For those types of income counted, gross amounts (before any deductions have been taken) are used;
- **Income of all adult household members.** The Part 5 definition of annual income contains income “inclusions” – types of income to be counted – and “exclusions” – types of income that are not considered (for example, income of minors); and
- **Anticipated to be received.** The Part 5 annual income is used to determine eligibility and the amount of Federal assistance a family can receive. A PJ must, therefore, use a household’s expected ability to pay, rather than past earnings, when estimating housing assistance needs.

Whose Income to Count

Knowing whose income to count is as important as knowing which income to count. Under the Part 5 definition of annual income, special consideration is given to income earned by the following groups of people:

- **Minors.** Eamed income of minors, including foster children (age 18 and under) is not counted. However, unearned income attributable to a minor (e.g., child support, TANF payments and other benefits paid on behalf of a minor) is included;
- **Live-in aides.** If a household includes a paid live-in aide (whether paid by the family or a social service program), the income of the live-in aide, regardless of the source, is not counted. Except under unusual circumstances, a related person does not qualify as a live-in aide.
- **Persons with Disabilities.** During the annual recertification of a family's income, PJs are required to exclude from annual income certain increases in the income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance. 24 CFR 5.617(a) outlines the eligible increases in income. These exclusions from annual income are of limited duration. The full amount of increase to a qualified family's annual income is excluded for the cumulative 12-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to the employment. During the second cumulative 12-month period, the PJ is required to exclude from annual income 50 percent of any increase in income. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.
- **Temporarily absent family members.** The income of temporarily absent family members is counted in the Part 5 definition of annual income – regardless of the amount the absent member contributes to the household. For example, a construction worker employed at a temporary job on the other side of the state earns \$600 per week. He keeps \$200 per week for expenses and sends \$400 per week home to his family. The entire amount (\$600 per week) is counted in the family's income;
- **Adult students living away from home.** If the adult student is counted as a member of the household in determining the household size (to compare against the HUD income limits), the first \$480 of the student's income must be counted in the family's income. Note, however, that the \$480 limit does not apply to a student who is the head of household or spouse (their full income must be counted); and
- **Permanently absent family members.** If a family member is permanently absent from the household (e.g., a spouse who is in a nursing home), the head of household has the choice of either counting that person as a member of the household, and including income attributable to that person as household income, or specifying that the person is no longer a member of the household.

Types of Income to Count

Exhibits 3.1 and 3.2 provide a comprehensive list of income that is included and excluded from calculations of annual income under Part 5. This list comes directly from the Federal regulations at 24 CFR 5.609. HUD updates this list when changes are made by Congress. Program administrators generally are expected to implement changes within 60 days of publication in the *Federal Register*.

In general, income exclusions fall into the following categories:

- Benefits that should not be counted as income;
- Income of certain household members that should not be counted, including earned income of minors and income attributable to foster children and live-in aides; and
- Amounts that are counted as assets rather than income, such as lump-sum lottery winnings.

Welfare Rent as Income

Welfare assistance is counted as income. Most PJs will use the actual gross amount of welfare assistance the household receives. In certain “as-paid” localities, however, a special calculation is required. In an as-paid jurisdiction, welfare assistance for housing costs is established separately from the rest of the welfare assistance and may be adjusted based on the actual cost of the family’s housing.

PJs in as-paid jurisdictions must count as income the amount of general assistance a family receives plus the maximum amount of housing assistance the family *could* receive (rather than the amount the household is actually receiving).

Sample Format for Computing Part 5 Annual Income

Exhibit 3.3 shows a sample format for computing annual income using the Part 5 annual income definition.

Exhibits 3.4 through 3.7 provide examples and exercises that demonstrate how the Part 5 annual income definition is applied to individual family circumstances. Answers to the exercises are provided in each exhibit. These exhibits do not include income from assets, which is addressed below. Examples and exercises concerning asset calculation follow that discussion.

Treatment of Assets

Some assistance programs require that families “spend down” assets before they

can participate. There is no asset limitation for participation in the HOME Program. Income from assets is, however, recognized as part of annual income under the Part 5 definition. To comply with the Part 5 rules regarding assets, PJs must know: (1) what to include as assets, (2) how to compute the market and cash value of those assets, and (3) how to determine the income from the asset to be included in annual income.

What to Include as an Asset

In general terms, an asset is a cash or non-cash item that can be converted to cash. Exhibit 3.8 summarizes items that are and are not to be considered assets. (Note: it is the income earned – e.g., interest on a savings account – not the value of the asset – that is counted in annual income.)

Exhibits 3.9 through 3.11 provide examples and exercises that demonstrate how income from assets is calculated. Market Value and Cash Value Assets have both a market value and a cash value. The market value of an asset is simply its dollar value on the open market. For example, the market value of a share of stock is the price quoted on the stock exchange on a particular day. A property’s market value is the amount it would sell for on the open market. This may be determined by comparing the property with similar, recently sold properties.

An asset’s cash value is the market value less reasonable expenses required to convert the asset to cash, including:

- **Penalties or fees for converting financial holdings.** Any penalties, fees, or transaction charges levied when an asset is converted to cash are deducted from the market value to determine its cash value (e.g., penalties charged for premature withdrawal of a certificate of deposit, the transaction fee for converting mutual funds to cash or broker fees for converting stocks to cash); and/or
- **Costs for selling real property.** Settlement costs, real estate transaction fees, payment of mortgages/liens

against the property and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

Under the rules of Part 5, only the cash value (rather than the market value) of an item is counted as an asset. If more than one person owns an asset, PJs must prorate the asset according to the applicant's percentage of ownership. If no percentage is specified or provided by state or local law, PJs must prorate the asset evenly among all owners. If an asset is not effectively owned by an individual, it is not counted as an asset.

Actual Income from Assets

Assets can generate income, and for the purpose of determining an applicant's income, the actual income generated by the asset (e.g., interest on a savings or checking account) is what counts, not the value of the asset. The income is counted, even if the household elects not to receive it. For example, if an applicant elects to reinvest the interest or dividends from an asset, it is still counted as income.

As with other types of income, the income included in annual income calculation is the income that is anticipated to be received from the asset during the coming 12 months. Several methods may be used to approximate the anticipated income from the asset. For example, to obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account. Alternatively, if the value of the account is not anticipated to change in the near future and the interest rate has been stable, a copy of the IRS 1099 form showing past interest earned can be used.

Many PJs are surprised to learn that checking account balances (as well as savings account balances) are considered an asset. This rule is not intended to count monthly income as an asset, but rather, is recognition that some households keep

assets in their checking accounts. To avoid counting monthly income as an asset, PJs should use the average monthly balance over a six-month period as the cash value of the checking account.

Two Unique Rules

For most assets, calculating cash value and the income from the assets is straightforward. Special rules have, however, been established to address two circumstances – situations in which the assets produce little or no income, and assets that are disposed of for less than fair market value.

When an Asset Produces Little or No Income

This rule assumes that a household with assets has an increased payment ability, even if its assets do not currently produce income. (For example, a household that owns land that is not rented or otherwise used to produce income.) Rather than require the household to dispose of the property, the rule requires that an "imputed" income be calculated based on a Passbook Rate that is applied to the cash value of all assets.

This rule only applies if the total cash value of all assets is more than \$5,000. The following examples illustrate how imputed income from assets calculation is applied.

Example 1: The Cayhill family has \$6,000 (average balance over six months) in a non-interest-bearing checking account. The PJ would include in annual income an amount based on the current Passbook Rate. The calculation would be: $\$6,000 \times .02 = \120 .

Example 2: The Shaw family has \$3,000 (average balance over six months) in a non-interest-bearing checking account and \$5,500 in an interest-bearing savings account. The family reports and the PJ verifies \$150 interest on the savings account. The PJ would count the greater of the actual income from assets or the imputed income based on the Passbook Rate, as shown below:

Imputed income (\$8,500 x .02) =	\$170
Actual income	\$150
Included in annual income	\$170

Note: Currently, each Field Office establishes the passbook savings rate to be used by the PHAs within its jurisdiction. A Field Office determines the rate based on the average interest rate received on passbook savings accounts at several banks in the local area (24 CFR 5.609 and Form HUD-50058 Family Report Instruction Booklet,⁸ p. 22). Although the new Public Housing Occupancy Guidebook,⁹ page 122, footnote 35, states that "Consistent with the Multi-family Housing Program, PHAs will use a standard 2% passbook rate," the current method described above will remain in effect until superceded by PIH Notice. Check with your state or regional HUD Field Office for the applicable Passbook Rate for your community.

Example 3: The Smiths have \$600 (average balance over six months) in a non-interest-bearing checking account. No income from assets would be counted because the family has no actual income from assets and the total amount of all assets is less than \$5,000.

When Assets are Disposed of at Less than Fair Market Value

Applicants who dispose of assets for less than fair market value (i.e., value on the open market in an "arm's length transaction") have, in essence, voluntarily reduced their ability to afford housing. The Part 5 rules require, therefore, that any asset disposed of for less than fair market value during the two years preceding the income determination be counted as if the household still owned the asset.

The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset. Consider the following examples.

Example 1: Mr. Jones cashed in stock to give a granddaughter funds for college in August 2004. The stock had a market value of \$4,500 and a broker fee of \$500 was charged for the transaction.

Market value	\$4,500
Less broker's fee	<u>500</u>
Cash value to be considered	\$4,000

The \$4,000 in assets would be counted for any income determination conducted until August 2006 (looking forward two years from the time of disposal).

If Mr. Jones has no other assets, no income from assets would be included in annual income because the cash value of the asset is less than \$5,000. If other assets brought total assets to more than \$5,000, however, the imputed income calculation described previously would be required.

Example 2: Mrs. Dutch "sold" a piece of property to a family member for \$30,000 on July 1, 2004. The home was valued at \$75,000 and had no loans against it.

Market value	\$75,000
Less settlement costs	3,000
Less sales price	<u>30,000</u>
Cash value to be considered	\$42,000

The \$42,000 would be counted as an asset for any income determination conducted until July 1, 2006.

The \$42,000 would be combined with the cash value of other assets (if any), and an imputed income calculation would be required.

Each applicant must certify whether an asset has been disposed of for less than fair market value. Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy are not included in this calculation. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be less than fair market value if the applicant receives (or received) important consideration not measurable in dollar terms.

Definition 2: Census Long Form Annual Income

Every ten years, the U.S. Bureau of the Census conducts a complete enumeration of all residents in the United States. This process involves gathering extensive information about people and where they live through the use of a detailed questionnaire, referred to as the Long Form. An entire section of the Long Form includes questions concerning household income. PJs may choose to use this definition of “annual income” when determining the eligibility of applicants to its HOME programs.

Types of Income to be Counted

Exhibit 3.12 lists what is and is not included in the annual income definition as set forth in the Long Form used in the 2000 census.

The list of income inclusions for the Census Long Form definition is very similar to the list of income inclusions under the Part 5 definition of annual income. However, Part 5 includes the income of minors and adults over the age of 18 whereas the Census Long Form definition includes the income of minors and adults over the age of 15.

Treatment of Assets

The primary difference between the Part 5 and Census Long Form definitions of annual income is in the treatment of assets. The asset calculation required when using the Part 5 definition is not necessary for the Long Form calculation of annual income. This is not to say that income from certain kinds of assets is not included in the Census Long Form definition of income. While the asset calculation is unique to the Part 5 definition, income generated by assets is still considered when calculating income under the Census (and IRS) definition of income.

As shown in Exhibit 3.12, the following types of income from assets are included in the Census Long Form definition of annual income:

- Interest;

- Dividends;
- Profit from royalties or real estate; and
- Income from payments from an estate or trust fund.

Income from some types of assets, however, is not included in the income calculation. Examples include:

- Withdrawals of savings;
- Capital gains (or losses) from the sale of homes, stock, and other property;
- Insurance settlements; and
- Assets disposed of for less than fair market value within two years prior to the income determination.

The treatment of assets is an important distinction PJs must consider when determining which definition of annual income to use.

Sample Format for Computing Census Long Form Annual Income

Exhibit 3.13 is a sample format for calculating annual income based on the Census Long Form definition. It is very similar to the sample format for Part 5 annual income except that the asset calculation information is not included.

Exhibit 3.14 provides an example of the Census Long Form annual income calculation.

Definition 3: IRS Form 1040 Adjusted Gross Income

Citizens of the United States and resident aliens, except those with gross incomes below a certain level, are required to file an income tax return with the Department of the Treasury's Internal Revenue Service (IRS) each year. The tax return is officially referred to as IRS Form 1040. The definition of adjusted gross income for the HOME Program is based on this form, also commonly referred to as “the long form.” The definition set forth in the short form, known as the 1040EZ (known as “the short form”), may not be used to determine applicant eligibility.

IRS Form 1040 requires reporting of certain kinds of income, as the Part 5 and Census Long Form definitions of income discussed in this guide require, which are added together to constitute what is referred to as gross income. However, unlike the other two definitions of income, another step is required. From the gross income figure, certain deductions are taken to arrive at an adjusted gross income number. This is the figure that is used to determine an applicant's eligibility for participation in the HOME Program.

The term "adjusted gross income" as used when referring to the IRS Form 1040 definition of income should not be confused with adjusted income, which is calculated in accordance with the regulations at 24 CFR Part 5 and used to determine subsidy and payment levels. (Refer to Chapter 4).

Note: The HOME and CDBG Programs use the IRS definition of annual income in different ways:

- CDBG does not require use of the long form.
- CDBG allows tax returns as proof of income.
- Documentation for CDBG income qualification can be up to 12 months old.

Calculating Adjusted Gross Income

PJs must determine if an applicant household has any of the types of income included in the Form 1040 definition of income and what amount, if any, must be included when calculating gross income.

Exhibit 3.15 lists the types of income that are to be included in the calculation.

Once the gross income figure is obtained, applicable deductions must be subtracted to arrive at the household's adjusted gross income. The deductions are:

- IRA deductions,
- Medical savings account deductions,
- Moving expenses,

- One-half of self-employment taxes,
- Self-employed health insurance deductions,
- KEOGH and self-employed SEP and SIMPLE plans,
- Penalties on early withdrawal of savings, and
- Paid alimony.

To determine if a household may take any of these deductions and in what amount, the IRS Form 1040 instructions should be followed.

If the household has a Form 1040 that was submitted to the IRS for income tax purposes and the form is less than six months old, PJs may use the form to determine eligibility. Using the actual tax return has several implications. First, PJs must ensure that IRS Form 4506 "Request for Copy of Tax Form" is completed and signed. Secondly, PJs are required to determine if any of the circumstances as reported on the form have changed or will change in the upcoming 12 months and to make such adjustments. For example, if the applicant received a raise at his/her job since the tax return was submitted, the applicant's current income should be used to determine eligibility. Finally, PJs must ensure that everyone in the household is represented through the use of the tax return. For example, if a husband and wife file a joint return, but their adult son that resides with them files a separate return, the tax return of the husband and wife would not be sufficient for determining income.

Treatment of Assets

The primary difference between the Part 5 and IRS Form 1040 definitions of annual income is treatment of assets. The asset calculation required when using the Part 5 definition is not necessary for the IRS Form 1040 calculation of adjusted gross income. This is not to say that income from certain kinds of assets is not included in the IRS Form 1040 definition of income. While the asset calculation is unique to the Part 5

Exhibit 3.1 – 24 CFR Part 5 Annual Income Inclusions

<p>1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.</p> <p>2. The 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. 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.</p> <p>3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.</p> <p>4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except for certain exclusions, listed in Exhibit 3.2, number 14).</p>	<p>5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except for certain exclusions, as listed in Exhibit 3.2, number 3).</p> <p>6. Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:</p> <ul style="list-style-type: none">• Qualify as assistance under the TANF program definition at 45 CFR 260.31; and• Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). <p>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:</p> <ul style="list-style-type: none">• the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus• 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 reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage. <p>7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.</p> <p>8. All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).</p>
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Last Modified: January 2005

Exhibit 3.2 – 24 CFR Part 5 Annual Income Exclusions

<ol style="list-style-type: none"> 1. Income from employment of children (including foster children) under the age of 18 years. 2. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone). 3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except as provided in Exhibit 3.1, number 5 of Income Inclusions). 4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member. 5. Income of a live-in aide (as defined in 24 CFR 5.403). 6. Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)). 7. The full amount of student financial assistance paid directly to the student or to the educational institution. 8. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire. 9. (a) Amounts received under training programs funded by HUD. (b) 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). (c) Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn 	<p>maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</p> <p>(e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training 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.</p> <ol style="list-style-type: none"> 10. Temporary, nonrecurring, or sporadic income (including gifts). 11. 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. 12. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse). 13. Adoption assistance payments in excess of \$480 per adopted child. 14. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts. 15. 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. 16. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home. 17. Amounts specifically excluded by any other Federal statute 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 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion.
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Chapter Three – Calculating Annual (Gross) Income

Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:

- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
- Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through AmeriCorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
- Payments received under the Alaskan Native Claims Settlement Act;
- Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;
- Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;
- Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
- Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;
- Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs;
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program);
- Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);
- Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;
- Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
- Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

Last Modified: January 2005

Exhibit 3.3 – Sample Format for Computing Part 5 Annual Income

1. Name:		2. Identification No.:			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets		Actual Income from Assets	
3. Net Cash Value of Assets.....			3.		
4. Total Actual Income from Assets.....				4.	
5. If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank.				5.	
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
					Enter the greater of lines 4 or 5 from above in e.
6. Totals	a.	b.	c.	d.	e.
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7.

X _____
Signature

For Office Use Only

\$ _____ Income Limit
\$ _____ Income Limit of Household

Exhibit 3.4 – Calculating Part 5 Annual Income – Example

Family Members	Position in Family	Age	Income Sources
George Jefferson	Head	53	Works full-time at \$7.25/hour; also receives \$400/month from the government as a result of a settlement in the Agent Orange product liability litigation.
Eloise Jefferson	Spouse	48	Works 18 hours/week at a bank at \$7.50/hour; also receives \$50/month from her mother to help with expenses.
Lionel Jefferson	Son	19	Full-time student at City College where he has a part-time, 15-hour/week job in the student bookstore at \$6.00/hour for the 46 weeks when classes are in session.

Under the HOME Program, the Income Limit for a family of three in the jurisdiction is \$23,900. Are the Jefferson's eligible for HOME assistance? Assume for this example that the Jefferson's have no assets.

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
George	\$15,080				Enter the greater of lines 4 or 5 from above in e.
Eloise	\$7,020			\$600	
Lionel	\$480				
6. Totals	a. \$22,580	b.	c.	d. \$600	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7. \$23,180

This family is eligible for assistance because its total income of \$23,180 is below the Low-Income Limit.

Explanation

- George George's earning from work count as income, but his income from the Agent Orange Settlement Fund (\$4,800/year) does not. Thus, George's income is \$7.25/hour x 40 hours/week x 52 weeks/year, or \$15,080.
- Eloise Eloise's income from wages of \$7.50/hour x 18 hours/week x 52 weeks, or \$7,020. In addition, her regular gift income of \$50/month or \$600/year counts as income. (The gift income is counted as "other income.")
- Lionel Because Lionel is a full-time student and is not the head of household or spouse, only the first \$480 of his earnings count toward the family income.

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.5 – Calculating Part 5 Annual Income – Exercise

Family Members	Position in Family	Age	Income Sources
Blanche Deverou	Head	55	Works 6 hours/night, 4 nights/week at \$5.00/hour as a waitress; also earns an average of \$55/night in tips.
Rose Nylen	Friend	58	Earns \$6.50/hour as a full-time aide in a hospital; employer reports that her wages will increase to \$6.75/hour, 7 weeks from the effective date of this calculation.
Dorothy Spornac	Friend	61	Earns \$60/day as a substitute teacher, and works an average of 3 days/week for the 40 weeks school is in session (she made \$7,200 last year); also receives \$40/month in Food Stamps.

Under the HOME Program, the Income Limit for a household of three is \$38,500. Assuming that these are the only sources of income, does the household qualify for assistance?

Complete the following table to calculate annual income (as defined in 24 CFR Part 5) for the household. Answers are found on the following page.

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Blanche					Enter the greater of lines 4 or 5 from above in e.
Rose					
Dorothy					
6. Totals	a.	b.	c.	d.	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7.

Exhibit 3.5 – Calculating Part 5 Annual Income – Exercise (continued)

ANSWERS

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Blanche	\$17,680				Enter the greater of lines 4 or 5 from above in e.
Rose	\$13,980				
Dorothy	\$7,200				
6. Totals	a. \$38,860	b.	c.	d.	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7. \$38,860

The household is not eligible for assistance. Its income exceeds the Low-Income Limit by \$360.

Explanation

Blanche Blanche's income must include both wages and tips. (The tips are included as wage/salary income.) Her wage income is \$6,240 annually (\$5.00/hour x 6 hours/night x 4 nights/week x 52 weeks/year) and her tip income is \$11,440 annually (\$55/night x 4 nights/week x 52 weeks/year).

Rose Rose's wage income must be calculated in two steps. For the first 6 weeks of the year, she earns \$6.50/hour. Her income at this wage is \$6.50/hour x 40 hours/week x 6 weeks = \$1,560. For the next 46 weeks, her wage will be \$6.75/hour. Her income at this wage is \$6.75/hour x 40 hours/week x 46 weeks = \$12,420.

Dorothy Dorothy made \$7,200 last year, and there is no reason to expect that she will work more or less often in the coming year. Her income is, therefore, estimated at \$7,200. Per the Income Exclusions (see Exhibit 3.2), the income she receives from Food Stamps is excluded from this calculation.

Exhibit 3.6 – Calculating Part 5 Annual Income – Example

Family Members	Position in Family	Age	Income Sources
Murphy Brown	Head	38	Earns \$550 semi-monthly as a manager in the housewares department of the local Kmart, and receives \$100/month in child support.
Eldon Bernakey	Boyfriend	36	Earns \$250/week as a part-time painting instructor at the local school for the 40 weeks/year when school is in session; attends evening classes at the Art Institute, which he pays with a State Student Incentive Grant of \$3,500; and pays \$50/month in child support for his twins – when he can.
Avery Brown	Son	3	No income.

Under the HOME Program, the Income Limit for a family of three in the jurisdiction is \$25,700. Is this household eligible for HOME assistance?

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Murphy	\$13,200			\$1,200	Enter the greater of lines 4 or 5 from above in e.
Eldon	\$10,000				
6. Totals	a. \$23,200	b.	c.	d. \$1,200	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7. \$24,400

This family is eligible for assistance. Its total income is \$24,400, which is below the Low- Income Limit.

Explanation

- Murphy** Murphy's annual wage income is \$550 semi-monthly x 24 periods/year, or \$13,200. In addition, she receives \$100/month x 12 months = \$1,200/year. This is other income.
- Eldon** Eldon's wage income is based on 40 weeks of work: \$250/week x 40 weeks/year, or \$10,000 annually. His scholarship does not count as income. The child support Eldon pays cannot be deducted from his income.

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.7 – Calculating Part 5 Annual Income – Exercise

Family Members	Position in Family	Age	Income Sources
Ricky Ricardo	Head	80	Receives gross Social Security in the amount of \$625/month; receives a pension from the local musicians' union in the amount of \$25 every quarter (3 months).
Lucy Ricardo	Spouse	79	Receives gross Social Security in the amount of \$120/month; grossed \$4,200 for giving voice lessons last year, but paid business expenses of \$1,250 from this income for equipment and sound proofing.
Ricky Ricardo II	Child	45	Earns \$330/week as an interpreter for a local nonprofit organization.

If the Low-Income Limit for a household of three is \$30,000 and the Ricardo's have no other source of income, do they qualify for assistance?

Complete the following table to calculate annual income (as defined in 24 CFR Part 5) for the household. Answers are found on the following page.

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Ricky					Enter the greater of lines 4 or 5 from above in e.
Lucy					
Ricky II					
6. Totals	a.	b.	c.	d.	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7.

Exhibit 3.7 – Calculating Part 5 Annual Income – Exercise (continued)

ANSWERS

ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Ricky		\$7,600			Enter the greater of lines 4 or 5 from above in e.
Lucy		\$1,440		\$2,950	
Ricky II	\$17,160				
6. Totals	a. \$17,160	b. \$9,040	c.	d. \$2,950	e. N/A
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7. \$29,150

The household is eligible for assistance.

Explanation

- Ricky Ricky's entire income is comprised of pensions and benefits. It equals \$625/month x 12 months/year (\$7,500) plus \$25/quarter x 4 quarters/year (\$100), or \$7,600.
- Lucy Lucy's benefits income is \$120/month x 12 months/year, or \$1,440. Her net income from her business was \$4,200 - \$1,250, or \$2,950. (Her equipment and soundproofing expense is an allowable deduction because the business funds were reinvested in the business and did not represent expansion. Refer to Exhibit 3.1)
- Ricky II Ricky II's income is wage income. The calculation is \$330/week x 52 weeks/year = \$17,160.

Exhibit 3.8 – Part 5 Annual Income Net Family Asset Inclusions and Exclusions

Inclusions	Exclusions
<ol style="list-style-type: none"> 1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets. 2. Cash value of revocable trusts available to the applicant. 3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects. 4. Cash value of stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. 5. Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty). 6. Retirement and pension funds. 7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy). 8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc. 9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments. 10. Mortgages or deeds of trust held by an applicant. 	<ol style="list-style-type: none"> 1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars, and vehicles specially equipped for persons with disabilities. 2. Interest in Indian trust lands. 3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset. 4. Equity in cooperatives in which the family lives. 5. Assets not accessible to and that provide no income for the applicant. 6. Term life insurance policies (i.e., where there is no cash value). 7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

Last Modified: January 2005

Exhibit 3.9 – Calculating Asset Income Under Part 5 – Example

Family Members	Assets	Asset Value
Juan Herrera	Checking account	\$870 average 6-month balance with an interest rate of 2.7%.
	Inheritance	Received an inheritance of \$30,000 that he used to buy a new car for \$12,000; pay off his \$3,000 credit card bill; and open a mutual fund account (which has no associated account costs) to invest the remaining \$15,000 at an annual interest rate of 5.3%.
The HUD Passbook Rate is 2%.		

