



This document is scheduled to be published in the Federal Register on 05/07/2020 and available online at [federalregister.gov/d/2020-09298](https://www.federalregister.gov/d/2020-09298), and on [govinfo.gov](https://www.govinfo.gov)

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 5, 891, 960, and 982

[Docket No. FR 5743-F-05]

RIN 2502-AJ36

### **Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews under the Fixing America's Surface Transportation (FAST) Act**

**AGENCY:** Office of the Deputy Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** On December 4, 2015, the President signed the Fixing America's Surface Transportation Act (FAST Act) into law. The law contained language that allowed public housing authorities (PHAs) and owners to conduct full income recertifications for families with 90 percent or more of their income from fixed income every 3 years instead of annually. HUD issued an interim rule on December 12, 2017, to align the current regulatory flexibilities with those provided in the FAST Act. In addition, the interim rule sought to extend to certain multifamily housing (MFH) programs some of the streamlining changes that were proposed for and made only to the housing choice voucher (HCV) and public housing (PH) programs. This final rule finalizes the regulatory language to implement the FAST Act contained in the December 2017 interim rule, with one change to clarify that owners are not required to make adjustments to non-fixed-income.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For questions, please contact the following people (the phone numbers are not toll-free):

Multifamily Housing programs: Katherine Nzive, Director, Program Administration Office, Asset Management and Portfolio Oversight, 202-402-3440.

Housing Choice Voucher and Public Housing programs: Becky Primeaux, Director, Housing Voucher Management and Occupancy Division, 202-402-6050 or Monica Shepherd, Director, Public Housing Management and Occupancy, 202-402-4059.

Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay at 800-877-8339 (this is a toll-free number). The above-listed contacts may also be reached by mail at the following address: U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On January 6, 2015, at 80 FR 423, HUD proposed a rule to implement several statutory changes made in the Department of Housing and Urban Development Appropriations Act, 2014 and also make multiple administrative streamlining changes across several HUD programs. In that proposed rule, some of these additional streamlining changes applied only to the HCV and PH programs, not MFH programs.

Prior to the issuance of the final rule, on December 4, 2015, the President signed the FAST Act (Public Law 114-94). While primarily a transportation law, section 78001 of the FAST Act also amended the United States Housing Act of 1937 to allow PHAs and owners in the HCV, PH, and project-based rental assistance (PBRA) programs to eliminate annual income reviews in some years by applying a cost of living adjustment (COLA) determined by the Secretary to fixed-income sources for families with incomes that are made up of at least 90 percent fixed income. The PHA or owner is not required to verify non-fixed income amounts for

these families in years where no fixed-income review is required but is still required to use third-party documentation for a full income recertification every 3 years.

On December 12, 2017, at 82 FR 58335,<sup>1</sup> HUD published an interim final rule to implement the statutory provisions of the FAST Act and modify the earlier streamlining regulations so that the procedures for families meeting the 90 percent fixed-income threshold of the FAST Act are as similar as possible to those for families who receive some, but less than 90 percent, of their income from fixed-income sources. This rule finalizes that interim final rule, along with one clarification.

## **II. Changes Made at the Final Rule Stage**

In response to public comment and as a result of further consideration of certain issues by HUD, this final rule makes one change to the December 12, 2017 interim final rule.

In § 5.657, the December 12, 2017 interim final rule made changes to an owner's option to apply a streamlined income determination to families receiving fixed income. In paragraph (d)(3)(i), the interim final rule stated that “[f]or non-fixed income, owners *may choose, but are not required, to make appropriate adjustments* pursuant to” the owner's obligation to conduct reexaminations and redeterminations of family income and composition. In this final rule, HUD is revising this sentence to read that “[f]or non-fixed income, owners *are not required to make adjustments* pursuant to” the owner's obligation to conduct reexaminations and redeterminations of family income and composition. HUD is making this change at the final rule stage to clarify that owners are not required to make such adjustments.

Identical changes are made to the language regarding the PHA's option to apply a streamlined income determination to families receiving fixed income. These changes affecting PHAs are made to §§ 960.257(c)(3)(i) and 982.516(b)(3)(i).

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<sup>1</sup> Please refer to this interim final rule for more background on changes made to HUD's regulations at that stage.

