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Excerpts from Title 24 of the Code of Federal Regulations

PART 5 GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

Subpart A Generally Applicable Definitions And Federal Requirements; Waivers

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. 1715(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency 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.

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.

(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.

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(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.

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.

5.214 Definitions.

In addition to the definitions in 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 813.109, 913.109, and 950.315 of this title.

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(l)(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 (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 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.

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.

(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 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 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

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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.

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 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 5.216; or

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

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.

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 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.

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 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.

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 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 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. 6103(l)(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.

5.238 Criminal and civil penalties.

Persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(l)(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.

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.

Subpart D Definitions For Section 8 And Public Housing Assistance Under The United States Housing Act Of 1937

5.400 Applicability.

This part applies to public housing and Section 8 programs.

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 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

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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 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

Subpart E Restrictions On Assistance To Noncitizens

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;

(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 5.504.

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.)

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 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. (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 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.

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)).

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(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 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 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.

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 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:

- (i) A signed declaration of eligible immigration status;
- (ii) One of the INS documents referred to in 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 5.516 and 5.518, or 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:

(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 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 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 5.512(a)).

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(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 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 exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

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 5.506(a) for the specific immigration status claimed by the individual.

5.512 Verification of eligible immigration status.

(a) General. Except as described in paragraph (b) of this section and 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 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with 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 5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see 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.

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 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with 5.520; or

(vi) Assistance for a mixed family is continued in accordance with 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with 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:

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(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in 5.508(g) or by the expiration of any extension granted in accordance with 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 5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in 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.

(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).

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(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.

(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 PPHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

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 5.514. There are three types of preservation assistance:

- (i) Continued assistance (see paragraph (a) of 5.518);
- (ii) Temporary deferral of termination of assistance (see paragraph (b) of 5.518); or
- (iii) Prorated assistance (see 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 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 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 5.518. However, the PHA must offer prorated assistance to eligible families.

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 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 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

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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.

(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.

5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or 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.

(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.

5.522 Prohibition of assistance to noncitizen students.

(a) General. The provisions of 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.

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 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.

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 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.

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

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;

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(2) Owner selection preferences; and
(3) Owner reexamination of family income and composition;
(d) Determining adjusted income, as provided in § 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 § 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 Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

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 § 5.100.

(2) Subpart D. The terms 'disabled family', 'elderly family', 'family', 'live-in aide', and 'person with disabilities' are defined in 5.403.

(b) The following terms shall have the meanings set forth below:

Adjusted income. See 5.611.

Annual income. See 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 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, 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 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 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 § 5.611, in addition to the definition of *responsible entity* in § 5.100, and for § 5.617, in addition to only that part of the definition of *responsible entity* in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 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;

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(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 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 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)).

Family Income

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: 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 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;

(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.

5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 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 § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

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 assistance in these housing assistance programs.

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 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 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.

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(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 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 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 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.

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;

(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).

Family Payment

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;

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(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 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.

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 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 5.628(a)(4) and 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to 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.

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 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see 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.

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 960.253 of this title for the determination of tenant rent.

PART 960 ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

SUBPART A Applicability, Definitions, Equal Opportunity Requirements

960.101 Applicability.

This part is applicable to public housing.

960.102 Definitions.

(a) *Definitions found elsewhere.* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(2) *Definitions under the 1937 Act.* The following terms are defined in part 5, subpart D of this title: *annual contributions contract (ACC), applicant, elderly family, elderly person, extremely low income family, family, low income family, person with disabilities.*

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in part 5, subpart F of this title: *Annual income* (see 5.609); *economic self-sufficiency program, tenant rent, total tenant payment* (see 5.628), *utility allowance.*

(b) *Additional definitions.* In addition to the definitions in paragraph (a), the following definitions and cross-references apply:

Ceiling rent. See 960.253(d).

Covered person. For purposes of this part, a resident, any member of the resident's household, a guest, or another person under the resident's control.

Designated housing. See part 945 of this chapter.

Disabled families. See 5.403 of this title.

Eligible families. Low income families who are eligible for admission to the public housing program.

Flat rent. See 960.253(b).

Household. For purposes of this part, the family and any PHA-approved live-in aide.

Income-based rent. See 960.253(c).

Mixed population development. A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.

Over-income family. A family that is not a low income family. See subpart E of this part.

PHA plan. See part 903 of this chapter.

Premises. For purposes of this part, the building or complex in which the public housing dwelling unit is located, including common areas and grounds.

Residency preference. A preference for admission of persons who reside in a specified geographic area.

Tenant-based. See 982.1(b) of this chapter.

960.103 Equal opportunity requirements.

(a) *Applicable requirements.* The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in 5.105(a) of this title.

(b) *PHA duty to affirmatively further fair housing.* The PHA must affirmatively further fair housing in the administration of its public housing program.

(c) *Equal opportunity certification.* The PHA must submit signed equal opportunity certifications to HUD in accordance with 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.

SUBPART C Rent and Reexamination

960.253 Choice of rent.

(a) *Rent options.*

(1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with 5.630 of this title.

(b) *Flat rent.*

(1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.*

(1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissible income deductions (see 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (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 of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.*

(1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

960.255 Self-sufficiency incentive—Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person 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 public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, 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 PHA 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.

(b) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member 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 of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA 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 as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

960.257 Family income and composition: Regular and interim reexaminations.

(a) *When PHA is required to conduct reexamination.*

(1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years.

(3) For all families who include nonexempt individuals, as defined in 960.601, the PHA must determine compliance once each twelve months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(c) *PHA reexamination policies.* The PHA must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with this section, and shall conduct reexaminations in accordance with such policies. The PHA reexamination policies must be in accordance with the PHA plan.

960.259 Family information and verification.

(a) *Family obligation to supply information*

(1) The family must supply any information that the PHA or HUD determines is necessary in administration of the public housing 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 PHA 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.

(b) *Family release and consent.*

(1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a consent form (including any release and consent as required under 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 PHA or HUD such information as the PHA 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 program.

(c) *PHA responsibility for reexamination and verification.*

(1) The PHA 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:

- (i) Reported family annual income;
- (ii) The value of assets;
- (iii) Expenses related to deductions from annual income; and
- (iv) Other factors that affect the determination of adjusted income or income-based rent.

960.261 Restriction on eviction of families based on income.

No PHA shall commence eviction proceedings based on the income of the tenant family unless:

(a) It has determined that there is decent, safe, and sanitary housing of suitable size for the family available at a rent not exceeding the tenant rent; or

(b) It is required to do so by local law.

Public Housing Occupancy Guidebook

Chapter 10: Income and Program Rents



Chapter 10. Income and Program Rents

10.0 Overview

In the public housing program most families have historically paid a rent based on a percentage of their income. Obviously, this approach relies on a complete and correct identification of income before the rent formula is applied. The first part of this chapter presents information on annual income and adjusted income, the two types of income used to compute an income-based rent. The second part of the chapter presents information on rent, including income-based rent, minimum rent, flat rent and the earned income disallowance's effect on computing rent.

The Quality Housing Work Responsibility Act of 1998 (QHWRA) made significant changes to the income and rent policies in the public housing program. QHWRA gave residents the choice of paying either an income-based rent or a market-based "flat rent." In addition, PHAs were given more flexibility in establishing optional deductions and even changing the percentage of rent that can be charged. PHAs are permitted to establish other "reasonable rent systems to determine income-based rents," including:

- Flexibility to adopt permissive deductions from annual income to determine Adjusted Income. (Permissive deductions are given at the PHA's expense, since rent lost from such deductions is not compensated by increases in operating subsidy); and
- Flexibility to make revisions to the percentage of adjusted and total income paid as rent or creates some other reasonable system to determine income-based rents (so long as the resulting rent is not higher than the income-based rent using the Federal deductions and formula).

10.1 Annual Income (24 CFR § 5.609)

Annual income includes all amounts, monetary and nonmonetary,³³ that go to, or on behalf of the family head or spouse (even if temporarily absent) or to any other family member or are anticipated to be received from a source outside the family in the 12 months following admission or the effective date of the annual reexamination. Annual income includes amounts derived from assets to which any member of the family has access that are not specifically excluded by Federal regulations.

Categories of included and excluded annual income are discussed on the following pages.

³³ For example, regular non-cash contributions from persons not residing in the household.



Amounts Included in Annual Income

- a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services.

Note: PHAs must take care to verify tips, bonuses and overtime pay. The employment income verification form included in Appendix VIII queries the employer about all the forms of employment income that are considered by the regulation. When a family's earned income varies significantly from one pay period to the next because of uneven numbers of hours worked or tips or overtime, many PHAs establish quarterly reexaminations of income. This approach avoids either overestimating or underestimating income.

- b. 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.^{xciii} An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line decline, 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.

Note: Most residents who own their own businesses keep much more detailed financial records than is otherwise typical. This can be helpful in projecting income, but newly established businesses may get off to a slow start and then produce more income in later years. PHAs should not simply review the previous year's records to document income for the coming 12 months. Changes in the local economy and many other factors may affect income from one year to the next. One way to deal with resident-owned businesses that produce irregular amounts of income is to set the family up on more frequent reexaminations than annual. If no other records are available, the business's checkbook can be used to document, for example, a quarter's income and expenses. The PHA may also be able to refer residents with businesses to free services, such as the Service Corps of Retired Executives, who can help them set up good financial records for the business.

- c. 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 for straight-line depreciation. 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. If



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 national passbook savings rate, as determined by HUD.^{xciv}

Note: Many PHAs mistakenly do not ask about income from assets. Since banks and investment firms report this income to the IRS on 1099 forms annually, unreported asset income may result in the family's receiving a letter from HUD informing them that their income reported to the PHA does not match the income reported to the IRS. Occupancy staff needs to know how to determine 'net family assets' correctly in order to calculate income from assets correctly, including the correct application of the "cost to dispose of the assets." Net family assets are discussed in more detail below in Section 10.1. Definition of Net Family Assets.

- d. The full amount of periodic amount 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 payment (except as provided in paragraph 10.1 Amounts Excluded from Annual Income (c) under income exclusions).

Note: This is an instance in which it is very important to know the rules. Lump-sum amounts for the delayed start of a pension or annuity are income, but the same amounts are excluded if they are Social Security or SSI. Periodic does not mean that income must be received every month. Some periodic income is received quarterly. If Social Security or other periodic receipts have deductions taken out of the gross benefit, the PHA should use the gross amount of the benefit, not the net amount after the deduction.

- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided under paragraph (c) 10.1 Amounts Excluded from Annual Income).

Note: This is another section that requires an appreciation of the difference between included and excluded income. Lump sum settlements from worker's compensation are excluded as income (although they are assets), while periodic payments from worker's compensation are included.



- f. Welfare assistance.³⁴ 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:

- 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 radically reduced from the standard of need by applying a percentage, the amount calculated shall be the amount resulting from one application of the percentage.^{35v}

Note: In most states, there is no 'welfare rent', an amount specifically designated for shelter and utilities. Families simply receive a flat grant amount based on the number of family members or eligible family members. In these states, the entire welfare grant is used to compute rent. Only in 'welfare rent' states is it necessary to go through the computation of grant without housing portion plus maximum housing portion with one ratable reduction.

- g. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions of gifts received from organizations or from persons not residing in the dwelling.

Note: Of all the forms of income that should be included in Annual Income, contributions from sources outside the household is the most often missed. One reason is that PHA staff often does not question families closely enough about periodic contributions they receive. Further, some PHAs don't understand that if a contribution is regular, it does not have to be cash. For example, if the children's grandmother (who does not live in the household) pays her daughter's telephone and cable TV bills directly to the phone and cable companies, it is income to the household. It is a regular contribution and can also be easily verified. Families who claim to have zero income (rather than having real excluded income, such as from foster care) but who have cars, cable TV, telephones, smoke cigarettes, etc. have some source of income, and the PHA should attempt to establish its value.