ASSETS			
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
Juan Herrera	Checking account	\$870	\$23
Same	Mutual fund	\$15,000	\$795
3. Net Cash Value of Assets		3. \$15,870	
4. Total Actual Income from Assets			4. \$818
5. If line 3 is greater than \$5,000, multiply line by 2% (Passbook Rate) and enter results here; otherwise, leave blank.			5. \$317

The asset income to be used in the annual income calculation is \$818 since the actual income generated by the assets is greater than the imputed income.

Explanation

- Checking account The income from the checking account is calculated based on the 6-month balance and the interest rate ($\$870 \times .027 = \23).
- Inheritance A car owned for personal use is not considered an asset. However, the mutual fund is an asset. $\$15,000 \times .053 = \795 .

Because the total cash value of the assets exceeds \$5,000, the HUD Passbook Rate must be used to calculate the imputed income from all assets combined. In this case, $\$15,870 \times .02 = \317 . The actual income earned (\$818) is greater, however, so that amount must be used in the calculation of annual income for this family.

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.10 – Calculating Asset Income (under Part 5) – Exercise

Family Members	Position in Family	Age	Family Assets	Asset Value
Archie Bunker	Head	72	Checking account	\$595 average 6-month balance in a non-interest-bearing account.
Edith Bunker	Spouse	73	Savings account	\$2,695 at 3.1%

HUD Passbook rate is 2%.

Calculate the Bunkers' asset income by completing the following chart. Answers are provided below.

ASSETS			
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
3.	Net Cash Value of Assets.....	3.	
4.	Total Actual Income from Assets.....		4.
5.	If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank.		5.

Asset Income to be used in annual income calculation: \$ _____

ANSWERS

ASSETS			
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
Archie Bunker	Checking Account	\$595	\$0
Edith Bunker	Savings Account	\$2,695	\$84
3.	Net Cash Value of Assets.....	3. \$3,290	
4.	Total Actual Income from Assets.....		4. \$84
5.	If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank.		5. \$0

The Bunkers' income from assets is \$84.

Explanation

Use the actual income in this case, because the cash value of the Bunker's total assets is less than \$5,000. The imputed income is only calculated for assets when the total cash value of all assets exceeds \$5,000.

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.11 – Calculating Asset Income Under Part 5 – Exercise

Family Members	Position in Family	Age	Family Assets	Asset Value
Fred Mertz	Head	85	Rental property	Small rental property that grosses \$6,500/year (expenses to keep up the property are \$3,400/year). The property has a fair market value of \$69,000, but they have a mortgage on the property in the amount of \$35,000. The average closing cost in a real estate transaction is 8% in the area.
Ethel Mertz	Spouse	81	Savings account	Savings of \$5,000 that earned \$179 in interest during the past year.
			Stock	100 shares of stock in "Why Buy it, Inc.," with a face value of \$4.25 per share, that have not shown a dividend in years. The cost to sell the stock would be about \$76.

HUD Passbook rate is 2%.

Calculate the Mertz's asset income by completing the following chart. Answers are provided on the following page.

ASSETS			
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
3.	Net Cash Value of Assets.....	3.	
4.	Total Actual Income from Assets.....		4.
5.	If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank.		5.

Asset Income to be used in annual income calculation: \$ _____

Exhibit 3.11 – Calculating Asset Income – Exercise (continued)

ANSWERS

ASSETS			
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets
Fred Mertz	Rental Property	\$28,480	\$3,100
Ethel Mertz	Savings Account	\$5,000	\$179
Same	Stock	\$349	
3. Net Cash Value of Assets.....		3. 33,829	
4. Total Actual Income from Assets.....			4. \$3,279
5. If line 3 is greater than \$5,000, multiply line by 2% (Passbook Rate) and enter results here; otherwise, leave blank.			5. \$677

The asset income to be used in the annual income calculation is \$3,279, since the actual income from assets is greater than the imputed income.

Explanation

Apartment Building The cash value of the property is:

Market value	\$69,000
Less mortgage	35,000
Less sales costs (\$69,000 X .08)	<u>5,520</u>
Cash value	\$28,480

The income earned is the net income (\$6,500 – \$3,400) of \$3,100.

Savings Account The information is provided.

Stock The cash value of the stock is the sales proceeds (100 shares x \$4.25/share = \$425) less the cost to sell (\$76). It generates no dividend income.

Because the total cash value of the assets exceeds \$5,000, calculate the imputed income by multiplying the cash value by the HUD Passbook Rate (\$33,829 x .02 = \$677). This is less than the actual income earned of \$3,279.

Exhibit 3.12 – Census Long Form Annual Income Inclusions and Exclusions

Inclusions	Exclusions
<ol style="list-style-type: none"> 1. Wages, salary, commissions, bonuses and tips from all jobs before deductions for taxes, bonds, dues, or other items. (For minors over the age of 15 and adults.) 2. Self-employment net income (after business expenses) from own non-farm business or farm business, including proprietorship and partnership. 3. Any of the following: <ul style="list-style-type: none"> • Interest received or credited to checking and savings accounts, money market funds, certificates of deposit, mutual funds, individual retirement accounts (IRAs), 401(K) plans, KEOGH retirement plans, and government bonds. • Dividends received, credited, or reinvested from ownership of stocks or mutual funds. • Profit (or loss) from royalties or rental of land, buildings or real estate, or roomers or boarders. (Income received from self-employed persons whose primary source of income is renting properties or from royalties should be included in number 2, above.) • Income from regular payments from an estate and or trust fund. 4. Social security or railroad retirement (before Medicare deductions). 5. Supplemental Security Income (SSI). 6. Any public assistance or welfare payments from the state or local welfare office. 7. Retirement, survivor, or disability pensions from companies and unions; Federal, state and local governments; and the U.S. military. Includes regular income from annuities, IRAs, 401(K)s, or KEOGH retirement plans. 8. Other sources of income received regularly, including Veterans Administration (VA) payments, unemployment compensation, child support or alimony, and all other regular payments (e.g., Armed Forces transfer payments, assistance from private charities, and regular contributions from persons not living in the household). 	<ol style="list-style-type: none"> 1. In-kind pay such as food, free rent, etc. 2. Profit (or loss) of incorporated businesses owned by the applicant. 3. Profit (or loss) of incorporated farm businesses owned by the applicant and amounts from land rented for cash. 4. Any of the following: <ul style="list-style-type: none"> • Refunds or rebates of any kind. • Withdrawals from savings of any kind. • Capital gains (or losses) from the sale of homes, shares of stock, etc. • Inheritances or insurance settlements. • Any type of loan. 5. Assistance to pay for heating or cooling costs.

Last Modified: January 2005

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.14 – Calculating Census Long Form Annual Income – Example

Family Members	Position in Family	Age	Income Sources
Adrian Marshall	Head	43	Earns \$400/week as an airline employee.
Penny Marshall	Spouse	42	Earns \$16,000/year as an administrative assistant with an insurance company.
Shirley Marshall	Child	19	Earns \$7.00/hour working in a retail store at the mall. Works an average of 24 hours/week. Full-time student at the local community college.

Their Assets

The Marshall's non-interest-bearing checking account has an average 6-month balance of \$700.

Penny Marshall has a savings account with a \$2,500 balance. The account earned interest of \$72 last year.

The Marshall's recently received an insurance settlement of \$20,000.

If the Low-Income Limit for a household of three is \$40,500, do the Marshall's qualify for assistance?

Name: Adrian and Penny Marshall			Identification No.:			
ANTICIPATED ANNUAL INCOME						
Family Member	a. Wages/ Salaries	b. Business Income	c. Interest/ Dividends	d. Benefits/ Pensions	e. Public Assistance	f. Other Income
Adrian	\$20,800					
Penny	\$16,000		\$72			
Shirley	\$ 8,736					
1. Totals	a. \$45,536	b.	c. \$72	d.	e.	f.
2. Enter total of items from 1a. through 1f. This is Annual Income						2. \$45,608

The Marshall's are not eligible for assistance because their income of \$45,608 is above the low -income limit of \$40,500.

Explanation

Adrian Adrian's income is \$400/week x 52 weeks/year, or \$20,800.

Penny Penny's income is \$16,000/year and she received \$72 in interest on the savings account.

Shirley Shirley earns \$7.00/hour x 24 hours/week x 52 weeks/year, or \$8,736. Note: Even though Shirley is a full-time student, her full income is included in the Census Long Form definition of income.

The insurance settlement is excluded under the Census Long Form definition of annual income. The checking account is not included because it earns no interest.

Exhibit 3.15 – IRS From 1040 Adjusted Gross Income Inclusions and Exclusions

Inclusions	Exclusions
<ol style="list-style-type: none"> 1. Wages, salaries, tips, etc. 2. Taxable interest. 3. Dividends. 4. Taxable refunds, credits or offsets of state and local income taxes. There are some exceptions – refer to Form 1040 instructions. 5. Alimony (or separate maintenance payments) received. 6. Business income (or loss). 7. Capital gain (or loss). There are some exceptions – refer to Form 1040 instructions. 8. Other gains (or losses) (i.e., assets used in a trade or business that were exchanged or sold). 9. Taxable amount of individual retirement account (IRA) distributions. (Includes simplified employee pension [SEP] and savings incentive match plan for employees [SIMPLE] IRA.) 10. Taxable amount of pension and annuity payments. 11. Rental real estate, royalties, partnerships, S corporations, trusts, etc. 12. Farm income (or loss). 13. Unemployment compensation payments. 14. Taxable amount of Social Security benefits. 15. Other income, including prizes and awards; gambling, lottery or raffle winnings; jury duty fees; Alaska Permanent fund dividends; reimbursements for amounts deducted in previous years; income from the rental of property if not in the business of renting such property; and income from an activity not engaged in for profit. 	<ol style="list-style-type: none"> 1. Child support. 2. Money or property that was inherited, willed or given as a gift. 3. Life insurance proceeds received as a result of someone's death.

Last Modified: January 2005

Exhibit 3.16¹ – Sample Format for Computing IRS 1040 Series Adjusted Gross Income

Name:		Identification No.:			
	Family Member				Subtotal (add a-d)
	a.	b.	c.	d.	
1. Wages, salaries, tips					
2. Taxable interest					
3. Dividend income					
4. Taxable refunds/ credits/offsets of state/ local income taxes					
5. Alimony received					
6. Business income (or loss)					
7. Capital gain (or loss)					
8. Other gains (or losses)					
9. Taxable amount of IRA distributions					
10. Taxable amount of pensions and annuities					
11. Rental real estate, royalties, partnerships, trusts, etc.					
12. Farm income (or loss)					
13. Unemployment compensation					
14. Taxable amount of Social Security benefits					
15. Other income					
16. Subtotal (lines 1-15)					
17. IRA deduction					
18. Medical savings account deduction					
19. Moving expenses					
20. One-half of self- employment tax					
21. Self-employed health insurance deduction					
22. Keogh and self-employed SEP and SIMPLE plans					
23. Penalty on early withdrawal of savings					
24. Paid alimony					
25. Subtotal (lines 17-24)					
26. Subtract line 25 from line 16. This is <i>Adjusted Gross Income</i>					

¹ Note to users: The income inclusions and exclusions allowed under the IRS 1040 definition of income are subject to change from tax year to tax year. This worksheet is a general representation of the IRS Form 1040, and as such cannot reflect all updated inclusions and exclusions each tax year. The user is advised to consult the IRS Web site for the most current version of this form at www.irs.gov.

Exhibit 3.17 – Calculating IRS Long Form Annual (Gross) Income – Example

Family Members	Position in Family	Age	Income Sources
Bernard Williams	Head	35	Bernard owns a contracting business. The net income from the business is \$32,000.
Amy Moynihan	Girlfriend	32	Amy receives alimony of \$200/month and child support of \$350/month for her two sons.
Gary Moynihan	Son	10	None
Charles Moynihan	Son	7	None

Their Assets

Bernard's checking account has an average six month balance of \$1,725. He earned interest of \$100 last year.

Amy has a savings account with a \$500 balance. This account earned \$17 in interest last year.

Under the HOME Program, the Income Limit for a household of 4 is \$42,000. Does the household qualify for assistance?

Name: Bernard Williams and Amy Moynihan		Identification No.:			
	Family Member				Subtotal (add a-d)
	a.	b.	c.	d.	
1. Wages, salaries, tips					
2. Taxable interest	\$100	\$17			\$117
3. Dividend income					
4. Taxable refunds/ credits/offsets of state/ local income taxes					
5. Alimony received		\$2,400			\$2,400
6. Business income (or loss)	\$32,000				\$32,000
7. Capital gain (or loss)					
8. Other gains (or losses)					
9. Taxable amount of IRA distributions					
10. Taxable amount of pensions and annuities					
11. Rental real estate, royalties, partnerships, trusts, etc.					
12. Farm income (or loss)					
13. Unemployment compensation					
14. Taxable amount of Social Security benefits					
15. Other income					
16. Subtotal (lines 1-15)					\$34,517
17. IRA deduction					
18. Medical savings account deduction					
19. Moving expenses					
20. One-half of self- employment tax					

Chapter Three – Calculating Annual (Gross) Income

	Family Member				Subtotal (add a-d)
	a.	b.	c.	d.	
21. Self-employed health insurance deduction					
22. Keogh and self-employed SEP and SIMPLE plans					
23. Penalty on early withdrawal of savings					
24. Paid alimony					
25. Subtotal (lines 17-24)					\$34,517
26. Subtract line 25 from line 16. This is <i>Adjusted Gross Income</i>					\$34,517

The household is eligible for HOME assistance. Their annual income of \$34,517 is less than the Low-Income Limit of \$42,000.

Explanation

Bernard Bernard's business income of \$32,000 is included. Interest income of \$100 is included as interest.

Amy Alimony of \$200/month x 12 = \$2,400 is included. The child support is not included as income under the IRS definition of adjusted gross income. The \$17 in interest income is included as income.

Exhibit 3.18 – Calculating Annual Income Using the Three Allowable Definitions – Example

Family Members	Position in Family	Age	Income Sources
Daniel Ming	Head	39	Daniel Ming works full-time at a local manufacturing plant at a rate of \$11.00/hour.
Anabel Ming	Spouse	37	Anabel Ming operates an in-home day care business for a small number of neighborhood children. Her net income from this business is \$12,000 per year.
Marsha Ming	Daughter	13	None

Assets

- The Ming’s non-interest-bearing checking account has a \$950 average 6-month balance.
- The Mings have a savings account with a current balance of \$5,000. The account carries an annual interest rate of 3%.
- The Mings also have certificates of deposit totaling \$5,000. The applicable interest rate is 5%.
- The Mings plan to use the savings account and redeem the certificates of deposit in order to pay the downpayment on the home they purchase.

Additional Information

- Daniel Ming pays \$200 per month in alimony to his ex-wife.

Under the HOME Program, the Income Limit for a family of three in the jurisdiction is \$34,500. Are the Mings eligible for HOME assistance under each of three definitions of income?

The following pages show the income calculations for the Mings using each of the three allowable definitions of income.

Sample Format for Computing Part 5 Annual Income

1. Name: Daniel and Anabel Ming		2. Identification			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets		Actual Income from Assets	
Daniel & Anabel	Checking account	\$950		\$0	
Daniel & Anabel	Savings	\$5,000		\$150	
Daniel & Anabel	Certificates of deposit	\$5,000		\$250	
3. Net Cash Value of Assets.....		3. \$10,950			
4. Total Actual Income from Assets.....				4. \$400	
5. If line 3 is greater than \$5,000, multiply line by .02 (Passbook Rate) and enter results here; otherwise, leave blank.				5. \$219	
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Daniel	\$22,880				Enter the greater of lines 4 or 5 from above in e.
Anabel				\$12,000	
6. Totals	a. \$22,880	b.	c.	d. \$12,000	e. \$400
7. Enter total of items from 6a. through 6e. This is Annual Income					7. \$35,280

Sample Format for Computing Census Long Form Annual Income

Name: Daniel and Anabel Ming				Identification No.:		
ANTICIPATED ANNUAL INCOME						
Family Member	a. Wages/ Salaries	b. Business Income	c. Interest/ Dividends	d. Benefits/ Pensions	e. Public Assistance	f. Other Income
Daniel	\$22,880		\$400			
Anabel	\$12,000					
1. Totals	a. \$34,880	b.	c. \$400	d.	e.	f.
2. Enter total of items from 1a. through 1f. This is Annual Income						2. \$35,280

Sample Format for Computing IRS 1040 Series Adjusted Gross Income

Name: Daniel and Anabel Ming		Identification No.:			
	Family Member				Subtotal (add a-d)
	a. Daniel	b. Anabel	c.	d.	
1. Wages, salaries, tips	\$22,880				\$22,880
2. Taxable interest	\$400				\$400
3. Dividend income					
4. Taxable refunds/ credits/offsets of state/ local income taxes					
5. Alimony received					
6. Business income (or loss)		\$12,000			\$12,000
7. Capital gain (or loss)					
8. Other gains (or losses)					
9. Taxable amount of IRA distributions					
10. Taxable amount of pensions and annuities					
11. Rental real estate, royalties, partnerships, trusts, etc.					
12. Farm income (or loss)					
13. Unemployment compensation					
14. Taxable amount of Social Security benefits					
15. Other income					
16. Subtotal (lines 1-15)					\$35,280
17. IRA deduction					
18. Medical savings account deduction					
19. Moving expenses					
20. One-half of self- employment tax					
21. Self-employed health insurance deduction					
22. Keogh and self-employed SEP and SIMPLE plans					
23. Penalty on early withdrawal of savings					
24. Paid alimony	\$2,400				\$2,400
25. Subtotal (lines 17-24)					\$2,400
26. Subtract line 25 from line 16. This is <i>Adjusted Gross Income</i>					\$32,880

Chapter Three – Calculating Annual (Gross) Income

Exhibit 3.18 – Calculating Annual Income Using the Three Allowable Definitions – Example

Section 8 Annual Income	
1. Gross amount of wages, salaries, overtime pay, commissions, fees, tips and bonuses.	\$22,880
2. Net income from operation of a business or profession.	12,000
3. Interest, dividends, and other net income from real or personal property. Requires asset calculation.	400
4. Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits.	
5. Payments in lieu of earnings (unemployment, disability compensation, worker's compensation and severance pay).	
6. Welfare or other need based payments to families or individuals.	
7. Periodic and determinable allowances (alimony, child support payments, regular contributions or gifts).	
8. Regular pay, special pay and allowances of a member of the Armed Forces.	
Total	\$35,280
Census Long Form Annual Income	
1. Gross amount of wages, salaries, commissions, bonuses or tips from all jobs.	\$22,880
2. Net income from self-employment from non-farm business, including proprietorship and partnership.	12,000
3. Net income from farm self-employment, including earnings as sharecropper or tenant farmer.	400
4. Interest, dividends, net rental income, royalty income or income from estates or trusts.	
5. Social security or railroad retirement.	
6. Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF) or other public assistance or public welfare payments.	
7. Retirement, survivor or disability pensions.	
8. Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, child support or alimony.	
Total	\$35,280
IRS 1040 Adjusted Gross Income	
1. Wages, salaries, tips, etc.	\$22,880
2. Taxable interest.	400
3. Dividend income.	
4. Taxable refunds, credits, or offsets of state and local income taxes.	
5. Alimony received.	
6. Business income (or loss).	12,000
7. Capital gain (or loss).	
8. Other gains (or losses)	
9. Taxable amount of individual retirement account (IRA) distributions.	
10. Taxable amount of pensions and annuities.	
11. Rental real estate, royalties, partnerships, S corporations, trust, etc.	
12. Farm income (or loss).	
13. Unemployment compensation.	
14. Taxable amount of Social Security benefits.	
15. Other income.	
<i>Subtotal A (Add 1-15)</i>	\$35,280

Chapter Three – Calculating Annual (Gross) Income

IRS 1040 Adjusted Gross Income	
Subtractions	
16. IRA deduction (head of household and spouse).	
17. Medical savings account deduction.	
18. Moving expenses.	
19. One-half of self-employment tax.	
20. Self-employed health insurance deduction.	
21. Keogh and self-employed SEP and SIMPLE plans.	
22. Penalty on early withdrawal of savings.	
23. Paid alimony.	2,400
<i>Subtotal B (Add 16 – 23)</i>	2,400
Subtract subtotal B from subtotal A. This is the Total:	\$32,880

Explanation

The Mings are not eligible for HOME assistance using the Part 5 and Census Long Form definitions of annual income. Using these two definitions, the Mings income is \$35,280, which exceeds the Low-Income Limit for a family of three of \$34,500.

The Mings are eligible, however, using the IRS 1040 Form definition of adjusted gross income. Using the IRS definition, which allows for the subtraction of alimony paid, the Mings have an income of \$ 32,880. This is below the Low-Income Limit for a family of three of \$34,500.

Exhibit 3.19 – Calculating Annual Income Using the Three Allowable Definitions – Example

Family Members	Position in Family	Age	Income Sources
Samantha Johnson	Head	36	Samantha earns a salary of \$30,000 per year as an administrative assistant. Samantha receives \$500 per month as child support for her sons Eric and Andrew.
Barbara Johnson	Mother	66	Barbara receives a pension check of \$200 per month and Social Security of \$600 per month.
Eric Johnson	Son	12	None
Andrew Johnson	Son	14	None

Their Assets

- Samantha has a savings account with a \$2,500 balance. The annual interest rate is 3.5%.
- Barbara’s sister Helen recently passed away and left her home to Barbara. The home is valued at \$50,000 and has a mortgage balance of \$8,000. The average cost of settlement and real estate transfers equals 8% of the value of the property.

Additional Information

- Barbara does not plan to sell the house she inherited in the near future because she wants to allow her other sister Martha and her husband to live in the home (rent-free).

Under the HOME Program, the Income Limit for a family of four in the jurisdiction is \$45,000. Is the Johnson family eligible for HOME assistance under each of three definitions of income?

Sample Format for Computing Part 5 Annual Income

1. Name: Samantha Johnson		2. Identification			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets		Actual Income from Assets	
Samantha	Savings Account	\$2,500		\$88	
Barbara	House	\$38,000		\$0	
3. Net Cash Value of Assets.....		3. \$40,500			
4. Total Actual Income from Assets.....				4. \$88	
5. If line 3 is greater than \$5,000, multiply line by .02 (Passbook Rate) and enter results here; otherwise, leave blank.				5. \$810	
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Samantha	\$30,000			\$6,000	Enter the greater of lines 4 or 5 from above in e.
Barbara		\$9,600			
6. Totals	a. \$30,000	b. \$9,600	c.	d. \$6,000	e. \$810
7. Enter total of items from 6a. through 6e. This is Annual Income					7. \$46,410

Sample Format for Computing Census Long Form Annual Income

Name: Samantha Johnson				Identification No.:		
ANTICIPATED ANNUAL INCOME						
Family Member	a. Wages/ Salaries	b. Business Income	c. Interest/ Dividends	d. Benefits/ Pensions	e. Public Assistance	f. Other Income
Samantha	\$30,000		\$88			\$6,000
Barbara				\$9,600		
1. Totals	a. \$30,000	b.	c. \$88	d. \$9,600	e.	f. \$6,000
2. Enter total of items from 1a. through 1f. This is <i>Annual Income</i>						2. \$45,688

Sample Format for Computing IRS 1040 Series Adjusted Gross Income

Name: Samantha Johnson		Identification No.:			
	Family Member				Subtotal (add a-d)
	a. Samantha	b. Barbara	c.	d.	
1. Wages, salaries, tips	\$30,000				\$30,000
2. Taxable interest	\$88				\$88
3. Dividend income					
4. Taxable refunds/ credits/offsets of state/ local income taxes					
5. Alimony received					
6. Business income (or loss)					
7. Capital gain (or loss)					
8. Other gains (or losses)					
9. Taxable amount of IRA distributions					
10. Taxable amount of pensions and annuities		\$2,400			\$2,400
11. Rental real estate, royalties, partnerships, trusts, etc.					
12. Farm income (or loss)					
13. Unemployment compensation					
14. Taxable amount of Social Security benefits		\$7,200			\$7,200
15. Other income					
16. Subtotal (lines 1-15)					\$39,688
17. IRA deduction					
18. Medical savings account deduction					
19. Moving expenses					
20. One-half of self- employment tax					
21. Self-employed health insurance deduction					
22. Keogh and self- employed SEP and SIMPLE plans					
23. Penalty on early withdrawal of savings					
24. Paid alimony					
25. Subtotal (lines 17-24)					\$0
26. Subtract line 25 from line 16. This is <i>Adjusted Gross Income</i>					\$39,688

Exhibit 3.19 – Calculating Annual Income Using the Three Allowable Definitions – Example

Section 8 Annual Income	
1. Gross amount of wages, salaries, overtime pay, commissions, fees, tips and bonuses.	\$30,000
2. Net income from operation of a business or profession.	
3. Interest, dividends, and other net income from real or personal property. Requires asset calculation.	810
4. Full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits.	9,600
5. Payments in lieu of earnings (unemployment, disability compensation, worker's compensation and severance pay).	
6. Welfare or other need based payments to families or individuals.	
7. Periodic and determinable allowances (alimony, child support payments, regular contributions or gifts).	6,000
8. Regular pay, special pay and allowances of a member of the Armed Forces.	
Total	\$46,410
Census Long Form Annual Income	
1. Gross amount of wages, salaries, commissions, bonuses or tips from all jobs.	\$30,000
2. Net income from self-employment from non-farm business, including proprietorship and partnership.	
3. Net income from farm self-employment, including earnings as sharecropper or tenant farmer.	
4. Interest, dividends, net rental income, royalty income or income from estates or trusts.	88
5. Social security or railroad retirement.	7,200
6. Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF) or other public assistance or public welfare payments.	
7. Retirement, survivor or disability pensions.	2,400
8. Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, child support or alimony.	6,000
Total	\$45,688
IRS 1040 Adjusted Gross Income	
1. Wages, salaries, tips, etc.	\$30,000
2. Taxable interest.	88
3. Dividend income.	
4. Taxable refunds, credits, or offsets of state and local income taxes.	
5. Alimony received.	
6. Business income (or loss).	
7. Capital gain (or loss).	
8. Other gains (or losses)	
9. Taxable amount of individual retirement account (IRA) distributions.	2,400
10. Taxable amount of pensions and annuities.	
11. Rental real estate, royalties, partnerships, S corporations, trust, etc.	
12. Farm income (or loss).	
13. Unemployment compensation.	
14. Taxable amount of Social Security benefits.	7,200
15. Other income.	
Subtotal A (Add 1–15)	\$39,688

Chapter Three – Calculating Annual (Gross) Income

IRS 1040 Adjusted Gross Income	
Subtractions	
16. IRA deduction (head of household and spouse).	
17. Medical savings account deduction.	
18. Moving expenses.	
19. One-half of self-employment tax.	
20. Self-employed health insurance deduction.	
21. Keogh and self-employed SEP and SIMPLE plans.	
22. Penalty on early withdrawal of savings.	
23. Paid alimony.	
<i>Subtotal B (Add 16 – 23)</i>	0
Subtract subtotal B from subtotal A. This is the Total:	\$39,688

Explanation

The Johnson family is not eligible for HOME assistance using the Part 5 definition of income. Using this definition, the Johnson's income is \$46,410, above the Low-Income Limit for a family of four of \$45,000.