### **III. Discussion of Public Comments and HUD's Responses**

The public comment period on the interim final rule closed on January 11, 2018, and 15 public comments were received. Comments were submitted by individual members of the public, Fair Housing advocacy groups, housing associations, and PHAs. The following presents the significant issues and questions related to the interim final rule raised by the commenters, and HUD's responses to these issues and questions.

#### **A. Comments of Support**

The comments were generally supportive. Commenters noted that it would reduce costs and make it easier for seniors to recertify income. Others supported the expansion of flexibilities and the streamlining of administrative changes across the HCV, PH and MFH programs, as it would reduce administrative burden on PHAs and MFH owners to make annual rental assistance adjustments and make it easier for program staff to apply consistent regulations.

#### **B. Rule Applicability**

*Issue: Single-family housing.* Commenters asked whether the rule includes residential single-family housing.

*HUD Response:* The FAST Act interim rule was, and this final rule is, only intended to include units assisted by multifamily housing programs overseen by the Office of Housing, as well as all Public Housing and Housing Choice Voucher units (both single- and multifamily).

*Issue: Project-Based Voucher (PBV) recertifications.* Commenters stated that the rule does not explicitly state that families with PBV assistance qualify for triennial recertifications and requested that the rule include specific language stating that PBV-assisted households are eligible for triennial recertifications.

*HUD Response:* Income recertification requirements for the PBV program follow HCV program rules and guidelines; therefore, the provisions related to reexamination of income apply to the PBV program.

*Issue: Additional guidance.* Commenters asked that HUD include with each provision the program office to which the provision applies, a description of change, background information, effective date, and whether the provision is mandatory or discretionary.

*HUD Response:* Applicability, description of change, background information, and effective dates will be further defined in program guidance. All provisions of this rule are discretionary.

## **C. Implementation**

### **1. General Implementation**

*Issue: Plans.* Commenters asked whether, outside of Section 202 or Section 811, an owner would need to create a policy or update their Tenant Selection Plan to reflect their choice of implementing the streamlined method.

*HUD Response:* If an owner chooses to implement streamlined methods, the tenant selection plan should be updated where the property's annual recertification requirements and interim recertification reporting policies are discussed.

*Issue: Contract amendments.* A commenter asked how HUD plans to amend assistance contracts of owners.

*HUD Response:* HUD does not believe that the changes made by the FAST Act interim rule necessitate a change in the assistance contracts of owners. The FAST Act interim rule made the following changes, none of which is addressed in a Housing Assistance Payment contract: (1) streamlining certification of fixed income; (2) allowing for family declaration for assets under

\$5,000; and (3) allowing owners to make a utility reimbursement of \$45 or less on a quarterly basis. For the Section 202 and Section 811 programs, the current regulations do not contain the requirements around utility reimbursements in general, leaving such requirements in the assistance contracts. Therefore, HUD is not including regulatory text to implement these new flexibilities in the final rule, but rather would be open to amending the assistance contracts of any owners interested in taking advantage of this flexibility. Owners of Section 202 and 811 properties should contact their Contract Administrator or Account Executive if they wish to request a contract amendment. To amend the 202 or 811 assistance contract, owners will need to submit the standard form of contract amendment which will be provided by HUD upon request. HUD will provide instructions for execution and submission with the standard contract amendment.

*Issue: Software.* Commenters asked how the streamlining provisions will be implemented with MFH's Tenant Rental Assistance Certification System (TRACS). They asked whether the software packages will know what to do if owners and agents either opt in or out of the streamlined certifications. They suggested that some type of structure be implemented so that Management Occupancy Reviews can be conducted consistently across portfolios.

*HUD Response:* The provisions in this rule can be handled by the current iteration of TRACS. Although streamlining certifications is now permitted by owners, form HUD-50059 is still required to be completed by owners and signed by tenants and submitted to TRACS. HUD will consider changes to TRACS that may make tracking streamlined years easier.