- h. All regular pay, special pay and allowances of a member of the Armed Forces (except for hostile fire pay, which is excluded below).

³⁴ Except see Chapter 13.5 for treatment of welfare income when a resident is sanctioned by the welfare agency for welfare fraud or failure to comply with economic self-sufficiency requirements.



Note: Unless a member of the armed services intends to return to the public housing unit and live full-time with the family, this provision encourages them to remove themselves from the lease. Otherwise all of the service person's income is counted, not just the allotment that is sent home.

Amounts Excluded from Annual Income (24 CFR § 5.609(c))

The lists of types of income that are excluded when determining Annual Income are included below. If PHA staff are not familiar with this list and do not update it periodically, they may inadvertently include in Annual Income some type of excluded income, overcharging the resident who opts for income-based rent.

- a. Income from employment of children (including foster children) under the age of 18 years;

Note: Income from the employment of the family head or spouse is always included, regardless of their ages. Only the earned income of children is excluded. Welfare assistance, SSI, and other non-earned income paid to children is always included in Annual Income.

- b. 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);

Note: In some states, persons are not required to have other types of income to qualify as foster parents. In such a situation, it is possible that the family's entire income would be excluded, since it is for the care of foster children.

- c. 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 (e) above);

Note: This section differentiates amounts received in lump sums (which are assets and excluded from income) from such amounts received as periodic payments (which are included in Annual Income).

- d. Amounts received by the family that is specifically for, or in reimbursement of, the cost of medical expenses for any family member;

Note: This exclusion is not limited to elderly and disabled families, the only families that qualify for the unreimbursed medical expense deduction from income.



- e. Income of a live-in aide, as defined in Section 2.2 Definitions of Eligible Families;
- f. The full amount of student financial assistance paid directly to the student or to the educational institution;

Note: This exclusion applies to all students, not just those eligible for the dependent deduction, and that it is not limited to assistance for tuition, books or fees.

- g. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

Note: This is the only component of income earned by service persons on the lease that is not included in Annual Income.

- h.
 - (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 the purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Achieve 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.^{xvii}



Note: These exclusions are generally related to participation by resident family members in training or economic self-sufficiency programs. Note that if a resident receives a stipend in excess of \$200 per month, the entire amount received is included in Annual Income. In subparagraph (v) above, the “incremental earnings” are earnings that exceed the benefits and earned income of the training participant before the earnings associated with the training began.

- i. Temporary, nonrecurring, or sporadic income (including gifts);

Note: The key element that causes the exclusion of this income is that it is neither reliable nor periodic.

- j. 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;
- k. Earnings in excess of \$480 for each full-time student 18 years of age or older (excluding the head of household and spouse);
- l. Adoption assistance payments in excess of \$480 per adopted child;
- m. Reserved;
- n. Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts; a lump sum payment covering the period from application to determination of eligibility;

Note: This exclusion very specifically exempts from Annual Income certain delayed benefits from social security and supplemental security income. While not income, these lump sums are additions to assets. This includes a SSI lump sum payment from application to determination of eligibility.

- o. 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;

Note: This exclusion would apply to State homestead exemptions, for example.



- p. 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

Note: The State funds alluded to in this paragraph are paid to prevent the institutionalization of a family member.

- q. 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 the above list of excluded income apply. The following list of benefits is excluded income:
- The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 [7 USC 2017 (h)];
 - Payments to volunteers under the Domestic Volunteer Service Act of 1973 [42 USC 5044 (g), 5088]; Examples of programs under this Act include but are not limited to:
 - the Retired Senior Volunteer Program (RSVP);
 - Foster Grandparent Program (FGP);
 - Senior Companion Program (SCP);
 - the Older American Committee Service Program; and
 - National Volunteer Antipoverty Programs such as VISTA, Peace Corps, Service Learning Program, and Special Volunteer Programs.
 - Small Business Administration Programs, such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE);
 - Payments received under the Alaska Native Claims Settlement Act [43 USC 1626 (a)];
 - Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes [25 USC 459e];
 - Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program [42 USC 8624 (f)];
 - Payments received under programs funded in whole or in part under the Job Training Partnership Act [29 USC 1552 (b)] ;
 - Income derived from the disposition of funds of the Grand River Band of Ottawa Indians [Pub. L. 94-540, 90 Stat 2503-04]; and
 - The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims [25 USC 1407-08], or from funds held in trust for an Indian Tribe by the Secretary of Interior [25 USC 117 (b), 1407].



- r. 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 [20 USC 1087 (uu)]. Examples of Title IV programs include but are not limited to:
- Basic Educational Opportunity Grants (Pell Grants), Supplemental Opportunity Grants, State Student Incentive Grants, College Work Study, and Byrd Scholarships.
 - Payments received from programs funded under Title V of the Older Americans Act of 1965 [42 USC 3056 (f)]: Examples of programs under this act include but are not limited to:
 - Senior Community Services Employment Program (CSEP);
 - National Caucus Center on the Black Aged;
 - National Urban League;
 - Association National Pro Personas Mayors;
 - National Council on Aging;
 - American Association of Retired Persons;
 - National Council on Senior Citizens; and
 - Green Thumb.
 - Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established in the Agent Orange product liability litigation;
 - Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 94 Stat. 1785);
 - 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 [42 USC 9858 (q)];
 - Earned income tax credit refund payments received on or after 1/1/91 [26 USC 32 (j)];
 - 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 USC 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.



Treatment of Assets and Determining Income from Assets

The public housing program does not have a dollar limit on the amount of assets a family can possess and still be eligible for the program, but the income produced by net family assets is counted as part of Annual Income.

Definition of Net Family Assets (24 CFR § 5.603)

Net family assets are the 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 lands, equity accounts in HUD homeownership programs, and necessary items of personal property such as furniture and automobiles.

Certain lump sums a family receives, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlements for personal or property losses are excluded from Annual Income but are expressly identified as additions to family assets.

Note: When determining the value of net family assets, deduct the cost of disposing of the asset. If an asset is an Individual Retirement Account, for example, there will be income tax and interest penalties due in the case of early withdrawal. Likewise, if a family sells stocks or bonds, they would typically have a broker's commission to pay. Certificates of deposit have penalties for early withdrawal. Sale of real estate will typically involve a commission to the real estate agent plus various sellers' settlement costs (which will vary from state to state). If a resident has to hire an attorney to obtain, for example, an insurance settlement, the lawyer's fee would be deducted to determine the net cash value.

If a family permanently transfers assets to an irrevocable trust not under the control of any family member, the value of the trust is not included as part of the Net Family Assets. Income distributed from the trust is included in Annual Income.

Example: A resident family whose relatives established an irrevocable trust for the education of the children with the requirements that the funds not be used until the children each turned 18, and then only for educational purposes. If the children were under the age of eighteen when the PHA is admitting them, the funds in this sort of trust would not be considered as part of the family's net family assets.

If a family disposes of business or family assets for less than fair market value (including into a non-revocable trust) the PHA is required to consider the net value of those assets for two years following the date of divestiture for less than fair market value. This provision does not apply to assets divested in a



foreclosure, bankruptcy, or in a divorce or separation settlement when the applicant or tenant family received some important consideration not measurable in dollar terms.

Note: When a family has divested assets, it is very important that the PHA take into account any costs of divestiture and keep track of the date of divestiture, since these divested assets will no longer be included in determining Annual Income two years from the date of divestiture.

If the combined value of net family assets is greater than \$5,000, the amount of income from assets used in determining Annual Income is the greater of:

- Actual income from the assets; or
- Percentage of the value of the assets based on the passbook savings rate³⁵ times the value of the net family assets.

A checklist is included in Appendix VIII to assist with identifying net family assets. PHAs that do not inquire about all possible assets should not be surprised if families do not understand what is included and what excluded.

10.2 Adjusted Income – Statutory Deductions (24 CFR § 5.611)

Income-based rents are calculated using adjusted income. After determining the annual income of the household a set of mandatory statutory deductions is applied. The statutory deductions are:

- \$480 for each dependent;
- \$400 for each elderly or disabled family;
- Any reasonable child care expenses necessary to enable a family member to be employed, actively seek employment or to further his or her education; and

The sum of following items, to the extent that the sum exceeds three (3) percent of Annual Income:

- Unreimbursed medical expenses for any elderly or disabled family; and
- Unreimbursed reasonable attendant and auxiliary apparatus expenses for each member of the family who is a person with a disability needed to enable an adult family member (including the member who

³⁵ Consistent with the Multi-family Housing Program, PHAs will use a standard 2% passbook rate. This is change from the prior method of determining imputed income from assets where an average of local bank rates was used.



is a person with disabilities) to work, but this allowance may not exceed the earned income of the family members age 18 and over who are able to work because of such attendant care of apparatus.

Each of the statutory deductions is discussed in the following section.

Dependent Deduction

This \$480 annual deduction is available for a member of the family (except live-in aides, foster children and foster adults who may be household members but are not family members) other than the family head or spouse, who is under 18 years of age, is a person with a disability, or is a full-time student.

Note: There is no maximum age limit for who may qualify as a full-time student.

Elderly and Disabled Family Deduction

This \$400 annual deduction is available to families whose head of household, their spouse, or a sole member who is at least 62 years of age (elderly families), or a person with a disability (disabled families). This may also include two or more such persons living together, or two or more such persons living with a live-in aide. Each Elderly or Disabled Family is limited to one \$400 deduction regardless of the number of elderly or disabled household members.

Child Care Deduction

Childcare expenses are defined as the unreimbursed amounts anticipated to be paid by the family for the care of children less than 13 years of age during the period for which annual income is computed (24 CFR § 5.603).

Such amounts are deductible from annual income only when the care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education.

The amount deducted must reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted may not exceed the amount of employment income that is included in annual income.

The PHA is charged with determining what is a reasonable amount, especially when the care is provided to further a family member's education. Unlike the employment related portion of the deduction, childcare costs for education purposes are not "capped" by the amount earned.



Surveying the cost of childcare in the community is a good method to determine when the PHA should cap the deduction. The survey would gather information on the cost per hour or per day per child, when daily care is needed (before school, all day, after school), whether care is available all year round, and any age limits imposed by the provider. Monthly costs can then be estimated, which are helpful in computing any cap to the annual amount of the deduction.

Note: If a resident claims to be paying for child care provided by an extended family member (who is not a public housing resident), the PHA may wish to verify that the child care provider is actually receiving payments by asking to review the child care provider's income tax return or canceled checks. This prevents the resident from claiming more than is actually paid.

Disability Expense Deduction

This deduction covers unreimbursed costs for attendant care or auxiliary apparatus for a disabled family member. The deduction must be applied as follows:

- The reasonable attendant and auxiliary apparatus expenses must enable an adult member of the family to be employed (including the person with disabilities).^{xvii}
- The deduction may not exceed the earned income received by adult family members who are able to work because of the care or auxiliary apparatus.

When imposing the employment income ceiling, consider:

- If the assistance enables more than one person to be employed, the PHA must combine the incomes of those persons to determine the ceiling.^{xviii}
- If an auxiliary apparatus enables the person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

The care and apparatus deduction includes, but is not limited to, the unreimbursed costs associated with:

- Attendant Care: For example, in-home care, adult day care, nursing, housekeeping, personal care, and errand services, an interpreter for persons who are hearing impaired, or a reader for persons with visual disabilities.
- Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals.

Note: When calculating the amount of the deduction, include payments on a specially- equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.

