

## Chapter 6

### INCOME AND SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

#### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the IHA's subsidy. The IHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and IHA policies related to these topics in three parts as follows:

- Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and IHA policies for calculating annual income are found in Part I.
- Part II: Adjusted Income. Once annual income has been established HUD regulations require the IHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and IHA policies for calculating adjusted income are found in Part II.
- Part III: Calculating Family Share and IHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining IHA subsidy and required family payment.

#### PART I: ANNUAL INCOME

##### 6-I.A. OVERVIEW

The general regulatory definition of *Annual Income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or non-monetary, 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 [5.609(c)].
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B. and 6-I.C. discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this Plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D.). Verification requirements for annual income are discussed in Chapter 7.

**6-I.B. HOUSEHOLD COMPOSITIONS AND INCOME**

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

| <b>Summary of Income Included and Excluded by Person</b>                   |  |
|--|--|
| Live-in aides  | Income from all sources is excluded [24 CFR 5.609(c)(5)].  |
| Foster child or foster adult   | Income from all sources is excluded [24 CFR 5.609(c)(2)].  |
| Head, spouse, or co head<br>Other adult family members                     | All sources of income not specifically excluded by the regulations are included.   |
| Children under 18 years of age   | Employment income is excluded [24 CFR 5.609(c)(1)].<br>All other sources of income, except those specifically excluded by the regulations, are included.                   |
| Full-time students 18 years of age or older (not head, spouse, or co head) | Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)].<br>All other sources of income, except those specifically excluded by the regulations, are included. |

### **Temporarily Absent Family Members**

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

#### IHA Policy

Absence means that no member of the family is residing in the unit. The family may be absent from the unit for up to ten (10) **consecutive calendar** days. The family must request permission **in writing** from the IHA for absences exceeding thirty (30) days. The Housing Authority will make a determination within five (5) business days of the request. An authorized absence may not exceed 180 **consecutive calendar days in any circumstance, or for any reason**. Any family absent for more than 30 days without authorization will be terminated from the program.

Generally, an individual who is or is expected to be absent from the assisted unit for 180 days or less in a 12-month period of time is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

### ***Absent Students***

#### IHA Policy

A student (other than husband or wife) who attends school away from home but who lives with the family during school recesses may be considered temporarily absent.

When someone, who has been considered a family member, attends school away from home, the person will continue to be considered a family member unless information becomes available to the IHA indicating that the student has established a separate household or the family declares that the student has established a separate household

### ***Absences Due to Placement in Foster Care***

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

#### IHA Policy

If a child has been placed in foster care, the IHA will verify with the appropriate agency whether and when the child is expected to return to the home. Unless the agency confirms the child is in foster care, they will be counted as a family member.

### *Absent Head, Spouse, or Co head*

#### IHA Policy

Absence means that no member of the family is residing in the unit. The family may be absent from the unit for up to ten (10) **consecutive calendar** days. The family must request permission **in writing** from the IHA for absences exceeding thirty (30) days. The Housing Authority will make a determination within five (5) business days of the request. An authorized absence may not exceed 180 **consecutive calendar days in any circumstance, or for any reason**. Any family absent for more than thirty (30) days without authorization will be terminated from the program.

### **Family Members Permanently Confined for Medical Reasons**

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

#### IHA Policy

The IHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. A person that is temporarily absent will have their income included. The family may present evidence the family member is confined on a permanent basis and request the person not be considered a family member. If the verification indicates the family member will return in less than thirty (30) consecutive calendar days (and up to 180 days after approval of the Executive Director or authorized designee) the family member will not be considered permanently absent.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualifies as an elderly person or a person with disabilities and only for the expenses incurred during the period of temporary absence.

### **Joint Custody of Dependents**

#### IHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family more than 183 days per year.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the IHA will make the determination based on available

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documents such as court orders, an IRS return showing which family has claimed the child for income tax purposes and/or school records.

## **Guardians for a Child**

### IHA Policy

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the IHA will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated guardian will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a guardian has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the guardian will be treated as a visitor for ninety (90) days. After the ninety (90) days has elapsed, the guardian will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the IHA will extend the guardian's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the guardian.
- (4) During any period that a guardian is considered a visitor, the income of the guardian is not counted in annual income and the guardian does not qualify the family for any deductions from income.
- (5) Kin-care or guardian care income is specifically excluded income.