*Issue: Medical expenses.* Some commenters were concerned that the rule does not address how to treat medical expenses for residents with fixed income. They asked whether owners and agents should conduct full recertifications for residents with medical expense claims

while conducting streamlined recertifications for residents that do not claim medical expenses. They suggested that HUD specifically address the fact that, while this rule does not incorporate the increased standard medical deduction and new threshold for deduction of allowable medical expenses or incorporate authority to use the past year's income and expenses that will be coming as the Housing Opportunity through Modernization Act (HOTMA) changes are implemented, HUD intends owners and agents to continue to provide annual adjustments for verified allowable medical expense deductions.

*HUD Response:* The FAST Act and the interim rule provide administrative relief to PHAs and owners. PHAs and owners may elect a streamlined income determination for families on a fixed income. However, the provision only pertains to the verification of sources of income. PHAs and owners must continue to conduct third-party verification of deductions, including medical expenses deductions.

HUD proposed a rule to implement income changes made by HOTMA, including medical expense deductions, published on September 17, 2019, at 84 FR 48820. HUD does not perceive a conflict between the FAST Act and HOTMA.

*Issue: Relationship with current regulations.* Commenters asked that HUD reiterate that Notice H 2016-09 is still applicable and that owners may continue streamlined verification for all fixed income sources, regardless of overall percentage of total income.

*HUD Response:* The Streamlining Administrative Regulations for PH, HCV, MFH, and Community Planning and Development programs final rule (81 FR 12353) and its implementing guidance in Notice H 2016-09 are still in effect alongside the provisions found in this rule.

*Issue: Fixed-income sources.* Commenters asked that HUD expand qualified fixed-income sources to include Retirement Survivors and Disability Income and income from Federal,

State, local and private pension plans if a family member receives such income through periodic payments at reasonable predictable levels.

*HUD Response:* The definition of fixed income found in 24 CFR 5.657(2)(iv) includes “other sources” that are subject to adjustment by a verifiable COLA or current rate of interest. Therefore, other sources of fixed income are already included, if the source falls within the framework established under this provision.

## 2. Income Verification

*Issue:* Commenters asked when owners and agents can and cannot choose to verify non-fixed income. They asked whether owners and agents must always verify non-fixed income regardless of the percentage of the income that is fixed and if owners must adopt all provisions of the new rule if they choose to adopt any. They asked that HUD emphasize that housing agencies must apply annual reexaminations to households with 90 percent fixed income, but that PHAs have discretion to apply such reexaminations to households with 100 percent fixed income.

*HUD Response:* Section 78001 of the FAST Act amended the United States Housing Act of 1937 to allow PHAs and owners in the HCV, PH, and PBRA programs to eliminate annual income reviews in some years by applying a COLA determined by the Secretary to fixed income sources for families with incomes that are made up of at least 90 percent fixed income. The FAST Act did not require PHAs and owners to verify non-fixed income amounts in years where no fixed-income review is required, but did require them to use third-party documentation for a full income recertification every 3 years.

The interim final rule and this final rule both reflect the FAST Act by allowing PHAs and owners to use a COLA for fixed sources if such sources make up at least 90 percent of a tenant’s



income. HUD has made a slight adjustment in the regulatory text in this final rule to clarify the language in §§ 5.657(d)(3)(i), 960.257(c)(3)(i), and 982.516(b)(3)(i) to emphasize that PHAs and owners are not required to make adjustments for non-fixed income in such instances when using streamlined income determinations.

This rule does not alleviate the responsibility to conduct reexaminations each year, but rather changes the standards for income verification during those reexaminations.

“Reexaminations” encompass more actions than income verifications. For example, reexaminations consider verifications of expenses related to deductions, verifications of family composition, compliance with the Community Service and Self Sufficiency requirement in the public housing program, etc.

*Issue: Triennial certifications.* Commenters requested clarification of the 3-year verification. They asked whether an owner or agent must verify income at the beginning of every third year of tenancy or every three calendar years from the date a tenant moves in. They requested that HUD provide a common use form as a template or subsequent guidance or examples for owners or agents.

*HUD Response:* The provisions of this rule are discretionary. Owners that choose to implement streamlined annual recertifications must use third-party verification of income at move-in for new tenants and for existing tenants at the first annual recertification after the rule becomes effective. Streamlined methods of verification of income may be applied to the annual recertification the year after third-party verified certification (year 2) and the next annual recertification (year 3). Third-party verification of income must be used for the following annual certification (year 4). HUD will not provide a common use form at this time.