Disability assistance expenses include the cost of maintenance and upkeep of any auxiliary apparatus (e.g., the veterinarian, grooming and food costs for a service animal; the cost of maintaining the equipment that is added to a car but not the cost of maintaining the entire car).

If the apparatus is NOT used exclusively by the person with a disability, the PHA may prorate the total cost and allow a specific amount to be applied toward this deduction.

If both child care **and** a disability expense are needed to enable a person(s) in the family to work, the employment income used to justify the child care allowance for employment purposes may NOT be used to also justify disability assistance allowance.

Example -- The family pays:	
Child care	\$100/week
Disability assistance	\$100/week
Total.....	\$200/week
The combined care enables an adult to work and earn	\$150/week

The total for BOTH the disability assistance allowance and the childcare allowance for employment purposes may not exceed \$150/week.

Unreimbursed Medical Expense Costs

This deduction is granted only to elderly or disabled families (See the definition in Section 10.2 Elderly and Disable Family Deduction).

A range of unreimbursed medical expenses and services can be claimed, including, but not limited to the following, to the extent that the total medical expenses exceed 3 percent of annual income (the PHA must put definition in its ACOP. Use of IRS Medical Expenses, found in IRS publication 502, as guidance is acceptable):

- Services of health care professionals and health care facilities (doctors, nurses, practical nurses, therapists, hospitals, clinics, etc.);
- Laboratory fees, X-rays and diagnostic tests, costs for blood, and oxygen;
- Medical insurance premiums (including Medicare) and the insurance deductible;

- Prescription and non-prescription medicines (non-prescription medicines should be prescribed by a licensed medical professional);
- Transportation to/from treatment including the actual cost (e.g., bus fare) or if driving by car, a mileage rate based on IRS rules or other accepted standard;
- Medical care of a permanently institutionalized family member IF his/her income is included in annual income;
- Dental treatment including fees paid to the dentist for cleaning, fluoride treatments, sealants, x-rays; fillings, braces, extractions, dentures;
- Eyeglasses and contact lenses;
- Hearing aid and batteries, wheelchair, walker, scooter, artificial limbs;
- Attendant care or periodic attendant care;
- Payments on accumulated medical bills (that will be due in the year for which annual income is computed) for the services of physicians, nurses, dentists, opticians, mental health practitioners, chiropractors Hospitals, health maintenance organizations (HMO's), out-patient medical facilities, and clinics;
- Expenses paid to an HMO;
- Purchase or rental and upkeep of equipment (e.g., where there are tenant paid utilities, the additional utility costs to the tenant because of an oxygen machine);
- Skilled, semi-skilled and unskilled nursing services;
- An assistive animal and the upkeep and care of the animal; and
- Any other medically necessary service, apparatus or medication, as documented by third party verification.

The 3 Percent “Deductible” for Disability and Medical Deductions

When only one deduction is present, the 3 percent is applied to that deduction.

Example: Medical only – Elderly family with no dependents.

Annual Income =	\$15,500
3 percent of A.I. =	\$ 465
Anticipated medical costs =	\$ 400

\$400 is less than \$465, so this family receives no medical deduction.

Note: The family would receive the \$400 deduction for being an elderly household.

Example: Attendant care/apparatus only – Single person with a disability, no dependents.

This family receives a deduction of \$1,935 for the assistive animal (\$2,400 - \$465). In addition the family will also receive the \$400 deduction for being a household headed by a person with a disability.

Annual Income =	\$15,500
3 Percent of A.I. =	\$ 465
Assistive animal care costs =	\$ 2,400
\$2,400 is greater than 3% of Annual Income, subtract	\$ 465
Deduction =	\$ 1,935

The 3 Percent “Deductible” with Both Unreimbursed Medical and Disability Expense Deductions

Families with a head or spouse who is elderly or a person with a disability may (potentially) receive both the unreimbursed medical and disability expense deductions.

Families with a member, other than the head or spouse, who is a person with a disability may only qualify for the disability expense deduction.

Example: Head of household is a senior with a disability who works part time.

Annual Income =	\$15,500
Income from employment =	\$ 6,600
Anticipated medical costs =	\$ 400
Assistive animal care costs =	\$ 3,000
Total Medical and Disability costs=	\$ 3,400
Total allowed deduction =	\$ 2,935 (\$3,400 - \$465)

This family will also receive the \$400 deduction for being a household headed by a person with a disability.

Note: If there is also a dependent under age 13 and childcare is needed for the head of house to work, the family will also qualify for the childcare deduction.

10.3 Adjusted Income – Permissive Deductions

Permissive Deductions (see 24 CFR § 5.611) are defined as additional, optional deductions that may be applied to annual income. If the PHA opts to use permissive deductions, it must have a written policy guiding their administration, and the deductions must be applied consistently. PHAs considering the use of permissive deductions should apply the following considerations when developing a new deduction.



- Permissive deductions must be included in the PHA's ACOP and granted to all families that qualify for them.
- Permissive deductions should "fill in" or complement existing income exclusions and deductions.

Permissive (and mandatory) deductions can be thought of in two ways: deductions based on need or family circumstance and deductions designed to encourage self-sufficiency or other economic purpose.

- The financial impact of implementing the permissive deductions must be carefully evaluated prior to adoption of any policy. PHAs must be able to "afford" the deduction.^{xcix} The loss of rental income is NOT compensated by an increase in operating subsidy. A PHA would be wise to determine the impact on the agency's operating budget prior to any change in policy.

Examples: A permissive deduction to exclude the amounts received for the reimbursement of medical expenses or the earned income of a full time student are of no value to the family, such amounts are already excluded from annual income.

A PHA establishes a deduction for the reasonable cost of looking for work. (Self-sufficiency)

A PHA could establish a deduction for a secondary wage earner.

The net income of a business operation is counted in annual income. A PHA could elect to reward a family member who is starting a business and provide a deduction of \$500 (or more) from the net income of any new business operation. (Such a deduction could be directly linked to Section 3 businesses.)

- PHAs should review the definitions of Annual Income and the statutory deductions used to calculate Adjusted Income. Does the proposed permissive deduction duplicate an income exclusion or mandatory deduction already addressed in the definitions of Annual or Adjusted Income? There is no reason to create such an unneeded deduction.
- For example, establishing a permissive deduction for the cost of medical insurance premiums paid by elderly or disabled families does nothing to help the family, since such costs are part of the mandatory deductions discussed earlier in this section.

Examples: A PHA establishes a medical deduction for families (not elderly or disabled) with extremely low-incomes. (Need)

A permissive deduction for household members who are going to school or vocational training on a part-time basis is more useful. Such a deduction will offset any earned income of the part-time student whose income is otherwise counted.

Although reasonable child care expenses are already deducted from annual income when work or school are involved, a PHA could establish a permissive deduction that covers reasonable transportation cost to the child care site, or transportation cost to the site, and then to work or school.

How Deductions Affect Rent

The following is a rent calculation example for a family of five, with a head of household, spouse, and three dependents.

One dependent is a person with a disability who requires care. Two dependents are in day care. Both the head and spouse are working part time. In addition to the mandatory deductions, the PHA has instituted an optional secondary wage earner deduction of \$400.

The following example is provided to illustrate the permissive deduction:

COMPONENTS OF INCOME AND RENT	FAMILY WITH STANDARD RENT CALCULATION	SAME FAMILY WITH PERMISSIVE DEDUCTION
Annual Income: No income disallowance	\$12,000	\$12,000
Adjusted Income: Statutory deductions <ul style="list-style-type: none"> • \$480/dependent X 3 • \$400 does not apply • Attendant \$4,000 /yr, • 3% of annual income = \$360 • Child care is \$3,600/year 	\$1,440	\$1,440
	\$3,640	\$3,640
	\$3,600	\$3,600
Initial Adjusted Income	\$3,320	\$3,320
Permissive deductions Secondary wage earner deduction of \$400	NOT APPLIED	\$400
Final Adjusted Income	\$3,320	\$2,920
Income-based rent @ 30%	\$83.00	\$73.00
Minimum Rent	\$50.00	\$50.00
Rent Charged	\$83.00	\$73.00

The above example illustrates some key points about a permissive deduction’s value to family and its impact on rent:

- If rent is calculated at 30 percent of monthly-adjusted income, every \$40 dollar decrease in annual income results in a \$1 decrease in rent.

- The \$400 permissive deduction in the above example yields a \$10 decrease in rent. (At 25 percent of monthly-adjusted income, every \$48 dollar decreases in annual income results in a \$1 decrease in rent. See discussion below on income-based rents.)

Impact on PHA Operating Budget

The ratios listed above are important. They can be used to isolate the impact of the deduction and then estimate the financial implications apart from any other deductions that the family may qualify for.

If the PHA has 30 families who qualify for the secondary wage earner deduction, set at \$400, the cost of that deduction in terms of rent forgone is \$300 per month (\$10 decrease X 30 families). If this is a larger PHA with 300 families qualifying, the cost of the deduction in terms of rent forgone is \$3,000 per month (\$10 decrease X 300 families).

Other Considerations

- No matter how many permissive deductions are applied, families are still required to pay the minimum rent established by the PHA.

Examples: At \$7,000 in annual income a 1 percent reduction in the percentage reduces rent from \$175/month to \$169/month, a \$6.00 reduction. To achieve this same reduction in rent using a fixed permissive deduction, a PHA would need to “value” the deduction at \$240.

At \$15,000 in adjusted income, the same 1 percent reduction reduces rent from \$375/month to \$362/month, a \$13 reduction. The \$240 deduction does not go as far for this family and produces only \$6 reduction, or \$369/month rent. For this higher income family, the deduction needs to be valued at \$520 to achieve the \$13 reduction.

- For higher income families who may be paying flat rent, adding permissive deductions will make the income-based rent lower and therefore more attractive as a rent choice.
- As adjusted income increases, reducing the percentage of income charged is a more efficient way to reduce rents. A fixed deduction loses its value to the family as income increases.

10.4 Income-Based Rent and Minimum Rent

The federal formula for income-based rents provides that a family’s Total Tenant Payment is the highest of:

- 10 percent of monthly income; or
- 30 percent of adjusted monthly income; or



- Welfare Rent (in States where the welfare payment includes a designated portion for housing costs).³⁶

But never less than the:

- Minimum Rent, except where a family has been exempted from the minimum rent because of financial hardship (24 CFR § 5.630 (b)).

With the exception of the minimum rent provision, this formula has been in place for nearly twenty years. Many PHA staff in non-Welfare rent states are used to assuming that thirty percent of adjusted income is the income-based rent, but for families with extremely low-incomes combined with high deductions, the ten percent of monthly income rent may, in fact be higher. Most automated rent calculation programs make this comparison automatically. Appendix VIII contains a rent calculation worksheet that can be used to manually calculate rent.

PHAs may establish a minimum rent (by Board resolution) in any amount between \$0 and \$50 per month. See Chapter 13 for a discussion of hardship exemptions from minimum rents.

How Optional Changes to Income-Based Rents Work

QHWRA has given PHAs very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the total tenant payment and statutory deductions.

- PHAs can now adjust the percentage of income used to calculate rent, it is no longer fixed at 30 percent of monthly adjusted, or 10 percent of monthly.
- PHAs can develop other reasonable systems to determine income-based rents (e.g. use of a rent schedule or sliding scale for rent based on income ranges).
- Rents calculated using different percentages or other “reasonable” systems cannot exceed total tenant payment under the regulatory formula.
- No matter what system or percentage is used, the PHA’s minimum rent policy and rent choice still apply to affected families.
- Once a year families can opt out of the income-based rent and pay a flat rent, or they can switch back to an income-based rent at any time under the regulation.