## **Unauthorized Residents**

Only family members listed on the HUD 50058 are permitted to reside in the assisted unit. Adults who reside in the assisted unit more than five (5) consecutive days or for a minimum period of thirty (30) consecutive days during a 12-month period are not listed on the HUD-50058 form, will be deemed unauthorized residents, unless the IHA has provided prior approval and is in the process of evaluating said resident for eligibility.

A family will be permitted to demonstrate that the person is not an unauthorized resident by submitting at least one (1) of the following:

1. A written statement from the landlord;
2. A legible copy of the person's current state-issued photo identification or current vehicle registration;
3. A lease in the person's name at another address shall be the preferred choice of evidence.
4. Mail sent to the assisted unit may be considered as unauthorized occupancy.

The burden of proof that the individual is a visitor rests on the assisted family. In the absence of such proof, the individual will be considered an unauthorized member of the household and the IHA will terminate assistance since prior approval was not requested for the addition.

### **Minors and College Students**

Minors and college students who were part of the family but who now live away from home during the school year and are no longer on the lease may visit for up to ninety (90) days per year.

## **6-I.C. ANTICIPATING ANNUAL INCOME**

The IHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date” [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

### **Minimum Income**

There is no minimum income requirement. Families who report extremely low income/zero income will be reviewed through EIV for income changes.

- Families that report extremely low/zero income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc. at their annual reexamination.
- If the family’s expenses exceed their known income, the HA will make inquiry of the head of household as to the nature of the family’s accessible resources.

While there is no minimum income, families must demonstrate and continue to demonstrate the capacity to fulfill the requirements in the program.

### **Basis of Annual Income Projection**

The IHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the IHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The IHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

IHA is required to use HUD's Enterprise Income Verification (EIV) system in its entirety as a third-party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

HUD allows IHA to use tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.

#### IHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, the IHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the IHA will make every effort to obtain current and consecutive pay stubs dated within the last sixty (60) days.

The IHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If the IHA determines additional information is needed.

In such cases, the IHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the IHA annualized projected income.

When the IHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the IHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the IHA to show why the historic pattern does not represent the family's anticipated income.

#### IHA Policy

When the IHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the IHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the IHA to show why the historic pattern does not represent the family's anticipated income.

***Known Changes in Income***

If the IHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

**Example:** An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case the IHA would calculate annual income as follows:  $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the IHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the IHA's policy in Chapter 11 does not require interim reexaminations for other types of changes.

**Treatment of Seasonal Changes, School Employees with 9-Months Employment, or Summer Employment**

**IHA's Policy:**

**IHA shall use only the method below to calculate income for the above factors:**

**CALCULATING ANTICIPATED ANNUAL INCOME**

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The PHA may calculate the family's income using either of the following two methods:

- *Calculate Annual Income Based on Current Income:*

\$15,600 ( $\$1,300 \times 12 \text{ months}$ ).

An interim reexamination would then be conducted at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7,200 ( $\$600 \times 12 \text{ months}$ ).



HUD requires the IHA to use the enterprise income verification (EIV) system. EIV is “the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals” [VG, p. 7].

HUD allows IHA to use EIV information in conjunction with family-provided documents to anticipate income.

#### IHA Policy

IHA will use the streamlined income verification system, whenever possible.

IHA procedures for anticipating annual income will include the use of EIV methods approved by HUD in conjunction with family-provided documents dated within the last sixty (60) days of the IHA interview date.

The IHA will follow “HUD Guidelines for Projecting Annual Income When Enterprise Income Verification (EIV) Data Is Available” in handling differences between EIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of \$200 or more per month.

**No Substantial Difference.** If EIV information for a particular income source differs from the information provided by a family by less than \$200 per month, the IHA will follow these guidelines:

If there is a discrepancy, IHA will always use the more accurate information in making its final determination.

**Substantial Difference.** If EIV information for a particular income source differs from the information provided by a family by \$200 or more per month, the IHA will follow these guidelines:

The IHA will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When the IHA cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the IHA will review historical income data for patterns of employment, paid benefits, and receipt of other income.

The IHA will analyze all EIV, third party, and family-provided data and attempt to resolve the income discrepancy.

The IHA will use the most current accurate verified income data and, if appropriate, historical income data to calculate anticipated annual income.

## 6-I.D. EARNED INCOME

### Types of Earned Income Included in Annual Income

**Wages and Related Compensation.** The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].

#### IHA Policy

For persons who regularly receive bonuses or commissions, the IHA will verify and use the prior year amount preceding admission or reexamination. The family may provide, and the IHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the IHA will count only the amount estimated by the employer.