*Issue: Staggered certifications.* Commenters requested that PHAs be allowed to stagger implementation of triennial recertifications of assisted households to mitigate substantial increases in work at the end of each triennial period.

*HUD Response:* Staggering recertifications has a potential impact of disparate treatment among similarly situated families. PHAs and owners choosing to implement triennial recertifications must afford all households the equal ability to utilize options in the final rule. HUD will not permit responsible entities to stagger recertifications.

Income verifications following new admissions or interim reexaminations will naturally be staggered. Existing families will have had the first triennial verification 3 years after implementation. Any new admissions in the year following initial implementation for existing families will have income verification in the year following initial implementation and then 3 years after that.

*Issue: Using prior certifications.* Commenters stated that HUD should allow the full certifications that owners and agents completed prior to the implementation of the rule on March 12, 2018, to qualify under the rule. They state that this would allow PHAs and owners to benefit from the rule despite its delayed implementation.

*HUD Response:* The authority to utilize provisions of this rule was not granted until March 12, 2018. Certifications completed prior to the rule's implementation date cannot be included in the year 3 streamline certification cycle. Additionally, the first eligible COLA-based certification is April 2019.

*Issue: Timing of implementation.* Commenters asked that HUD make clear that for housing agencies that choose to implement annual reexaminations for fixed sources of income, lower voucher payment standards for existing households under the lease will take effect on the

second annual recertification and not at the third. They also ask that HUD clarify that housing agencies will not be required to wait to implement triennial certifications.

*HUD Response:* Payment standards and the timing of their application are not affected. PHAs are still required to process an annual recertification and submit to PIH Information Center. Triennial certifications may be implemented for new tenants at move-in and for current tenants on or after March 12, 2018, at the next annual recertification, following the update to the PHA's or owner's policy.

*Issue: Previously reported income.* Commenters stated that housing agencies, owners, and managers should be allowed to use previously reported income in years 1, 2, or 3 for purposes of calculating tenant rent share and rent subsidy if the tenant has a transfer of unit, relocation, or port-out.

*HUD Response:* For portability in the HCV program, the receiving PHA has discretion to accept the most recent calculation of income on the HUD-50058 or redetermine income. If the receiving PHA chooses to redetermine income, a full reexamination would need to be completed. For moves with continued assistance in the Voucher program or transfers within a Public Housing property, PHAs are permitted to continue with the streamlined schedule.

For MFH programs, unit transfers cannot occur between properties. The new property must process a move-in certification and begin the streamlined process from the third-party verified move-in certification. For unit transfers within the property, owners are permitted to continue with the streamlined schedule unless the transfer involves circumstances that result in the family being unable to certify that 90 percent of income is fixed and fixed sources have not changed from the prior year.

#### **D. Fraud and Confusion**

*Issue: Increased fraud and unreported income.* Some commenters stated that it will cause confusion and allow for mistakes, fraud, unreported income, and mass income discrepancies. They stated that decreased contact with households, especially non-elderly households with members who are able to function in the workplace while receiving traditional sources of fixed income, could create a rise of fraud, unreported earned income, and deceit in the recertification process. They also stated that confusion is more likely if some project residents verify annually while other verify every 3 years. They asked that bank statements continue to be reviewed to avoid fraud and unreported self-employment income.

*HUD Response:* HUD acknowledges the commenters' stated concerns. The stated elements of risk were reviewed prior to publication of the rule. Provisions of this rule are discretionary. Further guidance will be provided by program offices for PHAs and owners who choose to implement provisions of the rule.

*Issue: Certifications.* Commenters asked that the term "three-year certification" be clarified, as they state it is unclear whether residents must still provide annual certifications regarding assets and income. They recommend replacing the word "certification" with "declaration" to avoid confusion with historical uses for the word certification.

*HUD Response:* PHAs and owners must conduct reexamination of household income and composition at least annually. This requirement remains in effect and is completed during the annual recertification process. The rule streamlines the annual recertification process by modifying income and asset verification methods but does not impact the requirement to reexamine the household income and composition at least annually. Annual recertifications performed during the 3-year streamlined certification cycle will continue to be referred to as a certification.

*Issue: Declaration of income.* Commenters asked whether a tenant can provide a single document declaring income or if documents must be obtained for each source of fixed income.