³⁶ If the family is receiving payments for welfare assistance from a public agency and part of those payments, adjusted in accordance with the family’s actual housing costs, is specifically designated to meet the family’s housing costs, the portion of those payments that is so designated, and, if ratably reduced from the standard of need by applying a percentage, the amount resulting from one application of the percentage.



- Utility allowances are applied to PHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.
- Rent policies may now specify what percentage a PHA will use to determine rent or PHAs may develop other reasonable systems to determine income-based rents.
- Income-based rents are charged when minimum rents do not apply and the family does not choose flat rent.
- At the discretion of the PHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.
- Keep in mind that the PHA will not receive any additional operating subsidy to make up for deductions greater than the regulatory deductions. Before adopting optional deductions it would be wise for a PHA to see how many current residents and applicants would qualify and estimate the amount of rent lost over the course of the fiscal year.
- Rental income for purposes of operating subsidy will be based on the existing regulatory formula. Therefore, PHAs will need to develop a system to track actual rents charged under the PHA’s permissive deductions policy versus what would have been charged if permissive deductions were not granted. The information can then be used to estimate rental income for operating subsidy, and to continually assess the financial impact of the rent policy.

The following table summarizes the various components of income and rent.

The Components of Income and Rent

COMPONENTS	COMMENTS	CFR REFERENCE	APPLIES TO
ANNUAL INCOME (Gross income less exclusions)	Items included in income Items excluded from annual income	24 CFR § 5.609(a) & (b) 24 CFR § 5.609 (c)	Family eligibility and rent calculations at time of admission
	Disallowance (exclusion) from annual income of certain increases in earned income	24 CFR § 960.255	Applies only to rent calculations for existing public housing residents
ADJUSTED INCOME	Mandatory deductions	24 CFR § 5.611 (a)	Applies to all families for rent calculations at admission and continued occupancy
	Permissive Deductions	24 CFR § 5.611 (b)	Applies to all or selected families per PHA policy for rent calculations
RENT CHOICE	See next page.	24 CFR § 960.253	Applies to all families



COMPONENTS	COMMENTS	CFR REFERENCE	APPLIES TO
INCOME-BASED RENT	Percentage of income paid is, the greater of: 30% of monthly adjusted, 10% of monthly, or Welfare rent (if applicable)	24 CFR § 5.628	Applies to all or selected families per PHA policy for rent calculations. May be modified by PHA policy
MINIMUM RENT	For public housing a minimum rent of up to \$50 must be established	24 CFR § 5.630	Applies to all families, amount set by PHA policy
FLAT RENTS	Based on the market rent for comparable units	24 CFR § 960.253 (b)	Applies to all units
CEILING RENTS	Optional under income-based rent provision: Minimum ceiling rent is based on % of monthly operating cost until September 30, 2002. After this time, these ceiling rents must be adjusted to the level required for flat rents. PHA rent policies may continue to impose a ceiling on tenant rents.	24 CFR § 960.253 (d)	Applies to specific units, rents must have been in place 10/1/99 (ends in 3 years). After this time, these ceiling rents must be adjusted to the level required for flat rents.

Optional Changes in the Percentage of Rent Paid

The table below shows some adjusted incomes with changes in the percentage paid for rent and the rent produced by each percentage change.

PERCENT OF ADJUSTED INCOME CHARGED	ADJUSTED INCOME \$7,000	ADJUSTED INCOME \$10,000	ADJUSTED INCOME \$15,000
30%	\$175	\$250	\$375
29%	\$169	\$242	\$362
28%	\$163	\$233	\$350
27%	\$157	\$225	\$337
26%	\$152	\$217	\$325
25%	\$146	\$208	\$312



The following are examples of how a PHA policy might alter the percentage of rent paid: Extremely low-income families (30% or less of AMI) are charged a lower percentage of rent. Higher income families are charged a lower percentage of rent.

Both are examples of rent skewing by income but with very different purposes. The first example is a needs-based policy choice while the second encourages self-sufficiency efforts and income mixing.

Other Reasonable Systems

The choices here are limited only by the requirement that the method used not produce a tenant rent greater than the old formula amount and that the PHA can afford the reduction in operating income produced by rent policy choices that generate less rental income.

Example: A PHA can now opt to establish rent schedules by property or agency-wide. As long as the rents produced do not exceed the tenant rent produced under the old formula. Schedules could apply to certain income ranges, be based on adjustments to the flat rents for the property, or a combination.

Note: Under any system, proposed minimum rents and rent choice still apply.

10.5 Ceiling Rents

Ceiling rents, which capped income-based rents, have been optional rather than required. Those PHAs with ceiling rents in effect at the time flat rents went into effect (October 1, 1999) were permitted to use the ceiling rents as a substitute for flat rents until September 30, 2002. The PHA policies on the use of ceiling rents were required to be established in writing in the ACOP. The institution of flat rents (under QHwRA) has likely changed the usefulness of ceiling rents.

Some general principles concerning ceiling rents include:

- Ceiling rents could be assigned by property or agency-wide for units of certain bedroom sizes;
- PHAs that had ceiling rents in effect on October 1, 1999 were allowed to continue these rents until September 30, 2002. After that time period, PHAs were required to adjust these ceiling rents to the level of flat rents. PHAs may continue to impose a ceiling on tenant rents as an income-based rent option, but again, these rents must be at the level of flat rents;^c
- PHAs with ceiling rents may discontinue them at any time after providing notice to residents;
- Ceiling rents could have been based on:
 - Section 8 Fair Market Rents;



- Comparable non-assisted rental units in the community (established by doing a survey). This should be equivalent to a flat rent, plus utilities; and
- Seventy (70) percent of the cost of any remaining debt service (which will vary by development) and the operating expenses associated with the unit expressed as The Average Monthly Amount (TAMA) for family developments and 100 percent of this cost for elderly or mixed population developments.
- With ceiling rents, utility allowances were retained;
- Ceiling rents were reinstated because they fostered upward mobility and income mixing. Increases in income did not affect the family since the rent was capped;
- Ceiling rents are typically “internal” to the PHA, since, absent any market survey, they do not include factors such as location and amenities, which are always considered when apartment rents are established in the private market; and
- Once the PHA has established flat rents, ceiling rents should be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities).

At this point the function of the ceiling rent is to assist flat rent families whose incomes are reduced, causing the families to be placed on income-based rents. If their incomes increase before the annual reexamination date, the families cannot be placed back on flat rents until the reexamination, but if the PHA has ceiling rents, the family can be placed on a ceiling rent (of exactly the same amount as the flat rent) until the annual reexamination.

10.6 Flat Rents

Overview

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. In other words, flat rent is the unsubsidized amount any landlord could charge and lease the unit promptly after preparation for occupancy.

Setting Flat Rents Properly (24 CFR § 960.253(b))

To calculate a flat rent, PHAs are required to take into consideration the following for each property:

- Location (this will include the value and quality of neighboring housing);
- Quality (need for rehabilitation);
- Unit size (both number of bedrooms and square footage);



- Unit type (Generally single family units are valued the highest, with semi-detached and town homes next, then walk-up or garden-type apartments. Elevator buildings are usually considered a negative for family housing, although that is not necessarily the case in mixed population housing.);
- Age of property;
- Amenities at the property and in immediate neighborhood (e.g. laundry facilities, child care, recreation room, play areas, open space, parking, public transportation, schools, shopping, etc.);
- Housing services provided;
- Maintenance provided by the PHA; and
- Utilities provided by the PHA.

The above list looks familiar because it is identical to the criteria used to determine rent reasonableness in the Housing Choice Voucher Program. Under that program, PHA's are required to "...determine whether the rent to owner is a reasonable rent in comparison to other comparable unassisted units" (24 CFR § 982.507 (b)). To make the rent reasonableness determination, the PHA must consider the same factors as those listed for the flat rents.

- PHAs may use rent reasonableness data to establish flat rents for their units if they have Section 8 units located in the same neighborhoods as their public housing properties and they adjust for differences between the units.
- PHAs might also choose to have the rents established through other forms of market analysis using census data, surveys, and the expertise of market analysts or appraisers.
- Documentation on the method used to determine flat rents must be retained by the PHA.
- Flat rents that are appropriately set can help rent an otherwise hard to rent property.
- There is no utility allowance or reimbursement with flat rents. Instead, the PHA takes the utility payment into consideration in setting the flat rents. In two otherwise identical properties, the flat rent would be higher for the property with PHA supplied utilities and lower for the property with tenant-paid utilities.

Rent Choice (24 CFR § 960.253)

Once each year, the PHA must offer families the choice between a flat rent or an income-based rent. The PHA must provide sufficient information for families to make an informed choice. This information must include the PHA's policy (stated in its Admissions and Continued Occupancy Policy, ACOP) on switching due to financial hardship and the dollar amount of the rent under each option.

Reexamination (24 CFR § 960.253)

If a family chooses a flat rent, the PHA is required to conduct a reexamination (updates) of income at least once every three years, although the PHA may opt to do so more often.

- PHAs must conduct annual reexaminations of family composition, community service, self-sufficiency, and other criteria related to continued occupancy.^{ci}
- PHAs are required to provide an income-based rent amount only in the year that a reexamination is conducted or if the family specifically requests it and submits updated income information.

Switching from Flat Rent to Income-Based Rent Because of Hardship (24 CFR § 960.253)

At any time families experiencing financial hardship and unable to pay flat rents because their situations have changed can opt to switch to an income-based rent.

- The PHA must adopt written policies on switching from one type of rent to another.
- If the PHA determines that a financial hardship exists, the PHA must immediately allow the requested switch.
- The time period for the PHA to determine that a hardship exists should be spelled out in the ACOP.
- PHA policies on hardship must include, but are not limited to, the following changes in circumstance:
 - Decreases in income
 - Loss or reduction of employment
 - Death in the family
 - Reduction or loss of earnings or other assistance
 - Increase in expenses including
 - Medical costs
 - Childcare
 - Transportation
 - Education
- Other situations determined by the PHA (Many PHAs are permitting families to switch whenever the income-based rent would be lower than the flat rent, on the theory that they would rather not lose the family.)

Annual Review of Flat Rents (24 CFR § 960.253)

PHAs should review their flat rents as often as necessary, but at least annually, to ensure that flat rents continue to mirror market rent values. In some PHA neighborhoods, where private disinvestments are



occurring, this could result in a reduction of flat rents. Conversely, if public and private investment were increasing rental values near a public housing property, flat rents would rise.

Residents paying flat rents would not have their flat rents adjusted (up or down) until their annual reexamination or annual update.

10.7 Relationship Between Rents and Utility Allowances

Utility allowances are provided to families paying income-based or ceiling rents when the cost of utilities is not included in the rent. Utility Allowances should not be confused with excess utility charges. (See Chapter 14 for a discussion of utilities.)

- Utilities include gas, electricity, fuel for heating, water, sewerage and solid waste disposal for an assisted unit. In addition, if the PHA does not furnish a range and refrigerator, the resident must be granted a utility allowance for the range and refrigerator they provide.
- Telephone and cable television are not considered utilities.
- The amount of the utility allowance is equal to the estimate of the monthly cost of the reasonable consumption of utilities and other services for the unit by an energy-conservative household of modest circumstances.
- Utility allowance amounts will vary by the rates in effect, size and type of unit (single family, duplex, row, town home), climatic location and sitting of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit. Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage.
- The allowance amount must be sufficient to maintain the requirements of a safe, sanitary and healthful living environment.^{ci} Existing technical standards (i.e., local building codes) should be used where available in determining what is necessary to provide for safe, sanitary and healthful living.

