

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 913 and 950****[Docket No. FR-4080-I-01]****RIN 2577-AB66****Office of the Assistant Secretary for Public and Indian Housing; Optional Earned Income Exclusions****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Interim rule.

**SUMMARY:** This rule amends HUD's regulations for the definition of "annual income" applicable to Public Housing Agencies and Indian Housing Authorities (collectively called Housing Agencies or HAs) in the operation of public housing and Indian housing programs. The change is not applicable to the Section 8 Housing Assistance Payments program. The rule is necessary to encourage HAs to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

**DATES:** Effective date: September 30, 1996.

Comment due date: October 29, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

**FOR FURTHER INFORMATION CONTACT:** For the public housing program, contact Linda Campbell, Director, Marketing and Leasing Management Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 708-0744, extension 4020. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

For the Indian housing programs, contact Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 755-0088, extension 122. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. General**

This rule amends HUD's regulations for the public housing and Indian housing programs that govern the definition of annual income, which the Secretary is authorized to define. Since income eligibility for the public and Indian housing programs is determined based on this term, and rents are based on annual income, as modified by statutorily prescribed adjustments, changes in this definition influence who lives in these types of housing and how much they are required to pay. (The change is not applicable to the Section 8 Housing Assistance Payments program.)

The rule is necessary to encourage public housing agencies and Indian Housing Authorities (collectively called housing authorities or HAs) to take action to further the efforts of applicants and tenants to seek employment and to increase their earned income. The intended effect is to permit HAs to adopt an exclusion for earned income, tailored to their own circumstances, to support the efforts of working families.

The Department believes that, in light of the shortfall in funding full HA eligibility for the Performance Funding System (PFS) expected over the next two years and the possibility that an HA can develop a higher income base by use of this type of exclusion, it is in the best interests of the program to encourage occupancy in these programs by working families.

**II. The Nature of Special Treatment for Earned Income**

The Balanced Budget Downpayment Act I, enacted on January 26, 1996 (Pub. L. No. 104-99), also known as the Continuing Resolution or "CR", specifically authorized housing agencies to allow earned income adjustments, as long as HUD's operating subsidy obligation was not affected. That provision and others were implemented by HUD by issuance of a Notice to HAs (PIH 96-6) on February 13, 1996, which

expires on September 30, 1996, based on the expiration of the CR on that date.

The CR enacted by Congress, effective for Federal Fiscal Year 1996, permitted housing agencies to take actions to attract and retain working families in occupancy such as the adoption of ceiling rents and the adoption of earned income adjustments that would ease the impact on working tenants. The Act also repealed Federal admissions preferences, permitting HAs to use working preferences to greater advantage. This rule codifies for Federal Fiscal Years 1997 and 1998 a provision permitting housing agencies to provide for special treatment of earned income.

The rationale for making this provision effective via a rule is to ensure some degree of consistency in Departmental policy, on which HAs can rely. The Department believes that this measure can contribute to improving the stability of HAs by permitting them to improve the income mix in their developments, thus increasing dwelling rental income.

There is a difference between the special treatment of earned income specifically authorized by the CR and that authorized by this rule. There are two defined terms related to income under the United States Housing Act of 1937: "annual income" and "adjusted income." The former is a gross income amount, which is used to determine the eligibility of a family for participation in the program based on whether that amount is less than 50% or 80% of median income for the area (adjusted by family size). The latter is a net amount after adjustments are made to the gross income, which is used to determine the amount of rent a family pays under the affected programs because rent is generally based on a percentage of "adjusted income." The CR authorized an "adjustment" to income affecting the amount of "adjusted income", while this rule authorizes an "exclusion" from income, which affects income at an earlier stage—the definition of "annual income."

The reason that this rule authorizes an exclusion rather than an adjustment is that the scope of the Department's authority does not clearly include authorizing "adjustments" without specific Congressional action. The statute prescribes the definition of "adjusted income" but leaves to the Secretary of HUD the authority (under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a) to define the term "income," as it is used for purposes of determining eligibility and rental payment in the public and Indian housing programs. The term HUD uses

that corresponds to this statutory term is "annual income."

Although the CR provision expires at the end of the current fiscal year (September 30, 1996), a change made by the Secretary in the definition of income permitting an exclusion for earned income can have longer lasting effect. The Secretary is exercising this authority in this rule.

Under this rule, HAs have the authority to establish their own earned income exclusion, as a means of attracting and retaining more tenants with earned income. The "exclusion" an HA adopts may be similar or identical to the "adjustment" it had adopted under the CR.

The adoption of an earned income exclusion under this rule will have the same effect on an HA's operating subsidy as the adoption of an earned income adjustment under the previously issued HUD Notice. (See discussion below.) In general, HAs that opt to adopt earned income exclusions will increase their total income if they are successful in obtaining more and/or higher income working tenants but will lose income if their policies do not produce a net increase in rent revenues.

### III. Specific Changes in Existing Rules

For the public housing program, this change to permit a new exclusion is accomplished by adding a new paragraph (d) to § 913.106, which states the definition of "annual income." The change to the Indian housing program occurs in § 950.102, in the definition of "annual income," where a new paragraph (3) is added. The new paragraphs authorize an HA to adopt a written earned income exclusion, after considering certain enumerated possibilities. No HUD approval is required for adoption of such an exclusion. However, if the HA experiences a decrease in dwelling rental income as a result, it will have to absorb the cost.