*HUD Response:* For the annual recertification initiating the 3-year certification cycle, PHAs and owners must adhere to established verification methods. For the next two annual recertifications, if the tenant declares the income has not changed, there is no need to collect declarations for each source.

*Issue: Enterprise Income Verification.* Some commenters asked that HUD include language from Notice H 2016-09 and Notice H 2010-19 on the use of the Enterprise Income Verification (EIV) System in the rule so that it is clear that owners must continue full income verification for residents with more than 10 percent of income from non-fixed sources and that owners may use current applicable interest rates available from public sources or tenant-provided, third-party generated documentation to determine interest income on net family assets.

*HUD Response:* The provisions of the rule do not change established EIV requirements. EIV usage will be further defined in program guidance. Requirements related to determining interest income on net family assets are not changed are by this rule.

## **E. Increased Burden**

### **1. Income verifications**

*Issue: In general.* Commenters stated that the changes seem more burdensome than the existing verification requirements and therefore owners and agents will be less likely to choose the proposed method. The commenters also stated that the rule would not be beneficial, as the COLA or rate of interest on an individual's source of fixed-income must be verified annually.

*HUD Response:* PHAs and owners have discretion in implementing provisions in this rule. If the PHA or owner determines that the rule's provisions are not beneficial, implementation is not required. To aid in implementation, further guidance will be provided.

*Issue: 90 percent calculation.* Commenters stated that the interim rule added the "90 percent or more" language to the streamlining final rule, which would cause owners and agents to conduct additional income calculations and could result in eligibility issues due to calculation errors.

*HUD Response:* The FAST Act only permits streamlined determinations for all income (including income from non-fixed-income sources) when the family's income is 90 percent or more from fixed-income sources, so the additional calculation is required by the statute. HUD recognizes that this requirement entails a determination whether the 90 percent threshold is met. However, PHAs and owners still retain the option to not streamline determinations pursuant to the FAST Act, but rather only streamline individual sources of income, per the March 8, 2016, final rule (81 FR 12353).

*Issue: Layering of assistance.* Some commenters stated that owners of projects with other affordability requirements or tenants who do not have 90 percent of income fixed may still need to certify annually, and therefore the proposed rule would not reduce burden. The commenters also stated that monitoring reporting cycles will be an increased burden to project owners, as not all project residents will be on the same 3-year reporting cycle.

*HUD Response:* It is understood that the streamlining efforts identified in the FAST Act may not be beneficial in all scenarios. Owners have the option of continuing to process annual recertifications of family income and composition as done prior to this rule being published.

Owners must be aware of policies in other programs, however; HUD cannot comment on programs that are not subject to FAST Act provisions.

*Issue: Self-certification of assets.* Commenters questioned whether allowing residents to self-certify assets of \$5,000 or less will reduce administrative burden, as more effort may be used to monitor and determine the amount of tenant pension than just verifying the tenant pension.

*HUD Response:* PHAs and owners may accept tenant self-certification for assets of \$5,000 or less for years 2 and 3 of the streamlined 3-year cycle. Provisions of the FAST Act affect the means by which income is identified. PHAs and owners have discretion in implementing provisions in this rule. If the rule's provisions are not beneficial, implementation is not required.

## 2. Use of forms

*Issue: Form 9886.* Commenters stated that HUD should not require fixed-income households to complete HUD's 9886 authorization form to access the Enterprise Income Verification each year. Instead, they state that the 9886 authorization form should only be required for full recertifications every 3 years. They ask that HUD extend the 9886 authorization form for at least 15 months to allow housing authorities to benefit from triennial recertifications in early 2018.

*HUD Response:* HUD acknowledges the stated concern and suggestion of the commenter. At this time, HUD is not extending the effective period of forms HUD 9886 and 9887.

*Issue: Reducing the number of forms.* One commenter stated that HUD should not require PHAs to collect all of the currently required certification forms from fixed-income households during years 2 and 3 of the triennial period.

*HUD Response:* The required certification forms are in connection with other HUD regulatory and statutory requirements. HUD does not have the authority under this rule to discontinue the requirement to collect these forms.