10.8 Utility Reimbursement

The amount, if any, by which the utility allowance for a unit exceeds the total tenant payment for the family occupying the unit must be provided as a utility reimbursement, either directly to the family or to the utility supplier on the family's behalf each month.^{ciii} (This definition is not used in the Housing Choice Voucher Program, or for a public housing family that is paying a flat rent.)

Example 1: No Reimbursement		Example 2: Utility Reimbursement	
Total Tenant Payment =	\$ 120	Total Tenant Payment =	\$ 120
Minus Utility Allowance =	\$ 75	Minus Utility Allowance =	\$ 130
Rent paid to the PHA =	\$ 45	Utility Reimbursement =	\$ 10

10.9 Earned Income Disallowance (EID)

Overview

The earned income disallowance, established by QHWRA, encourages resident self-sufficiency by rewarding certain residents who go to work or have increased earnings. The earned income disallowance is applicable to an adult resident who either begins earning income or earns additional income. The disallowance functions as an income exclusion – that is, certain amounts of qualifying adults’ verified income are not counted toward rent for a specified period. For a qualified resident, increases in income due to earnings are completely excluded in calculating rent for 12 months, after which, half the increased earnings are excluded for the following 12 months. The exclusion period can be interrupted, but in no case may the total number of months between the beginning of the exclusion and the final month of exclusion exceed 48 months. Thereafter, applicants cannot receive the earned income disallowance, including for purposes of admission, rent and income targeting.

Note: An updated EID Frequently Asked Questions (FAQ) is available at HUD’s Public and Indian Housing web site at www.hud.gov/pih. Also available, for your benefit, is an EID calculator in Excel spreadsheet format and instructions along with an EID Exclusion Period Tracking Form.

Terminology

Earned income exclusion, earned income disregard and earned income disallowance all mean the same thing: income that the individual receives that is not counted as part of their annual income for rent computation. Former income is the amount of the family member’s income just prior to the earned



income disallowance being triggered, e.g., the last certified income. It is this former income that establishes the **baseline** amount to be used in determining the amount to be excluded. The baseline for that family member will never change throughout the course of the earned income disallowance.

Qualifying for a Disallowance

The earned income disallowance is only available for households under lease. It is not applicable at admission. Only adults can qualify for the earned income disallowance (because the earnings of family members other than the head or spouse are excluded if the family member is under age 18). Each person can receive only one 48-month disallowance period during his or her lifetime. There are three categories of individuals who qualify for the earned income disallowance:

- **A person whose annual income increases because of employment after having been unemployed for at least 12 months.** A person is considered to have been unemployed if he or she has earned less money in the previous 12 months than would have been earned working 10 hours per week for 50 weeks at the established minimum wage. (The minimum wage to be used is that applicable to the locality in which the determination is made.) The majority of families who qualify for earned income disallowances are likely to do so under this category.

Note: An individual who was unemployed for some period of time before becoming a public housing resident or who earned so little in the previous period to be considered unemployed could qualify under this category, so long as there is a 12 month period of unemployment.

- **A person whose annual income increases because of new or increased earnings during participation in an economic self-sufficiency or other job-training program.** This requirement is not the same as the previous income disregard. The key concept in this eligibility category is that the individual receives the new or additional earned income while he or she is involved in economic self-sufficiency or job training, not after the completion of such training.

Note: An example of this category of qualification occurs when people are studying for a variety of medical professions. Typically, classroom work is followed by a 'practicum' in a doctor's office, hospital or clinic, during which the individual is paid.

- **A person whose annual income increases because of new or increased earnings, during or within six months after receiving assistance, benefits or services from a program funded by any state program for Temporary Assistance to Needy Families funded under Part A of Title VI of the Social Security**



Act.³⁷ The assistance is not limited to income maintenance, but also includes benefits and services such as child care and transportation subsidies and one-time payments, wage subsidies and other amounts and services as long as the value of such benefits or services over a six month period is at least \$500. This is the only eligibility category that relates to the type of income received before the earned income. Only persons who have received either cash grants (of any amount) or at least \$500 worth of benefits or services from a qualified welfare program in the past six months qualify under this category. Note, also that persons who are already employed but who receive increases in income may qualify under this category if they have received welfare income or services in the previous six months.

Example: A former welfare recipient who is still receiving subsidized childcare from the welfare agency is working in a fast food restaurant. The quality of her work and her attendance and attitude bring her to the attention of the restaurant's management who nominates her for the 'management track.'

She is selected, trained, and receives a substantial increase in her hourly rate. Because she is receiving childcare subsidy from the welfare agency worth \$300 per month, the increase in her earnings will qualify her for the earned income disallowance.

Note: Receipt of Medicaid or food stamps does not qualify under this category, although there are a wide range of services and programs that do qualify. A PHA should check with the agency that administers welfare programs to determine the source of funding.

Disallowance Amounts (24 CFR § 960.255 (b))

In the first 12 months, the amount excluded from the qualified family's household income is the amount by which the new income of the family member whose earned income increases exceeds the family member's former income.³⁸

If a resident has taken a job that pays only slightly more than the resident's previous income, the disallowance amount would be very small. On the other hand, if a resident's child were taking her first job after finishing college, she might qualify for the disallowance of the entire amount of her earnings, since she might very well have had no income prior to her new employment. Below is the method of calculation for determining the earned income disallowance. The spreadsheet below has been automated in Excel software format and can be accessed at HUD's PIH web site. The method illustrated on the following page has the effect of applying the disallowance that results when a family member goes to work, without impacting the TTP, because that event has occurred. Moreover, in calculating the

³⁷ As determined by the PHA in consultation with the local agencies administering Temporary Assistance to Needy Families (TANF) and welfare to work programs.

³⁸ In determining "former income", the PHA is permitted to use the last certified income of the family member.

disallowance, the amount disallowed can never be greater than the total earned income of the family member.

Source Of Income	BASELINE LAST CERTIFIED INCOME) (B)	NEW TOTAL ANNUAL INCOME FOR THIS FAMILY MEMBER ONLY (C)	ANNUAL DISALLOWANCE C-B (D)	OTHER INCOME EXCLUSIONS (E)	INCOME AFTER EXCLUSIONS C-1 -E (F)
TANF	6,000	6,000			
Child Support	3,000	2,400			
Wages	0.0	10,000			
Other income					
Total	9,000	18,400	9,400	0.0	9,000

After the first exclusion period (12 months), the disallowance amount is fifty percent of the increase in earned income of the family member over the baseline of that family member. Thus, if a resident received a raise during the first 12 months of working, or changed to a job that paid more than the initial job, the amount disallowed during the first 12 months is the entire amount by which earnings exceed the baseline income. At the end of the first 12 months, the disallowance amount would be based on fifty percent of the increased earned income.

Disallowance Periods (24 CFR § 960.255 (b))

Every resident that qualifies for a disallowance receives two different disallowance periods: 12 cumulative months of full disallowance and 12 cumulative months of fifty percent disallowance, or phase-in exclusion. For the 12 cumulative months starting when the disallowance begins, the full exclusion period is in effect and the amount disallowed is the difference between the resident’s baseline income and the new annual income due to earned income. After the first 12 month exclusion period, the disallowance continues in effect for an additional 12 months, but the amount of the disallowance is reduced by fifty percent.

Note: The disallowance amount computation is specific to the individual resident and not to the entire family. If a family consisted of a head of household who was receiving welfare income, and her



children, one of whom is finishing high school and turning 18, the disallowance for the head would be the earnings less the welfare income (3rd EID category). For the 18 year old, however, the disallowance would be the entire amount earned because this family member had no income previously (1st EID category).

Maximum Disallowance Period

One aspect of the earned income disallowance that makes the program particularly useful to families moving from welfare to work is that the disallowance periods are only in effect when the family is actually earning income. The disallowance period is suspended if the resident is laid off or stops work for some other reason. Eligibility for the disallowance can be spread over a maximum of 48 months.

Many residents find the road from welfare to work very bumpy and cycle in and out of work. Residents should be counseled to report to the PHA when they stop working and when they start working again, so the PHA can keep track of exactly how many months are remaining for their disallowance period.

Note: One effect of the earned income disallowance is to eliminate some situations in which the PHA would otherwise be making retroactive charges to residents. For example, if a resident gets a job and does not report in a timely manner, the resident might be subject to a retroactive charge of the difference between the amount he paid and the amount his rent should have been. If the resident qualified for a disallowance, however, when the PHA finds out about the job, the resident would be deemed to have already received the number of months of disallowance from the point when he would have qualified for the disallowance. In other words, the disallowance does not start when the PHA discovers the additional earned income or when the resident gets around to reporting it – the disallowance starts when the additional employment income starts.

While this program detail is of benefit to families, it makes the program more difficult for PHAs to administer correctly. PHAs must track each resident's disallowance periods carefully, both to ensure that every resident gets the 12 months of full disallowance and 12 months of fifty percent disallowance to which they are entitled and to avoid granting any resident a disallowance that extends beyond the 48 month maximum.

Earned Income Disallowance Example

- Sandra Marshall was unemployed for 25 months ending May 30, 2000.
- Her TANF income was \$540 per month.
- She received a position on the assembly line at the local automobile plant, earning \$1100 per month starting work on June 1, 2000 and reported to the PHA immediately. The PHA noted that her maximum disallowance period would expire on May 31, 2004.
- The amount of her disallowance was \$560 per month (\$1,100 in new earnings - \$540 in TANF) beginning June 1, 2000.
- Sandra’s rent continued to be based on her previous TANF income of \$540 per month
- Sandra was laid off effective September 1, 2000 and reported to the PHA immediately.
- The PHA noted that Sandra still has 9 months of full disallowance left and 12 months of 50% disallowance left.
- Sandra went back on TANF at \$540 per month from September 1, 2000 until January 1, 2001, when she was called back to work at the plant at her previous \$1,100 per month salary. Sandra reported to the PHA immediately.
- In the ninth month of her first year, Sandra receives a raise to \$1,200 per month. This does not affect her disallowance during the first 12 months.
- Sandra’s rent was based on \$540 until August 31, 2001 (which completed the 9 months of full disallowance that were remaining).
- After 12 months, her disallowance was reduced to \$330 per month (50% of her new earned income of \$1,200 less her original TANF income of \$540).
- Effective September 1, 2001, Sandra’s rent was increased because she was now in the beginning of her 12 months of 50% disallowance. Her rent will now be based on \$870 per month (\$540 of base income plus \$330, 50% of the new earned income amount)
- Sandra is not laid off again and continues to work at the plant.
- On August 31, 2002 Sandra completes the 12 months of 50% disallowance.
- Beginning September 1, 2002 Sandra’s rent is based on her full income of \$1,200 per month.



Imputed Welfare Income and Earned Income Disallowance

Occasionally an individual who is under an imputed welfare income sanction will go to work and qualify for an earned income disallowance. In this instance, the base rent, before the disallowance, includes the imputed welfare income. See Chapter 13 for further discussion of imputed welfare income.

Individual Savings Account (24 CFR § 960.255 (d))

PHAs have the choice to implement Individual Savings Accounts (ISAs) as an alternative to the earned income disallowance. While there are some ways in which the ISA is similar to an escrow account under the Family Self-Sufficiency (FSS) program, there are also some significant differences. Even if a PHA opts to implement ISAs, the family has a choice of either depositing to an ISA or taking the earned income disallowance. The PHA may not require families to use ISAs.

The amount to be deposited into the ISA is computed in the same manner as an FSS escrow account, that is, the difference between the family's original rent and what the rent would be if the new earned income were included. In the Sandra Marshall example above, Sandra's ISA deposit would be the difference between her rent based on her former \$540 per month welfare income and the rent based on the \$1,100 per month automobile plant job.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home;
- To pay education costs of family members;
- Because the family is moving out of public or other assisted housing; or
- To pay any other expenses the PHA authorizes to promote economic self-sufficiency.

The PHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The PHA may not charge the family a fee for maintaining the account.

At least once each year the PHA must provide each family with an ISA a statement of the balance in their account (including any interest earned, if required by state law).

If the family moves out of public housing, the PHA must return the balance in the family's ISA, less any amounts the family owes the PHA.



Chapter 12. Annual Reexamination of Income and Family Circumstances

12.0 Overview

After a family is admitted to public housing, they must comply with HUD's and the PHA's rules on continued occupancy (as expressed in the PHA's lease) to remain as tenants in good standing.^{xxv} The Admission and Continued Occupancy Policy as well as the lease should clearly state the criteria that would qualify a resident for continued occupancy. This chapter provides guidance on the criteria for continued occupancy of public housing residents.

12.1 Qualification for Continued Occupancy

Residents who meet the following criteria are eligible for continued occupancy:

- Qualify as a family: Remaining family members qualify as a family so long as at least one of them is of legal age to execute a lease. Remaining family members can also include court recognized emancipated minors under the age of 18.
- Are in full compliance with the resident obligations as described in the dwelling lease: Except for failing to comply with Community Service requirements (described in Chapter 15), public housing authorities cannot refuse to renew their residents' leases. Leases can only be terminated for serious or repeated violation of the material terms of the lease.
- Whose family members, age 6 and older, each have Social Security numbers or have certifications on file indicating they have no Social Security number: At the annual reexamination residents should document the social security numbers of children born, adopted or placed in the family by Court-awarded custody since the admission or the previous reexamination.
- Who meet HUD standards on citizenship or immigration status or are paying a pro-rated rent (24 CFR § 5.500). As with Social Security numbers, residents would document the citizenship or eligible immigrant status of children born, adopted, or placed in the family by Court-awarded custody since admission or previous reexamination.



- Who are in compliance with the PHA's 8 hour per month community service requirements. This requirement is applicable to certain adults who are neither elderly, person with a disability, already working or otherwise exempt. (See Chapter 15).

12.2 Annual Reexamination

At least annually, the resident is required to provide the PHA with accurate and current information on the following, as stipulated in the lease (24 CFR § 966.4):

- Family composition;
- Age of family members;
- Annual income and sources of income of all family members;⁴⁰
- Deductions for computing adjusted income;
- Assets;
- Community Service and economic self-sufficiency activities and exempt status of all family members over age 18;
- Social security numbers for any new family members; and
- Citizenship or eligible immigrant status of any new family members.

To ensure uniformity and compliance with HUD regulations and Civil Rights Laws, PHAs must establish reexamination procedures to be followed by Occupancy Staff that reflect their Admission and Continued Occupancy Policy.^{cxvi} It is not possible to perform an adequate reexamination without interviewing the family. The following procedures are essential to the reexamination process:

- Many PHAs require adult members of the household to sign an application for continued occupancy and other forms required by HUD.⁴¹
- Employment, income, allowances, Social Security numbers, and such other data appropriate for the family's circumstances must be verified,^{cxvii} and all verified findings must be documented and filed in the resident's folder.^{cxviii} A credit check may be run on each family at the time of reexamination to help detect any unreported income, family members not reported on the lease, etc. (24 CFR § 960.259).
- Verified information is to be analyzed and a determination must be made with respect to:
 - Eligibility of the resident as a family or as the remaining member of a family;

⁴⁰ The exception is PHAs may require that families paying Flat Rent need only provide income information every three years.

⁴¹ In certain states it is possible to bring legal action against anyone who signs a lease. In other states only the head of household may be subject to lease enforcement.



- Unit size required for the family (using the Occupancy standard established by PHA in the ACOP); and
- Income-based rent the family would pay (although all residents will be given the choice of paying income-based or flat rent).
- Residents with a history of employment whose regular reexamination takes place at a time when they are not employed must have their income calculated based on their past and anticipated employment. Residents with seasonal or part-time employment of a cyclical nature must be asked for third party documentation of the circumstances of their employment including starting and ending dates.
- Income shall be computed in accordance with the definitions and procedures set forth in HUD regulations (24 CFR Part 5).
- Families failing to respond to the initial reexamination appointment are usually issued a final appointment within the same month. If the family fails to respond to the final request they will be sent a notice of lease violation and referred to the Housing Manager for failure to comply with the terms and conditions of the lease. Failure to comply must result in termination of the lease (24 CFR § 966.4 (c)(2)).
- Third party verifications must be obtained and documented for annual income, net family assets, deductions from annual income and any other factor that could affect the adjusted income or income based rent of the family undergoing reexamination. The PHA must also document if third party verifications are not available.
- Criminal Background checks may be conducted for all household members age 18 and over.⁴²

Chapter 7 of this Guidebook provides further guidance on verifications standards.

Reexamination of Income (24 CFR § 960.257)

PHAs are required to reexamine the incomes of all residents who have chosen to pay income-based rent at least annually⁴³ after which, if appropriate, their rents will be adjusted.

To facilitate the reexamination process, a PHA must provide each resident reasonable written notice of what actions the resident must take and the timeframe for those actions, before the process starts.^{cxix} This stipulation should be included in the PHA's lease.

⁴² Increasing numbers of PHAs are conducting criminal history checks at annual reexaminations, although this is not a HUD requirement.

⁴³ Many PHAs set certain categories of residents up on more frequent reexamination schedules. Examples of families to whom this might apply would include families who report zero income, or those whose incomes are too unstable to determine for twelve months.



The annual reexamination of income is equivalent to that at admission: the PHA must obtain acceptable verifications (see Chapter 7) of every type of income included in Annual Income (see Chapter 10) received by each family member. Then, if income has changed, rent will be recomputed. State laws require differing amounts of notice of rent increases, so the PHA must begin the reexamination process early enough to complete verifications and provide the requisite amount of notice that will permit rent to be adjusted at the beginning of the next twelve month lease term. Most PHAs begin the reexamination process one hundred twenty to ninety days before lease expiration.

PHAs are permitted to reexamine the incomes of residents who have opted to pay flat rent as infrequently as every three years.

Reexamination of Family Composition

PHAs are required to reexamine the family composition of both families paying income-based rent and flat rent annually. The purpose of this reexamination is to ensure that the size and type of unit in which the family is living is appropriate for the family's size and needs. Unless the family has requested an interim occupancy transfer, the annual reexamination is the point at which the PHA makes determination about a resident's eligibility or requirement to transfer.⁴⁴ As with rent adjustments, the lease stipulates the amount of notice required for transfers, so PHAs should schedule reexaminations far enough in advance that transfers can be effectuated concurrent with the execution of new annual leases. Transfers are covered in more detail in Section 12.7.

Verification requirements related to family composition (see Chapter 7) must be followed for all new family members added to a tenant's lease at reexamination.^{xxx}

PHAs are required to add to the lease and certification form children added to the household by birth, adoption or Court-awarded custody. If the PHA's lease requires residents to report the addition of such children when they actually join the household, the verification requirements may already be complete at the annual reexamination.

The PHA's lease describes its policies with respect to adding adults to the lease. Generally, PHAs should not add adults to a lease unless the PHA has screened them (using the PHA's standard applicant selection criteria) and given the tenant written permission to add the adults.

⁴⁴ Some PHA's leases and ACOPs provide that occupancy transfers will only take place at annual reexaminations.



Choice of Rent

During the reexamination process, the PHA must give each resident the choice between income-based or flat rent.^{cxxi} The annual reexamination is the only time a resident can change from income-based to flat rent. Chapter 10 of this guidebook further describes the different types of Program Rents.

Community Service/Economic Self-Sufficiency Requirement

The Quality Housing and Work Responsibility Act of 1998 introduced the Community Service and Economic Self-Sufficiency requirement, under which each PHA must adequately document whether its non-exempt residents are complying with their community service or economic self-sufficiency responsibilities.^{cxix} This requirement relates directly to lease renewal, because the PHA is not permitted to renew the lease at the end of the twelve (12) month period if non-exempt family members fail to comply with the service requirement. The Community Service and Economic Self-Sufficiency requirement is discussed in Chapter 15.

12.3 Remaining Family Members and Prior Debt

If the head of household dies or leaves the dwelling unit permanently for any reason, the remaining family members may continue to occupy the unit if there is at least one household member (not a live-in aide) of legal age and capacity to execute the lease living in the household. A new lease must be signed to correct the family's composition in the tenant file.^{cxix}

A PHA may permit an adult not on the lease, to be a new head of household after the death or departure of the original head of household. This would usually occur when the only family members remaining in the unit are children, who otherwise would have to leave the unit. The PHA should consider whether there are any remaining family members capable of executing a lease before permitting a new head of household in the unit.

In either case, the new head of household would be charged for any outstanding debt incurred by the former head or spouse. The PHA may establish a payment plan with the new head of household, especially in the case where there could be an eviction due to delinquent amounts incurred by the former head.

A PHA shall not hold remaining family members under age 18 responsible for the rent arrearages incurred by the former head of household, nor for any amounts incurred before a new head of household attained age 18.



12.4 Change in Reexamination Date

If a family begins working and their incremental earned income is excluded in accordance with HUD requirements on the Earned Income Disallowance, the date for their next regular reexamination may be permanently adjusted to be 12 months following the date that the income disallowance began.

12.5 Zero Income Families

When families report zero income, and have no income excluded for rent computation, PHAs have an obligation to pursue verification of income that reflects the family's lifestyle. One method is to examine the family's circumstances every 60 to 90 days until they have a stable income. It is recommended that PHAs request zero income families to complete a zero income form (see Appendix VIII). The form asks residents to estimate how much they spend on: telephone, cable TV, food, clothing, transportation, health care, child care, debts, household items, etc. and whether any of these costs are being paid by an individual outside the family. If any such payments are received they are to be considered income.

12.6 Special Reexaminations

If the PHA cannot estimate anticipated annual income based on the available information with any degree of accuracy at the time of admission or regular reexamination, a temporary determination will be made with respect to income and a special reexamination can be scheduled every 60 or 120 days (as stated in the PHA's ACOP) until a reasonably accurate estimate of income can be made. The resident must be notified in advance of the date for the special reexamination(s). Special reexaminations shall also be conducted when there is a change in the head of household that requires a remaining family member to take on the responsibilities of a leaseholder.

12.7 Determination of Need for Transfer

If the reexamination conducted by the PHA determines that any change in the unit size or unit type is required, the resident must be placed on a transfer list in accordance with the PHA's transfer criteria specified in the Admission and Continued Occupancy Policy and moved to an appropriate unit that conforms with the size and design required by the family, when one becomes available. (24 CFR § 966.4 (c)(3)). The transfer must be in accordance with the transfer criteria.

After discussing with the resident the need for the transfer during the reexamination process, the PHA shall provide the resident, upon request, with a written notice indicating the reasons for the determination of transfer, the resident's right to request a hearing under the grievance procedure, and the approximate date, if known, for the move.



Involuntary transfers are considered adverse actions and, as such, are subject to the PHA's Grievance Procedures. The transfer cannot be processed until the time to request a grievance hearing has expired or the procedure has been completed. (See Chapter 11 for further discussion of Transfers.)

Chapter 13. Interim Rent Adjustments

13.0 Overview

Interim rent adjustments are made as a result of changes in family income or changes in family composition between annual reexaminations. Housing Authorities are required to decrease rent in certain instances (described below), but they have options regarding changes or activities that will trigger interim rent increases. The options an authority chooses must be detailed in its Admissions and Continued Occupancy Policy (ACOP) and outlined in its annual PHA Plan.