For streamlined income verification, in addition to the EIV, the IHA will use a least:

- 4 current consecutive payroll stubs if paid weekly
- 2 current consecutive payroll stubs if paid bi-weekly/bi-monthly
- 1 current payroll stub if paid monthly

**Some Types of Military Pay.** All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

### Types of Earned Income Not Counted in Annual Income

**Temporary, Nonrecurring, or Sporadic Income** [24 CFR 5.609(c)(9)].

This type of income (including gifts) is not included in annual income.

#### IHA Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. If there is a historic trend or stable pattern of working, even if it for limited durations and amounts, then it will be considered income and counted in the calculation.

**Children's Earnings.** Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

**Certain Earned Income of Full-Time Students.** Earnings in excess of the eligible Dependent Deduction amount annually for each full-time student 18 years old or older (except for the head, spouse, or co head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

***Income of a Live-in Aide.*** Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

***Income Earned under Certain Federal Programs.*** Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Workforce Development Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program, except for the student rule provisions (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

***Resident Service Stipend.*** Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the IHA 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 IHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

***State and Local Employment Training Programs.*** Incremental earnings and benefits to any family member resulting 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 are excluded from annual income. 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 training program [24 CFR 5.609(c)(8)(v)].

#### IHA Policy

The IHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The IHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the IHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the IHA's interim reporting requirements.

***HUD-Funded Training Programs.*** Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

#### IHA Policy

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

***Earned Income Tax Credit.*** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

***Earned Income Disallowance.*** The earned income disallowance for persons with disabilities is discussed in section 6-I.E. below.

### **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617]**

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

## Eligibility

This disallowance applies only to individuals in families already participating in the HCV program. To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was ***previously unemployed*** for one or more years prior to employment. ***Previously unemployed*** includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage or state or local minimum wage, whichever is the higher wage rate.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly cash maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

## Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

### IHA Policy

The IHA defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying event for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

***Initial 12-Month Exclusion.*** During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are to be consecutive.

### IHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings, whether the family reports the earnings or not.

**Second 12-Month Exclusion and Phase-In.** During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are to be consecutive.

**Window of Opportunity.** The EID has a two-year (24-month) window of opportunity. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends twenty-four (24) months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

#### IHA Policy

During the 24-month eligibility period, the IHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income(baseline), when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period, which is 24-months from the start of the EID period). Any changes to the family income or composition must still be reported by the family within (10) ten days of the change.

#### **6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

Annual income includes "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" [24 CFR 5.609(b)(2)].

#### **Business Expenses**

Net income is "gross income less business expense" [HCV GB, p. 5-19].

#### IHA Policy

To determine business expenses that may be deducted from gross income, the IHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

#### **Business Expansion**

HUD regulations do not permit the IHA to deduct from gross income expenses for business expansion.

IHA Policy

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion.

**Capital Indebtedness**

HUD regulations do not permit the IHA to deduct from gross income the amortization of capital indebtedness.

IHA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the IHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

**Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

**Withdrawal of Cash or Assets from a Business**

HUD regulations require the IHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

IHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the IHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

**Co-owned Businesses**

IHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

## 6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

### Overview

The IHA may use any or all of the streamline procedures and verification processes as allowed by HUD. There is no asset limitation for participation in the HCV program. However, HUD requires that the IHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the IHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and IHA policies related to each type of asset.

### General Policies

#### *Income from Assets*

The IHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the IHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the IHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, the IHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### IHA Policy

Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the IHA to show why the asset income determination does not represent the family’s anticipated asset income.

#### *Valuing Assets*

The calculation of asset income sometimes requires the IHA to make a distinction between an asset’s market value and its net cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).



- The net cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

#### IHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

#### ***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, (See sections 6-I.H. and 6-I.I.)

#### ***Imputing Income from Assets [24 CFR 5.609(b)(3)]***

When net family assets are \$5,000 or less, the IHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the IHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate. If the total value of the assets (TVA) is less than \$5,000, the PHA will allow the applicant/participant to self-certify on the asset and will use the actual amount that is certified.

The HUD field office no longer provides an interest rate for imputed asset income. The “safe harbor” is now for the IHA to establish a passbook rate within 0.75 percent of a national average.

The IHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

#### IHA Policy

The IHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The IHA will review the passbook rate annually during the Agency Planning process to reestablish the rate.

Changes to the passbook rate will take effect after the IHA reestablishes the rate.

