

Chapter 6

DETERMINATION OF TOTAL TENANT PAYMENT [24 CFR 5.609, 5.611, 5.613, 5.615]

INTRODUCTION

The accurate calculation of Annual Income and Adjusted Income will ensure that families are not paying more or less money for rent than their obligation under the regulations.

This Chapter defines the allowable deductions from Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subpart F and further instructions set forth in HUD Notices, Memoranda and Addenda. However, the Quality Housing and Work Responsibility Act now give PHAs broader flexibility. LSHA's policies in this Chapter address those areas that allow the PHA discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

A. MINIMUM RENT

The minimum rent for LSHA is \$50. The minimum rent refers to a minimum total tenant payment and not a minimum tenant rent.

The Total Tenant Payment is the greater of:

30% of the adjusted monthly income

10% of the monthly income

The Minimum rent as established by LSHA

The Total Tenant Payment does not include other charges.

LSHA recognizes that in some instances even the minimum rent may create a financial hardship for families. LSHA will review all relevant circumstances brought to the LSHA's attention regarding financial hardship as it applies to minimum rent. The following section states the LSHA's procedures and policies in regard to minimum rent financial hardship as set forth by the QHWRA.

LSHA Procedures for Notification to Families of Hardship Exceptions

LSHA will notify all participant families subject to a minimum rent of their right to request a minimum rent hardship exception under the law.

LSHA notification will advise the family that hardship exception determinations are subject to LSHA grievance procedures.

LSHA will review all tenant requests for exception from the minimum rent due to financial hardships.

All requests for minimum rent exception are required to be in writing.

Requests for minimum rent exception must state the family circumstances that qualify the family for an exception.

Exceptions to Minimum Rent

LSHA will immediately grant the minimum rent exception to all families who request it.

The Minimum Rent will be suspended until LSHA determines whether the hardship is:

Covered by statute

Temporary or long term

If LSHA determines that the minimum rent is not covered by statute, LSHA will impose a minimum rent including payment for minimum rent from the time of suspension.

LSHA will use its standard verification procedures to verify circumstances that have resulted in financial hardship, such as loss of employment, death in the family, etc.

HUD Criteria for Hardship Exception

In order for a family to qualify for a hardship exception the family's circumstances must fall into one of the following criteria:

The family has lost eligibility or is awaiting an eligibility determination for Federal, State, or local assistance;

The family would be evicted as a result of the imposition of the minimum rent requirement;

The income of the family has decreased because of changed circumstances, including:

Loss of employment

Death in the family

Other circumstances as determined by LSHA or HUD

Temporary Hardship

If LSHA determines that the hardship is temporary, a minimum rent will be imposed, including back payment from time of suspension, but the family will not be evicted for nonpayment of rent during the 90-day period commencing on the date of the family's request for exemption.

LSHA defines temporary as less than 90 days.

Repayment Agreements for Temporary Hardship

LSHA will offer a repayment agreement to the family for any such rent not paid during the temporary hardship period.

If the family owes LSHA money for rent arrears incurred during the minimum rent period, LSHA will calculate the total amount owed and divide it by 3 to arrive at a reasonable payment increment that will be added to the family's regular monthly rent payment. The family will be required to pay the increased amount until the arrears are paid in full.

Minimum rent arrears that are less than \$50 will be required to be paid in full the first month following the end of the minimum rent period.

If the family goes into default on the repayment agreement for back rent incurred during a minimum rent period, LSHA will reevaluate the family's ability to pay the increased rent amount and:

Determine whether the family has the means to meet the obligation and, if so determined, initiate eviction proceedings for nonpayment of rent; or

Determine that the repayment agreement is a financial hardship to the family and if so, restructure the existing repayment agreement.

LSHA's policies regarding repayment agreements are further discussed in the chapter entitled "Family Debts to the PHA."

B. INCOME AND ALLOWANCES

Income: Includes all monetary and non-monetary income or benefit amounts that are received on behalf of the family. For purposes of calculating the Total Tenant Payment, HUD defines what is to be calculated and what is to be excluded in the federal regulations. In accordance with this definition, all income that is not specifically excluded in the regulations is counted.

Annual Income is defined as the gross amount of income anticipated to be received by the family during the 12 months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions and does not include income that has been excluded by HUD. Annual Income is used to determine whether or not applicants are within the applicable income limits.

Adjusted Income is defined as the Annual Income minus any HUD allowable expenses and deductions.