*Issue: Bank statements.* Commenters stated that it would be difficult to obtain six consecutive bank statements for family declarations of assets. They asked whether owners and agents would need to use the tenants' declaration of asset income similar to the tax credit program.

*HUD Response:* For move-ins and annual recertifications initiating the 3-year streamlining cycle, PHAs and owners or agents must adhere to current program guidance. For years 2 and 3, the rule requires households to complete a declaration of assets of \$5,000 or less.

## **F. Utility Allowances**

### **1. Determination of utility allowance**

*Issue: Setting allowances.* Commenters stated that the utility allowance should not be a project-based allowance based on an artificial average. The commenters stated that the utility allowance should instead be based on the annual recertification process, wherein each resident provides its own bills in the annual certification process and the allowance is calculated as part of the resident's total tenant payment. The commenters stated that the utilities reimbursements should be made monthly, as it would otherwise be more difficult for accounting to issue checks.

*HUD Response:* The process of determining utility allowance is outside the scope of this rule. PHAs and owners have discretion to utilize the provision of issuing utility reimbursements equal to or less than \$15 per month on a quarterly basis. If it is determined that the provision will create administrative hardships, implementation is not required.

### **2. Requests for clarification**



*Issue: Hardships.* Commenters requested clarification on what policies owners/agents should adopt to assist tenants that might experience a financial hardship under the rule. They stated that a tenant that receives a utility reimbursement has very limited or no income and therefore it would be difficult to determine what would constitute a hardship. They asked whether HUD has analyzed or calculated the amounts at which tenants may claim a financial hardship.

*HUD Response:* Hardship policies for utility reimbursements will be addressed through program-specific guidance.

*Issue: Contract amendments.* Commenters asked HUD to provide clarity on the process for 202 and 811 Project Rental Assistance Contracts (PRACs) to amend their assistance contracts to incorporate changes to utility reimbursement payments. They suggested HUD provide a centralized point of contact to assist owners with amending assistance contracts for this purpose.

*HUD Response:* The provisions of this rule do not affect the regulation and program guidance governing the requirements of adjusting utility allowances. PHAs and owners must perform utility allowance adjustments in accordance with established guidance.

*Issue: Relationship with annual reexaminations.* Commenters asked that HUD clarify that those housing agencies that implement annual reexaminations for fixed sources of income would still have to adjust tenant-paid utility allowances.

*HUD Response:* The provisions of this rule do not affect the regulation and program guidance governing the requirements of adjusting utility allowances. PHAs and owners must perform utility allowance adjustments in accordance with established guidance.

## **G. COLA**

### **1. Use and adjustments of COLA**

*Issue: COLA adjustment.* Commenters stated that COLA should be adjusted so that all households pay their fair portion.

*HUD Response:* The COLA is adjusted each year based on actual COLA. The changes in rent are based on the change in COLA. Changing the amount of the COLA is outside the scope of this rule.

*Issue: Which COLA to use.* Commenters asked that housing agencies, owners, and managers use the Social Security Administration's COLA as the single COLA, unless requested otherwise by a household.

*HUD Response:* The rule does not implicate the use of a single COLA. PHAs and owners or agents must use the COLA applicable to the income source.

## 2. Requests for clarification

*Issue: When to start using COLA.* Commenters stated that HUD should explicitly state that owners may begin to use the current SSA COLA as of the rule effective date of March 12, 2018, to adjust the overall total or each line item for the various sources of fixed sources of income. They also state that this factor should apply to all other income that comprise less than 10 percent of the total resident incomes, where the owner chooses not to verify them.

*HUD Response:* The authority to utilize provisions of this rule was not granted until March 12, 2018. Certifications completed prior to the interim rule's implementation date cannot be included in the second or third year of the streamline certification cycle. The first eligible COLA-based certification is April 2019. For families with 90 percent or more of their income from fixed sources, sources of non-fixed income need not be adjusted and must not be adjusted by a COLA, but the PHA or owner may choose to adjust sources of non-fixed income by the amount determined on the basis of third-party verification.

The rule does not allow the use of a single COLA. PHAs and owners or agents must use the COLA applicable to the income source.

*Issue: Single COLA.* Commenters asked that HUD provide more information on whether owners should use a current COLA and explicitly state that HUD will issue a notice before a single-value COLA can be implemented.