#### ***Determining Actual Anticipated Income from Assets***

It may or may not be necessary for the IHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the net cash value of the asset is used. For example, if the asset is a property for

which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is based on the property's net cash value which in this case is the greater return that would be provided from the amount derived from the income stream. However, if the asset is a savings account, the anticipated income is determined by multiplying the net cash value of the account by the interest rate on the account.

### ***Withdrawal of Cash or Liquidation of Investments***

Any withdrawal of cash or assets from an investment will be included in income except to the extent the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### ***Jointly Owned Assets***

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

#### **IHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the IHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the IHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the IHA will prorate the asset evenly among all owners.

### ***Assets Disposed of for Less than Fair Market Value [24 CFR 5.603(b)]***

HUD regulations require the IHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

#### ***Minimum Threshold***

The *HCV Guidebook* permits the IHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

#### **IHA Policy**

The IHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past one year exceeds the gross amount received for the assets by more than \$5,000.

When the one-year period expires, the income assigned to the disposed asset(s) also expires. If the one-year period ends between annual re-certifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

#### *Separation or Divorce*

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

#### IHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

#### *Foreclosure or Bankruptcy*

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a foreclosure or bankruptcy.

#### *Family Declaration*

#### IHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The IHA may verify the value of the assets disposed of if other information available to the IHA does not appear to agree with the information reported by the family.

#### *Verification of Assets*

#### IHA Policy

The IHA will accept a family declaration of assets for families whose total net assets are Valued at \$5000 or less.

The IHA will obtain third-party verification of assets at admission to the program and at Least once every three years thereafter.

All family members aged 18 and older must sign a declaration of asset if the assets are Valued at \$5000 or less.

The Final Rule of HOTMA will have to be followed once published in the Federal Register. The Final Rule could increase the total family asset amount from \$5,000 to \$10,000 plus move a self-certification to be done by the family if under \$50,000. The \$50,000 rule change, once effective with the Final Rule passage, can also be adjusted

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annually by applying an inflationary factor per the Secretary.

This Final Rule of HOTMA will also have a limitation cap of \$100,000 of net family assets per family that will disqualify that family for assistance in either program. This limitation cap can be adjusted annually by applying an inflationary factor by the Secretary.

### **Types of Assets**

#### ***Checking and Savings Accounts***

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated actual income from the account is zero.

#### **IHA Policy**

In determining the value of a checking account, the IHA will use the last six months average balance.

In determining the value of a savings account, the IHA will use the last six months average balance.

In determining the anticipated income from an interest-bearing checking or savings account, the IHA will multiply the value of the account by the current rate of interest paid on the account.

In lieu of the calculation described above, the IHA can use the actual received over the last calendar year in determining the anticipated amount of interest if it is anticipated that the average balance will remain constant (similar to the balance for the last six months).

#### ***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds***

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### **IHA Policy**

In determining the market value of an investment account, the IHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the IHA will calculate asset income based on the earnings for the most recent reporting period.

#### ***Equity in Real Property or Other Capital Investments***

Equity (cash value) in a property or other capital asset is the estimated current market value of

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the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25]

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

The IHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

#### IHA Policy

For the purposes of calculating expenses to convert to cash for real property, the PHA will use ten percent of the market value of the home.

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the IHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

The Final Rule of the Housing Opportunity through Modernization Act of 2016 or HOTMA will need to be followed for real property. Based upon that rule when finalized, the participant that owns a house and has vested interest to sale or the ability to live in that home, cannot qualify for assistance.

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### ***Trusts***

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

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#### ***Revocable Trusts***

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

#### ***Nonrevocable Trusts***

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

### ***Retirement Accounts***

#### ***Company Retirement/Pension Accounts***

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the IHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

#### ***IRA, Keogh, and Similar Retirement Savings Accounts***

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

### ***Personal Property***

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

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IHA Policy

In determining the value of personal property held as an investment, the IHA will use the family's estimate of the value. However, the IHA also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until disposition. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

IHA Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

***Life Insurance***

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the cash surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it. The Final Rule of the Housing Opportunity through Modernization Act of 2016 or HOTMA will need to be followed for net asset amount caps and any self-certification requirements.

**6-I.H. PERIODIC PAYMENTS**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

**Periodic Payments Included in Annual Income**

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

**Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security, VA disability or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

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IHA Policy

In order to determine the amount of retroactive tenant rent that the family owes as a result of the lump sum receipt:

- The IHA will calculate prospectively if the family reported the payment within 30 days and retroactively to date of receipt if the receipt was not reported within that time frame.