13.1 Required Interim Rent Reductions

There are several instances in which a reduction in a family's income or other change in their circumstances might require a PHA to make an interim reduction in their rent, as described below.

Minimum Rent Hardship Exemption

If a PHA has adopted a minimum rent greater than \$0 per month, and a resident is paying the minimum rent, there are certain instances in which the PHA is required to suspend the minimum rent (24 CFR § 5.630):

- When the family has lost eligibility for or is awaiting an eligibility determination for a government assistance program;
- When the family would be evicted because it is unable to pay the minimum rent;
- When the income of the family has decreased because of changed circumstances including loss of employment;
- When a death has occurred in the family; and
- Other circumstances determined by the PHA or HUD (currently none are required).

It is necessary that PHAs advise any family who pays the minimum rent of the right to request the exemption. If a family paying minimum rent requests a hardship exemption, the PHA must suspend the minimum rent, effective the following month.^{cxxiv} The PHA may not evict the family for non-payment of the minimum rent for 90 days following the request for the hardship exemption.

The suspension of minimum rent continues until the PHA determines whether or not the hardship is temporary or long term.



If the hardship is verified to be temporary (less than 90 days), the PHA must reinstate the minimum rent and offer the family a reasonable repayment agreement of the minimum rent that was suspended.^{cxxv}

If the hardship is verified to be long-term (lasting more than 90 days), the minimum rent must be suspended until the hardship ceases. The family may not be evicted for failing to pay the minimum rent while the hardship is occurring.^{cxxvi}

If a PHA denies a resident the minimum rent hardship exemption, the resident is entitled to file a grievance and the PHA may not require the resident to make an escrow deposit to obtain the grievance hearing.

Decrease in Income of Families Paying Income-Based Rent

If a family is paying income-based rent and experiences a reduction in income pursuant to the PHA's reexamination policies, the family may request an interim reexamination of family income. As a result, the PHA must adjust the family's rent to correspond to the new verified income,^{cxxvii} effective the first day of the month following the reported change in circumstances.⁴⁵ The reduction in income might occur because of a job lay-off or cutback in hours worked, or from some sort of reduction in unearned income. Remember that reductions in welfare payments due to welfare fraud or failure to comply with economic self-sufficiency requirements are not eligible for rent reductions (Section 13.5).

Change in Circumstances (Increase in Eligible Deductions) of Families Paying Income-Based Rent

Occasionally families paying income based rent experience a verified change in their circumstances that would qualify them for a reduction in income-based rent even though their incomes have not decreased. These circumstances would increase the family's deductions and thus reduce their adjusted income. Examples include:

- When families gains an additional dependent;
- When a family's child care costs increase with no increase in income;
- When an elderly or disabled family's unreimbursed medical costs increase;
- When a family that was not an elderly or disabled family becomes an elderly or disabled family; and
- When a family's disability expense allowance increases.

⁴⁵ If the reduction in income were reported after the PHA's cut-off date for the following month's rent set-up, this might mean the PHA would charge the resident the former, higher rent, subject to a credit when the circumstances of the reduction were verified.



Hardship of Families Paying Flat Rent (24 CFR § 960.253 (f))

When families who have elected to pay flat rent experience certain hardships they are eligible for a reduction of rent to an income-based rent. PHAs are permitted to adjust a family's rent from flat rent to income-based rent any time the income-based rent would be lower, but they are required to adjust the rent in the following circumstances:

- The family has experienced a verified loss in income because of changed circumstances, including loss of reduction of employment, death in the family, or reduction in or loss of earnings or other assistance.
- The family has experienced a verified increase in expenses because of changed circumstances such as increased medical costs, childcare, transportation, education or similar items.

13.2 Approaches to Interim Rent Increases

Unlike the rules related to interim reductions in rent, PHAs are not required to increase rent between annual reexaminations except when it is determined that the resident misrepresented income or expenses at the annual reexamination. The three main approaches to Interim Rent Adjustments are Fixed Rent System, Variable Rent System, and the Hybrid Rent System. The PHA’s approach to interim rent increases must be set forth in writing in the PHA’s ACOP and lease.^{cxviii}

Fixed Rent System

Many housing authorities have discovered that the increase in rental income resulting from processing interim rent increases is less than the cost of processing the changes. In a “Fixed Rent System,” increases in family income between reexaminations will not result in a rent increases until the next annual reexamination. This can serve as an incentive for families to improve their economic circumstances. Examples of income changes and resulting PHA actions are below:

CHANGE	PHA ACTION
(a) Increase in earned income from the employment of a current family member.	PHA will grant earned income disallowance if family member qualifies, or will defer the increase to the next regular reexamination.
(b) Increase in unearned income (e.g., COLA adjustment for social security).	PHA will defer the increase to the next regular reexamination.
(c) Increase in income because a person with income (from any source) is approved by the PHA to join the household.	PHA will defer the increase to the next regular reexamination.



Interim Rent System

Under an “Interim Rent System,” the PHA processes interim increases in the rent for every interim increase in income. All changes in income must be reported to the PHA, within the time period specified in the ACOP.^{cxix} A rent change is processed for each change, even if the increase would only be one dollar per month. Unlike the Fixed Rent System, there are no changes that are delayed until the next annual reexamination. The Interim Rent System can be extremely staff intensive, requiring that staff obtain third-party verifications on many small changes in income as well as processing the change in rent.

Hybrid Rent System

Housing authorities that implement a “Hybrid Rent System” establish a benchmark in the lease and ACOP for the types of increases in income that would result in a change in rent. Examples of benchmarks that PHAs may use in a Hybrid Rent System include:

- Family has income after having reported zero income;
- Increases in income of a specified percentage;
- Increases in income of a specified amount;
- Increases in income resulting from changes in employers or other sources of income;
- Increases in income resulting from someone with income joining the family (with the PHA's permission);
- Increases in income that occur after the PHA has granted an interim decrease in rent; and
- Increases in unearned income resulting something other than from annual Cost of Living Increases.

While the Hybrid Rent System may decrease the number of changes in rent, depending on the types of increases that will trigger a rent change, it can be complex for housing authority staff to determine when to process rent changes resulting from increases in income.

It is recommended that a PHA using the Hybrid Rent System include a detailed description in its ACOP and lease describing the events that trigger the change in rent. For example, if a PHA chooses an increase in income of a specified percentage, the PHA's ACOP states what that percentage is and how that percentage is computed (i.e., percentage of that source of income or percentage of the total income of the family).

13.3 Effective Date of Adjustments (24 CFR § 966.4 (3)(b))

PHAs shall notify residents in writing of any rent adjustment and when the adjustment is effective. Rent decreases usually go into effect the first of the month following the reported change. Income decreases reported and verified before the tenant accounting cut-off date will be effective the first of the following month. Income decreases reported or verified after the tenant accounting cut-off date will be effective the first of the second month with a credit retroactive to the first month. The PHA may adopt a policy that states that a decrease that is verified to last less than 30 days will not be processed.

Rent **increases** (except those due to misrepresentation) require the same notice as other rent increases (established in state law) and become effective as stated in the lease.

13.4 Timely Reporting of Accurate Information

A PHA must include in its ACOP resident requirements (if any) for reporting changes in income.^{cxxx} Even if the PHA is using the Fixed Rent System, the PHA still may require the resident to report all changes with a set time period of the change occurring. Since the Fixed Rent System does not require that a rent change occur with every increase in rent, the PHA will file the changes in the tenant file, without verification. Verifications will be performed at the time of the next annual reexamination. PHAs may also choose not to require residents to report income increases if it will not change rent until the annual reexamination.

If it is found the resident has misrepresented or failed to report to the PHA the facts upon which his/her rent is based so that the rent being paid is less than what should have been charged, then the increase in rent will be made retroactive. Failure to report accurate information is also grounds for initiating eviction proceedings in accordance with PHA's dwelling lease (24 CFR § 966.4).

The PHA will always process an interim increase in rent if it is found that the resident at an annual or interim reexamination has misrepresented the facts upon which the rent is based so that the rent the resident is paying is less than the rent that he/she should have been charged. PHA will apply any increase in rent retroactive to the first of the month following the month in which the misrepresentation occurred.

Failure to report within the timeframe specified in the ACOP and lease may result in a retroactive rent increase, but not a retroactive credit or rent reduction. In order to qualify for rent reductions, residents must report income decreases promptly. Residents may also be required to report interim increases in income if they have been granted interim rent reductions.^{cxxxi}

Complete verification of the circumstances applicable to rent adjustments must be documented.^{cxxxii}

13.5 Imputed Welfare Income (24 CFR § 5.615)

Overview

In 1998, with the passage of QHwRA, Congress linked welfare reform and housing reform. To give public housing residents and housing choice voucher participants a greater incentive to comply with welfare requirements that participants move toward economic independence, the law established two situations in which PHAs are not permitted to reduce rents, even though resident families have reduced incomes. Instead of reducing rent, the PHA must “impute” welfare income to the family in an amount equal to the reduction in benefits.^{cxxxiii}

Economic Self-Sufficiency Requirements

The imputed income provisions apply only to residents who receive welfare assistance from a government program that requires a family member to participate in an economic self-sufficiency program as a condition for receipt of the assistance. In other words, imputed welfare income rules are not applicable to social security benefits, SSI, or general assistance. In most states, the programs to which the imputed welfare income rules apply are funded under the federal program of Temporary Assistance to Needy Families (TANF), although some state and local programs also have similar economic self-sufficiency requirements.

24 CFR § 5.603 (b) defines economic self-sufficiency program as:

“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.”

Also included would be General Equivalency Diploma programs, certain higher education, and work readiness programs. Economic self-sufficiency requirements are generally tailored to each welfare recipient’s situation, so the same programs will not be required for every resident.

When the PHA Must Not Reduce Rent

There are two situations in which a PHA is not permitted to reduce rent, even though the family has experienced a reduction in benefits:



- When welfare benefits are verified to have been reduced because of welfare fraud; or
- When welfare benefits are verified to have been reduced because of noncompliance with economic self-sufficiency requirements.

These are the only situations in which welfare income is imputed.

When the PHA Must Reduce Rent

Any other time a resident's welfare grant is reduced or terminated, the PHA must reduce rent in accordance with the ACOP.^{xxxiv} Examples include:

- At expiration of lifetime or other time limit on the payment of welfare benefits;
- If a family member cannot find a job, even though he or she has completed all the required economic self-sufficiency requirements;
- Because the family's welfare grant was reduced for noncompliance with some other welfare agency requirement; or
- Because of an earlier inadvertent overpayment.

This is not an all-inclusive list of situations in which welfare benefits might be reduced and a PHA would reduce rent.

Example: States that immediately terminate a welfare grant if a recipient misses an appointment (for any reason) and reinstate the grant only when a subsequent appointment is made and kept.

Verification Standards

Before a PHA can make a determination about whether or not to grant a rent reduction, or, conversely, impute welfare income, the PHA must obtain written verification from the welfare agency of the dollar amount of welfare reduction, the term of the reduction, and the reason for the reduction. With this information, the PHA can make a determination about whether or not to impute welfare income. PHAs are expressly permitted to rely on the welfare agency's verification. If a resident wishes to dispute the welfare agency's allegations about welfare fraud or failure to comply with economic self-sufficiency requirements, the resident must appeal through the welfare program's channels. PHAs are permitted, but not required, to delay imputing welfare income until such appeals are exhausted.