Using the Census Long Form definitions of annual income, the Johnson's are also not eligible. Under this definition, the Johnson's income is \$46,688, over the Low-Income Limit of \$45,000.

The Johnson family is eligible using the IRS 1040 Form definition of adjusted gross income. Using the IRS definition, which does not include child support as income, the Johnson family has an income of \$39,688. This is below the Low-Income Limit of \$45,000.

Chapter Four

Calculating Adjusted Income

Annual (gross) income is needed to determine whether a household is income eligible for participation in many Federal assistance programs. In contrast, adjusted income as defined in 24 CFR 5.611 is used to determine total tenant payment (TTP), which is a measure of a household's ability to pay housing costs. Under the HOME Program, adjusted income is needed for calculating:

- The subsidy and tenant's share of rent under a HOME-funded tenant based rental assistance (TBRA) program. This calculation is done when the tenant first receives assistance and whenever the tenant's income is recertified;
- The rent for a tenant in a HOME-assisted rental unit whose rent must be adjusted because the household income increases above 80 percent of the area median; and
- The household's eligibility for, and amount of, assistance to be provided under the Uniform Relocation Act (URA) or Section 104(d) relocation and tenant assistance requirements.

Adjusted income is not needed for HOME-funded owner-occupied rehabilitation or homebuyer programs.

Typically under HOME rental housing programs, the rent each family pays is based on "high" and "low" HOME rents established for each unit in the project. The family's rent is established for the unit they will occupy, not its ability to pay.

HOME Program rules do permit PJs to design a program in which rents are based on the household's ability to pay, however. When a PJ elects this option, it must use adjusted income in its rent calculation.

The deductions (also called allowances) of 24 CFR 5.611 must be applied whenever adjusted income is required (as outlined

previously) *regardless of the definition of annual income used by the PJ to determine initial eligibility.*

This chapter describes how to calculate and document adjusted income.

How is Adjusted Income Calculated?

Adjusted income is derived by subtracting any of five deductions (or allowances) that apply to the household from the household's annual (gross) income. The household's eligibility for deductions depends, in part, on the type of household that it is. Not all households are eligible for all deductions. Exhibit 4.1 summarizes these deductions by household type.

Exhibit 4.1 Allowable Deductions

Type of Deduction Permitted	Type of Household	
	Elderly or Disabled	Non-Elderly or Non-Disabled
Elderly or disabled household	•	
Dependent	•	•
Child care	•	•
Medical expenses	•	
Disability assistance expenses	•	•

In order to determine which deductions a family is eligible for, PJs must determine what type of household it represents.

Types of Households

As noted in Exhibit 4.1, a household's eligibility for adjustments to annual income depends in part on whether the household qualifies as an "elderly" household, a "disabled" household, or a "family" (non-elderly) household.

An elderly household is any household in which the head, spouse, or sole member is 62 years of age or older; two or more persons who are at least 62 years of age live together; or one or more persons who are at least 62 years of age live with one or more live-in aides.

Each of the following are considered elderly households:

- Alice Smith (65 years of age) and her husband Joe (60);
- Juan Azul (69) and Rosa Ramirez (63) who live together;
- Jane Green (92); and
- Thomas Miller (74) and his live-in aide.

A disabled household is one in which the head, spouse, or sole member is a person with disabilities. Two or more persons with disabilities living together and one or more persons with disabilities living with one or more live-in aides also qualify as disabled households.

The following are considered disabled households:

- Carlos Blanco (25 and disabled);
- Fred Jones (42) and his wife Suzanne (41 and disabled); and
- Daniel Jackson (35 and disabled) and his housemate Charlie Andrews (38 and disabled) and their live-in aide.

Certain households may, however, include elderly or disabled family members and still not qualify as an elderly or disabled household. For example, neither of the following households qualify as an elderly or disabled household:

- Bob and Carol Jackson (50 and 49, respectively) who have taken in Bob's mother (age 70) to live with them. Because Bob's mother is not the household head or spouse, this is not an elderly household; and
- Ted and Alexis Cooper (both age 35) have a son (age 14) who is disabled. Because the son is not the household

head or spouse, this household is not a disabled household.

Some household compositions will require clarification as to whether they are elderly or disabled households. Compare the following examples:

- Don and Alice Brown (45 and 46, respectively) have recently taken Don's mother (75) into their home because her apartment building is being converted to condominiums. In this situation, Don and Alice are the head of household and spouse, so the household is not an elderly household; but
- Rita Smith (75) has recently taken in her son Don and his wife Alice (45 and 46, respectively) into her home because their apartment building is being converted to condominiums. In this situation, Rita is the head of the household, so the household is an elderly household.

In cases such as these, PJs must clarify the family type with the family before making a judgement about the type of household.

Exhibit 3.1 of Chapter Three identified persons whose incomes are not counted in the Part 5 definition of annual income. For the purposes of adjusting income, these same persons are not considered family members—even if they live in the same household—and cannot qualify a family for deductions or allowances. These include live-in aides, children of live-in aides, and foster children.

For example, if a live-in aide must pay \$50 per week for child care in order to work for a family, the family itself cannot consider this child care cost when determining whether it is eligible for a child care deduction because the live-in aide is not considered a family member. (See the discussion on child care, below.)

Elderly or Disabled Household Deduction

A household that meets the definition of an elderly or disabled household is entitled to a

deduction of \$400 *per household*. It is essential to understand the distinction between elderly/disabled households and non-elderly/non-disabled households in order to apply the allowances correctly. Complete the following chart to assess your understanding of these issues.

Which of the following households qualify for an elderly or disabled household deduction of \$400? (Note: the age of the family member is shown in parentheses.)

Household Characteristics	Yes	No
1. Head (59), spouse (63)		
2. Head (40), disabled spouse (39)		
3. Head (59), disabled son (16)		
4. Head (59), disabled son (32)		
5. Head (40), father (63)		
6. Disabled head of household (51)		

The answers can be found in Exhibit 4.2 at the end of this chapter.

Dependent Deduction

When calculating adjusted income, PJs must deduct \$480 from annual income for *each* household dependent. HUD’s definition of dependent is different from the Internal Revenue Service (IRS) definition. HUD defines as dependent any household member who is not the head, co-head, or spouse, but is:

- Under the age of 18 years; or
- Disabled (of any age); or
- A full-time student (of any age).

The household member must qualify for the deduction at the time the income certification is made. For example, a household member is 17 years of age at the time, but will turn 18 six months later. Because the member is dependent at the time of certification, the family receives the \$480 deduction. The PJ is not required to recertify the family six months later when the member turns 18. When the household’s income is recertified the

following year, however, the family loses the \$480 deduction (unless the 18-year-old family member is a full-time student).

A household may request a re-examination of income if its status changes (e.g., the family has a baby or adopts a child), and it now qualifies for more deductions.

Child Care Expenses Deduction

Reasonable child care expenses for the care of a child age 12 or under may be deducted from annual income if the child care (1) enables an adult family member to seek employment actively, be gainfully employed, or further his/her education; and (2) expenses are not reimbursed. The child care expenses must be reasonable.

To document that the anticipated child care expenses can be deducted, the household must:

- Identify the child(ren) who will be cared for;
- Identify the family member who is enabled to work, look for work, or go to school because of the child care;
- Demonstrate that no other adult household member is available to care for the child;
- Identify the child care provider; and
- Provide documentation of costs.

If a deduction for child care expenses is requested, the allowable expenses cannot exceed the income generated by that household member during the period the care is provided. The PJ should look at the family’s actual circumstances to determine which family member is enabled to work. In general, the person with the lowest income (i.e., the person who would quit work to take care of the children if no child care were available) is considered the family member enabled to work.

If a deduction for child care expenses is requested to enable a family member to seek work, the family must provide evidence that the household member is looking for work.

If a deduction for child care expenses is requested to enable a family member to go to school, the household must provide documentation that the household member is enrolled in a vocational program or degree-granting institution. The household member need not be a full-time student.

Medical Expenses Deduction

Elderly or disabled households (as defined previously) that have no disability assistance expenses (see below) may claim as a deduction medical expenses that are in excess of three percent of annual income. Medical expenses that may be considered include all medical expenses anticipated to be incurred during the coming year that are not covered by insurance. Medical expenses can include such items as:

- Services of a physician or other health care professional;
- Services of a hospital or other health care facility;
- Medical insurance premiums;
- Prescription and nonprescription medicines;
- Dental expenses;
- Eyeglasses and eye examinations;
- Medical or health products or apparatus (e.g., hearing aids or batteries);
- Live-in or periodic medical care assistance (e.g., visiting nurses or care attendants); and
- Periodic payments on accumulated medical bills.

The medical expenses allowance is the amount by which total medical expenses exceed three percent of annual income. For example, the Smith family has anticipated annual income of \$25,000 and anticipated medical expenses of \$3,000 (not covered by insurance). The calculation for the medical expense deduction would be:

Total medical expenses	\$3,000
Less 3% of annual income	<u>750</u>
Allowable medical expenses	\$2,250

One of the most challenging aspects of determining allowable medical expenses is “anticipating” a household’s medical expenses for the coming year. Some anticipated expenses can be documented (such as Medicare and other medical insurance premiums, the cost of ongoing prescriptions, and payment agreements for accumulated medical bills). Whenever possible, the PJ should request such documentation.

Using the previous year’s medical expenses is not always appropriate. The family may have had medical expenses last year that will not be repeated this year (e.g., major surgery) or the family may have new medical problems that were not reflected in last year’s costs (e.g., a family member has recently been diagnosed with a medical disorder). Even so, the experience from the previous year can provide a useful basis for anticipating future expenses. PJs can use last year’s history to help the family to anticipate costs, particularly in a household where a family member has regular medical or prescription needs. For example, if all household members went to the dentist twice during the previous year, it is appropriate to assume they will do so in the coming year. For “general” medical expenses (e.g., prescription and nonprescription medicines) using the previous year’s expenses is acceptable unless the family can provide documentation that higher expenses can be anticipated.

Allowable medical expenses are established at the time of income certification. Under a HOME-funded TBRA program, the household may request a re-examination of medical expenses if a major illness or emergency would significantly affect the anticipated amount.

Although medical expenses are permitted only for elderly or disabled households, once a household qualifies as an elderly or disabled household, the medical expenses of all household members are considered. For example, if a household includes the

head (grandmother, age 65), her daughter (age 35) and her granddaughter (age 12), the medical expenses of all three family members would be considered.

HUD Notice PIH-2004-11

HUD issued Notice PIH-2004-11, "Income Calculation Regarding Medicare Prescription Drug Cards and Transitional Assistance," on July 15, 2004. While the Notice addresses the calculation of annual household income under certain HUD programs, including certain Section 8 activities, the Notice and the Medicare Prescription Drug Card program **do not affect** the calculation of annual income under the Part 5 definition, and thus does not affect the calculation of annual or adjusted income for the purposes of HOME eligibility. The Medicare Modernization Act authorizing this benefit amended the Social Security Act to require that benefits provided under this program "not be treated as benefits or otherwise taken into account in determining an individual's eligibility for, or amount of benefits under, any other Federal program." Benefits provided under the Medicare Prescription Drug Benefit program must be excluded from the calculation of annual income of tenants residing in HUD's public housing and assisted housing program units.

Disability Assistance Expenses Deduction

Disability assistance expenses can also be deducted from annual income to the extent that they exceed three percent of annual income. The purpose of this deduction is to recognize expenses for the care of a disabled person that enable the disabled person or some other family member to work. Disability assistance expenses may include the cost of a care attendant and/or auxiliary apparatus that enables a household member, including the disabled member, to work. Consider the following examples:

- Jane and John Doe have a disabled 17-year-old son (John, Jr.). If a care

attendant takes care of John, Jr., Jane can go to work. The cost of the care attendant would be an eligible disability assistance expense.

- Samuel Brown, age 35, uses a wheelchair. The wheelchair and a specially adapted automobile enable John to go to work. The cost of his wheelchair and the adaptations to his automobile are eligible disability assistance expenses.

Expenses can be considered only if they enable a household member to work. Consider the following example:

- Samuel Brown, age 35, uses a wheelchair and a specially adapted automobile. His income comes from a disability pension. The costs of the wheelchair and the adaptations to the automobile are not eligible disability assistance expenses because no family member is enabled to work. Samuel's disability does, however, qualify him as a disabled head of household. Thus, he is entitled to medical expenses. The wheelchair (but not the adaptations to the automobile) could qualify as a medical expense.

Expenses may be deducted only if: (1) they are reasonable; (2) they are not reimbursed from another source, such as insurance; (3) they do not exceed the amount of income generated by the person enabled to work; and (4) they are in excess of three percent of annual income.

When Both Medical and Disability Assistance Expenses Apply

As noted above, both medical expenses and disability assistance expenses are limited to those in excess of three percent of annual income. For families who qualify for both types of expenses, the allowable amount is the amount by which the *combined* expenses exceed three percent of annual income. Because disability assistance expenses are also capped by the amount of income earned, a special calculation is required.

The PJ first calculates the allowable disability assistance expenses and then adds to that the allowable medical expenses. The form in Exhibit 4.3 is designed to help perform this calculation.

Sample Format for Calculating Adjusted Income

As for annual income, any information used to determine the household’s eligibility for participation in the program or the amount of a deduction or allowance must be documented in a way that allows HUD to monitor the PJ’s determination. Exhibit 4.3 provides a sample format for calculating adjusted income. Exhibits 4.4 through 4.6 provide examples and exercises on calculating adjusted income.

Exhibit 4.2 – Answers to Exercise on page 55

Which of the following households qualify for an elderly or disabled household deduction of \$400?

Household Characteristics	Yes	No
1. Head (59), spouse (63)	•	
2. Head (40), disabled spouse (39)	•	
3. Head (59), disabled son (16)		•
4. Head (59), disabled son (32)	Maybe; the head and son could be living as co-heads, in which case the household would be a disabled household.	
5. Head (40), father (63)	Maybe; the head and father could be living as co-heads, in which case the household would be an elderly household. If the father were the head of household, the household would be an elderly household.	
6. Disabled head of household (51)	•	

Exhibit 4.3 – Sample Format for Calculating Part 5 Adjusted Income

1. Enter Annual Income.	1.
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2.
3. Multiply line 2 by \$480.	3.
4. If a family member is enabled to work or further their education as a result of child care expenses, enter the <u>unreimbursed</u> annual child care expenses (reasonable child care expenses for children age 12 and under).	4.
5. If the family member was enabled to <u>work</u> as a result of the child care expenses, enter that family member's annual <u>employment income</u> .	5.
6. If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.	6.
7. If the household qualifies as an elderly and/or disabled household, enter \$400.	7.
8. Add Lines 3, 6, and 7.	8.
9. <i>If this household has no unreimbursed disability assistance or medical expenses, subtract Line 8 from Line 1. This is Adjusted Income for this household <i>without</i> these expenses.</i>	9.

***** **FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES** *****

10. Enter <u>unreimbursed</u> annual disability assistance expenses.	10.
11. Enter the annual <u>earned income</u> of the family member enabled to work as a result of unreimbursed disability assistance expenses.	11.
12. Enter the lesser of Lines 10 or 11.	12.
13. Enter <u>unreimbursed</u> annual medical expenses.	13.
14. Add Lines 12 and 13.	14.
15. Multiply Line 1 by 0.03.	15.
16. Subtract Line 15 from Line 12. If negative, enter 0.	16.
17. Subtract Line 15 from Line 13. If negative, enter 0.	17.
18. Subtract Line 15 from Line 14. If negative, enter 0.	18.
19a. If the household reported <u>only</u> unreimbursed disability expenses but <u>no</u> unreimbursed medical expenses, add Lines 8 and 16.	19a.
19b. If the household reported <u>only</u> unreimbursed medical expenses but <u>no</u> unreimbursed disability expenses, add Lines 8 and 17.	19b.
19c. If the household reported <u>both</u> unreimbursed disability expenses <u>and</u> unreimbursed medical expenses, add Lines 8 and 18.	19c.
20. Subtract either Line 19a, 19b, or 19c from Line 1. This is Adjusted Income for this household <i>with</i> these expenses.	20.

Chapter Four – Calculating Adjusted Income

Exhibit 4.4 – Calculating Part 5 Adjusted Income – Example

Family Member	Position in Family	Age	Income	Expenses
Pearl Henderson	Head	76	\$13,500	Prescription medication – \$75/month; Medicare deduction – \$38.50/month
Marshall Jones	Grandson	19	No income; full-time student	Visits to physician – \$120/year

1. Enter Annual Income.	1. \$13,500
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2. 1
3. Multiply line 2 by \$480. This is the dependent deduction.	3. \$480
4. If a family member is enabled to work or further their education as a result of child care expenses, enter the <u>unreimbursed</u> annual child care expenses (reasonable child care expenses for children age 12 and under).	4. N/A
5. If the family member was enabled to <u>work</u> as a result of the child care expenses, enter that family member's annual <u>employment income</u> .	5. N/A
6. If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.	6. \$0.00
7. If the household qualifies as an elderly and/or disabled household, enter \$400. This is the elderly/disabled household deduction. Otherwise, enter 0.	7. \$400
8. Add Lines 3, 6, and 7.	8. \$880
9. <i>If the household has no unreimbursed disability assistance or medical expenses, subtract Line 8 from Line 1. This is Adjusted Income for a household <i>without</i> these expenses. Otherwise, proceed to line 10.</i>	9.

***** **FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES** *****

Exhibit 4.4 (continued)

10. Enter <u>unreimbursed</u> annual disability assistance expenses.	10. N/A	
11. Enter the annual <u>earned income</u> of the family member enabled to work as a result of unreimbursed disability assistance expenses.	11. N/A	
12. Enter the lesser of Lines 10 or 11.	12. N/A	
13. Enter <u>unreimbursed</u> annual medical expenses.	13. \$1,482	
14. Add Lines 12 and 13.	14. \$1,482	
15. Multiply Line 1 by 0.03.	15. \$405	
16. Subtract Line 15 from Line 12. If negative, enter 0.		16. \$0.00
17. Subtract Line 15 from Line 13. If negative, enter 0.		17. \$1,077
18. Subtract Line 15 from Line 14. If negative, enter 0.		18. \$1,077
19a. If the household reported <u>only</u> unreimbursed disability expenses but <u>no</u> unreimbursed medical expenses, add Lines 8 and 16.	19a. 0	
19b. If the household reported <u>only</u> unreimbursed medical expenses but <u>no</u> unreimbursed disability expenses, add Lines 8 and 17.	19b. \$1,957	
19c. If the household reported <u>both</u> unreimbursed disability expenses <u>and</u> unreimbursed medical expenses, add Lines 8 and 18.	19c. 0	
20. Subtract either Line 19a, 19b, or 19c from Line 1. This is Adjusted Income for this household <i>with</i> these expenses.		20. \$11,543

Explanation

- Line 2 Marshall is a full-time student, so the household qualifies for one \$480 deduction.
- Line 4 There are no children under age 12.
- Lines 5-9 The household qualifies as an elderly household and does have annual unreimbursed medical expenses.
- Lines 10-14 The household does not have any annual unreimbursed disability assistance expenses (Lines 10-12), but does have annual unreimbursed medical expenses [(\$75/month x 12 months/year) + (\$38.50/month x 12 months/year) + (\$120/year) = \$1,482]. This amount is entered in Line 13.
- Line 15 The household can only deduct those unreimbursed medical and disability assistance expenses that exceed 3 percent of annual household income.
- Lines 16-18 The household deducts 3 percent of its annual income from the total amount of annual unreimbursed medical expenses (Line 17).
- Lines 19a-19c The household adds its medical expenses deduction (Line 17) to the other deductions (dependent deduction, elderly household deduction) that are summed in Line 8, and enters this total in Line 19b (households reporting medical expenses, but no disability assistance expenses).
- Line 20 The amount entered in Line 19b (\$1,957) is subtracted from the household's annual income figure in Line 1 (\$13,500), giving it an adjusted income of \$11,543.

Exhibit 4.5 – Calculating Part 5 Adjusted Income – Example

Family Member	Position in Family	Age	Income	Expenses
Clark Griswald	Head	40	\$27,900	Prescription medication – \$75/month
Rusty Griswald	Son	13	No income	Child care – \$50/week
Audrey Griswald	Daughter	11	No income	Child care – \$50/week

1. Enter Annual Income.		1. \$27,900
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2. 2	
3. Multiply line 2 by \$480. This is the dependent deduction.		3. \$960
4. If a family member is enabled to work or further their education as a result of child care expenses, enter the <u>unreimbursed</u> annual child care expenses (reasonable child care expenses for children age 12 and under).	4. \$2,600	
5. If the family member was enabled to <u>work</u> as a result of the child care expenses, enter that family member's annual <u>employment income</u> .	5. \$27,900	
6. If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.		6. \$2,600
7. If the household qualifies as an elderly and/or disabled household, enter \$400. This is the elderly/disabled household deduction. Otherwise, enter 0.		7. 0
8. Add Lines 3, 6, and 7.	8. \$3,560	
9. <i>If the household has no unreimbursed disability assistance or medical expenses, subtract Line 8 from Line 1. This is Adjusted Income for a household <i>without</i> these expenses. Otherwise, proceed to line 10.</i>		9. \$24,340

***** **FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES** *****

Chapter Four – Calculating Adjusted Income

Exhibit 4.5 (continued)

10. Enter <u>unreimbursed</u> annual disability assistance expenses.	10. N/A	
11. Enter the annual <u>earned income</u> of the family member enabled to work as a result of unreimbursed disability assistance expenses.	11. N/A	
12. Enter the lesser of Lines 10 or 11.	12. N/A	
13. Enter <u>unreimbursed</u> annual medical expenses.	13. N/A	
14. Add Lines 12 and 13.	14. N/A	
15. Multiply Line 1 by 0.03.	15. N/A	
16. Subtract Line 15 from Line 12. If negative, enter 0.		16. N/A
17. Subtract Line 15 from Line 13. If negative, enter 0.		17. N/A
18. Subtract Line 15 from Line 14. If negative, enter 0.		18. N/A
19a. If the household reported <u>only</u> unreimbursed disability expenses but <u>no</u> unreimbursed medical expenses, add Lines 8 and 16.	19a. N/A	
19b. If the household reported <u>only</u> unreimbursed medical expenses but <u>no</u> unreimbursed disability expenses, add Lines 8 and 17.	19b. N/A	
19c. If the household reported <u>both</u> unreimbursed disability expenses <u>and</u> unreimbursed medical expenses, add Lines 8 and 18.	19c. N/A	
20. Subtract either Line 19a, 19b, or 19c from Line 1. This is Adjusted Income for this household <i>with</i> these expenses.		20. N/A

Explanation

- Line 2 There are two children in the family under the age of 18.
- Lines 4-6 Although the family has child care expenses for both children, only Audrey's expenses are eligible for the child care deduction because only she is under the age of 12. Audrey's child care expenses are less than Clark's annual income, and are reported as the household's child care expense deduction (Line 6).
- Line 7 The household does not qualify for either the elderly or disabled household deduction of \$400.
- Lines 8-9 The household's eligible deductions are subtracted from Clark's annual income. This is the household's adjusted income (\$24,340).
- Lines 10-20 There are no further calculations or adjustments to be made to the Griswald's annual income.

Chapter Four – Calculating Adjusted Income

Exhibit 4.6 – Calculating Part 5 Adjusted Income – Exercise

Instructions: Based on the information about the Taylor household below, complete the worksheet to determine its adjusted income figure.