**Prospective Calculation Methodology**

If the payment is reported on a timely basis, the calculation will be done prospectively and will result in an interim adjustment calculated as follows:

- The entire lump-sum payment will be added to the annual income at the time of the interim.

**Retroactive Calculation Methodology**

The IHA will go back to the date the lump-sum payment was received, or to the date of admission, whichever is closer.

The IHA will determine the amount of income for each certification period, including the lump sum and recalculate the tenant rent for each certification period to determine the amount due the IHA.

**The family may pay this “retroactive” amount to the IHA in a lump sum; or at the IHA’s option, the IHA may enter into a Repayment Agreement with the family.**

The amount owed by the family is a collectible debt even if the family becomes unassisted.

**Treatment of Overpayment Deductions from Social Security Benefits**

The IHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the IHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

**Periodic Payments Excluded from Annual Income**

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)] Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].



### IHA Policy

The IHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- 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 [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security, VA disability and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

## **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

## **6-I.J. WELFARE ASSISTANCE**

### **Overview**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

### **Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]**

The IHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### ***Covered Families***

The families covered by 24 CFR 5.615 are those “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” [24 CFR 5.615(b)]

### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the IHA must include in annual income “imputed” welfare income. The IHA must request that the welfare agency inform the IHA when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements, or (4) for inadvertent overpayment [24 CFR 5.615(b)(2)].

### ***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

### **Alimony and Child Support**

The IHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

#### **IHA Policy**

The IHA will count court-awarded amounts for alimony and child support unless the IHA verifies that (1) the payments are not being made and/or (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

### **Regular Contributions or Gifts**

The IHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

#### IHA Policy

Examples of regular contributions include but are not limited to: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the IHA. For contributions that may vary from month to month (e.g., utility payments), the IHA will include an average amount based upon past history. The family may be required to provide a copy of paid bills or complete further verification upon IHA request.

### **Student Financial Assistance**

For the Section 8 Program only, and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this section is not considered income for persons over the age of 23 with dependent children. For purposes of determining income, financial assistance does not include loan proceeds.

#### **Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9) and FR 4/10/06]**

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

**Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c)(6)]**

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

**6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Subject to the additional income inclusion for the HCV program on annual income for students of higher education, the full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- 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) [(24 CFR 5.609(c)(8)(ii)]
- 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 [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]

- 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 [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b)) (SNAP)
  - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (g) Payments received under programs funded in whole or in part under the Workforce Reinvestment (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
  - (h) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
  - (i) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (j) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
  - (k) Subject to the annual income inclusions for the HCV Program 24 CFR 5.609 (b) (9), the 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 U.S.C. 1087uu)- See exception for Student Rule.
  - (l) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

- (m) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (n) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (o) 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 U.S.C. 9858q)
- (p) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (q) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (r) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (s) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (t) 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 (42 U.S.C. 10602)
- (u) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (v) The EID income exclusions as allowed for the regulations.
- (w) The Medicare incentive payments.
- (x) Kinship Care and guardian assistance payments through the state.
- (y) Temporary Census workers.
- (z) Stimulus programs that are specifically exempt. Kin Care or Guardian Care
- (aa) Assistance from the Richard B Russell National School Lunch Program
- (bb) Payments Under the Seneca Nation Settlement Act
- (cc) Compensation on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation in programs authorized under the Native American Assistance and Self-Determination Act of 1996
- (dd) Federal major disaster and emergency assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance

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- (ee) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))

## PART II: ADJUSTED INCOME

### 6-II.A. INTRODUCTION

#### Overview

HUD regulations require IHA to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory Deductions. In determining adjusted income, the responsible entity [IHA] must deduct the following amounts from annual income:

- (1) \$480 for each dependent (HOTMA will increase this amount annually, after the Final Rule has been published in the Federal Register, based upon an inflation factor and establish a new amount by rounding to the next lowest multiple of \$25);
- (2) \$400 for any elderly family or disabled family (HOTMA will increase this amount to \$525 and then annually, after the Final Rule has been published in the Federal Register, based upon an inflation factor and establish a new amount by rounding to the next lowest multiple of \$25);
- (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;
  - (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 childcare expenses necessary to enable a member of the family to be employed, further his or her education or seek employment.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7.