Method for Imputing Welfare Income

After the PHA receives verification that it is appropriate to impute welfare income, the PHA can determine the imputed welfare amount: simply, it is the amount by which the welfare grant has been reduced. The amount of time during which welfare income will be imputed is the term of the welfare benefit reduction. Another way of expressing this concept is to say that the PHA is required to compute rent exactly as if the welfare benefit reduction had not occurred until either the benefit reduction ceases, or the resident obtains some additional type of income.

Offsetting Imputed Welfare Income with Additional Income

If a PHA is imputing welfare income in computing a resident’s rent and the resident’s income increases for any reason (e.g., earned or unearned income), the new income is not added to the former income (which includes the imputed welfare income). Instead, the new income takes the place of the imputed welfare income. Thus, when a resident with imputed welfare income obtains any additional income, it is not added to the overall income until it exceeds the amount of the welfare sanction amount.

Imputed Welfare Income Example

Provided below is an example of imputed welfare income, and what happens when a resident with imputed welfare income obtains additional income.

Example: Meet Monica Smith. Monica’s welfare grant is being reduced because of failure to comply with economic self-sufficiency requirements. The PHA has written verification that Monica’s former monthly grant of \$500 is going to be reduced to \$300 per month for six months.

Previous welfare grant	\$500 per month
Amount of welfare benefit reduction	\$200 per month
New welfare income (next six months)	\$300 per month
PHA’s imputed welfare income amount (Same as the welfare benefit reduction)	\$200 per month
New monthly income for rent	\$500 per month
(includes \$300 welfare income + \$200 imputed welfare income)	

Even though Monica’s actual cash income has been reduced by forty percent, the PHA is required to impute welfare income and use \$500 in computing her rent.

If Monica gets a job to make up for the reduction in her welfare grant it will be applied as follows:

If she earns \$200 per month, her rent will be based on	\$500 per month
(\$300 in welfare, \$200 in earnings, offsetting the imputed welfare income)	
If she earns \$250 per month, her rent will be based on	\$550 per month
(\$300 in welfare, \$250 in earnings, offsetting the imputed welfare income)	
If she earns \$150 per month, her rent will be based on	\$500 per month
(\$300 in welfare, \$150 in earnings, \$50 in imputed welfare income)	

Under no circumstances will a resident who is under an imputed welfare income sanction pay less rent than the share of rent based on the former welfare income.

Imputed Welfare Income and Earned Income Disallowance

Occasionally a resident who is having welfare income imputed will go to work and qualify for an earned income disallowance, described below. Note that the baseline income for such a resident will include the imputed welfare income, rather than being based on the actual cash welfare income. In the Monica Smith example, if Monica got a very good job paying \$1,000 per month, her \$500 income (based on actual and imputed welfare income), would be the income used to compute the rent she would pay, not the rent based on her \$300 cash welfare income. See the discussion in Chapter 10 on earned income disallowance.

Chapter 14. Utilities

14.0 Overview

There are two approaches to payment of utilities in public housing: PHA-paid and resident-paid. Generally PHA-paid utilities are master metered, but the regulations at 24 CFR Part 965, Subpart D require PHAs to convert to individually metered utilities, by having residents' individual units in master metered developments check metered or converting the entire master metered system to one with retail service between each resident and the utility company. If a PHA has check meters, residents receive a utility allowance based on usage and are charged (at the PHA's rate) for any use that exceeds the usage allowance. In developments with direct retail service, residents receive a cash-based utility allowance that is deducted from their total tenant payment.

The regulations permit PHAs to retain master metered systems if it is impractical to convert (e.g., in a centrally heated high-rise building) or not financially beneficial to the PHA (e.g., the rate for master metered utilities is so much lower than the rate for individual utilities and the cost for upgrading the utility distribution network is so high that it is less expensive to retain the master metered system).

At least every five years, PHAs with master metered developments that are not check metered are required to perform a cost/benefit analysis at each master-metered development to determine whether conversion to individual service with either check meters or direct retail service would be financially beneficial to the authority. PHAs that have units, such as scattered site homes, that are already individually metered and paid by the PHA are required to convert to retail service (24 CFR § 965.404).

Any conversion from a PHA-paid system requires that the PHA work closely with residents to plan the conversion, explain how it will affect individual residents, and describe methods of utility conservation. When check meters are being installed, PHAs are required to run the system for at least six months during which residents receive a copy of what their bills would be without having to pay them. In developing both consumption allowances for a check metered system or cash allowances for a retail system, the PHA must be mindful of any residents with disabilities who use greater than normal amounts of utilities because of their disability. Such residents must be provided with an adjusted allowance to account for the higher usage. For example, if a PHA had a resident who used a lung machine 24 hours per day, the family would be entitled to a higher than usual utility allowance.

When comparing check metering to direct retail service between the utility provider and the resident, many PHAs have opted for resident-paid utilities because it provides an incentive for the residents to save on energy consumption. It is also easier for a PHA to administer (no PHA meter readers, no computation



of individual bills for excess usage to residents, no additional collection requirements). Both residents and PHAs have responsibilities under each system. PHAs must provide residents with the utilities that are required for safe and sanitary housing, and residents must pay their utilities in a timely manner.

This chapter provides guidance on the following topics:

- Resident-paid utilities;
- PHA-paid utilities;
- Utility allowances and reimbursement; and
- Excess utility charges.

14.1 Resident-Paid Utilities

Under a resident-paid utility system, residents pay the cost of designated utilities directly to the utilities supplier. In those cases, the resident rent is reduced by an allowance for utilities developed by the PHA in accordance with the regulations under 24 CFR Part 965. The resident lease must state the utilities, services and equipment that will be supplied by the PHA without any additional cost, the utilities and appliances that will be paid or supplied directly by the resident, and the allowance for resident paid or supplied utilities and appliances.^{xxxxv}

The following requirements are suggested additions to an ACOP for residents living in or applicants being admitted to developments with resident-paid utilities:

- No applicant can be admitted nor tenant transferred to a development with resident-paid utilities unless he or she can obtain utility service.
- In developments with resident-paid utilities, each resident receives a monthly utility allowance that reflects a reasonable amount of utilities for the specific size and type of unit occupied.
- When a resident's Total Tenant Payment is less than the utility allowance, the PHA will pay a monthly utility reimbursement, equal to the difference between one month's total tenant payment and the utility allowance, either to the resident or to the utility company on the resident's behalf.
- When the supplier of utilities offers a "Budget" or level payment plan, it shall be suggested to the resident to pay his/her bills according to this plan. This protects the resident from large seasonal fluctuations in utility bills and ensures adequate heat in the winter and cooling in the summer.
- When a resident makes application for utility service in his/her own name, he or she shall sign a third-party notification agreement so that the PHA should be notified if the resident fails to pay the utility bill;
- Retaining utility service is the resident's obligation under the PHA's lease. Failure to retain utility service is grounds for eviction.



- Some PHAs pay residents' overdue utility bills and have service switched to the PHA account to avoid having utilities disconnected. Typically, this is a short term arrangement since the resident will have violated the lease and may be involved in eviction proceedings, but it will prevent the pipes in the unit from freezing or, much worse, a fire caused by some makeshift arrangement to keep the unit warm.
- When the actual energy consumption by tenants routinely exceeds a utility allowance, the PHA shall increase the allowance unless the PHA can provide evidence that the energy consumption can be attributed to a lack of non-energy conservative consumption. The fact that tenant consumption is routinely in excess of the PHA's utility allowance is material evidence that the PHA allowance is insufficient or that excess consumption may be due to factors not within the control of the tenants.

14.2 PHA-Paid Utilities

In some public housing developments, it is not practical to convert to individually metered utilities. These developments have PHA-paid utilities. Even at these sites, residents are expected to conserve utilities and to pay for excess usage. For example, the PHA may charge residents for excess utility usage based on resident-provided equipment such as freezers, washing machines, air conditioners, or extra refrigerators. The PHA typically will establish a monthly charge for each type of appliance and cite these in the lease. HUD regulations in 24 CFR § 990.102 define the required utilities as: water; electricity; gas; other heating, refrigeration and cooking fuels; trash collection; and sewerage services. Telephone service and cable TV are not considered utilities and therefore not calculated with the utility allowance.

14.3 Utility Allowances

The PHA must establish fair and reasonable utility allowances for individually metered utilities. The objective in establishing an allowance is to estimate as closely as possible a reasonable consumption of utilities by an energy-conscious household. In making the determination of what consumption is to be attributed to an energy-conscious household, a PHA should distinguish between necessary appliances and luxury appliances. A PHA must be mindful of additional utility use by individuals with disabilities due to the need and use medical equipment or other needs. This distinction should reflect local usage and custom patterns. The utility allowance is generally determined by or in consultation with the supplier of utilities following an energy audit.

In check-metered developments, where utility allowances are based on usage, the PHA will generally read the meters on a quarterly or monthly basis. This meter reading helps overcome any single month's fluctuations in usage. The resident is then charged for any use above the allowance at the rate paid by the PHA.



In developments with retail service between the resident and the utility company, the utility allowance is a cash allowance. The PHA may either establish a flat, monthly allowance by unit size and type (which works effectively if residents are on a budget billing system with the utility company) or can adjust the utility allowances seasonally.

If residents use more utilities than the amount covered by the allowance, the resident must pay the higher amount. On the other hand, if residents use less than the allowance, they receive the benefit of their conservation.

PHAs are required to review their schedule of utility allowances annually, revise them if needed, as discussed below, and make them available for inspection by the residents. According to the regulations in 24 CFR § 965.502, no later than 60 days before the proposed effective date of the revision, the PHA must inform the residents of the planned allowances, surcharges and revisions.^{xxxxvi} Residents must be provided with an opportunity to make comments during a period no longer than 30 days before the proposed effective date of the revised schedule.^{xxxxvii} The schedule of allowances or surcharges is not subject to HUD approval before becoming effective by the PHA.

PHAs are required to revise their schedule of allowances before the end of the year if there is a change in the utility rate of 10 percent or more from the rate on which the allowance was based. A PHA would then be required to readjust the resident payment retroactive to the first day of the month following the month in which the last rate change taken into account became effective. Changes in costs passed through an automatic adjustment clause (such as, for example, a fuel adjustment clause, a purchase gas adjustment clause, or a gas recovery clause) shall be considered a “rate change” for this procedure. This type of rate change is not subject to the 60-day notice requirement (24 CFR § 965.507(b)).

This requirement applies to non-tariffed home energy sources as well as to tariffed utility costs. If at the end of the current winter heating season (October 1 through April 30 of each year), the average price of a non-tariffed fuel has increased by 10 percent or more, relative to the price of the same fuel for the winter heating season in or immediately preceding the date on which the resident payment became effective, the PHA shall readjust the resident payment retroactive to the month following the month in which the last rate change taken into account became effective.

14.4 Utility Reimbursement

When a resident’s Total Tenant Payment (TTP) is less than the utility allowance, the PHA must make a monthly utility reimbursement equal to the difference between the TTP and the utility allowance.^{xxxxviii} In the Public Housing program, a PHA may pay utility reimbursement either to the family or directly to the utility supplier on behalf of the family. Payment of utility reimbursements directly to the utility company



involves considerably less bookkeeping for the PHA. Typically, the PHA sends a check to the utility company each month with a list of the residents by address and utility account number on whose behalf reimbursements are being paid. The PHA pays early enough in the month that the resident's utility bill would reflect the PHA's payment.

Residents paying an income-based rent are eligible for a utility reimbursement, while residents who choose a flat rent are not eligible for a utility reimbursement.

14.5 Reasonable Accommodation of Residents With Disabilities (24 CFR § 965.508)

On request from a family that includes a disabled or elderly person, the PHA must approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR Part 8 to make the program accessible to and usable by the family with a disability (24 CFR § 965.508).

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.

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