Family Member	Position in Family	Age	Income	Expenses
Jill Taylor	Head	36	\$22,984	Health insurance – \$230/month; Prescription medication – \$75/month for Jill and Randy; Visits to the physician for Randy and Brad – \$370/year.
Tim Taylor	Spouse; full-time student	36	\$3,500; plus \$2,500 from a school loan	
Randy Taylor	Son – disabled	15	None	Attendant care, which frees Tim to work – \$50/week
Brad Taylor	Son	11	None	Child care – \$25/week

1. Enter Annual Income.
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.
3. Multiply line 2 by \$480. This is the dependent deduction.
4. If a family member is enabled to work or further their education as a result of child care expenses, enter the unreimbursed annual child care expenses (reasonable child care expenses for children age 12 and under).
5. If the family member was enabled to work as a result of the child care expenses, enter that family member's annual employment income.
6. If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.
7. If the household qualifies as an elderly and/or disabled household, enter \$400. This is the elderly/disabled household deduction. Otherwise, enter 0.
8. Add Lines 3, 6, and 7.
9. *If the household has no unreimbursed disability assistance or medical expenses, subtract Line 8 from Line 1. This is **Adjusted Income** for a household without these expenses. Otherwise, proceed to line 10.*

1.	1.
2.	
3.	3.
4.	
5.	
6.	6.
7.	7.
8.	
9.	9.

***** **FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES** *****

Exhibit 4.6 (continued)

10. Enter unreimbursed annual disability assistance expenses.
11. Enter the annual earned income of the family member enabled to work as a result of unreimbursed disability assistance expenses.
12. Enter the lesser of Lines 10 or 11.
13. Enter unreimbursed annual medical expenses.
14. Add Lines 12 and 13.
15. Multiply Line 1 by 0.03.
16. Subtract Line 15 from Line 12. If negative, enter 0.
17. Subtract Line 15 from Line 13. If negative, enter 0.
18. Subtract Line 15 from Line 14. If negative, enter 0.
- 19a. If the household reported only unreimbursed disability expenses but no unreimbursed medical expenses, add Lines 8 and 16.
- 19b. If the household reported only unreimbursed medical expenses but no unreimbursed disability expenses, add Lines 8 and 17.
- 19c. If the household reported both unreimbursed disability expenses and unreimbursed medical expenses, add Lines 8 and 18.
20. Subtract either Line 19a, 19b, or 19c from Line 1. This is **Adjusted Income** for this household *with* these expenses.

10.	
11.	
12.	
13.	
14.	
15.	
	16.
	17.
	18.
19a	
19b.	
19c.	
	20.

ANSWERS

1. Enter Annual Income.	1. \$26,484
2. Enter the number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2. 2
3. Multiply line 2 by \$480. This is the dependent deduction.	3. \$960
4. If a family member is enabled to work or further their education as a result of child care expenses, enter the <u>unreimbursed</u> annual child care expenses (reasonable child care expenses for children age 12 and under).	4. \$1,300
5. If the family member was enabled to <u>work</u> as a result of the child care expenses, enter that family member's annual <u>employment income</u> .	5. \$3,500
6. If an amount is reported in Line 5, enter the lesser of Lines 4 or 5. Otherwise, enter the amount in Line 4.	6. \$1,300
7. If the household qualifies as an elderly and/or disabled household, enter \$400. This is the elderly/disabled household deduction. Otherwise, enter 0.	7. 0
8. Add Lines 3, 6, and 7.	8. \$2,260
9. <i>If the household has no unreimbursed disability assistance or medical expenses</i> , subtract Line 8 from Line 1. This is Adjusted Income for a household <i>without</i> these expenses. Otherwise, proceed to Line 10.	9.

***** **FILL IN LINES 10 THROUGH 20 IF THE FAMILY HAS UNREIMBURSED DISABILITY ASSISTANCE OR MEDICAL EXPENSES** *****

10. Enter <u>unreimbursed</u> annual disability assistance expenses.	10. \$2,600
11. Enter the annual <u>earned income</u> of the family member enabled to work as a result of unreimbursed disability assistance expenses.	11. \$3,500
12. Enter the lesser of Lines 10 or 11.	12. \$2,600
13. Enter <u>unreimbursed</u> annual medical expenses.	13. N/A
14. Add Lines 12 and 13.	14. \$2,600
15. Multiply Line 11 by 0.03.	15. \$795
16. Subtract Line 15 from Line 12. If negative, enter 0.	16. \$1,805
17. Subtract Line 15 from Line 13. If negative, enter 0.	17. 0
18. Subtract Line 15 from Line 14. If negative, enter 0.	18. \$1,805
19a. If the household reported <u>only</u> unreimbursed disability expenses but <u>no</u> unreimbursed medical expenses, add Lines 8 and 16.	19a. \$4,065
19b. If the household reported <u>only</u> unreimbursed medical expenses but <u>no</u> unreimbursed disability expenses, add Lines 8 and 17.	19b. 0
19c. If the household reported <u>both</u> unreimbursed disability expenses <u>and</u> unreimbursed medical expenses, add Lines 8 and 18.	19c. 0
20. Subtract either Line 19a, 19b, or 19c from Line 1. This is Adjusted Income for this household <i>with</i> these expenses.	20. \$22,419

Chapter Four – Calculating Adjusted Income

Explanation

- Line 1 Include Jill's annual income of \$22,984 plus Tim's income of \$3,500. Do not include Tim's student loan of \$2,500.
- Line 2 There are two children in the family under the age of 18. Although Tim is a full-time student, he is not eligible for a \$480 deduction because he is the head of household or spouse.
- Lines 4-6 Brad is the only child under age 12. Include his child care costs of \$25/week X 52 weeks/year = \$1,300. Brad's child care services allow Tim to work. The lesser of Tim's annual earned income and Brad's child care expenses is \$1,300. This is the household's child care deduction.
- Line 7 Although Randy is disabled, this does not qualify the household as "disabled" under the Part 5 definition. The Taylors do not qualify for the \$400 deduction for disabled and/or elderly households.
- Lines 10-12 The attendant care for Randy allows Tim to work and go to school. Randy's attendant expenses (\$1,300) are less than Tim's annual income (\$3,500), and are entered as the amount of unreimbursed annual disability services costs.
- Line 13. The Taylor household does not qualify as an elderly or disabled household, therefore none of Jill's medical expenses exceeding 3 percent of household income can be deducted.
- Lines 15-16 Three percent of the household's annual income is \$795. This amount is subtracted from the annual cost of Randy's disability assistance, and entered as the household's disability deduction.
- Line 19a The Taylor household's combined dependent, child care and disability assistance deductions sum to \$4,065.
- Line 20 The figure from Line 19a (\$4,065) is subtracted from Line 1 to determine the household's adjusted income (\$22,419).

Chapter Five

Calculating Assistance Amounts

This chapter describes how HOME Program definitions of income (found at 24 CFR Part 92.203) are used to calculate tenant payments and PJ subsidies under a HOME-funded tenant based rental assistance (TBRA) program and to comply with anti-displacement and tenant assistance requirements under the Uniform Relocation Act (URA) and Section 104(d) relocation requirements.

Detailed guidance on HOME TBRA programs is provided in a companion guide, *Tenant Based Rental Assistance: A HOME Program Model*. This model program guide is available online at the HOME Program Model Program Guide website at http://www.hud.gov/offices/cpd/affordable_housing/library/modelguides/index.cfm.

In summary, the PJ must establish a rent standard for each unit size (by number of bedrooms) that is: (1) not greater than the HUD-published Existing Housing Fair Market Rent (FMR) or the HUD-approved Area Exception Rent; or (2) determined locally based on local market conditions.

Tenant and PJ Payments for HOME TBRA Programs

Under the HOME regulations pertaining to TBRA, PJs have some discretion in the amount of rental subsidy they provide to, or on behalf of, a tenant. The subsidy can be no greater than the difference between a PJ-established payment standard and 30 percent of the household's adjusted monthly income. The PJ must also establish a minimum tenant contribution.

PJs can use either the Section 8 Rental Certificate or Rental Voucher Program as a model to determine the PJ subsidy, or they can establish their own methodology, in conformance with regulatory requirements.

Rental Certificate Model

A PJ that chooses to use the Rental Certificate Program as a model assumes a fixed tenant payment—the tenant's share of housing costs (Total Tenant Payment [TTP]) is calculated by formula. The public housing agency (PHA) then pays the difference between the tenant's share and the approved rent for the unit.

The formula for computing TTP under the Certificate Program requires a tenant to pay the greatest of:

- 30 percent of its household's monthly adjusted income;
- 10 percent of its household's monthly annual (gross) income; or
- Welfare rent (applies only to welfare recipients in as-paid localities).

Exhibit 5.1 demonstrates this method.

Rental Voucher Model

The Rental Voucher Program assumes a fixed PHA payment—the maximum PHA subsidy is calculated and the tenant pays the difference between the PHA subsidy and the approved rent for the unit.

Using the Rental Voucher method, the PJ first establishes rent standards by unit size for the program as a whole. Details on establishing the payment standard are provided in the TBRA model program guide, *Tenant-Based Rental Assistance: A HOME Program Model*. The PJ generally pays the difference between its rent standard and 30 percent of the tenant's monthly adjusted income. A minimum tenant payment of 10 percent of monthly annual (gross) income is required, however. Exhibit 5.2 demonstrates this method.

Income Calculations for Antidisplacement Activities

A household that must move because it can no longer afford housing costs after completion of a Federally-funded activity is considered displaced. For instance, displacement might occur if rents are raised after Community Development Block Grant (CDBG) or HOME funds are used to rehabilitate a rental project.

For the CDBG and HOME Programs, to avoid displacement, any increased rents that are the result of the CDBG or HOME activity cannot exceed the following:

- For low-income households (those with incomes at or below 80 percent of the area median, as established by HUD), the household's TTP as calculated for the Certificate Program—the greatest of 30 percent of monthly adjusted income, 10 percent of monthly gross income, or the Welfare rent; or
- For households above the low-income limit, 30 percent of monthly gross income.

Replacement Housing Payments to Displaced Households

Among other assistance, displaced renter households are entitled to replacement housing payments. In concept, the replacement housing payments are intended to make up the difference between the family's old base monthly rent and the amount the family *must pay* for housing at its new location. The formula for determining how much the family should receive varies depending on the family's length of occupancy, its income and

whether it is covered by Section 104(d) or the Uniform Relocation Act [URA]. (See HUD Handbook 1378 for a complete discussion of this topic.)

Under the URA (for both low-income households and those above the low-income limit) the household's base monthly rent is the lesser of:

- Rent and utilities the tenant paid at the displacement unit (old residence); or
- 30 percent of monthly gross income ($[\text{annual income} / 12 \text{ months}] \times .30$); or
- Welfare rent (applies only to welfare recipients in as-paid localities).

The PJ must make up the difference between this ability to pay (household's base monthly rent) and the household's actual housing costs at the replacement unit (new residence) or a comparable rent established by the PJ if the new rent is higher than the old. Exhibit 5.3 provides an example of a URA replacement housing payment calculation.

A similar calculation is made under Section 104(d). Ability to pay under Section 104(d) is, however, based on the Section 8 Total Tenant Payment formula—the greatest of 30 percent of monthly adjusted income, 10 percent of gross monthly income, or welfare rent.

Sample Format for Calculating Total Tenant Payments

Exhibits 5.4 and 5.5 provide sample formats for calculating TTP using both the Rental Certificate and Rental Voucher models. Examples of these calculations are included in Exhibits 5.6 and 5.7.

Exhibit 5.1 – Sample Calculation of Tenant and PJ Payments Using the Rental Certificate Method

The Cleavers have been issued a 2-bedroom HOME TBRA coupon. Their Part 5 annual and adjusted incomes are \$22,500 and \$18,300, respectively. They find an apartment that rents for \$725 per month, including utilities.

The Cleavers must pay the greater of:		The PJ must pay the difference between the tenant's share and the approved rent.	
30% of monthly adjusted income (\$18,300/12 months) x .30	\$458	Approved rent for the unit:	\$725
Or		Less total tenant payment (TTP)	\$458
10% of monthly gross income (\$22,500/12 months) x .10	\$188	PJ's share of the rent	\$267

Exhibit 5.2 – Sample Calculation of Tenant and PJ Payments Using the Rental Voucher Method

The Cleavers have been issued a 2-bedroom HOME TBRA coupon. Their Part 5 annual and adjusted incomes are \$22,500 and \$18,300, respectively. As in Exhibit 5.1, their monthly adjusted income and monthly gross income are \$458 and \$188, respectively. They find an apartment that rents for \$800 per month, including utilities. The PJ's Rent Standard is \$775.

The maximum PJ subsidy is:		The Cleavers' share is:	
Rent standard	\$775	Approved rent	\$800
Less 30% of monthly adjusted income	\$458	Less maximum PJ subsidy	\$317
Maximum PJ subsidy	\$317	Cleaver's payment	\$483

In this example, the Cleavers will pay more than 30% of their adjusted monthly income for housing because they selected a unit that rents for more than the standard. Had the Cleavers found a very inexpensive unit, the requirement that the family pay at least 10% of monthly gross income might apply.

Approved rent	\$500
Less maximum PJ subsidy	\$317
Calculated tenant share	\$183

The Cleavers, however, must pay at least 10% of gross monthly income (((\$22,500/12 months) x .10 = \$188). The PJ's contribution would be reduced by \$5.

Exhibit 5.3 – Sample URA Replacement Housing Payment Calculation

The Simpson family is being displaced from a HOME rental project because their household size is too large for any unit in the project after its rehabilitation. The family's current rent (including utilities) is \$475 per month. The PJ identifies a unit that is suitable to the family's size and otherwise comparable to the unit they will be leaving. The rent for the comparable unit is \$500. The Simpson family elected to move to another unit that rents for \$520. This is not a welfare as-paid jurisdiction. The Simpson's annual income is \$15,000/year.

The replacement payment would be calculated as follows:

1. Determine the family's ability to pay as the lesser of:	
30% of gross monthly income (($\$15,000/12$ months) x .30)	\$ 375
<i>Or</i>	
Family's rent and utilities at displacement unit	\$ 475
2. Determine the new housing costs to be considered as the lesser of:	
PJ-determined comparable unit	\$ 500
Family's rent and utilities at replacement unit	\$ 520
3. Provide the family with the difference between these two amounts for a 42-month period	
New housing costs to be considered	\$ 500
Less family's ability to pay	\$ 375
	\$ 125
Months	x 42
Replacement housing payment	\$5,250

Exhibit 5.4 – Sample Format for Computing Total Tenant Payment and PJ Subsidy – Rental Voucher Model

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

15. Rent Standard	15.	
16. 30% of Monthly Adjusted Income ((line 14 + 12) x 0.30).	16.	
17. Maximum Subsidy (line 15 minus line 16).		17.
18. Rent Charged by Owner. ²	18.	
19. Utility Allowance — if any.	19.	
20. Gross Rent for the Unit (line 18 plus line 19).		20.
21. Gross Rent minus Maximum Subsidy (line 20 minus line 17).		21.
22. 10% of Monthly Gross Income (line 1 + 12) x 0.10).	22.	
23. Total Family Contribution (higher of line 21 or line 22).		23.
24. Gross Rent minus Family Contribution (line 20 minus line 23).	24.	
25. Total Voucher Subsidy (lower of line 17 or line 24).		25.
26. PJ Payment to Owner (lower of line 18 or line 25).		26.
27. Family Rent to Owner (line 18 minus line 26).		27.
28. Utility Reimbursement — if any (line 25 minus line 26).		28.

² If this is a Section 236 or Department of Agriculture Rural Development Section 515 project, enter the lower of the project's market Rent or line 22, *but* never less than the project's Basic Rent.

Exhibit 5.5 – Sample Format for Computing Total Tenant Payment and PJ Subsidy -- Rental Certificate Model³

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

- | | | |
|-----|---|-----|
| 15. | 30% of Monthly Adjusted Income (line 14 + 12) x 0.30). | 15. |
| 16. | 10% of Gross Monthly Income (line 1 + 12) x 0.30). | 16. |
| 17. | Welfare rent (if applicable). | 17. |
| 18. | TOTAL TENANT PAYMENT (greater of lines 15, 16 or 17). | 18. |
| 19. | Contract Rent to Owners. | 19. |
| 20. | Utility Allowance. | 20. |
| 21. | Gross Rent (line 19 plus line 20). | 21. |
| 22. | Tenant Rent (line 18 minus line 20)
If line 20 is greater than line 18, enter zero, and enter the
<i>difference</i> in line 23. | 22. |
| 23. | Utility Reimbursement to Tenant (line 20 minus line 18 only
if line 20 is greater than line 18). | 23. |
| 24. | PJ Payment to Owner (line 19 minus line 22). | 24. |

³ Must be used for calculation of TTP when required for anti-displacement activities.

Exhibit 5.6 – Calculating PJ Subsidy -- Exercise

The Petrillos family - Salvador (head of household), age 75, Sophia (spouse), age 77, and their son Phil, age 38 and handicapped- want to leave their house and move to an apartment that costs \$625 per month (utilities included). They will need HOME tenant based rental assistance (TBRA) to afford the apartment. When they applied for assistance, they had not found a buyer for their home.

The PJ's rent standard is \$600.

Income Sources

- Salvador receives a pension check of \$350/month and gross social security of \$625/month.
- Sophia receives a pension check of \$375/month. She works as a Retired Senior Volunteer and has averaged 20/hours week during the past year at \$6.50 an hour.
- Phil receives gross social security of \$305/month.

Their Assets

- The Petrillos own a home with a market value of \$50,000. The outstanding balance on the mortgage is \$10,000. The average cost of settlement and real estate transfers is five percent.
- The Petrillos' checking account has a \$1,525 average six-month balance. The actual yearly interest income on this account is \$58.
- The Petrillos' savings account holds \$2,500 with an annual interest rate of three percent.
- The Petrillos have a certificate of deposit worth \$10,000 with an annual interest rate of 4.2 percent.
- Last month, the Petrillos sold all their stock and gave the proceeds to their daughter Dorothy. Their net proceeds from the sale of the stock was \$1,850.

The HUD Passbook Rate is two percent.

Their Expenses

- Doctor and medication expenses for Salvador and Phil total \$1,390 per year.
- Medical insurance for the household equals \$2,300 per year.

Attendant care for Phil works costs \$50/week. This care enables Sophia to work.

Using the above information and the following format, calculate the Petrillos' annual and adjusted income using the Part 5 definitions. How much will the subsidy be?

Sample Format for Calculating Part 5 Annual Income

1. Name		2. Identification No.:			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets		Actual Income from Assets	
3. Net Cash Value of Assets.....		3.			
4. Total Actual Income from Assets.....				4.	
5. If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank				5.	
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
					Enter the greater of lines 4 or 5 from above in e.
6. Totals	a.	b.	c.	d.	e.
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i> .					7.

Sample Format for Calculating Adjusted Income

1. Annual Income.	1.	
2. Number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2.	
3. Multiply line 2 by \$480.		3.
4. Child care deduction (reasonable child care expenses for children age 12 and under). [If family has disability assistance expenses or qualifies as an elderly family, proceed to line 5; otherwise, skip to line 13.]		4.
5. Enter disability assistance expenses.	5.	
6. Multiply line 1 by 0.03.	6.	
7. Subtract line 6 from line 5. If negative, enter 0.	7.	
8. Enter amount earned by family member enabled to work as a result of disability assistance expenses.	8.	
9. Enter the lesser of lines 7 or 8. This is the disability assistance allowance.		9.
FILL IN LINES 10 THROUGH 12 FOR ELDERLY FAMILIES ONLY		
10. Enter total medical expenses.	10.	
11. Allowable medical expenses:		11.
• If the household reported no expenses in line 5, enter line 10 minus line 6.		
• If the household reported expenses in line 5, but line 7 is zero, enter line 10 minus (line 6 minus 5).		
• If the household reported expenses in line 7 and line 7 is greater than zero, enter line 10.		
12. Enter \$400.		12.
13. Add lines 3, 4, 9, 11, and 12.		13.
14. Subtract line 13 from line 1. This is Adjusted Income .		14.

**Sample Format for Computing Total Tenant Payment and PJ Subsidy
Rental Voucher Model**

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

- | | |
|---|----------------------------------|
| 15. Rent Standard | <input type="text" value="15."/> |
| 16. 30% of Monthly Adjusted Income ((line 14 + 12) x 0.30). | <input type="text" value="16."/> |
| 17. Maximum Subsidy (line 15 minus line 16). | <input type="text" value="17."/> |
| 18. Rent Charged by Owner. ⁴ | <input type="text" value="18."/> |
| 19. Utility Allowance — if any. | <input type="text" value="19."/> |
| 20. Gross Rent for the Unit (line 18 plus line 19). | <input type="text" value="20."/> |
| 21. Gross Rent minus Maximum Subsidy (line 20 minus line 17). | <input type="text" value="21."/> |
| 22. 10% of Monthly Gross Income (line 1 + 12) x 0.10). | <input type="text" value="22."/> |
| 23. Total Family Contribution (higher of line 21 or line 22). | <input type="text" value="23."/> |
| 24. Gross Rent minus Family Contribution (line 20 minus line 23). | <input type="text" value="24."/> |
| 25. Total Voucher Subsidy (lower of line 17 or line 24). | <input type="text" value="25."/> |
| 26. PJ Payment to Owner (lower of line 18 or line 25). | <input type="text" value="26."/> |
| 27. Family Rent to Owner (line 18 minus line 26). | <input type="text" value="27."/> |
| 28. Utility Reimbursement — if any (line 25 minus line 26). | <input type="text" value="28."/> |

⁴ If this is a Section 236 or Department of Agriculture Rural Development Section 515 project, enter the lower of the project's market Rent or line 22, *but* never less than the project's Basic Rent.

**Sample Format for Computing Total Tenant Payment and PJ Subsidy
Rental Certificate Model⁵**

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

15.	30% of Monthly Adjusted Income (line 14 + 12) x 0.30).	<input type="text" value="15."/>
16.	10% of Gross Monthly Income (line 1 + 12) x 0.10).	<input type="text" value="16."/>
17.	Welfare rent (if applicable).	<input type="text" value="17."/>
18.	TOTAL TENANT PAYMENT (greater of lines 15, 16 or 17).	<input type="text" value="18."/>
19.	Contract Rent to Owners.	<input type="text" value="19."/>
20.	Utility Allowance.	<input type="text" value="20."/>
21.	Gross Rent (line 19 plus line 20).	<input type="text" value="21."/>
22.	Tenant Rent (line 18 minus line 20). If line 20 is greater than line 18, enter zero, and enter the <i>difference</i> in line 23.	<input type="text" value="22."/>
23.	Utility Reimbursement to Tenant (line 20 minus line 18 only if line 20 is greater than line 18).	<input type="text" value="23."/>
24.	PJ Payment to Owner (line 19 minus line 22).	<input type="text" value="24."/>

⁵ Must be used for calculation of TTP when required for anti-displacement activities.

Sample Format for Calculating Part 5 Annual Income

1. Name <i>Salvador and Sophia Petrillo</i>		2. Identification No.:			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets		Actual Income from Assets	
Salvador & Sophia	Home	\$37,500		\$ 0	
Salvador & Sophia	Checking Account	\$1,525		\$ 58	
Salvador & Sophia	Savings Account	\$2,500		\$ 75	
Salvador & Sophia	Certificates of Deposit	\$10,000		\$420	
Salvador & Sophia	Stock	\$1,850		\$ 0	
3. Net Cash Value of Assets.....		3. \$53,375			
4. Total Actual Income from Assets.....				4. \$ 553	
5. If line 3 is greater than \$5,000, multiply line by <u>.02</u> (Passbook Rate) and enter results here; otherwise, leave blank				5. \$1,068	
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
Salvador		\$11,700			Enter the greater of lines 4 or 5 from above in e.
Sophia		\$ 4,500			
Phil		\$ 3,660			
6. Totals	a.	b. \$19,860	c.	d.	e. \$ 1,068
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i> .					7. 20,928

Sample Format for Calculating Adjusted Income

1. Annual Income.	1.	\$20,928	
2. Number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2.	1	
3. Multiply line 2 by \$480.			3. 480
4. Child care deduction (reasonable child care expenses for children age 12 and under). [If family has disability assistance expenses or qualifies as an elderly family, proceed to line 5; otherwise, skip to line 13.]			4. N/A
5. Enter disability assistance expenses.	5.	2,600	
6. Multiply line 1 by 0.03.	6.	628	
7. Subtract line 6 from line 5. If negative, enter 0.	7.	1,972	
8. Enter amount earned by family member enabled to work as a result of disability assistance expenses.	8.	6,760	
9. Enter the lesser of lines 7 or 8. This is the disability assistance allowance.			9. 1,972
FILL IN LINES 10 THROUGH 12 FOR ELDERLY FAMILIES ONLY			
10. Enter total medical expenses.	10.	3,690	
11. Allowable medical expenses:			
• If the household reported no expenses in line 5, enter line 10 minus line 6.			
• If the household reported expenses in line 5, but line 7 is zero, enter line 10 minus (line 6 minus 5).			
• If the household reported expenses in line 7 and line 7 is greater than zero, enter line 10.			
12. Enter \$400.			11. 3,690
13. Add lines 3, 4, 9, 11, and 12.			12. 400
14. Subtract line 13 from line 1. This is Adjusted Income .			13. 6,542
			14. 14,386

**Sample Format for Computing Total Tenant Payment and PJ Subsidy
Rental Voucher Model**

15. Rent Standard	15. 600	
16. 30% of Monthly Adjusted Income ((line 14 + 12) x 0.30).	16. 360	
17. Maximum Subsidy (line 15 minus line 16).		17. 240
18. Rent Charged by Owner. ⁶	18. 625	
19. Utility Allowance — if any.	19. 0	
20. Gross Rent for the Unit (line 18 plus line 19).		20. 625
21. Gross Rent minus Maximum Subsidy (line 20 minus line 17).		21. 385
22. 10% of Monthly Gross Income (line 1 + 12) x 0.10).	22. 174	
23. Total Family Contribution (higher of line 21 or line 22).		23. 385
24. Gross Rent minus Family Contribution (line 20 minus line 23).	24. 240	
25. Total Voucher Subsidy (lower of line 17 or line 24).		25. 240
26. PJ Payment to Owner (lower of line 18 or line 25).		26. 240
27. Family Rent to Owner (line 18 minus line 26).		27. 385
28. Utility Reimbursement — if any (line 25 minus line 26).		28. 0

⁶ If this is a Section 236 or Department of Agriculture Rural Development Section 515 project, enter the lower of the project's market Rent or line 22, *but* never less than the project's Basic Rent.