#### Anticipating Expenses

##### IHA Policy

Generally, the IHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the IHA will estimate costs based on historic data and known future costs.

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If a family has an accumulated debt for medical or disability assistance expenses, the IHA will include as an eligible expense the portion of the expense that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The IHA may require the family to provide documentation of payments made in the preceding year.

#### **6-II.B. DEPENDENT DEDUCTION**

A deduction of \$480 is taken for each dependent [ 24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)]. When the HOTMA Final Rule is published in the Federal Register, the annual Dependent Deduction will increase based upon an inflation factor and establish a new amount annually by rounding to the next lowest multiple of \$25.

#### **6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and 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. A *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities and it may include two or more persons who are disabled living together, or one or more persons who are disabled living with one or more live in aides. [24 CFR 5.403]. When the HOTMA Final Rule is published in the Federal Register, the annual Elderly or Disabled Deduction will increase to \$525 based upon an inflation factor and establish a new amount by rounding to the next lowest multiple of \$25.

#### **6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three (3) percent of annual income. With the publication of the Final Rule of HOTMA in the Federal Register, the Medical and Disability Expense will increase to ten (10) percent of the annual income to disability expense.

The medical expense deduction is permitted only for families in which the head, spouse, or co head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

#### **Definition of *Medical Expenses***

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “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.”



IHA Policy

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to clarify the costs that qualify as medical expenses.

| <b>Summary of Allowable Medical Expenses from IRS Publication 502</b>  |   |
|--|---|
| Services of medical professionals<br>Surgery and medical procedures that are necessary, legal, non-cosmetic<br>Services of medical facilities<br>Hospitalization, long-term care, and in-home nursing services<br>Prescription medicines and insulin, and nonprescription medicines if recommended by a doctor<br>Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails) | Substance abuse treatment programs<br>Psychiatric treatment<br>Ambulance services and some costs of transportation related to medical expenses<br>The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)<br>Cost and continuing care of necessary service animals<br>Medical insurance premiums or the cost of a health maintenance organization (HMO) |
| <p><b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.</p>  |   |

**Families That Qualify for Both Medical and Disability Assistance Expenses**

IHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older, a disabled family, or when a family also includes a person with disabilities that qualifies for a disability expense.

When expenses anticipated by a family include both a medical or disability assistance expenses, the IHA will first apply the 3% of the annual income to the disability expenses. The IHA will then apply any remaining 3% to the medical expense deduction.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the IHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

With the publication of the Final Rule of HOTMA in the Federal Register, the Medical and Disability Expense will increase to 10% of the annual income to disability expense.

## **6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, are not paid to a family member or reimbursed by an outside source, (3) exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

### **Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified after any earned income disallowances or income exclusions are applied for the individual. (HUD FAQ’s on RHIP)

#### IHA Policy

The family must identify the family member enabled to work as a result of the disability assistance expenses. The disability expense cannot exceed the earned income of the individual that is freed to go to work.

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises IHA to further define and describe auxiliary apparatus [VG, p. 30].

#### ***Eligible Auxiliary Apparatus***

#### IHA Policy

The IHA defines eligible auxiliary apparatus as those listed in the HCV GB; p 5-30 as stated above.

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included. This expense also qualifies for Emotional Support/Companion Animals.

### *Eligible Attendant Care*

The family determines the type of attendant care that is appropriate for the person with disabilities.

#### IHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the IHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### *Payments to Family Members*

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### IHA Policy

The IHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish reasonable costs, the IHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the IHA will consider, the family's justification for costs that exceed typical costs in the area.

### **6-II.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at 24 CFR 5.603(b) as "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

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amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. 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.”

#### IHA Policy

The reasonableness standard for allowing childcare expenses as a deduction uses the following standards:

Child care to work: The maximum childcare allowed will be based on the amount earned by the person enabled to work.

Rate of Expense: The IHA will use the local welfare agency’s standard in the area to determine a reasonableness standard for furthering education or seeking employment. The determination will be made on a reasonable hourly/weekly/monthly rate per child.

If the IHA determines the childcare is unreasonable according to this standard, the standard may be used as the maximum.

#### **Clarifying the Meaning of *Child* for This Deduction**

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, childcare expenses for foster children that are living in the assisted family’s household are included when determining the family’s childcare expenses [HCV GB, p. 5-29].

#### **Qualifying for the Deduction**

##### ***Determining Who Is Enabled to Pursue an Eligible Activity***

#### IHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, the IHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

##### ***Furthering Education***

#### IHA Policy

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If the childcare expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities, must be commensurate with the childcare claimed.