*HUD Response:* The rule does not implicate the use of a single COLA. PHAs and owners or agents must use the COLA applicable to the income source.

*Issue: Required interim recertifications.* Commenters stated that HUD should make explicit that interim recertifications are not required of housing agencies, owners, or managers when the COLA is to take effect, but the COLAs will instead be applied to household income on an annual basis at their lease anniversary.

*HUD Response:* This rule requires that an adjustment be made at annual recertification. HUD is not prohibiting interim recertifications as a result of a change in the COLA. Tenants and owners must continue to follow the income recertification requirements identified in the lease agreement, and PHAs must follow the income recertification requirements in their policies.

#### **IV. Findings and Certifications**

##### **Regulatory Review—Executive Orders 12866 and 13563**

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome,” and to modify, streamline, expand, or repeal them in accordance with what has been learned.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was not determined to be a “significant regulatory action” as defined in section 3(f) of the Executive order.

As discussed in more detail in the December 12, 2017, interim final rule, this final rule continues to further HUD’s efforts to streamline administrative requirements for owners receiving subsidies under the HCV, PH, PBRA, Section 202 and Section 811 programs. Specifically, this final rule continues to give PHAs and owners greater flexibilities in determining tenant families’ income and assets, and in issuing utility reimbursements. The final rule also continues to provide PHAs and owners with the discretion to implement these changes. Some may choose the status quo; others will choose the streamlining alternative. By allowing voluntary implementation, HUD enables participants to choose their desired method of administration, which in many cases will presumably be the least-cost method. Given that an unknown number of PHAs and owners may choose the status quo, it is difficult to estimate the savings with precision. Based on the assumptions above, the interim final rule and this final rule expect aggregate savings to be approximately \$31.2 million (\$24.9 million from income verification + \$0.6 million from utility reimbursement + \$5.9 million from asset verification).

### **Executive Order 13771**

Executive Order 13771 entitled, “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. The interim final rule, published on December 12, 2017, at 82 FR 58335, was considered an E.O. 13771 deregulatory action based on the cost savings mentioned above. This final rule does not make substantive changes to the interim final rule, and

therefore does not contribute any additional cost savings. However, the final rule continues the potential for future cost savings established by the interim final rule.

### **Information Collection Requirements**

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502-0204. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

### **Environmental Review**

This final rule involves external administrative requirements and procedures related to calculation of HUD rental assistance that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

### **Executive Order 13132, Federalism**

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

## **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers applicable to the program affected by this final rule are 14.157, 14.181, 14.195, 14.850, and 14.871.

### **List of Subjects**

#### **24 CFR Part 5**

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

#### **24 CFR Part 891**

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

#### **24 CFR Part 960**

Aged, Grant programs-housing and community development, Individuals with disabilities, Pets, Public housing.

#### **24 CFR Part 982**

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 24 CFR parts 5, 891, 960, and 982, which was published at 82 FR 58335 on December 12, 2017, is adopted as final with the following changes:

### **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

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

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

2. In § 5.657, revise the last sentence in paragraph (d)(3)(i) to read as follows:

**§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \* For non-fixed income, owners are not required to make adjustments pursuant to paragraph (b) of this section.

\* \* \* \* \*

**PART 960 – ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING**

3. The authority citation for part 960 continues to read as follows:

4. In § 960.257, revise the last sentence in paragraph (c)(3)(i) to read as follows:

**§ 960.257 Family income and composition: Annual and interim reexaminations.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \* For non-fixed income, the PHA is not required to make adjustments pursuant to paragraph (a) of this section.

\* \* \* \* \*

**PART 982 – SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE**

**VOUCHER PROGRAM**

5. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

6. In § 982.516, revise the last sentence in paragraph (b)(3)(i) to read as follows:

**§ 982.516 Family income and composition: Annual and interim reexaminations.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \* For non-fixed income, the PHA is not required to make

adjustments pursuant to paragraph (a) of this section.

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Dated: April 27, 2020.

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Brian D. Montgomery  
Assistant Secretary for Housing  
Federal Housing Commissioner

**[Billing Code: 4210-67]**

[FR Doc. 2020-09298 Filed: 5/6/2020 8:45 am; Publication Date: 5/7/2020]