**Sample Format for Computing Total Tenant Payment and PJ Subsidy
Rental Certificate Model⁷**

15.	30% of Monthly Adjusted Income (line 14 + 12) x 0.30).	15.	360
16.	10% of Gross Monthly Income (line 1 + 12) x 0.30).	16.	174
17.	Welfare rent (if applicable).	17.	N/A
18.	TOTAL TENANT PAYMENT (greater of lines 15, 16 or 17).	18.	360
19.	Contract Rent to Owners	19.	625*
20.	Utility Allowance.	20.	0
21.	Gross Rent (line 19 plus line 20).	21.	625
22.	Tenant Rent (line 18 minus line 20). If line 20 is greater than line 18, enter zero, and enter the <i>difference</i> in line 23.	22.	360
23.	Utility Reimbursement to Tenant (line 20 minus line 18 only if line 20 is greater than line 18).	23.	0
24.	PJ Payment to Owner (line 19 minus line 22).	24.	265

⁷ Must be used for calculation of TTP when required for anti-displacement activities.

Explanation

Assets

- HOME: For HOME TBRA, the cash value of the home is counted as an asset when determining imputed asset income. The net market worth is \$50,000, less \$10,000 for the second mortgage and \$2,500 ($\$50,000 \times 5\%$) for the sales expenses, or \$37,500.
- Checking Account: The actual income from this account was \$58.
- Savings Account: \$2,500 in this account times an annual interest rate of 3% (.03) = \$75.
- Certificate of Deposit: \$10,000 mature certificate of deposit times an interest rate of 4.2% (.042) = \$420.
- Stock: Because the asset was sold less than two years ago, it must be included in this total.

The HUD Passbook Rate is 2%. The actual income, from the accounts and the certificate, is \$553. The imputed income is the total asset value times the Passbook Rate, or \$1,068. Because \$1,068 is larger than the actual amount earned, it must be used.

Income

- Salvador: His pension check of \$350/month and gross Social Security of \$625/month come to \$11,700 annually. This is all benefit/pension income.
- Sophia: Her pension check of \$375/month comes to \$4,500 annually. Her wages for Retired Senior Volunteer are not counted as income (refer to Exhibit 3.2).
- Phil: His gross Social Security payment of \$305/month comes to \$3,660 annually.

Adjustments

- Line 2: Phil is disabled and is therefore eligible for a \$480 deduction.
- Line 4: There are no children in the family.
- Line 5: Phil's attendant costs \$50/week. $\$50/\text{week} \times 52 \text{ weeks/year} = \$2,600$.
- Line 7: The eligible amount of disabled assistance expense deduction is the portion that is in excess of 3% of the household's annual income.
- Line 8-9: The maximum allowable disability assistance expense deduction is the amount that was earned because of the expenditure. In this case, this is Sophia's income of \$6,760. The disability allowance (line 9) is the lesser of this maximum amount or the portion of the disabled assistance expense that is in excess of 3% of the household total income.
- Line 10: This is an elderly household (head or spouse over 62 years).
- Line 11: Because the 3% of annual income has already been deducted from the disability assistance expense, the medical expense can be deducted in full.
- Line 12: Allowance for elderly households.

Endnotes

¹ The rules concerning Section 8 annual income were previously found at 24 CFR Part 813; however, Part 813 was removed from the Federal regulations on October 18, 1996. At the same time, 24 CFR Part 5 was published. Subpart F of Part 5 consolidated the requirements pertaining to income for many of HUD's programs, including Section 8.

² While the IRS uses the term adjusted gross income, it is considered annual income for the purposes of the HOME Program. Under the HOME Program, the term "adjusted income" is used only in reference to the process of subtracting certain deductions from annual income to determine subsidy or payment level in accordance with 24 CFR 5.611.

³ http://www.archives.gov/federal_register/index.html

⁴ Throughout this guide, unless specified otherwise, "annual income" refers to annual income as calculated using one of the three definitions allowed under the HOME Program.

⁵ "Adjusted income" is calculated using annual income (as calculated using one of the three allowable definitions of annual income) and subtracting adjustments defined at 24 CFR 5.611.

⁶ "Part 5 annual income" refers to the annual income calculation defined at 24 CFR 5.609. It was formerly commonly known as "Section 8 annual income" and was previously the only definition of annual income allowed under the HOME Program.

⁷ For the purposes of this discussion, the terms household and family are interchangeable.

⁸ http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/ib_final_0601.pdf

⁹ <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>

Appendices

- Appendix A: Glossary of Terms
- Appendix B: Sample Format for Computing Part 5 Annual Income
- Appendix C: Sample Format for Computing Census Long Form Annual Income
- Appendix D: Sample Format for Computing IRS Form 1040 Series Adjusted Gross Income
- Appendix E: Sample Format for Computing Part 5 Adjusted Income
- Appendix F: Sample Format for Computing Total Tenant Payment and PJ Subsidy – Rental Voucher Model
- Appendix G: Sample Format for Computing Total Tenant Payment and PJ Subsidy – Rental Certificate Model
- Appendix H: Sample Verification Forms for Determining Annual (Gross) Income
- Appendix I: Sample Verification Forms for Determining Part 5 Adjusted Income
- Appendix J: Sample Annual Recertification of Income Forms (for Rental Housing Projects)

Appendix A

Glossary of Terms

Adjusted Income	The HOME Program uses three definitions of annual (gross) income. Adjusted income is annual (gross) income reduced by deductions (or allowances) for dependents, elderly households, medical expenses, disability assistance expenses, and child care. Adjusted income is used only under certain circumstances.
Affordability	As used in this guide, affordability refers to the requirements of the HOME Program that relate to the cost of housing both at initial occupancy and over established timeframes, as prescribed in the HOME regulations. Affordability requirements vary depending on the nature of the HOME-assisted activity (i.e., homeownership or rental housing).
Annual (Gross) Income	The HOME Program allows the use of three income definitions for the purpose of determining applicant eligibility -- annual income as defined in 24 CFR 5.609, annual income as reported under the Census Long Form for the most recent decennial Census, and adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes. The definitions are collectively referred to as annual (gross) income, and are also used in the Community Development Block Grant Program.
Community Development Block Grant (CDBG)	Federal funding that allows communities to carry out flexible, locally designed comprehensive community development activities in accordance with Title I, Housing and Community Development Act of 1974 and its implementing regulations at 24 CFR Part 570.
Community Housing Development Organization (CHDO)	A private, nonprofit organization that meets a series of qualifications prescribed in the HOME regulations. CHDOs must receive at least 15 percent of a participating jurisdiction's annual allocation of HOME funds. CHDOs may own, develop, or sponsor HOME-financed housing.
Consolidated Plan	A plan of up to five years in length that describes a community's needs, resources, priorities, and proposed activities to be undertaken with certain HUD funding, including funding under the HOME Program. The Consolidated Plan is updated annually.

HOME-Assisted Units	Units within a HOME project where HOME funds are used and rent, occupancy, and/or long-term affordability restrictions apply.
HOME Funds	All appropriations for the HOME Program, plus all repayments and interest or other return on the investment of these funds.
HOME Investment Trust Fund	The term given to the two accounts — one at the Federal level and one at the local level — that “hold” the participating jurisdiction’s HOME funds. The Federal HOME Investment Trust Account is the U.S. Treasury account for each participating jurisdiction. The local HOME Investment Trust Fund account includes repayments of HOME funds, matching contributions, and payment of interest or other returns on investment.
HOME Investment Partnerships Program (HOME)	The HOME Program is a formula-based allocation program intended to support state and local affordable housing programs. The goal of the program is to increase the supply of affordable rental and ownership housing through acquisition, construction, reconstruction, and moderate or substantial rehabilitation activities. The program was authorized by Title II of the National Affordable Housing Act of 1990. Its implementing regulations are found at 24 CFR Part 92.
HUD	U.S. Department of Housing and Urban Development.
Low-Income Family	Family whose annual (gross) income does not exceed 80 percent of the median family income for the area (adjusted for family size), as determined by HUD. HUD may establish, on an exception basis, income ceilings higher or lower than 80 percent of median income for an area.
National Affordable Housing Act of 1990 (NAHA)	Enacted by Congress to authorize the HOME Investment Partnerships Program, the National Homeownership Trust program, and programs to amend and extend certain laws relating to housing, community, and neighborhood preservation and related programs.
New Construction	The creation of new dwelling units. Any project that includes the creation of additional dwelling units outside the existing walls of a structure is also considered new construction.
Participating Jurisdiction (PJ)	The term given to any state, local government, or consortium of local governments that HUD has designated to administer a HOME Program. HUD designation as a PJ occurs if a state, local government, or consortium meets the funding thresholds, notifies HUD that it intends to participate in the program, and obtains approval by HUD of a Consolidated Plan.

Project	One or more buildings on a single site or multiple sites that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking.
Section 8 Existing Rental Assistance	A Federal program that provides rental assistance to low-income families who are unable to afford market rents. Assistance may be in the form of vouchers or certificates. Implementing regulations can be found at 24 CFR Part 982.
State Recipient	Any unit of local government designated by a state to receive HOME funds. The state PJ is responsible for ensuring that HOME funds allocated to state recipients are used in accordance with the HOME regulations and other applicable laws.
Subrecipient	A public agency or nonprofit organization selected by a participating jurisdiction to <i>administer</i> all or a portion of the participating jurisdiction's HOME Program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient.
Targeting	Requirements of the HOME Program relating to the income or other characteristics of households that may occupy HOME-assisted units.
Total Development Cost (TDC)	The sum of all costs for site acquisition, relocation, demolition, construction and equipment, interest and carrying charges.
Very Low-Income Family	Family whose annual (gross) income does not exceed 50 percent of the median income for the area (adjusted for family size), as determined by HUD. HUD may establish income ceilings higher or lower than 50 percent of median income for an area on an exception basis.

Appendix B

Sample Format for Calculating Part 5 Annual Income

1. Name		2. Identification No.:			
ASSETS					
Family Member	Asset Description	Current Cash Value of Assets	Actual Income from Assets		
3. Net Cash Value of Assets		3.			
4. Total Actual Income from Assets			4.		
5. If line 3 is greater than \$5,000, multiply line by ____ (Passbook Rate) and enter results here; otherwise, leave blank			5.		
ANTICIPATED ANNUAL INCOME					
Family Members	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
					Enter the greater of lines 4 or 5 from above in e.
6. Totals	a.	b.	c.	d.	e.
7. Enter total of items from 6a. through 6e. This is <i>Annual Income</i>					7.

X _____
Signature

For Office Use Only

_____ Income Limit
_____ Income Limit of Household

Appendix C

Sample Format for Computing Census Long Form Annual Income

Name:			Identification No.:			
ANTICIPATED ANNUAL INCOME						
Family Member	a. Wages/ Salaries	b. Business Income	c. Interest/ Dividends	d. Benefits/ Pensions	e. Public Assistance	f. Other Income
1. Totals	a.	b.	c.	d.	e.	f.
2. Enter total of items from 1a. through 1f. This is <i>Annual Income</i>						2.

X _____
Signature

For Office Use Only

_____ Income Limit
_____ Income Limit of Household

Appendix D

Sample Format for Computing IRS 1040 Series Adjusted Gross Income

Name:		Identification No.:			
	Family Member				Subtotal (add a-d)
	a.	b.	c.	d.	e.
1. Wages, salaries, tips					
2. Taxable interest					
3. Dividend income					
4. Taxable refunds/ credits/offsets of state/ local income taxes					
5. Alimony received					
6. Business income (or loss)					
7. Capital gain (or loss)					
8. Other gains (or losses)					
9. Taxable amount of IRA distributions					
10. Taxable amount of pensions and annuities					
11. Rental real estate, royalties, partnerships, trusts, etc.					
12. Farm income (or loss)					
13. Unemployment compensation					
14. Taxable amount of Social Security benefits					
15. Other income					
16. Subtotal (lines 1-15)					

Appendix D – Sample Format for Computing IRS 1040 Series Adjusted Gross Income

	Family Member				Subtotal (add a-d)
	a.	b.	c.	d.	
17. IRA deduction					
18. Medical savings account deduction					
19. Moving expenses					
20. One-half of self-employment tax					
21. Self-employed health insurance deduction					
22. Keogh and self-employed SEP and SIMPLE plans					
23. Penalty on early withdrawal of savings					
24. Paid alimony					
25. Subtotal (lines 17-24)					
26. Subtract line 25 from line 16. This is <i>Adjusted Gross Income</i>					

X _____

Signature

For Office Use Only

_____ Income Limit

_____ Income Limit of Household

Appendix E

Sample Format for Computing Part 5 Adjusted Income

1. Annual Income.	1.	
2. Number of family members (excluding head or spouse) under 18, disabled, or full-time students.	2.	
3. Multiply line 2 by \$480.		3.
4. Child care deduction (reasonable child care expenses for children age 12 and under). [If family has disability assistance expenses or qualifies as an elderly family, proceed to line 5; otherwise, skip to line 13.]		4.
5. Enter disability assistance expenses.	5.	
6. Multiply line 1 by 0.03.	6.	
7. Subtract line 6 from line 5. If negative, enter 0.	7.	
8. Enter amount earned by family member enabled to work as a result of disability assistance expenses.	8.	
9. Enter the lesser of lines 7 or 8. This is the disability assistance allowance.		9.
FILL IN LINES 10 THROUGH 12 FOR ELDERLY FAMILIES ONLY		
10. Enter total medical expenses.	10.	
11. Allowable medical expenses:		11.
• If the household reported no expenses in line 5, enter line 10 minus line 6.		
• If the household reported expenses in line 5, but line 7 is zero, enter line 10 minus (line 6 minus 5).		
• If the household reported expenses in line 7 and line 7 is greater than zero, enter line 10.		
12. Enter \$400.		12.
13. Add lines 3, 4, 9, 11, and 12.		13.
14. Subtract line 13 from line 1. This is Adjusted Income .		14.

Appendix F

Sample Format for Computing Total Tenant Payment and PJ Subsidy

Rental Voucher Model

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

15. Rent Standard	15.	
16. 30% of Monthly Adjusted Income ((line 14 ÷ 12) x 0.30).	16.	
17. Maximum Subsidy (line 15 minus line 16).		17.
18. Rent Charged by Owner. ¹	18.	
19. Utility Allowance — if any.	19.	
20. Gross Rent for the Unit (line 18 plus line 19).		20.
21. Gross Rent minus Maximum Subsidy (line 20 minus line 17).		21.
22. 10% of Monthly Gross Income (line 1 ÷ 12) x 0.10).	22.	
23. Total Family Contribution (higher of line 21 or line 22).		23.
24. Gross Rent minus Family Contribution (line 20 minus line 23).	24.	
25. Total Voucher Subsidy (lower of line 17 or line 24).		25.
26. PJ Payment to Owner (lower of line 18 or line 25).		26.
27. Family Rent to Owner (line 18 minus line 26).		27.
28. Utility Reimbursement — if any (line 25 minus line 26).		28.

¹ If this is a Section 236 or Department of Agriculture Rural Development Section 515 project, enter the lower of the project's market Rent or line 22, *but* never less than the project's Basic Rent.

Appendix G

**Sample Format for Computing
Total Tenant Payment and PJ Subsidy**

Rental Certificate Model²

(This form is designed to continue from the Sample Format for Computing Part 5 Adjusted Income, presented in Chapter 4.)

15. 30% of Monthly Adjusted Income (line 14 ÷ 12) x 0.30).	15.	
16. 10% of Gross Monthly Income (line 1 ÷ 12) x 0.30).	16.	
17. Welfare rent (if applicable).	17.	
18. TOTAL TENANT PAYMENT (greater of lines 15, 16 or 17).		18.
19. Contract Rent to Owners.	19.	
20. Utility Allowance.	20.	
21. Gross Rent (line 19 plus line 20).		21.
22. Tenant Rent (line 18 minus line 20) If line 20 is greater than line 18, enter zero, and enter the <i>difference</i> in line 23.		22.
23. Utility Reimbursement to Tenant (line 20 minus line 18 only if line 20 is greater than line 18).		23.
24. PJ Payment to Owner (line 19 minus line 22).		24.

² Must be used for calculation of TTP when required for anti-displacement activities.

Appendix H

Sample Verification Forms for Determining Annual (Gross) Income

HOME Program Eligibility Release Form _____	105
Verification of Employment _____	106
Verification of Income from Business _____	107
Verification of Social Security Benefits _____	108
Verification of Pension and Annuities _____	109
Verification of Veterans Administration Benefits _____	110
Verification of Unemployment Benefits _____	111
Verification of Public Assistance Income _____	112
Verification of Child Support Payments _____	113
Verification of Alimony or Separation Payments _____	114
Verification of Recurring Cash Contributions _____	115
Verification of Income from Military Service _____	116
Verification of Assets on Deposit _____	117
Verification of Assets Disposed _____	118
Record of Oral Verification _____	119

**HOME Program
Eligibility Release Form**

Organization requesting release of information (PJ name, address, telephone, and date)

Purpose: Your signature on this HOME Program Eligibility Release Form, and the signatures of each member of your household who is 18 years of age or older, authorizes the above-named organization to obtain information from a third party relative to your eligibility and continued participation in the:

- HOME TBRA Program
- HOME Homebuyer Program
- HOME Rental Rehabilitation Program
- HOME Homeowner Rehabilitation Program

Privacy Act Notice Statement: The Department of Housing and Urban Development (HUD) is requiring the collection of the information derived from this form to determine an applicant's eligibility in a HOME Program and the amount of assistance necessary using HOME funds. This information will be used to establish level of benefit on the HOME Program; to protect the Government's financial interest; and to verify the accuracy of the information furnished. It may be released to appropriate Federal, state, and local agencies when relevant to civil, criminal, or regulatory investigators, and to prosecutors. Failure to provide any information may result in a delay or rejection of your eligibility approval. The Department is authorized to ask for this information by the National Affordable Housing Act of 1990.

Instructions: Each adult member of the household must sign a HOME Program Eligibility Release Form prior to the receipt of benefit and on an annual basis to establish continued eligibility. Additional signatures must be obtained from new adult members whenever they join the household or whenever members of the household become 18 years of age.

NOTE: THIS GENERAL CONSENT MAY NOT BE USED TO REQUEST A COPY OF A TAX RETURN. IF A COPY OF A TAX RETURN IS NEEDED, IRS FORM 4506, "REQUEST FOR COPY OF TAX FORM" MUST BE PREPARED AND SIGNED SEPARATELY.

Information Covered: Inquiries may be made about items initialed by applicant/tenant.

	Verification Required	Initials
Income (all sources)		
Assets (all sources)		
Child Care Expense		
Handicap Assistance Expense (if applicable)		
Medical Expense (if applicable)		
Other (list) _____ _____		
Dependent Deduction ____ Full-Time Student ____ Handicap/Disabled Family Member ____ Minor Children		

Authorization: I authorize the above-named HOME Participating Jurisdiction and HUD to obtain information about me and my household that is pertinent to eligibility for participation in the HOME Program.

I acknowledge that:

- (1) A photocopy of this form is as valid as the original.
- (2) I have the right to review the file and the information received using this form (with a person of my choosing to accompany me).
- (3) I have the right to copy information from this file and to request correction of information I believe inaccurate.
- (4) All adult household members will sign this form and cooperate with the owner in this process.

Head of Household—Signature, Printed Name, and Date: Family Member HEAD

Other Adult Member of the Household—Signature, Printed Name, and Date: Family Member #2

Other Adult Member of the Household—Signature, Printed Name, and Date: Family Member #3

Other Adult Member of the Household—Signature, Printed Name, and Date: Family Member #4

VERIFICATION OF: Unemployment Benefits

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Unemployment Benefits Income of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Benefits</p> <p>1. Are benefits being paid now? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2. If yes, what is Gross Weekly Payment? \$ _____</p> <p>3. Date of Initial Payment _____</p> <p>4. Duration of Benefits _____ weeks</p> <p>Is claimant eligible for future benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>5. If yes, how many weeks? _____ weeks</p> <p>6. If no, what is the termination date of benefits? _____</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Child Support Payments

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Child Support Payments made to all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Name of Person Paying Child Support: _____</p> <p>Address of Person Paying Child Support: _____</p> <p>_____</p> <p>_____</p> <p>Support is for <input type="checkbox"/> his <input type="checkbox"/> her children.</p> <p>Name(s) of children being supported: _____</p> <p>_____</p> <p>_____</p> <p>Amount of support: \$ _____ <input type="checkbox"/> Week <input type="checkbox"/> Month <input type="checkbox"/> Year</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Alimony or Separation Payments

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Alimony and Separation Payments made to all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Name of Person Paying Alimony or Separation Payments:</p> <p>_____</p> <p>Address of Person Paying Alimony or Separation Payments:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Name of person being supported:</p> <p>_____</p> <p>Amount of support:</p> <p>\$ _____ <input type="checkbox"/> Week <input type="checkbox"/> Month <input type="checkbox"/> Year</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____</p> <p>or Authorized Representative</p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Income from Military Service

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Military Service Income of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Years _____ and Months _____ of service for pay purposes.</p> <p>Income:</p> <p>Base and Longevity Pay \$ _____</p> <p>Proficiency Pay \$ _____</p> <p>Sea and Foreign Duty Pay \$ _____</p> <p>Hazardous Duty Pay \$ _____</p> <p>Subsistence Allowance \$ _____</p> <p>Quarters Allowance (include only amount contributed by the Government) \$ _____</p> <p>Number of dependents claimed _____</p> <p>Imminent Danger Pay \$ _____</p> <p>Other (explain):</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Assets on Deposit

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Assets on Deposit of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Checking Account No.</p> <p>_____</p> <p>_____</p>	<p>Average Monthly Balance for Last 6 Months</p> <p>_____</p> <p>_____</p>	<p>Current Interest rate</p> <p>_____</p> <p>_____</p>		
	<p>Savings Account No.</p> <p>_____</p> <p>_____</p>	<p>Current Balance</p> <p>_____</p> <p>_____</p>	<p>Current Interest Rate</p> <p>_____</p> <p>_____</p>	<p>Current Interest Rate</p> <p>_____</p> <p>_____</p>	
	<p>Certificate of Deposit Account No.</p> <p>_____</p> <p>_____</p>	<p>Amount</p> <p>_____</p> <p>_____</p>	<p>Withdrawal Penalty</p> <p>_____</p> <p>_____</p>		
<p>Retirement Savings (IRA, Keogh, 401(k))</p>	<p>Account No.</p> <p>_____</p> <p>_____</p>	<p>Amount</p> <p>_____</p> <p>_____</p>	<p>Withdrawal Penalty</p> <p>_____</p> <p>_____</p>	<p>Current Interest Rate</p> <p>_____</p> <p>_____</p>	
<p>Money Market Funds</p>	<p>Money Market Funds</p> <p>_____</p> <p>_____</p>	<p>Amount (Average 6-month Balance)</p> <p>_____</p> <p>_____</p>	<p>Interest Rate</p> <p>_____</p> <p>_____</p>		
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>				
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>					

VERIFICATION OF ASSETS DISPOSED

I/We certify that during the 2-year (24-month) period preceding the effective date of my certification or recertification of eligibility for program participation, I/we _____ have _____ have not disposed of more than \$1,000 in asset(s) for less than fair market value.

If asset(s) were disposed of for less than fair market value, describe:

Asset	Date of Disposition
1. _____	_____
2. _____	_____
3. _____	_____

Amount received for asset(s) disposed of:

1. _____
2. _____
3. _____

Signature of Applicant

Date

Signature of Spouse

Date

RECORD OF ORAL VERIFICATION

APPLICANT INFORMATION

Re: _____

Address: _____

Date Received: _____

INFORMATION VERIFIED

Item Verified: _____

Person Contacted: _____

Representing: _____

INFORMATION SUPPLIED

Signature of Person Receiving Verification

Date and Time

Appendix I

Sample Verification Forms for Determining Part 5 Adjusted Income

Verification of Full-Time Student Status _____	123
Verification of Medical Expenses _____	124
Verification of Transportation to Medical Treatment _____	125
Verification of Prescription/Nonprescription Expense _____	126
Verification of Child Care/Dependent Care _____	127

VERIFICATION OF: Full-Time Student Status

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Full-Time Student Status of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Name of Full-Time Student: _____</p> <p>Name of institution: _____</p> <p>Address of institution: _____</p> <p>Check applicable box: Referenced individual <input type="checkbox"/> is <input type="checkbox"/> is not a full-time student in good standing at this institution.</p> <p>Years remaining to complete Degree or Program: _____</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Transportation to Medical Treatment

<p>(Name of HOME Participating Jurisdiction) _____</p> <p>AUTHORIZATION: Federal Regulations require us to verify expenses for Transportation to Medical Treatment for all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Number of Trips to Medical Treatment (yearly) _____</p> <p>Cost per Trip \$ _____</p> <p>Total Expense for Transportation to Medical Treatment \$ _____</p> <p>or _____ miles traveled per year at a cost of _____ cents per mile for a total cost of \$ _____</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>_____</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

VERIFICATION OF: Prescription/Nonprescription Expense

<p>(Name of HOME Participating Jurisdiction)</p> <p>AUTHORIZATION: Federal Regulations require us to verify Prescription and Nonprescription Expenses of all members of the household applying for participation in the HOME Program which we operate and to re-examine this income periodically. We ask your cooperation in supplying this information. This information will be used only to determine the eligibility status and level of benefit of the household.</p> <p>Your prompt return of the requested information will be appreciated. A self-addressed return envelope is enclosed.</p>	<p>Prescription expenses for the months from _____ to _____.</p> <p>Average yearly cost for prescription medications that are not covered by Medicare or other insurance \$ _____</p> <p>Average yearly cost for nonprescription drug items used for medical reasons (aspirin, pain relief medications taken by mouth or applied to the skin, antacids, etc.) \$ _____</p>
<p>RELEASE: I hereby authorize the release of the requested information.</p> <p>_____</p> <p>(Signature of Applicant)</p> <p>Date: _____</p> <p>Or a copy of the executed "HOME Program Eligibility Release Form," which authorizes the release of the information requested, is attached.</p>	<p>Signature of _____ or Authorized Representative</p> <p>Title: _____</p> <p>Date: _____</p> <p>Telephone: _____</p>
<p>WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.</p>	

Appendix J

Sample Annual Recertification of Income Forms (for Rental Housing Projects)

Recertification of Annual Income by Tenant Family _____	131
Recertification of Annual Income by Government Programs _____	132

Recertification of Annual Income by Tenant Family

Household Information

Household name: _____

Household size (total number in household): _____

Household members (list): _____

Income Information

Annual (gross) income (total of all household members): \$ _____

I/we certify that this information is complete and accurate. I/we agree to provide, upon request, documentation on all income sources to (Name of PJ and/or Property Owner/Manager).