***Being Gainfully Employed***

IHA Policy

If the childcare expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that childcare is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated. Childcare will be capped by the amount of earned income of the individual that is freed to work. In the case of EID, the cap for the amount of earned income included in the annual income for individual will be the amount after the EID is applied for the individual that is freed to work.

**Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, the cap on the amount that may be deducted for childcare is established a reasonable amount as determined by the IHA. However, when childcare enables a family member to work, the deduction is capped by "the amount of employment income for the individual freed to go to work that is included in annual income" [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 (or the new Final Rule HOTMA amount) is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, childcare expenses are limited to \$5,000.

The IHA must not limit the deduction to the least expensive type of childcare. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

IHA Policy

When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the IHA generally will limit allowable child care expenses to the earned income of the individual that is freed to go to work.

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. The IHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26 and HUD FAQ].

### ***Allowable Child Care Activities***

#### IHA Policy

For school-age children under 13 years of age, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

### ***Necessary and Reasonable Costs***

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

#### IHA Policy

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

The Final Rule of HOTMA, when published in the Federal Register, will allow for the childcare expense to be given without meeting any of the required eligible activities under a Hardship.

## **PART III: CALCULATING FAMILY SHARE AND IHA SUBSIDY**

### **6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS**

#### **TTP Formula [24 CFR 5.628]**

**HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:**

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly annual income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the IHA

The IHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

#### ***Welfare Rent [24 CFR 5.628]***

##### IHA Policy

Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 CFR 5.630]***

##### IHA Policy

**The minimum rent for this locality is \$50.00.**

#### **Family Share [24 CFR 982.305(a)(5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the IHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the IHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than sixty (60) days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.) Prior to tenancy, all family income has to be verified again if older than ninety (90) days from the original verification on the application.

#### **IHA Subsidy [24 CFR 982.505(b)]**

The IHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

### **Utility Reimbursement [24 CFR 982.514(b)]**

When the HA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the IHA to pay the reimbursement to the family or directly to the utility provider.

#### IHA Policy

The IHA will make utility reimbursements to the family.

The IHA may at a future period make them to the utility supplier. However, if the utility supplier does not accept direct deposit, the payment will be made to the family.

### **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

#### IHA Policy

The financial hardship rules described below do apply in this jurisdiction because the IHA has established a minimum rent of \$50.00.

#### **Overview**

If the IHA establishes a minimum rent greater than zero, the IHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the IHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

#### **HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family 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.

#### IHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.



(2) The family would be evicted because it is unable to pay the minimum rent.

IHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's inability, due to no fault of the family, to pay rent to the owner or tenant-paid utilities.

(3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

IHA Policy

In order to qualify under this provision, a family must describe and verify how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

(5) The family has experienced other circumstances determined by the IHA.

IHA Policy

The IHA has not established any additional hardship criteria.

## **Implementation of Hardship Exemption**

### ***Determination of Hardship***

When a family requests a financial hardship exemption, the IHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

The IHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

IHA Policy

The IHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

| <b>Example: Impact of Minimum Rent Exemption</b>       |   |
|--|---|
| Assume the IHA has established a minimum rent of \$50. |   |
| <b>Family Share – No Hardship</b>                      | <b>Family Share – With Hardship</b>       |
| \$0 30% of monthly adjusted income                     | \$0 30% of monthly adjusted income        |
| \$15 10% of monthly gross income                       | \$15 10% of monthly gross income          |
| N/A Welfare rent                                       | N/A Welfare rent                          |
| \$50 Minimum rent                                      | \$50 Minimum rent                         |
| Minimum rent applies.<br>TTP = \$50                    | Hardship exemption granted.<br>TTP = \$15 |

IHA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

The IHA will make the determination of hardship within 30 calendar days.

***No Financial Hardship***

If the IHA determines there is no financial hardship, the IHA will reinstate the minimum rent and require the family to repay the amounts suspended.

IHA Policy

The IHA will require the family to repay the suspended amount within 30 calendar days of the IHA’s notice that a hardship exemption has not been granted.

***Temporary Hardship***

If the IHA determines that a qualifying financial hardship is temporary, the IHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family’s request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the IHA the amounts suspended. HUD requires the IHA to offer a reasonable repayment agreement, on terms and conditions established by the IHA. The IHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

IHA Policy

The IHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### ***Long-Term Hardship***

If the IHA determines that the financial hardship is long-term, the IHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

### **IHA Policy**

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

## **6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]**

### **Overview**

The IHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the IHA's payment standards. The establishment and revision of the IHA's payment standard schedule are covered in Chapter 16.