### IV. Effect on Operating Subsidy

In addition to the HUD Notice to housing agencies described above, HUD issued a second Notice (PIH 96-24) in the spring of 1996, implementing the CR with respect to its impact on the Performance Funding System of determining operating subsidy eligibility. Specifically, that Notice permitted HAs to offset PFS funding shortfalls by retaining increases in dwelling rental income that result from increases in residents' earned incomes and non-dwelling rental income earned by the HAs through entrepreneurial activities. That Notice made the changes effective for the shorter period through

Federal Fiscal Year 1998 or the time by which HUD no longer has a shortfall in the availability of funds to pay full operating subsidy eligibility to all HAs.

Under this rule, as under that Notice, the special treatment given earned income by an HA will not affect its PFS subsidy eligibility. That eligibility will be calculated without respect to either decreases in rental income resulting from the exclusion, or increases resulting from higher rents received from households with earned income. Another pending rulemaking (FR-4072) codifies those changes.

### V. Scope of rule

The CR authorized the earned income adjustment only for the public and Indian housing programs and only based on the premise that operating subsidy obligations of the Department would not be affected. This rule follows those limits on the scope of the optional special treatment of earned income. Therefore, the change is not applied to other programs usually governed by the same definition of "annual income," such as the Section 8, Section 236, and Rent Supplement programs.

### Findings and Certifications

#### *Justification for Interim Rule*

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

The change made by this interim rule merely adds an optional exclusion to the definition of income used by Housing Agencies, which supports the policy of obtaining a broad range of income levels in public housing and Indian housing developments and the Secretary's policy of encouraging HAs to increase the number of working families residing in these developments. As noted earlier, the Department has already authorized the use of such income exclusions for a limited period of time, based on the Balanced Budget Downpayment Act I, in a Notice. Authorization of such an optional exclusion in this rule is expected to increase the number of HAs using it, helping to encourage the participation of working families in these programs.

Implementation of the rule's provisions is needed as soon as possible to facilitate the adoption of this type of exclusion to realize the benefits of increasing the incentives for working families to participate and to prevent

HAs that are now deducting earned income from having to change their policy starting on October 1, 1996, only to institute earned income exclusions later. Therefore, the Department has determined that good cause exists to omit prior public procedure for this interim rule because such delay would be contrary to the public interest and unnecessary.

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an earned income exclusion, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

### *Impact on the Environment*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

### *Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the provisions of this interim rule simply add an option for housing agencies to adopt. To the extent there is an impact, it is advantageous to the HAs, which are creatures of State or local government.

### *Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. The rule merely broadens the options for housing agencies in managing their public housing or Indian housing programs to encourage families to obtain employment and to increase their earnings.

**Impact on Small Entities**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes available additional options for housing agencies but does not impose mandatory obligations.

**Catalog**

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

**List of Subjects****24 CFR Part 913**

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

**24 CFR Part 950**

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 913 and 950 of title 24 of the Code of Federal Regulations are amended as follows:

**PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM**

1. The authority citation for part 913 continues to read as follows:

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

2. In § 913.106, paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added, to read as follows:

**§ 913.106 Annual income.**

\* \* \* \* \*

(d) In addition to the exclusions from annual income covered in paragraph (c) of this section, a housing agency may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a housing agency must adopt one or more of the following types of earned income exclusions, including variations thereof:

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the HA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in § 913.102.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

**PART 950—INDIAN HOUSING PROGRAMS**

3. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa–1437ee and 3535(d).

4. In the definition of “Annual income” in § 950.102, paragraphs (3) and (4) are redesignated as paragraphs (4) and (5), and a new paragraph (3) is added, to read as follows:

**§ 950.102 Definitions.**

\* \* \* \* \*

**Annual income. \* \* \***

(3) In addition to the exclusions from annual income covered in paragraph (2) of this definition, an IHA may adopt additional exclusions for earned income pursuant to an established written policy.

(i) In establishing such a policy, an IHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

(A) Exclude all or part of the family's earned income;

(B) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(C) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(D) Apply the exclusion only to the earned income of persons other than the primary earner;

(E) Apply the exclusion to applicants, newly admitted families, existing residents, or persons joining the family;

(F) Make the exclusion temporary or permanent, for the IHA, the family, or the affected family member;

(G) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(H) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(I) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(J) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(K) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(ii) Any amounts that are excluded from annual income under paragraph (3) of this definition may not also be deducted in determining adjusted income, as defined in this section.

(iii) IHAs do not need HUD approval to adopt optional earned income exclusions.

(iv) In the calculation of Performance Funding System operating subsidy eligibility, IHAs will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (3)(i) of this definition, including any variations of the listed options.

\* \* \* \* \*

Dated: August 6, 1996.

Kevin Emanuel Marchman,

*Acting Assistant Secretary for Public and  
Indian Housing.*

[FR Doc. 96-22214 Filed 8-29-96; 8:45 am]

**BILLING CODE 4210-33-P**