Signature of _____

or Authorized Representative _____

Title: _____

Date: _____

Telephone: _____

WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Recertification of Annual Income by Government Programs

The purpose of this form is to certify that _____ (name of household) residing at _____ (address) receives benefits under _____ (name of government program). As such, the annual income of this household has been examined and determined to be below \$ _____ (income limit for the program for a family of ____ [household size]).

Certified by:

Signature of Authorized Representative _____

Name (Print) _____

Title _____

Agency _____

Date _____

WARNING:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

[Code of Federal Regulations]
[Title 24, Volume 1]
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[Page 38-103]

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 5_GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart A_Generally Applicable Definitions and Federal Requirements;
Waivers

Sec.

- 5.100 Definitions.
- 5.105 Other Federal requirements.
- 5.107 Audit requirements for non-profit organizations.
- 5.108 Preservation of Open Competition and Government Neutrality Towards
Government Contractors' Labor Relations on Federally Funded
Construction Projects.
- 5.110 Waivers.

Subpart B_Disclosure and Verification of Social Security Numbers and
Employer Identification Numbers; Procedures for Obtaining Income
Information

- 5.210 Purpose, applicability, and Federal preemption.
- 5.212 Compliance with the Privacy Act and other requirements.
- 5.214 Definitions.

Disclosure and Verification of Social Security Numbers and Employer
Identification Numbers for Applicants and Participants in Certain HUD
Programs

- 5.216 Disclosure and verification of Social Security and Employer
Identification Numbers.
- 5.218 Penalties for failing to disclose and verify Social Security and
Employer Identification Numbers.

Procedures for Obtaining Income Information About Applicants and
Participants

- 5.230 Consent by assistance applicants and participants.
- 5.232 Penalties for failing to sign consent forms.
- 5.234 Requests for information from SWICAs and Federal agencies;
restrictions on use.
- 5.236 Procedures for termination, denial, suspension, or reduction of
assistance based on information obtained from a SWICA or
Federal agency.
- 5.238 Criminal and civil penalties.
- 5.240 Family disclosure of income information to the responsible entity
and verification.

Subpart C_Pet Ownership for the Elderly or Persons With Disabilities

Serving Persons with Disabilities: Family Income and Family Payment;
Occupancy Requirements for Section 8 Project-Based Assistance

- 5.601 Purpose and applicability.
- 5.603 Definitions.

Family Income

- 5.609 Annual income.
- 5.611 Adjusted income.
- 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.
- 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.
- 5.617 Self-sufficiency incentives for persons with disabilities-- Disallowance of increase in annual income.

Family Payment

- 5.628 Total tenant payment.
- 5.630 Minimum rent.
- 5.632 Utility reimbursements.
- 5.634 Tenant rent.

Section 8 Project-Based Assistance: Occupancy Requirements

- 5.653 Section 8 project-based assistance programs: Admission--Income-eligibility and income-targeting.
- 5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.
- 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.
- 5.659 Family information and verification.
- 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.

Subpart G Physical Condition Standards and Inspection Requirements

- 5.701 Applicability.
- 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).
- 5.705 Uniform physical inspection requirements.

Subpart H Uniform Financial Reporting Standards

- 5.801 Uniform financial reporting standards.

Subpart I Preventing Crime in Federally Assisted Housing Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

General

- 5.850 Which subsidized housing is covered by this subpart?
- 5.851 What authority do I have to screen applicants and evict tenants?
- 5.852 What discretion do I have in screening and eviction actions?
- 5.853 Definitions.

Denying Admissions

- 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?
- 5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?
- 5.856 When must I prohibit admission of sex offenders?
- 5.857 When must I prohibit admission of alcohol abusers?

[[Page 40]]

Terminating Tenancy

- 5.858 When authority do I have to evict drug criminals?
- 5.859 When am I specifically authorized to evict other criminals?
- 5.860 When am I specifically authorized to evict alcohol abusers?
- 5.861 What evidence of criminal activity must I have to evict?

Subpart J Access to Criminal Records and Information

- 5.901 To what criminal records and searches does this subpart apply?
- 5.902 Definitions.
- 5.903 What special authority is there to obtain access to criminal records?
- 5.905 What special authority is there to obtain access to sex offender registration information?

Subpart K Application submission requirements.

- 5.1001 Applicability.
- 5.1003 Use of a universal identifier for organizations applying for HUD grants.

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

Source: 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

Subpart A Generally Applicable Definitions and Federal Requirements; Waivers

Sec. 5.100 Definitions.

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

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.)

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

ALJ means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant's household, a guest or another person under the tenant's control.

Department means the Department of Housing and Urban Development.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Elderly Person means an individual who is at least 62 years of age.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 et seq.).

Fair Market Rent (FMR) means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This Fair Market Rent includes utilities (except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the Federal Register in accordance with part 888 of this title.

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

- (1) Public housing;
- (2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
- (3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
- (4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
- (5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
- (6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715l(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency

[[Page 41]]

under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

General Counsel means the General Counsel of HUD.

Grantee means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

HUD means the same as Department.

MSA means a metropolitan statistical area.

NAHA means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.).

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

NOFA means Notice of Funding Availability.

OMB means the Office of Management and Budget.

Organizational Unit means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.

Other person under the tenant's control, for the purposes of the definition of covered person and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as premises is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.

Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

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

Public Housing Agency (PHA) means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Responsible entity means:

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

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

Section 8 means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Secretary means the Secretary of Housing and Urban Development.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201-4655).

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000; 66 FR 28791, May 24, 2001]

[[Page 42]]

Sec. 5.105 Other Federal requirements.

The following Federal requirements apply as noted in the respective

program regulations:

(a) Nondiscrimination and equal opportunity. The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(b) Disclosure requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).

(c) Debarred, suspended or ineligible contractors. The prohibitions at 24 CFR part 24 on the use of debarred, suspended or ineligible contractors.

(d) Drug-Free Workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) and HUD's implementing regulations at 24 CFR part 24.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

Sec. 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations" (see 24 CFR 84.26). For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997]

Sec. 5.108 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects.

(a) Purpose. This section implements Executive Order 13202 (issued

on February 17, 2001), as amended by Executive Order 13208 (issued on April 6, 2001), entitled ``Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''

(b) Definitions. For purposes of this section:

Construction contract means a contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property, including any subcontracts awarded pursuant to such a contract.

Financial assistance includes:

- (i) Grants, loans, and advances of federal funds; or
- (ii) Proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.) and title VI of the Native American Housing Assistance and Self-Determination

[[Page 43]]

Act of 1996 (25 U.S.C. 4101 et seq.). The term ``financial assistance' does not include any other contract of insurance or guaranty.

Labor organization has the same meaning it has in 42 U.S.C. 2000e(d).

(c) Neutrality towards government contractors' labor relations. To the extent permitted by law, the bid specifications, project agreements, or other controlling documents for a construction contract awarded on or after June 23, 2003, by a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD, for a construction project (or a construction manager acting on their behalf) shall not:

(1) Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations on the same or other related federally funded construction project; or

(2) Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories, or otherwise adhere to agreements with one or more labor organizations, on the same or other related federally funded construction project.

(d) Exemptions--(1) Exemptions due to special circumstances. HUD may exempt a particular construction project, construction contract, subcontract, grant, or cooperative agreement from any requirement of this section, if HUD determines that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security. HUD will not base a finding of ``special circumstances' on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are non-signatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the construction project who are not members of, or affiliated with, a labor organization.

(2) Exemption of construction projects subject to project labor agreements entered into as of June 23, 2003. HUD may exempt a particular construction project from any requirement of this section upon written request from the HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf), if HUD determines that:

- (i) The HUD grantee, recipient of financial assistance from HUD, or

party to the cooperative agreement with HUD (or a construction manager acting on their behalf) issued, or was a party to, as of June 23, 2003, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to a particular construction project, that contain any of the requirements or prohibitions contained in paragraph (c) of this section; and

(ii) One or more construction contracts subject to such requirements or prohibitions was awarded as of June 23, 2003.

(e) Sanctions. If HUD determines that a HUD grantee, recipient of financial assistance from HUD, or party to a cooperative agreement with HUD (or a construction manager acting on their behalf) performs in a manner contrary to the requirements of this section, HUD will take such action, consistent with law and regulations, as HUD determines appropriate.

(f) Voluntarily entering into project labor agreements. Nothing in this section prohibits contractors or subcontractors from voluntarily entering into project labor agreements.

[68 FR 28104, May 22, 2003]

Sec. 5.110 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

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

Authority: 42 U.S.C. 3535(d), 3543, 3544, and 11901 et seq.

[[Page 44]]

Source: 61 FR 11113, Mar. 18, 1996, unless otherwise noted.

Sec. 5.210 Purpose, applicability, and Federal preemption.

(a) Purpose. This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs). 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, in order to verify an applicant's or participant's eligibility for or level of assistance. The purpose of this subpart B is to enable HUD to decrease the incidence of fraud, waste, and abuse in the covered programs.

(b) Applicability. (1) This subpart B applies to mortgage and loan insurance and coinsurance and housing assistance programs contained in chapter II, subchapter B, and chapters VIII and IX of this title.

(2) The information covered by consent forms described in this subpart involves income information from SWICAs, and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. In addition, consent forms may authorize the collection of other information from applicants and

participants to determine eligibility or level of benefits.

(c) Federal preemption. This subpart B preempts any State law, including restrictions and penalties, that governs the collection and use of income information to the extent State law is inconsistent with this subpart.

[61 FR 11113, Mar. 18, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

Sec. 5.212 Compliance with the Privacy Act and other requirements.

(a) Compliance with the Privacy Act. The collection, maintenance, use, and dissemination of SSNs, EINs, any information derived from SSNs and Employer Identification Numbers (EINs), and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(b) Privacy Act notice. All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification.

Sec. 5.214 Definitions.

In addition to the definitions in Sec. 5.100, the following definitions apply to this subpart B:

Assistance applicant. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term means the following:

(1) For any program under 24 CFR parts 215, 221, 236, 290, or 891, or any program under Section 8 of the 1937 Act: A family or individual that seeks rental assistance under the program.

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

(3) For any program under 24 CFR part 235: A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

Computer match means the automated comparison of data bases containing records about individuals.

Computer matching agreement means the agreement that describes the responsibilities and obligations of the parties participating in a computer match.

Consent form means any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and payments of retirement income), as referenced at 26 U.S.C. 6103(l)(7)(A); and return information for unearned income from the Internal Revenue Service, as referenced at 26 U.S.C. 6103(l)(7)(B). The consent forms expire after a certain time and may authorize the collection of other information from assistance applicants or participants to determine eligibility or level of benefits as provided in Sec. Sec. 813.109, 913.109, and 950.315 of this title.

[[Page 45]]

Employer Identification Number (EIN) means the nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation pursuant to sections

6011(b), or corresponding provisions of prior law, or 6109 of the Internal Revenue Code.

Entity applicant. (1) Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), and paragraph (2) of this definition, this term means a partnership, corporation, or any other association or entity, other than an individual owner applicant, that seeks to participate as a private owner in any of the following:

- (i) The project-based assistance programs under Section 8 of the 1937 Act;
- (ii) The programs in 24 CFR parts 215, 221, or 236; or
- (iii) The other mortgage and loan insurance programs in 24 CFR parts 201 through 267, except that the term "entity applicant" does not include a mortgagee or lender.

(2) The term does not include a public entity, such as a PHA, IHA, or State Housing Finance Agency.

Federal agency means a department of the executive branch of the Federal Government.

Income information means information relating to an individual's income, including:

(1) All employment income information known to current or previous employers or other income sources that HUD or the processing entity determines is necessary for purposes of determining an assistance applicant's or participant's eligibility for, or level of assistance in, a covered program;

(2) All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law;

(3) With respect to unemployment compensation:

(i) Whether an individual is receiving, has received, or has applied for unemployment compensation;

(ii) The amount of unemployment compensation the individual is receiving or is entitled to receive; and

(iii) The period with respect to which the individual actually received such compensation;

(4) Unearned IRS income and self-employment, wages and retirement income as described in the Internal Revenue Code, 26 U.S.C. 6103(1)(7); and

(5) Wage, social security (Title II), and supplemental security income (Title XVI) data obtained from the Social Security Administration.

Individual owner applicant. Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), or paragraph (2) of this definition, this term means:

(1) An individual who seeks to participate as a private owner in any of:

(i) The project-based assistance programs under Section 8 of the 1937 Act; or

(ii) The programs in 24 CFR parts 215, 221, 235 (without homeownership assistance), or 236, including where the individual seeks to assume an existing mortgage; or

(2) An individual who:

(i) Either: (A) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in paragraph (1)(iii) of the definition of "entity applicant" in this section; or

(B) Seeks to assume an existing mortgage or loan; and

(ii) Intends to hold the mortgaged property in his or her individual right.

IRS means the Internal Revenue Service.

Owner means the person or entity (or employee of an owner) that leases an assisted dwelling unit to an eligible family and includes, when applicable, a mortgagee.

Participant. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term has the following meaning:

(1) For any program under 24 CFR part 891, or Section 8 of the 1937 Act: A family receiving rental assistance under the program;

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

(3) For 24 CFR parts 215, 221, 236, and 290: A tenant or qualified tenant under any of the programs; and

[[Page 46]]

(4) For 24 CFR part 235: A homeowner or a cooperative member receiving homeownership assistance.

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

Social Security Number (SSN) means the nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

SSA means the Social Security Administration.

State Wage Information Collection Agency (SWICA) means the State agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the State, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

[61 FR 11113, Mar. 18, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000]

Disclosure and Verification of Social Security Numbers and Employer Identification Numbers for Applicants and Participants in Certain HUD Programs

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

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

(1) (i) The complete and accurate SSN assigned to the assistant applicant and to each member of the assistant applicant's household who is at least six years of age; and

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

(2) If the assistance applicant or any member of the assistance applicant's household who is at least six years of age has not been

assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(b) Disclosure: 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) (i) 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

(ii) The documentation referred to in paragraph (f) (1) of this section to verify the SSNs; or

(2) If any person referred to in paragraph (b) (1) (i) of this section has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) Disclosure: certain officials of entity applicants. As explained more fully in HUD administrative instructions, 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: participants--(1) Initial disclosure. Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next regularly scheduled income reexamination for the program involved:

(i) (A) The complete and accurate SSN assigned to the participant and to

[[Page 47]]

each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f) (1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) Subsequent disclosure. Once a participant has disclosed and verified every SSN, or submitted any certification that an SSN has not been assigned, as provided by paragraph (a) of this section (for an assistance applicant) or paragraph (d) (1) (for a preexisting participant) of this section, the following rules apply:

(i) If the participant's household adds a new member who is at least six years of age, 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 SSNs assigned to each new member and the documentation referred to in paragraph (f) (1) of this section to verify the SSNs for each new member; or

(B) If the new member has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of

paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at least six years of age 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 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 and 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 parts 882 and 887 of this title, the PHA.

(e) Disclosure: 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 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) Special documentation rules for assistance applicants and participants--(1) Certification of inability to meet documentation requirements. If an individual who is required to disclose his or her SSN under paragraph (a) (assistance applicants) of this section or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant must submit to the processing entity the individual's SSN and a certification executed by the individual that the SSN submitted has been assigned to the individual, but that acceptable documentation to verify the SSN cannot be provided.

(2) Acceptance or certification by processing entity. Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of

[[Page 48]]

this section and continue to process the assistant applicant's or participant's eligibility to participate in the program involved.

(3) Effect on assistance applicants. If the processing entity determines that the assistance applicant is otherwise eligible to

participate in the program, the assistance applicant may not become a participant in the program, unless it submits to the processing entity the documentation required under paragraph (f) (1) of this section within the time period specified in paragraph (g) (5) 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.

(4) Effect on participants. If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will 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) (5) of this section.

(5) Time for submitting documentation. The time period referred to in paragraphs (g) (4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g) (1) of this section is executed, except that the processing entity may, in 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 or certification. The processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraphs (a) (2), (b) (2), (d), or (g) (1) 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 the SSA regulations at 20 CFR chapter III (see, particularly, part 422).

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

(j) Form and manner of certifications. The certifications referred to in paragraphs (a) (2), (b) (2), (d), and (g) (1) of this section must be in the form and manner that HUD and the PHA prescribe in applicable administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, the certification must be executed by his or her parent or guardian or, in accordance with administrative instructions, by the individual or another person.

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

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

(a) Denial of eligibility: 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, and certification requirements specified in Sec. 5.216.

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

(1) The entity applicant does not meet the applicable EIN disclosure and verification requirements specified in Sec. 5.216; or

(2) Any of the officials of the entity applicant referred to in Sec. 5.216(c) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in Sec. 5.216.

(c) Termination of assistance or tenancy: 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

[[Page 49]]

participant does not meet the applicable SSN disclosure, documentation and verification, and certification requirements specified in Sec. 5.216.

(d) Cross reference. Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of SSNs and EINs in determinations regarding eligibility.

Procedures for Obtaining Income Information About Applicants and Participants

Sec. 5.230 Consent by assistance applicants and participants.

(a) Required consent by assistance applicants and participants. Each member of the family of an assistance applicant or participant who is at least 18 years of age, and each family head and spouse regardless of age, shall sign one or more consent forms.

(b) Consent authorization--(1) To whom and when. The assistance applicant shall submit the signed consent forms to the processing entity when eligibility under a covered program is being determined. A participant shall sign and submit consent forms at the next regularly scheduled income reexamination. Assistance applicants and participants shall be responsible for the signing and submitting of consent forms by each applicable family member.

(2) Subsequent consent forms--special cases. Participants are required to sign and submit consent forms at the next interim or regularly scheduled income reexamination under the following circumstances:

(i) When any person 18 years or older becomes a member of the family;

(ii) When a member of the family turns 18 years of age; and

(iii) As required by HUD or the PHA in administrative instructions.

(c) Consent form--contents. The consent form required by this section shall contain, at a minimum, the following:

(1) A provision authorizing HUD and PHAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and to maintain continued assistance under a covered program; and

(2) A provision authorizing HUD, PHAs, or the owner responsible for determining eligibility for or the level of assistance to verify with previous or current employers income information pertinent to the assistance applicant's or participant's eligibility for or level of assistance under a covered program;

(3) A provision authorizing HUD to request income return information from the IRS and the SSA for the sole purpose of verifying income

information pertinent to the assistance applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed.

Sec. 5.232 Penalties for failing to sign consent forms.

(a) Denial or termination of benefits. In accordance with the provisions governing the program involved, if the assistance applicant or participant, or any member of the assistance applicant's or participant's family, does not sign and submit the consent form as required in Sec. 5.230, then:

(1) The processing entity shall deny assistance to and admission of an assistance applicant;

(2) Assistance to, and the tenancy of, a participant may be terminated.

(b) Cross references. Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of income information in determinations regarding eligibility.

Sec. 5.234 Requests for information from SWICAs and Federal agencies; restrictions on use.

(a) Information available from SWICAs and Federal agencies--to whom and what. Income information will generally be obtained through computer matching agreements between HUD and a SWICA or Federal agency, or between a PHA and a SWICA, as described in paragraph (c) of this section. Certification

[[Page 50]]

that the applicable assistance applicants and participants have signed appropriate consent forms and have received the necessary Privacy Act notice is required, as follows:

(1) When HUD requests the computer match, the processing entity shall certify to HUD; and

(2) When the PHA requests the computer match, the PHA shall certify to the SWICA.

(b) Restrictions on use of information. The restrictions of 42 U.S.C. 3544(c)(2)(A) apply to the use by HUD or a PHA of income information obtained from a SWICA. The restrictions of 42 U.S.C. 3544(c)(2)(A) and of 26 U.S.C. 6103(l)(7) apply to the use by HUD or a PHA of income information obtained from the IRS or SSA.

(c) Computer matching agreements. Computer matching agreements shall specify the purpose and the legal authority for the match, and shall include a description of the records to be matched, a statement regarding disposition of information generated through the match, a description of the administrative and technical safeguards to be used in protecting the information obtained through the match, a description of the use of records, the restrictions on duplication and redisclosure, a certification, and the amount that will be charged for processing a request.

(Approved by the Office of Management and Budget under control number 2508-0008)

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

(a) Termination, denial, suspension, or reduction of assistance. The provisions of 42 U.S.C. 3544(c)(2)(B) and (C) shall govern the termination, denial, suspension, or reduction of benefits for an assistance applicant or participant based on income information obtained from a SWICA or a Federal agency. Procedures necessary to comply with these provisions are provided in paragraph (b) of this section.

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

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

(2) Upon receiving income information from a SWICA or a Federal agency, HUD or, when applicable, the PHA shall compare the information with the information about a family's income that was:

(i) Provided by the assistance applicant or participant to the PHA; or

(ii) Obtained by the owner (or mortgagee, as applicable) from the assistance applicant or participant or from his or her employer.

(3) When the income information reveals an employer or other income source that was not disclosed by the assistance applicant or participant, or when the income information differs substantially from the information received from the assistance applicant or participant or from his or her employer:

(i) HUD or, as applicable or directed by HUD, the PHA shall request the undisclosed employer or other income source to furnish any information necessary to establish an assistance applicant's or participant's eligibility for or level of assistance in a covered program. This information shall be furnished in writing, as directed to:

(A) HUD, with respect to programs under parts 215, 221, 235, 236, or 290 of this title;

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

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

(ii) HUD or the PHA may verify the income information directly with an assistance applicant or participant. Such verification procedures shall not

[[Page 51]]

include any disclosure of income information prohibited under paragraph (b)(6) of this section.

(4) HUD and the PHA shall not be required to pursue these verification procedures when the sums of money at issue are too small to raise an inference of fraud or justify the expense of independent verification and the procedures related to termination, denial,

suspension, or reduction of assistance.

(5) Based on the income information received from a SWICA or Federal agency, HUD or the PHA, as appropriate, may inform an owner (or mortgagee) that an assistance applicant's or participant's eligibility for or level of assistance is uncertain and needs to be verified. The owner (or mortgagee) shall then confirm the assistance applicant's or participant's income information by checking the accuracy of the information with the employer or other income source, or directly with the family.

(6) Nondisclosure of Income information. Neither HUD nor the PHA may disclose income information obtained from a SWICA directly to an owner (unless a PHA is the owner). Disclosure of income information obtained from the SSA or IRS is restricted under 26 U.S.C. Sec. 6103(1)(7) and 42 U.S.C. 3544.

(c) Opportunity to contest. HUD, the PHA, or the owner (or mortgagee, as applicable) shall promptly notify any assistance applicant or participant in writing of any adverse findings made on the basis of the information verified in accordance with paragraph (b) of this section. The assistance applicant or participant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. Termination, denial, suspension, or reduction of assistance shall be carried out in accordance with requirements and procedures applicable to the individual covered program, and shall not occur until the expiration of any notice period provided by the statute or regulations governing the program.

[61 FR 11113, Mar. 18, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

Sec. 5.238 Criminal and civil penalties.

Persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(1)(7) with respect to the use and disclosure of income information may be subject to civil or criminal penalties under 42 U.S.C. 3544(c)(3), 26 U.S.C. 7213(a), or 18 U.S.C. 1905.

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

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

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

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

[65 FR 16715, Mar. 29, 2000]

Subpart C_Pet Ownership for the Elderly or Persons With Disabilities

Authority: 42 U.S.C. 1701r-1 and 3535(d).

General Requirements

Sec. 5.300 Purpose.

(a) This subpart implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) as it pertains to projects for the elderly or persons with disabilities under:

- (1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner;
 - (2) Projects assisted under the programs contained in chapter VIII of this title 24; and
 - (3) The public housing program.
- (b) [Reserved]

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

[[Page 52]]

Sec. 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist persons with disabilities. Project owners and PHAs may not apply or enforce any pet rules developed under this subpart against individuals with animals that are used to assist persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(1) A project owner may require resident animals to qualify for this exclusion. Project owners must grant this exclusion if:

- (i) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability;
- (ii) The animal has been trained to assist persons with that specific disability; and
- (iii) The animal actually assists the person with a disability.

(2) [Reserved]

(b) Nothing in this subpart C:

- (1) Limits or impairs the rights of persons with disabilities;
- (2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or
- (3) Affects any authority that project owners or PHAs may have to regulate animals that assist persons with disabilities, under Federal, State, or local law.

Sec. 5.306 Definitions.

Common household pet means:

(1) For purposes of Housing programs: A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist persons with disabilities.

(2) For purposes of Public Housing programs: PHAs may define the

term ``common household pet'' under Sec. 5.318.

Elderly or disabled family means:

(1) For purposes of Housing programs: An elderly person, a person with a disability, or an elderly or disabled family for purposes of the program under which a project for the elderly or persons with disabilities is assisted or has its mortgage insured.