HUD has six allowable deductions from Annual Income:

- A. \$480 for each dependent;
 - B. \$400 for any elderly family or disabled family until implementation of the federal Housing Opportunity Through Modernization Act (HOTMA) legislation, at which time the allowance shall be \$525;
 - C. For any family that is a disabled family or has a member (other than the head or spouse) who is a person with a disability. A disability assistance expenses for unreimbursed amounts paid for attendant care, or auxiliary apparatus expenses for family members with disabilities, including the disabled member, where such expenses are necessary to permit an adult family member to be employed. The allowable expenses must be in excess of 3% of annual income. This allowance may not exceed the employment income received by the family members that is freed to go to work, who is at least 18 years of age.
 - D. For any elderly or disabled family:
 1. That has no disability assistance expenses, an allowance for medical expenses equal to the amount by which the medical expenses exceed 3% of annual income;
 2. That has disability expenses greater than or equal to 3% of annual income, an allowance for disability assistance expenses computed in accordance with paragraph C, plus an allowance for medical expenses that equal the family's medical expenses;
 3. That has disability assistance expenses that are less than 3% of annual income, an allowance for combined disability assistance expenses and medical expenses that is equal to the total of these expenses less 3% of annual income.
- NOTE: Upon passage and implementation of the federal 2016 HOTMA legislation, the allowance for medical and disability expenses shall increase from exceeding 3% to exceeding 10% of annual income.
- E. Childcare expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which Annual Income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income. (24 CFR 5.603(d)).

- F. The LSHA does not provide for any optional deductions or allowances in the public housing program.

C. DISALLOWANCE OF EARNED INCOME FROM RENT DETERMINATION

The annual income for qualified families may not be increased as a result of increases in earned income of a family member beginning on the date on which the increase in earned income begins and continuing for a cumulative 12-month period. For calculation purposes, the disallowance shall begin the first of the month after the employment begins. After the family receives 12 cumulative months of the full exclusion, annual income will include a phase-in of half the allowable earned income exclusion from annual income.

A family qualified for the earned income exclusion is a family that is receiving assistance under the public housing program; and

- Whose annual income increases as a result of employment of an adult family member and who was previously unemployed for one or more years prior to employment;
- Whose annual income increases as a result of increased earnings by an adult family member during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of an adult family member during or within six months after receiving assistance, benefits or services under any State program for TANF provided that the total amount over a six-month period is at least \$500. The qualifying TANF assistance may consist of any amount of monthly income maintenance, and/or at least \$500 in such TANF benefits and services as one-time payments, wage subsidies and transportation assistance.

The HUD definition of "previously unemployed" includes a person who has earned in the previous 12 months no more than the equivalent earnings for working 10 hours per week for 50 weeks at the minimum wage. Minimum wage is the prevailing minimum wage in the State of Missouri at any given year.

The HUD definition of economic self-sufficiency program is any program designed to encourage, assist, train or facilitate economic independence of assisted families or to provide work for such families. Such programs may include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as substance abuse or mental health treatment).

Qualifying increases are any earned income increases of a family member during participation in an

economic self-sufficiency or job training program and may include increases that occur after participation provided the training provides assistance, placement, training or mentoring after the training that leads to employment.

The amount that is subject to the disallowance is the amount of incremental increase in income of a family member. The incremental increase in income is calculated by comparing the amount of the family member's income before the beginning of qualifying employment (baseline) to the amount of such income after the employment.

Initial Twelve-Month Exclusion

During the cumulative 12-month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the LSHA will exclude from annual income of a qualified family member any increase in income of the family member as a result of employment over the prior income of that family member (baseline).

Second Twelve-Month Exclusion and Phase-in

During the second cumulative 12-month period after the expiration of the initial cumulative 12-month period referred to above, the LSHA must exclude from Annual Income of a qualified family member, 50 percent of any increase in income of a family member who is a person with disabilities as a result of employment over the income of that family member prior to the beginning of such employment.

Maximum Two-Year Disallowance

The earned income disallowance is limited to a lifetime 24-month period for each family member. For each family member, the disallowance only applies for a maximum of 12 months of full exclusion of incremental increase, and a maximum of 12 months of phase-in exclusion during the 24-month period starting from the date of the initial exclusion.

If the period of increased income does not last for 12 consecutive months, the disallowance period may be resumed at any time within the 24-month period, and continued until the disallowance has been applied for a total of 12 months of each disallowance (the initial 12-month full exclusion and the balance of the second 12-month phase-in exclusion).

No earned income disallowance will be applied after the 24-month period following the initial date the exclusion was applied.

The Maximum Two-Year Disallowance shall be in effect until official passage and implementation of federal HOTMA legislation in the CFR.

Applicability to Child Care Expense Deductions

The amount deducted for childcare necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after

the application of the earned income disallowance will be used in determining the cap for childcare deduction in the case of the deduction that is allowed due to employment.

Applicability to Disability Expense Deductions

The amount deducted for disability expense deduction that is necessary to permit employment shall not exceed the amount of employment income that is included in Annual Income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after the application of the earned income disallowance will be used in determining the cap for the disability expense deduction.