*The payment standard* is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is lower than (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the IHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the IHA has established an exception payment standard for a designated part of an FMR area and a family unit is located in the exception area, the IHA must use the appropriate payment standard for the exception area.

The IHA is required to pay a monthly housing assistance payment (HAP) for a family that is lower than (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

### **Changes in Payment Standards**

When the IHA revises its payment standards during the term of the HAP contract for a family unit, it will apply the new payment standards in accordance with HUD regulations.

#### ***Decreases***

The IHA will determine the payment standard for the family as follows from the PIH Notice 2018-01:

- 1. Hold Harmless – No Reduction in Subsidy.*** IHA will continue to use the existing higher payment standard for the family's subsidy calculation as long as the family continues to receive the voucher assistance in that unit. Once the voucher assistance is moved to another unit in IHA's jurisdiction or ported to another jurisdiction, then the payment standard will decrease immediately to either the currently approved IHA payment standard or the receiving PHA payment standard, if porting.

#### ***Increases***

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first annual reexamination on or after the effective date of the increase in the payment standard, **except during periods of any approved HUD waivers that IHA may be under.**

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

### ***Changes in Family Unit Size***

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first annual reexamination following the change in family unit size.

### **Reasonable Accommodation**

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the IHA is allowed to establish a higher payment standard for the family within the basic range (90-110 percent).

## **6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

### **Overview**

A IHA-established utility allowance schedule is used in determining family share and IHA subsidy. The IHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by a family or the voucher unit size that the family is eligible for using IHA subsidy standards. See Chapter 5 for information on the IHA's subsidy standards.

The 2014 Appropriations Act requires that the amount allowed for tenant-paid utilities not exceed the utility allowance for the family unit size as determined by the IHA.

The rule requires the IHA to use the lesser of the two standards, unless the family is living in a larger unit as a result of a reasonable accommodation, in which case, the IHA would be required to use the utility allowance for the size unit the family is actually leasing. Section 982.517(e) already requires a PHA to approve a higher amount than shown on the utility allowance schedule as a reasonable accommodation, so HUD is proposing no revision to that provision. For policies on establishing and updating utility allowances, see Chapter 16.

### **Reasonable Accommodation**

HCV program regulations require the IHA to approve a utility allowance amount higher than shown on the IHA's schedule if a higher allowance is needed as a reasonable accommodation for

a family member with a disability. For example, if a family member with a disability requires such an accommodation for air-conditioning, the IHA will approve an allowance for air-conditioning, even if the IHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the IHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

### **Utility Allowance Revisions**

At reexamination, the IHA must use the IHA current utility allowance schedule [24 CFR 982.517(d)(2)].

#### IHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

### **6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The IHA must prorate the assistance provided to a mixed family. The IHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the IHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the IHA subsidy would be reduced to \$250.

**EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**

**24 CFR 5.609**

*(a) Annual income means all amounts, monetary or not, which:*

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

*(b) Annual income includes, but is not limited to:*

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

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<sup>1</sup> Text of 45 CFR 260.31 follows.

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

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| <p style="text-align: center;"><b>HHS DEFINITION OF<br/>"ASSISTANCE"</b></p> |
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**45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes



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supportive services such as transportation and childcare provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as childcare and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

**EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS**

**24 CFR 5.609**

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b) (9) of the inclusions, 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 IHA 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 IHA'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) (or approved HOTMA amount);

(12) Adoption assistance payments in excess of \$480 per adopted child (or approved HOTMA amount);

(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. [See the following

chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

d) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m) 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 U.S.C. 9858q);

n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) 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 (42 U.S.C. 10602); and

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

t) The Medicare incentive allowance.

u) Kinship Care and guardian assistance payments through the state

v) Temporary employment by U.S. Census Bureau as per PIH 2010-38

w) Stimulus programs that are specifically exempt

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**24 CFR 5.603(b) 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 Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

**EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

**24 CFR 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 (Federal, State or Local that is highest).

*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 (12) month exclusion. During the consecutive 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 (12) month exclusion and phase-in. During the second consecutive 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 two (2) 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 of 24 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 24-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).

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

**24 CFR 5.615**

**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular



reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(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 Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly

calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such

determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.