(2) For purposes of Public Housing programs: (i) An elderly person, a person with a disability, or an elderly or disabled family as defined in Sec. 5.403 in subpart A of this part.

(ii) [Reserved]

Housing programs means:

(1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner; and

(2) The programs contained in chapter VIII of this title 24 that assist rental projects that meet the definition of project for the elderly or persons with disabilities in this subpart C.

Project for the elderly or persons with disabilities means:

(1) For purposes of Housing programs: (i) A specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(A) That is assisted under statutory authority identified by HUD through notice;

(B) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, if not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and that is assisted or insured under one of the programs identified by HUD through notice; or

(C) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under one of the programs identified by HUD through notice.

(ii) This term does not include health and care facilities that have mortgage insurance under the National Housing

[[Page 53]]

Act. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (1)(i)(A) through (C) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

(2) For purposes of Public Housing programs: Any project assisted under title I of the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or persons with disabilities at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or disabled families. For purposes of this part, this term does not include projects assisted the Low-Rent Housing Homeownership Opportunity program or under title II of the United States Housing Act of 1937.

Project owner means an owner (including HUD, where HUD is the owner) or manager of a project for the elderly or persons with disabilities, or an agent authorized to act for an owner or manager of such housing.

Public Housing Agency (PHA) is defined in Sec. 5.100.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

Sec. 5.309 Prohibition against discrimination.

Except as otherwise specifically authorized under this subpart no project owner or PHA that owns or manages a project for the elderly or persons with disabilities may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in the person's dwelling unit.

Sec. 5.312 Notice to tenants.

(a) During the development of pet rules as described in Sec. Sec. 5.353 or 5.380, the project owner or PHA shall serve written notice on all tenants of projects for the elderly or persons with disabilities in occupancy at the time of service, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under this subpart C;

(2) Animals that are used to assist persons with disabilities are excluded from the requirements of this subpart C, as provided in Sec. 5.303;

(3) Tenants may, at any time, request a copy of any current pet rule developed under this subpart C (as well as any current proposed rule or proposed amendment to an existing rule); and

(4) Tenants may request that their leases be amended under Sec. 5.321 to permit common household pets.

(b) The project owner or PHA shall provide to each applicant for tenancy when he or she is offered a dwelling unit in a project for the elderly or persons with disabilities, the written notice specified in paragraphs (a) (1), (2), and (3) of this section.

(c) If a PHA chooses not to promulgate pet rules, the notice shall be served within 60 days of the effective date of this part. PHAs shall serve notice under this section in accordance with their normal service of notice procedures.

Sec. 5.315 Content of pet rules: General requirements.

(a) Housing programs. The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in Sec. 5.350 and may, unless otherwise noted in this subpart C, include other discretionary provisions as provided in Sec. 5.318.

(b) Public Housing programs. (1) PHAs may choose not to promulgate rules governing the keeping of common household pets or may include rules as provided in Sec. 5.318. PHAs may elect to include provisions based on those in Sec. 5.350. If they so choose, the PHAs may

[[Page 54]]

modify the provisions in Sec. 5.350 in any manner consistent with this

subpart C.

(2) If PHAs choose to promulgate pet rules, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this subpart C, and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(3) PHAs that choose not to promulgate pet rules, shall not impose, by lease modification or otherwise, any requirement that is inconsistent with the provisions of this subpart C.

(c) Use of discretion. (1) This subpart C does not define with specificity the limits of the project owners' or PHAs' discretion to promulgate pet rules. Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the pet rules should be:

(i) Reasonably related to furthering a legitimate interest of the project owner or PHA, such as the owner's or PHA's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants and in protecting and preserving the physical condition of the project and the owner's or PHA's financial interest in it; and

(ii) Drawn narrowly to achieve the owner's or PHA's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners.

(2) Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the owner or PHA may vary the rules' content among projects and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(d) Conflict with State or local law. The pet rules adopted by the project owner or PHA shall not conflict with applicable State or local law or regulations. If such a conflict may exist, the State and local law or regulations shall apply.

Sec. 5.318 Discretionary pet rules.

Pet rules promulgated by project owners and PHAs may include, but are not limited to, consideration of the following factors:

(a) Definitions of ``common household pet''--(1) For Public Housing programs. The pet rules established by a PHA may contain a reasonable definition of a common household pet.

(2) For Housing programs. Project owners wishing to define ``common household pet'' in their pet rules must use the Housing programs definition of the term in Sec. 5.306.

(b) Density of tenants and pets. (1)(i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home.

(ii) For Housing programs. Under these rules, project owners may limit the number of four-legged, warm-blooded pets to one pet in each dwelling unit or group home.

(iii) Other than the limitations described in this paragraph (b)(1), the pet rules may not limit the total number of pets allowed in the project.

(2) As used in paragraph (b)(1) of this section, the term ``group

home'' means:

(i) For purposes of Housing programs. A small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically disabled who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(ii) For purposes of Public Housing programs. A dwelling or dwelling unit for the exclusive residential use of elderly persons or persons with disabilities who are not capable of living completely independently and who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(c) Pet size and pet type. The pet rules may place reasonable limitations on

[[Page 55]]

the size, weight, and type of common household pets allowed in the project.

(d) Potential financial obligations of tenants--(1) Pet deposits. The pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. In the case of project owners, this pet deposit shall be limited to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any other financial obligation generally imposed on tenants of the project. The project owner or PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit and, for project owners, the cost of animal care facilities under Sec. 5.363. The project owner or PHA shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet (or a cat or dog in the case of project owners) in the dwelling unit.

(2) Housing programs: Maximum pet deposit. (i) Pet deposits for the following tenants shall not exceed an amount periodically fixed by HUD through notice.

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under one of the programs identified by HUD through notice.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under one of the programs identified by HUD through notice.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises.

(ii) In establishing the maximum amount of pet deposit under paragraph (d)(2)(i) of this section, HUD will consider factors such as:

(A) Projected, estimated expenses directly attributable to the presence of pets in the project;

(B) The ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and

(C) The low income status of tenants of projects for the elderly or persons with disabilities.

(iii) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed \$50 when the pet is brought onto the premises, and subsequent monthly

payments not to exceed \$10 per month until the amount of the deposit is reached.

(iv) For pet deposits subject to paragraphs (d)(2)(i)(B) and (C) of this section, the pet rules may provide for gradual accumulation of the deposit by the pet owner.

(v) The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with Sec. 5.353.

(A) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the house pet rules shall provide for gradual accumulation of any such increase not to exceed \$10 per month for all deposit amounts that are being accumulated.

(B) [Reserved]

(vi) Any pet deposit that is established within the parameters set forth by paragraph (d)(2) of this section shall be deemed reasonable for purposes of this subpart C.

(3) Public Housing programs: Maximum pet deposit. The maximum amount of pet deposit that may be charged by the PHA, on a per dwelling unit basis, shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as the PHA may require. The pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(4) Housing programs: Waste removal charge. The pet rules may permit the project owner to impose a separate waste removal charge of up to five dollars (\$5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar (\$5) limitation shall

[[Page 56]]

be deemed to be a reasonable amount for the purposes of this subpart C.

(5) The pet deposit (for Housing and Public Housing programs) and waste removal charge (for Housing programs) are not part of the rent payable by the tenant. Except as provided in paragraph (d) of this section for Housing programs and, paragraph (d) of this section and 24 CFR 966.4(b) for Public Housing programs, project owners or PHAs may not prescribe pet rules that impose additional financial obligations on pet owners that are designed to compensate the project owner or PHA for costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners:

(i) To obtain liability or other insurance to cover damage caused by the pet;

(ii) To agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or

(iii) To indemnify the project owner for pet-related litigation and attorney's fees.

(e) Standards of pet care. The pet rules may prescribe standards of pet care and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. The pet rules may not require pet owners to have any pet's vocal cords removed. Permitted rules may:

(1) Bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building.

(2) Require the pet owner to control noise and odor caused by a pet.

(3) Housing programs: Project owners may also:

(i) Require pet owners to have their dogs and cats spayed or neutered; and

(ii) Limit the length of time that a pet may be left unattended in a dwelling unit.

(f) Pet licensing. The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(g) Public Housing programs: Designated pet areas. (1) PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings, or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary (or both) to accommodate such applicants for tenancy or to meet the changing needs of existing tenants.

(2) Project owners may not designate pet areas in buildings in their pet rules.

(h) Pets temporarily on the premises. The pet rules may exclude from the project pets not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of paragraph (h) of this section, pets are to be kept ``temporarily'' if they are to be kept in the tenant's dwelling accommodations for a period of less than 14 consecutive days and nights. HUD, however, encourages project owners and PHAs to permit the use of a visiting pet program sponsored by a humane society, or other nonprofit organization.

Sec. 5.321 Lease provisions.

(a) Lease provisions. (1) PHAs which have established pet rules and project owners shall ensure that the leases for all tenants of projects for the elderly or persons with disabilities:

(i) State that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this subpart and the pet rules);

(ii) Shall incorporate by reference the pet rules promulgated by the project owner or PHA;

[[Page 57]]

(iii) Shall provide that the tenant agrees to comply with these rules; and

(iv) Shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner's tenancy (or both), in accordance with the provisions of this subpart and applicable regulations and State or local law.

(2) [Reserved]

(b) Where a PHA has not established pet rules, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets, and shall state that owning and keeping of such pets will be subject to the general

obligations imposed on the PHA and tenants in the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

Sec. 5.324 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or persons with disabilities who is admitted on or after the date on which this subpart C is implemented shall contain the lease provisions described in Sec. 5.321 and, if applicable, Sec. 5.360. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in Sec. 5.321 and, if applicable, Sec. 5.360:

(a) For Housing programs:

(1) Upon renewal of the lease and in accordance with any applicable regulation; and

(2) When a Housing program tenant registers a common household pet under Sec. 5.350

(b) For Public Housing programs:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation; and

(2) When a Public Housing program tenant wishes to own or keep a common household pet in his or her unit.

Sec. 5.327 Nuisance or threat to health or safety.

Nothing in this subpart C prohibits a project owner, PHA, or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

Pet Ownership Requirements for Housing Programs

Sec. 5.350 Mandatory pet rules for housing programs.

Mandatory rules. The project owner must prescribe the following pet rules:

(a) Inoculations. The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(b) Sanitary standards. (1) The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may:

(i) Designate areas on the project premises for pet exercise and the deposit of pet waste;

(ii) Forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas;

(iii) Require pet owners to remove and properly dispose of all removable pet waste; and

(iv) Require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes.

(2) In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for

the disposal of pet waste and used litter.

(c) Pet restraint. The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the common areas of the project.

(d) Registration. (1) The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought onto the project premises, and must update the registration at least

[[Page 58]]

annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet.

(2) The project owner may require the pet owner to provide additional information necessary to ensure compliance with any discretionary rules prescribed under Sec. 5.318, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them.

(3) The pet rules shall permit the project owner to refuse to register a pet if:

(i) The pet is not a common household pet;

(ii) The keeping of the pet would violate any applicable house pet rule;

(iii) The pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or

(iv) The project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations.

(4) The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants.

(5) The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of Sec.

5.353(f)(1)(i) or (ii). The notice of refusal to register a pet may be combined with a notice of pet violation as required in Sec. 5.356.

Sec. 5.353 Housing programs: Procedure for development of pet rules.

(a) General. Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in Sec. Sec. 5.318 and 5.350.

(b) Development and notice of proposed pet rules. Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or persons with disabilities. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall:

(1) Include the text of the proposed rules;

(2) State that tenants or tenant representatives may submit written comments on the rules; and

(3) State that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules.

(4) The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) Tenant consultation. Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) Development and notice of final pet rules. The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings.

[[Page 59]]

The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this subpart C, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) Amendment of pet rules. The project owner may amend the pet rules at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) Service of notice. (1) The project owner must serve the notice required under this section by:

(i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or

(ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or

(iii) For service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of paragraph (f) of this section, a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered

or mailed, or in the case of service by posting, on the day that all notices are initially posted.

Sec. 5.356 Housing programs: Pet rule violation procedures.

(a) Notice of pet rule violation. If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule violation on the pet owner in accordance with Sec. 5.353(f)(1)(i) or (ii). The notice of pet rule violation must:

- (1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;
- (2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;
- (3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and
- (4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

(b) (1) Pet rule violation meeting. If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) Notice for pet removal. If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with Sec. 5.353(f)(1)(i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

- (i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

[[Page 60]]

- (ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

- (iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) Initiation of procedures to remove a pet or terminate the pet owner's tenancy. (1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:

- (i) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner); and

- (ii) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the terms of the lease and

applicable regulations.

(2) The project owner may initiate procedures to remove a pet under Sec. 5.327 at any time, in accordance with the provisions of applicable State or local law.

Sec. 5.359 Housing programs: Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or persons with disabilities may reject a unit offered by a project owner if the unit is in close proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this subpart C imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

Sec. 5.360 Housing programs: Additional lease provisions.

(a) Inspections. In addition to other inspections permitted under the lease, the leases for all Housing program tenants of projects for the elderly or persons with disabilities may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(b) Emergencies. (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days.

(2) The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in Sec. 5.363.

(3) The project owner may place a provision in tenant leases permitting

the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of Sec. 5.363. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

Sec. 5.363 Housing programs: Protection of the pet.

(a) If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under Sec. 5.350(d)(1)(iii).

(b) If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or designated agent of such an authority) and request the removal of the pet.

(c) If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in Sec. 5.360(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days.

(d) The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

Pet Ownership Requirements for Public Housing Programs

Sec. 5.380 Public housing programs: Procedure for development of pet rules.

PHAs that choose to promulgate pet rules shall consult with tenants of projects for the elderly or persons with disabilities administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

Subpart D_Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

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

Source: 61 FR 5665, Feb. 13, 1996, unless otherwise noted.

Sec. 5.400 Applicability.

This part applies to public housing and Section 8 programs.

[61 FR 5665, Feb. 13, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

Sec. 5.403 Definitions.

Annual contributions contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Applicant means a person or a family that has applied for housing assistance.

Disabled family means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

Displaced family means a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster

[[Page 62]]

declared or otherwise formally recognized pursuant to Federal disaster relief laws.

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

Family includes but is not limited to:

(1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

(2) An elderly family;

(3) A near-elderly family;

(4) A disabled family;

(5) A displaced family;

(6) The remaining member of a tenant family; and

(7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons; and

(3) Would not be living in the unit except to provide the necessary supportive services.

Near-elderly family means a family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Person with disabilities:

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

[61 FR 5665, Feb. 13, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000]

Subpart E Restrictions on Assistance to Noncitizens

Authority: 42 U.S.C. 1436a and 3535(d).

Sec. 5.500 Applicability.

(a) Covered programs/assistance. This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart E is applicable to financial assistance provided under:

- (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);
- (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);
- (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and
- (4) The United States Housing Act of 1937 (42 U.S. C. 1437 et seq.) which covers:
 - (i) HUD's Public Housing Programs;

[[Page 63]]

- (ii) The Section 8 Housing Assistance Programs; and
- (iii) The Housing Development Grant Programs (with respect to low income units only).

(b) Covered individuals and entities--(1) Covered individuals/ persons and families. The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) Covered entities. The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term "responsible

entity'' is used in this subpart E to refer collectively to these entities, and is further defined in Sec. 5.504.

Sec. 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

Sec. 5.504 Definitions.

(a) The definitions 1937 Act, HUD, Public Housing Agency (PHA), and Section 8 are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See Sec. 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of ``Section 8 Covered Programs'' in this section.)

Responsible entity means the person or entity responsible for

administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

[[Page 64]]

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in Sec. 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

Sec. 5.506 General provisions.

(a) Restrictions on assistance. Financial assistance under a Section 214 covered program is restricted to:

(1) Citizens; or

(2) Noncitizens who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) Family eligibility for assistance. (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in Sec. Sec. 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in Sec. Sec. 5.516 and 5.518.

(c) Preferences. Citizens of the Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau who are eligible for assistance under paragraph (a)(2) of this section are entitled to receive local preferences for housing assistance, except that, within Guam, such citizens who have such local preference will not be entitled to housing assistance in preference to any United States citizen or national resident therein who is otherwise eligible for such assistance.

[61 FR 5202, Feb. 9, 1996, as amended at 67 FR 65273, Oct. 23, 2002]

Sec. 5.508 Submission of evidence of citizenship or eligible

immigration status.

(a) General. Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of Sec. Sec. 5.516 and 5.518 shall apply.

(b) Evidence of citizenship or eligible immigration status. Each family member, regardless of age, must submit the following evidence to the responsible entity.

(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 may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(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, the evidence consists of:

- (i) A signed declaration of eligible immigration status; and
- (ii) Proof of age document.

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

[[Page 65]]

- (i) A signed declaration of eligible immigration status;
- (ii) One of the INS documents referred to in Sec. 5.510; and
- (iii) A signed verification consent form.

(c) Declaration. (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) For Housing covered programs: The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) Verification consent form--(1) Who signs. Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) Notice of release of evidence by responsible entity. The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status

of the individual.

(3) Notice of release of evidence by HUD. The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) Individuals who do not contend that they have eligible status. If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under Sec. Sec. 5.516 and 5.518, or Sec. 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) Notification of requirements of Section 214--(1) When notice is to be issued. Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) Applicant's notice. The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) Notice to tenants. The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular reexamination of income, but not later than one year following June 19, 1995.

(iii) Timing of mortgagor's notice. A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) Form and content of notice. The notice shall:

[[Page 66]]

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see Sec. 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of Sec. Sec. 5.516 and 5.518.

(g) When evidence of eligible status is required to be submitted. The responsible entity shall require evidence of eligible status to be

submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) Applicants. For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see Sec. 5.512(a)).

(2) Tenants. For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) New occupants of assisted units. For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) Changing participation in a HUD program. Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) One-time evidence requirement for continuous occupancy. For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) Extensions of time to submit evidence of eligible status--(1) When extension must be granted. The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under Sec. 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) Thirty-day extension period. Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) Grant or denial of extension to be in writing. The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not

[[Page 67]]

exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) Failure to submit evidence or to establish eligible status. If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of Sec. Sec. 5.514, 5.516, and 5.518.

(ii) [Reserved]

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60538, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

Sec. 5.510 Documents of eligible immigration status.

(a) General. A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) Acceptable evidence of eligible immigration status. Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in Sec. 5.506(a) for the specific immigration status claimed by the individual.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

Sec. 5.512 Verification of eligible immigration status.

(a) General. Except as described in paragraph (b) of this section and Sec. 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with Sec. 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with Sec. 5.508.

(b) PHA election to provide assistance before verification. A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) Primary verification--(1) Automated verification system. Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) Failure of primary verification to confirm eligible immigration status. If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) Secondary verification--(1) Manual search of INS records. Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary

verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) Secondary verification initiated by responsible entity. Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) Failure of secondary verification to confirm eligible immigration status. If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in Sec. 5.514(d), which includes notification of the right

[[Page 68]]

to appeal to the INS of the INS finding on immigration status (see Sec. 5.514(d)(4)).

(e) Exemption from liability for INS verification. The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

Sec. 5.514 Delay, denial, reduction or termination of assistance.

(a) General. Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) Restrictions on delay, denial, reduction or termination of assistance. (1) Restrictions on reduction, denial or termination of assistance for applicants and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under Sec. 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with Sec. 5.520; or

(vi) Assistance for a mixed family is continued in accordance with Sec. Sec. 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with Sec. Sec. 5.516 and 5.518.

(2) Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants. In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) Events causing denial or termination of assistance. (1) General. Assistance to an applicant shall be denied, and a tenant's assistance

shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in Sec. 5.508(g) or by the expiration of any extension granted in accordance with Sec. 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

(2) Termination of assisted occupancy. For termination of assisted occupancy, see paragraph (i) of this section.

(d) Notice of denial or termination of assistance. The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under Sec. 5.520;

[[Page 69]]

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in Sec. Sec. 5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) Appeal to the INS. (1) Submission of request for appeal. Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request

for appeal and proof of mailing.

(2) Documentation to be submitted as part of appeal to INS. The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) Decision by INS--(i) When decision will be issued. The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) Notification of INS decision and of informal hearing procedures. When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS. Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) Informal hearing. (1) When request for hearing is to be made. After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

(2) Informal hearing procedures--(i) Tenants assisted under a Section 8 covered program: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) For Section 8 Moderate Rehabilitation assistance: 24 CFR part 882;

(B) For Section 8 tenant-based assistance: 24 CFR part 982; or

(C) For Section 8 project-based certificate program: 24 CFR part 983.

(ii) Tenants assisted under any other Section 8 covered program or a Public Housing covered program: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

[[Page 70]]

(iii) Families under Housing covered programs and applicants for assistance under all covered programs. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

(A) Hearing before an impartial individual. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) Examination of evidence. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) Presentation of evidence and arguments in support of eligible status. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) Controverting evidence of the responsible entity. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) Representation. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) Interpretive services. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) Hearing to be recorded. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) Hearing decision. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) Judicial relief. A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) Retention of documents. The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

- (1) The application for financial assistance;
 - (2) The form completed by the family for income reexamination;
 - (3) Photocopies of any original documents (front and back), including original INS documents;
 - (4) The signed verification consent form;
 - (5) The INS verification results;
 - (6) The request for an INS appeal;
 - (7) The final INS determination;
 - (8) The request for an informal hearing; and
 - (9) The final informal hearing decision.
- (i) Termination of assisted occupancy. (1) Under Housing covered programs, and in the Section 8 covered programs other than the Section 8

Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

[[Page 71]]

(ii) The responsible entity and tenant entering into a new lease without financial assistance.

(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

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

(a) Assistance available for tenant mixed families--(1) General. Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in Sec. 5.514. There are three types of preservation assistance:

- (i) Continued assistance (see paragraph (a) of Sec. 5.518);
- (ii) Temporary deferral of termination of assistance (see paragraph (b) of Sec. 5.518); or
- (iii) Prorated assistance (see Sec. 5.520, a mixed family must be provided prorated assistance if the family so requests).

(2) Availability of assistance--(i) For Housing covered programs: One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) For Section 8 or Public Housing covered programs. One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.

(b) Assistance available for applicant mixed families. Prorated assistance is also available for mixed families applying for assistance as provided in Sec. 5.520.

(c) Assistance available to other families in occupancy. 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 have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

(1) For Housing covered programs: Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) For Section 8 or Public Housing covered programs: The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(d) Section 8 covered programs: Discretion afforded to provide certain family preservation assistance--(1) Project owners. With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary

[[Page 72]]

deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.

(2) PHAs. The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of Sec. 5.518. However, the PHA must offer prorated assistance to eligible families.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

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

(a) Continued assistance. (1) General. A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in Sec. 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any

spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) Proration of continued assistance. A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in Sec. 5.520.

(b) Temporary deferral of termination of assistance--(1) Eligibility for this type of assistance. If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, 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 one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

[[Page 73]]

(3) Time limit on deferral period. If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) Notification requirements for beginning of each deferral period. At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in

finding, other affordable housing.

(5) Determination of availability of affordable housing at end of each deferral period. (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) For Housing covered programs: Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) For Section 8 or Public Housing covered programs: Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) Option to select proration of assistance at end of deferral period. A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) Notification of decision on family preservation assistance. A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

Sec. 5.520 Proration of assistance.

(a) Applicability. This section applies to a mixed family other than a family receiving continued assistance, or

[[Page 74]]

other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) Method of prorating assistance for Housing covered programs--(1) Proration under Rent Supplement Program. If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) Proration under Section 235 Program. If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) Proration under Section 236 Program without the benefit of additional assistance. If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) Proration under Section 236 Program with the benefit of additional assistance. If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) Method of prorating assistance for Section 8 covered programs--(1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program. For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) Step 1. Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) Step 2. Determine total tenant payment in accordance with

section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) Step 3. Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) Step 4. Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) Prorated housing assistance. The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) No effect on contract rent. Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

[[Page 75]]

(2) Assistance for a Section 8 voucher tenancy or over-FMR tenancy. For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) Step 1. Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) Step 2. Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) Prorated housing assistance. The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) No effect on rent to owner. Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) Method of prorating assistance for Public Housing covered programs. The PHA shall prorate the family's assistance by:

(1) Step 1. Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) Step 2. Subtracting the total tenant payment from a HUD-supplied ``public housing maximum rent'' applicable to the unit or the PHA. (This ``maximum rent'' shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible (``family maximum subsidy'').

(3) Step 3. Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (``eligible family member''). The subsidy per eligible family member is the ``member maximum subsidy''.

(4) Step 4. Multiplying the member maximum subsidy by the number of

family members who have citizenship or eligible immigration status ('`eligible family members'').

(5) Step 5. The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ('`eligible subsidy''). The family's rent is the ``public housing maximum rent'' minus the amount of the eligible subsidy.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 64 FR 13056, Mar. 16, 1999]

Sec. 5.522 Prohibition of assistance to noncitizen students.

(a) General. The provisions of Sec. Sec. 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) Family of noncitizen students. (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

Sec. 5.524 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24

[[Page 76]]

CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

Sec. 5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) Protection from liability for responsible entities. Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) Protection from liability for State and local government agencies and officials. State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in Sec. 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

[64 FR 25732, May 12, 1999]

Sec. 5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

Subpart F Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

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

Source: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

Sec. 5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

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

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

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

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences; and

(3) Owner reexamination of family income and composition;

(d) Determining adjusted income, as provided in Sec. 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); 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 paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs; and

(e) Determining earned income disregard for persons with disabilities, as provided in Sec. 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive

Housing Program (McKinney Act

[[Page 77]]

Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

[66 FR 6222, Jan. 19, 2001]

Sec. 5.603 Definitions.

As used in this subpart:

(a) Terms found elsewhere in part 5--(1) Subpart A. The terms 1937 Act, elderly person, public housing, public housing agency (PHA), responsible entity and Section 8 are defined in Sec. 5.100.

(2) Subpart D. The terms ``disabled family'', ``elderly family'', ``family'', ``live-in aide'', and ``person with disabilities'' are defined in Sec. 5.403.

(b) The following terms shall have the meanings set forth below:

Adjusted income. See Sec. 5.611.

Annual income. See Sec. 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except 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.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

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

Extremely low income family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

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

Imputed welfare income. See Sec. 5.615.

Low income family. A family whose annual income does not exceed 80

percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of,

[[Page 78]]

any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall 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 important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term ``net family assets'' does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term ``owner'' shall also include a ``borrower'' as defined in part 891 of this title.

Responsible entity. For Sec. 5.611, in addition to the definition of ``responsible entity'' in Sec. 5.100, and for Sec. 5.617, in addition to only that part of the definition of ``responsible entity'' in Sec. 5.100 which addresses the Section 8 program covered by Sec. 5.617 (public housing is not covered by Sec. 5.617), ``responsible entity'' means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable ``State'' or ``unit of general local

government'' or ``nonprofit organization'' as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the ``Recipient'' as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the ``recipient'' as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the ``Owner'' as defined in 24 CFR 891.205;

(8) 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

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the ``owner'' as defined in 24 CFR 891.305.

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

Total tenant payment. See Sec. 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

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

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

[[Page 79]]

variations are necessary because of unusually high or low family incomes.

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).

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

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 6223, Jan. 19, 2001; 67 FR 47432, July 18, 2002]

Family Income

Sec. 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 anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
 - (3) Which are not specifically excluded in paragraph (c) 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) Annual income includes, but is not limited to:
- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
 - (2) The 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. 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;
 - (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
 - (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
 - (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
 - (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.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c) (7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b) (5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) 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);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

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

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State 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;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) 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;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

[[Page 81]]

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) 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;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute 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 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

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

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 67 FR 47432, July 18, 2002]

Sec. 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in Sec. 5.100 and Sec. 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

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

(1) \$480 for each dependent;

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

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

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

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with

disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the 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, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in Sec. 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

[66 FR 6223, Jan. 19, 2001]

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

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

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

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

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving

[[Page 82]]

assistance in these housing assistance programs.

[65 FR 16717, Mar. 29, 2000]

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

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

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

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

Economic self-sufficiency program. See definition at Sec. 5.603.

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

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole

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

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

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

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

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

(c) Imputed welfare income.

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

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

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

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

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

(d) Review of PHA decision. (1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant

[[Page 83]]

does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the

amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

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

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

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

[65 FR 16717, Mar. 29, 2000]

Sec. 5.617 Self-sufficiency incentives for persons with disabilities--
Disallowance of increase in annual income.

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

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

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

[[Page 84]]

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income--(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c) (1) or (c) (2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c) (1) and a maximum of twelve months for disallowance under paragraph (c) (2), during the 48 month period starting from the initial exclusion under paragraph (c) (1) of this section.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

[66 FR 6223, Jan. 19, 2001, as amended at 67 FR 6820, Feb. 13, 2002]

Family Payment

Sec. 5.628 Total tenant payment.

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

- (1) 30 percent of the family's monthly adjusted income;
- (2) 10 percent of the family's monthly income;

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

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

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

[65 FR 16718, Mar. 29, 2000]

[[Page 85]]

Sec. 5.630 Minimum rent.

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

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

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

(b) Financial hardship exemption from minimum rent. (1) When is family exempt from minimum rent? The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

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

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

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

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

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

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

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

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

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

(ii) All section 8 programs. (A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

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

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

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

(B) If the responsible entity determines a qualifying financial hardship

[[Page 86]]

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

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

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

[65 FR 16718, Mar. 29, 2000]

Sec. 5.632 Utility reimbursements.

(a) Applicability. This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program

(for distribution of a voucher housing assistance payment that exceeds rent to owner, see Sec. 982.514(b) of this title);

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

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

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

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

(i) To the family, or

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

[65 FR 16719, Mar. 29, 2000]

Sec. 5.634 Tenant rent.

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

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

[65 FR 16719, Mar. 29, 2000]

Section 8 Project-Based Assistance: Occupancy Requirements

Sec. 5.653 Section 8 project-based assistance programs: Admission-- Income-eligibility and income-targeting.

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

(b) Who is eligible?

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

(2) Low income limit. No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-based voucher program under part 983 of this title.)

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

be available for leasing only by families that are extremely low income families at the time of admission.

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

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

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

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

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

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

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

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

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

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

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

with income-eligibility and income-targeting requirements.

[65 FR 16719, Mar. 29, 2000]

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

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

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

[[Page 88]]

and income-targeting requirements in Sec. 5.653.

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

(3) Amount of income. The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of Sec. 5.653(c).

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

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

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

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

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

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

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

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

(C) Modification of the Affirmative Fair Housing Marketing Plan, in

accordance with Sec. 108.25 of this title,

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

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

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

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

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

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

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

(5) Preference for single persons who are elderly, displaced, homeless or persons

[[Page 89]]

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

[65 FR 16720, Mar. 29, 2000]

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

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

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

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

[65 FR 16720, Mar. 29, 2000]

Sec. 5.659 Family information and verification.

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

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

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

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

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

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

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

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

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

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

(1) Reported family annual income;

(2) The value of assets;

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

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

[65 FR 16721, Mar. 29, 2000]

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

(a) Applicability. This section describes when a Section 8 owner may lease a Section 8 unit to police or other

security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

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

(i) A police officer, or

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Housing assistance payment and rent. (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and

HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the

[[Page 91]]

unit, or whether the cost of security services should be borne by the owner from other project income.

[65 FR 16721, Mar. 29, 2000]

Effective Date Note: At 65 FR 16721, Mar. 29, 2000, Sec. 5.661 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart G Physical Condition Standards and Inspection Requirements

Source: 63 FR 46577, Sept. 1, 1998, unless otherwise noted.

Sec. 5.701 Applicability.

(a) This subpart applies to housing assisted under the HUD programs listed in 24 CFR 200.853(a).

(b) This subpart applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the programs listed in 24 CFR 200.853(b).

(c) This subpart also applies to Public Housing (housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act).

(d) For purposes of this subpart, the term ``HUD housing'' means the types of housing listed in paragraphs (a), (b), and (c) of this section.

[63 FR 46577, Sept. 1, 1998, as amended at 65 FR 77240, Dec. 8, 2000]

Sec. 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in Sec. 5.701(a), mortgagors of housing described in Sec. 5.701(b), and PHAs and other entities approved by HUD owning housing described in Sec. 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) Site. The site components, such as fencing and retaining walls,

grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) Building exterior. Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) Building systems. Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) Dwelling units. (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-

[[Page 92]]

wired smoke detector, in proper working condition, on each level of the unit.

(e) Common areas. The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) Health and safety concerns. All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings

must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) Compliance with State and local codes. The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

Sec. 5.705 Uniform physical inspection requirements.

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually in accordance with HUD-prescribed physical inspection procedures. The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice.

[65 FR 77240, Dec. 8, 2000]

Subpart H Uniform Financial Reporting Standards

Sec. 5.801 Uniform financial reporting standards.

(a) Applicability. This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437l) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

[[Page 93]]

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which

includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

- (i) Section 202 Program of Supportive Housing for the Elderly;
- (ii) Section 811 Program of Supportive Housing for Persons with Disabilities;
- (iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);
- (iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);
- (v) Section 213 of the NHA (Cooperative Housing Insurance);
- (vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
- (vii) Section 221(d) (3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);
- (viii) Section 221(d) (4) of the NHA (Housing for Moderate Income and Displaced Families);
- (ix) Section 231 of the NHA (Housing for Elderly Persons);
- (x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);
- (xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
- (xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
- (xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(5) HUD-approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees, and loan correspondents.

(b) Submission of financial information. Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

- (1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;
- (2) Submitted electronically to HUD through the internet, or in such other electronic format designated by HUD, or in such non-electronic format as HUD may allow if the burden or cost of electronic reporting is determined by HUD to be excessive; and
- (3) Submitted in such form and substance as prescribed by HUD.

(c) Annual financial report filing dates. (1) For entities listed in paragraphs (a)(1) and (2) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law (for public housing agencies, see also 24 CFR 903.33).

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 90 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(3) For those entities listed in paragraph (a)(5) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section must be submitted to HUD annually, no later than 90 days after the end of the fiscal year (or within an

extended time if an extension is granted at the sole discretion of the Secretary). An extension request must be received no earlier than 45 days and no later than 15 days prior to the submission deadline.

(d) Reporting compliance dates. Entities (or individuals) that are subject to the reporting requirements in this section must commence compliance with these requirements as follows:

[[Page 94]]

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (a)(4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(3) The requirements of this section apply to the entities listed in paragraph (a)(5) of this section with fiscal years ending on or after September 30, 2002. Audited financial statements submitted by lenders with fiscal years ending before September 30, 2002, may either be submitted in paper or electronically at the lenders' option. Audited financial statements submitted by lenders with fiscal years ending on or after September 30, 2002, must be submitted electronically.

(e) Limitation on changing fiscal years. To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following October 1, 1998.

(f) Responsibility for submission of financial report. The responsibility for submission of the financial report due to HUD under this section rests with the individuals and entities listed in paragraph (a) of this section.

[63 FR 46591, Sept. 1, 1998, as amended at 64 FR 1505, Jan. 11, 1999; 64 FR 33755, June 24, 1999; 65 FR 16295, Mar. 27, 2000; 67 FR 53451, Aug. 15, 2002]

Subpart I_Preventing Crime in Federally Assisted Housing_Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

Source: 66 FR 28792, May 24, 2001, unless otherwise noted.

General

Sec. 5.850 Which subsidized housing is covered by this subpart?

(a) If you are the owner of federally assisted housing, your federally assisted housing is covered, except as provided in paragraph (b) or (c) of this section.

(b) If you are operating public housing, this subpart does not apply, but similar provisions applicable to public housing units are found in parts 960 and 966 of this title. If you administer tenant-based assistance under Section 8 or you are the owner of housing assisted with tenant-based assistance under Section 8, this subpart does not apply to you, but similar provisions that do apply are located in part 982 of this title.

(c) If you own or administer housing assisted by the Rural Housing Administration under section 514 or section 515 of the Housing Act of 1949, this subpart does not apply to you.

Sec. 5.851 What authority do I have to screen applicants and to evict tenants?

(a) Screening applicants. You are authorized to screen applicants for the programs covered by this part. The provisions of this subpart implement statutory directives that either require

[[Page 95]]

or permit you to take action to deny admission to applicants under certain circumstances in accordance with established standards, as described in this subpart. The provisions of this subpart do not constrain your authority to screen out applicants who you determined are unsuitable under your standards for admission.

(b) Terminating tenancy. You are authorized to terminate tenancy of tenants, in accordance with your leases and landlord-tenant law for the programs covered by this part. The provisions of this subpart implement statutory directives that either require or permit you to terminate tenancy under certain circumstances, as provided in 42 U.S.C. 1437f, 1437n, and 13662, in accordance with established standards, as described in this subpart. You retain authority to terminate tenancy on any basis that is otherwise authorized.

Sec. 5.852 What discretion do I have in screening and eviction actions?

(a) General. If the law and regulation permit you to take an action but do not require action to be taken, you may take or not take the action in accordance with your standards for admission and eviction. Consistent with the application of your admission and eviction standards, you may consider all of the circumstances relevant to a particular admission or eviction case, such as:

- (1) The seriousness of the offending action;
- (2) The effect on the community of denial or termination or the failure of the responsible entity to take such action;
- (3) The extent of participation by the leaseholder in the offending action;
- (4) The effect of denial of admission or termination of tenancy on household members not involved in the offending action;

(5) The demand for assisted housing by families who will adhere to lease responsibilities;

(6) The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action; and

(7) The effect of the responsible entity's action on the integrity of the program.

(b) Exclusion of culpable household member. You may require an applicant (or tenant) to exclude a household member in order to be admitted to the housing program (or continue to reside in the assisted unit), where that household member has participated in or been culpable for action or failure to act that warrants denial (or termination).

(c) Consideration of rehabilitation. (1) In determining whether to deny admission or terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, you 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. 13661). For this purpose, you may require the applicant or 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.

(2) If rehabilitation is not an element of the eligibility determination (see Sec. 5.854(a)(1) for the case where it must be considered), you may choose not to consider whether the person has been rehabilitated.

(d) Length of period of mandatory prohibition on admission. If a statute requires that you prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, you may apply that prohibition for a longer period of time.

(e) Nondiscrimination limitation. Your admission and eviction actions must be consistent with fair housing and equal opportunity provisions of Sec. 5.105.

Sec. 5.853 Definitions.

(a) Terms found elsewhere. The following terms are defined in subpart A of this part: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, premises, public housing, public

[[Page 96]]

housing agency (PHA), Section 8, violent criminal activity.

(b) Additional terms used in this part are as follows.

Currently engaging in. With respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, currently engaging in means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.

Owner. The owner of federally assisted housing.

Responsible entity. For the Section 8 project-based certificate or project-based voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an Annual Contributions Contract with HUD. For all other federally assisted

housing, the responsible entity means the owner of the housing.

Denying Admissions

Sec. 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity?

(a) You must prohibit admission to your federally assisted housing of an applicant for three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, you may admit the household if:

(1) The evicted household member who engaged in drug-related criminal activity has successfully completed an approved supervised drug rehabilitation program; or

(2) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(b) You must establish standards that prohibit admission of a household to federally assisted housing if:

(1) You determine that any household member is currently engaging in illegal use of a drug; or

(2) You determine that you have reasonable cause to believe that a household member's illegal use or a pattern of illegal use of a drug may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Sec. 5.855 When am I specifically authorized to prohibit admission of individuals who have engaged in criminal activity?

(a) You may prohibit admission of a household to federally assisted housing under your standards if you determine that any household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

(b) You may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (reasonable time).

(c) If you previously denied admission to an applicant because of a determination concerning a member of the household under paragraph (a) of this section, you may reconsider the applicant if you have sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, determined by you, before the admission decision.

(1) You would have sufficient evidence if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which you verified. (See subpart J of this part for one method of checking criminal records.)

(2) For purposes of this section, a household member is currently engaged in the criminal activity if the person

[[Page 97]]

has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

Sec. 5.856 When must I prohibit admission of sex offenders?

You must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, you must perform necessary criminal history background checks in the State where the housing is located and in other States where the household members are known to have resided. (See Sec. 5.905.)

Sec. 5.857 When must I prohibit admission of alcohol abusers?

You must establish standards that prohibit admission to federally assisted housing if you determine you have reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

Terminating Tenancy

Sec. 5.858 What authority do I have to evict drug criminals?

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine 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.

Sec. 5.859 When am I specifically authorized to evict other criminals?

(a) Threat to other residents. The lease must provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
- (2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.

(b) Fugitive felon or parole violator. The lease must provide that you may terminate the tenancy during the term of the lease if a tenant is:

- (1) 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
- (2) Violating a condition of probation or parole imposed under

Federal or State law.

Sec. 5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Sec. 5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine 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 a criminal conviction standard of proof of the activity.

Subpart J Access to Criminal Records and Information

Source: 66 FR 28794, May 24, 2001, unless otherwise noted.

[[Page 98]]

Sec. 5.901 To what criminal records and searches does this subpart apply?

(a) General criminal records searches. This subpart applies to criminal conviction background checks by PHAs that administer the Section 8 and public housing programs when they obtain criminal conviction records, under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)), from a law enforcement agency to prevent admission of criminals to public housing and Section 8 housing and to assist in lease enforcement and eviction.

(b) Sex offender registration records searches. This subpart applies to PHAs that administer the Section 8 and public housing programs when they obtain sex offender registration information from State and local agencies, under the authority of 42 U.S.C. 13663, to prevent admission of dangerous sex offenders to federally assisted housing.

(c) Excluded records searches. The provisions of this subpart do not apply to criminal conviction information or sex offender information searches by a PHA or others of information from law enforcement agencies or other sources other than as provided under this subpart.

Sec. 5.902 Definitions.

(a) Terms found elsewhere. The following terms used in this subpart are defined in subpart A of this part: 1937 Act, drug, federally assisted housing, household, HUD, public housing, public housing agency (PHA), Section 8.

(b) Additional terms used in this subpart are as follows:

Adult. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

Covered housing. Public housing, project-based assistance under section 8 (including new construction and substantial rehabilitation projects), and tenant-based assistance under section 8.

Law enforcement agency. The National Crime Information Center (NCIC), police departments and other law enforcement agencies that hold criminal conviction records.

Owner. The owner of federally assisted housing.

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

Sec. 5.903 What special authority is there to obtain access to criminal records?

(a) Authority. If you are a PHA that administers the Section 8 program and/or the public housing program, this section authorizes you to obtain criminal conviction records from a law enforcement agency, as defined in Sec. 5.902. You may use the criminal conviction records that you obtain from a law enforcement agency under the authority of this section to screen applicants for admission to covered housing programs and for lease enforcement or eviction of families residing in public housing or receiving Section 8 project-based assistance.

(b) Consent for release of criminal conviction records. (1) In order to obtain access to records under this section, as a responsible entity you must require every applicant family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(c) Procedure for PHA. (1) When the law enforcement agency receives your request, the law enforcement agency must promptly release to you a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC

[[Page 99]]

records must be provided in accordance with NCIC procedures.

(2) The law enforcement agency may charge you a reasonable fee for releasing criminal conviction records.

(d) Owner access to criminal records--(1) General. (i) If an owner submits a request to the PHA for criminal records concerning an adult member of an applicant or resident household, in accordance with the provisions of paragraph (d) of this section, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the PHA.

(ii) If the PHA receives criminal conviction records requested by an owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction, as applicable in accordance with HUD regulations and the owner criteria.

(iii) The PHA must notify the owner whether the PHA has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (e)(2)(ii) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(2) Screening. If you are an owner of covered housing, you may request that the PHA in the jurisdiction of the property obtain criminal conviction records of an adult household member from a law enforcement agency on your behalf for the purpose of screening applicants.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) Your request must include your standards for prohibiting admission of drug criminals in accordance with Sec. 5.854, and for prohibiting admission of other criminals in accordance with Sec. 5.855.

(3) Eviction or lease enforcement. If you are an owner of a unit with Section 8 project-based assistance, you may request that the PHA in the location of the project obtain criminal conviction records of a household member from an appropriate law enforcement agency on your behalf in connection with lease enforcement or eviction.

(i) Your request must include a copy of the consent form, signed by the household member.

(ii) If you intend to use the PHA determination regarding any such criminal conviction records in connection with eviction, your request must include your standards for evicting drug criminals in accordance with Sec. 5.857, and for evicting other criminals in accordance with Sec. 5.858.

(iii) If you intend to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) Fees. If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a criminal records check.

(e) Permitted use and disclosure of criminal conviction records received by PHA--(1) Use of records. Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) Applicant screening. (A) PHA screening of applicants for admission to public housing (part 960 of this title);

(B) PHA screening of applicants for admission to the Housing Choice Voucher Program (section 8 tenant-based assistance) (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

[[Page 100]]

(D) PHA screening concerning criminal conviction of applicants for

admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (d) of this section.)

(ii) Lease enforcement and eviction. (A) PHA enforcement of public housing leases and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) PHA disclosure of records. (i) A PHA may disclose the criminal conviction records which the PHA receives from a law enforcement agency only as follows:

(A) To officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(B) To the owner for use in connection with judicial eviction proceedings by the owner to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or offered as evidence.

(ii) This disclosure may be made only if the following conditions are satisfied:

(A) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(B) If the owner certifies in writing that it will use the criminal conviction records only for the purpose and only to the extent necessary to seek eviction in a judicial proceeding of a Section 8 tenant based on the criminal activity by the household member that is described in the criminal conviction records.

(iii) The PHA may rely on an owner's certification that the criminal record is necessary to proceed with a judicial eviction to evict the tenant based on criminal activity of the identified household member, as shown in the criminal conviction record.

(iv) Upon disclosure as necessary in connection with judicial eviction proceedings, the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) Opportunity to dispute. If a PHA obtains criminal record information from a State or local agency under this section showing that a household member has been convicted of a crime relevant to applicant screening, lease enforcement or eviction, 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 applicant or tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

(g) Records management. Consistent with the limitations on

disclosure of records in paragraph (e) of this section, the PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

- (1) Maintained confidentially;
- (2) Not misused or improperly disseminated; and
- (3) Destroyed, once the purpose(s) for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

[[Page 101]]

(h) Penalties for improper release of information--(1) Criminal penalty. Conviction for a misdemeanor and imposition of a penalty of not more than \$5,000 is the potential for:

(i) Any person, including an officer, employee, or authorized representative of any PHA or of any project owner, who knowingly and willfully requests or obtains any information concerning an applicant for, or tenant of, covered housing assistance under the authority of this section under false pretenses; or

(ii) Any person, including an officer, employee, or authorized representative of any PHA or a project owner, who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive the information.

(2) Civil liability. (i) A PHA may be held liable to any applicant for, or tenant of, covered housing assistance affected by either of the following:

(A) A negligent or knowing disclosure of criminal records information obtained under the authority of this section about such person by an officer, employee, or authorized representative of the PHA if the disclosure is not authorized by this section; or

(B) Any other negligent or knowing action that is inconsistent with this section.

(ii) An applicant for, or tenant of, covered housing assistance may seek relief against a PHA in these circumstances by bringing a civil action for damages and such other relief as may be appropriate against the PHA responsible for such unauthorized action. The United States district court in which the affected applicant or tenant resides, in which the unauthorized action occurred, or in which the officer, employee, or representative alleged to be responsible resides, has jurisdiction. Appropriate relief may include reasonable attorney's fees and other litigation costs.

Sec. 5.905 What special authority is there to obtain access to sex offender registration information?

(a) PHA obligation to obtain sex offender registration information.

(1) A PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD must carry out background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program. This check must be carried out with respect to the State in which the housing is located and with respect to States where members of the applicant household are known to have resided.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(b) Owner's request for sex offender registration information--(1) General. An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an Annual Contributions Contract with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) Procedure. If the request is made in accordance with the provisions of paragraph (b) of this section:

(i) The PHA must request the information from a State or local agency;

(ii) The State or local agency must promptly provide the PHA such information in its possession or control;

(iii) The PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction, based on the criteria used by the owner as specified in the owner's request, and inform the owner of the determination.

(iv) The PHA must notify the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

[[Page 102]]

(3) Contents of request. As the owner, your request must specify whether you are asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction and include the following information:

(i) Addresses or other information about where members of the household are known to have lived.

(ii) If you intend to use the PHA determination regarding any such sex offender registration information for applicant screening, your request must include your standards in accordance with Sec. 5.855(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(iii) If you intend to use the PHA determination regarding any such sex offender registration information for eviction, your request must include your standards for evicting persons subject to a lifetime registration requirement in accordance with Sec. 5.858.

(iv) If you intend to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, your request must include your standards for lease enforcement because of criminal activity by members of a household.

(4) PHA disclosure of records. The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section.

(5) Fees. If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, the PHA may charge the owner reasonable fees for making the

request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a State or local agency for releasing the information, the PHA's own related staff and administrative costs. The owner may not pass along to the applicant or tenant the costs of a sex offender registration records check.

(c) Records management. (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

(i) Maintained confidentially;
(ii) Not misused or improperly disseminated; and
(iii) Destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(d) Opportunity to dispute. If a PHA obtains sex offender registration information from a State or local agency under paragraph (a) of this section showing that a household member is subject to a lifetime sex offender registration requirement, 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 applicant or tenant, with a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

Subpart K_Application submission requirements

Source: 69 FR 15673, Mar. 26, 2004, unless otherwise noted.

Effective Date Note: At 69 FR 15673, Mar. 26, 2004, Subpart K was added, effective Apr. 26, 2004.

Sec. 5.1001 Applicability.

This subpart applies to all applicants for HUD grants, cooperative agreements, capital fund or operating fund subsidy, capital advance, or other assistance under HUD programs, including grant programs that are classified by OMB as including formula grant programs or activities, but excluding FHA insurance and loan guarantees that are not associated with a grant program or grant award.

[[Page 103]]

Sec. 5.1003 Use of a universal identifier for organizations applying for HUD grants.

(a) Every application for a new or renewal of a grant, cooperative agreement, capital fund or operating fund subsidy, capital advance, or other assistance, including an application or plan under a grant program that is classified by OMB as including formula grant programs, must include a Data Universal Numbering System (DUNS) number for the

applicant.

(b) (1) Applicants or groups of applicants under a consortium arrangement must have a DUNS number for the organization that is submitting the application for federal assistance as the lead applicant on behalf of the other applicants. If each organization is submitting a separate application as part of a group of applications, then each organization must include its DUNS number with its application submission.

(2) If an organization is submitting an application as a sponsor or on behalf of other applicants, and the other entities will be receiving funds directly from HUD, then the applicant or sponsor must submit an application for funding that includes the DUNS number of each applicant that would receive funds directly from HUD.

(3) If an organization is managing funds for a group of organizations, a DUNS number must be submitted for the managing organization, if it is drawing down funds directly from HUD.

(4) If an organization is drawing down funds directly from HUD and subsequently turning the funds over to a management organization, then the management organization must obtain a DUNS number and submit the number to HUD.

(c) Individuals who would personally receive a grant or other assistance from HUD, independent from any business or nonprofit organization with which they may operate or participate, are exempt from this requirement.

(d) In cases where individuals apply for funding, but the funding will be awarded to an institution or other entity on the individual's behalf, the institution or entity must obtain a DUNS number and the individual must submit the institution's DUNS number with the application.

(e) Unless an exemption is granted by OMB, HUD will not consider an application as complete until a valid DUNS number is provided by the applicant. For classes of grants and grantees subject to this part, exceptions to this rule must be submitted to OMB for approval in accordance with procedures prescribed by the Department.