Applicability to Families that Receive both Child Care Expense and Disability Deductions

The amount deducted for both childcare and disability expense deductions necessary to permit employment shall not exceed the amount of employment income that is included in Annual Income. Therefore, for families entitled to the earned income disallowance, the amounts of the earned income that is included in the Annual Income after the application of the earned income disallowance will be used in determining the cap for childcare deduction and disability expenses combined in the case of the deduction that is allowed due to employment.

Tracking the Earned Income Exclusion

The earned income exclusion will be reported on the HUD 50058 form. Documentation will be included in the family's file to show the reason for the reduced increase in rent.

***Such documentation will include:**

- Date the increase in earned income was reported by the family
- Name of the family member whose earned income increased
- Reason (new employment, participation in job training program, within 6 months after receiving TANF) for the increase in earned income
- Amount of the increase in earned income (amount to be excluded)
- Date the increase in income is first excluded from annual income
- Date(s) earned income ended and resumed during the initial cumulative 12-month * period of exclusion (if any)
- Date the family member has received a total of 12 months of the initial exclusion
- Date the 12-month phase-in period began
- Date(s) earned income ended and resumed during the second cumulative 12-month period (phase-in) of exclusion (if any)
- Date the family member has received a total of 12 months of the phase-in exclusion
Ending date of the maximum 24-month (four year) disallowance period (24 months from the date of the initial earned income disallowance)

The LSHA will maintain a tracking system to ensure correct application of the earned income disallowance.

It is a LSHA policy decision to conduct an interim reexamination for income increases for the

purpose of calculating the earned income disallowance.

Inapplicability to Admission

The earned income disallowance is only applied to determine the Annual Income of families who are participants in the public housing program, and therefore does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

D. INDIVIDUAL SAVINGS ACCOUNTS

LSHA chooses **not to** establish a system of individual savings accounts for families who qualify for the disallowance of earned income.

E. TRAINING PROGRAMS FUNDED BY HUD

All training income from a HUD sponsored or HUD funded training program, whether incremental or not, is excluded from the resident's Annual Income while the resident is in training. Income from a Resident Services training program, which is funded by HUD, is excluded.

Upon employment with LSHA, the full amount of employment income received by the person is counted, but subject to the earned income disallowance provisions.

F. AVERAGING INCOME

When Annual Income cannot be anticipated for a full twelve months, LSHA will:

Annualize current income and conduct an interim reexamination if income changes.

If there are bonuses or overtime that the employer cannot anticipate for the next twelve months, then the LSHA will anticipate the income will include the bonuses and overtime received the previous year.

If by averaging, an estimate can be made for those families whose income fluctuates from month to month, this estimate will be used so that the housing payment will not change from month to month.

The method used depends on the regularity, source, type of income and verification.

G. MINIMUM INCOME

There is no minimum income requirement. Families who report zero income or extremely low income will have the income be re-verified through EIV every 120 days for income changes and are further required to complete a written no/low-income certification every 120 days and undergo an

interim recertification every 120 days. If any increases in income are indicated in any of the above information or other verification at any time, then the family will be reviewed for an interim and the rent will be adjusted accordingly.

LSHA may request credit checks for all adult members of families that report zero or extremely low income.

Where credit reports show credit accounts open and payments current, LSHA will take action to investigate the possibility of unreported or underreported income, fraud or program abuse.

H. INCOME OF PERSON PERMANENTLY/TEMPORARILY CONFINED TO NURSING HOME

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, LSHA will calculate the Total Tenant Payment by:

Excluding the income of the person permanently confined to the nursing home and not giving the family deductions for medical expenses of the confined family member.

If the family member is temporarily confined in a hospital or nursing home, LSHA will calculate the TTP by:

Including the income of the person temporarily confined to the nursing home and giving the family the medical deductions allowable on behalf of the person in the nursing home, if they are an elderly or disabled family.

I. REGULAR CONTRIBUTIONS AND GIFTS [24 CFR 5.609(a)(7)]

Regular contributions and gifts received from persons outside the household are counted as income for calculation of the Total Tenant Payment.

Any contribution or gift received on a consistent basis will be considered a "regular" contribution or gift regardless of the amount. This includes rent and utility payments made on behalf of the family and other cash or non-cash contributions provided on a regular basis. It does not include casual contributions or sporadic gifts. (See Chapter on "Verification Procedures," for further definition.)

If the family's expenses exceed their known income, LSHA will make inquiry of the family about regular contributions and gifts.

J. ALIMONY AND CHILD SUPPORT [24 CFR 5.609(a)(7)]

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment.

If the amount of child support or alimony received is less than the amount awarded by the court,

LSHA will use the amount that is determined to be received by the family.

LSHA will accept as verification that the family is receiving an amount less than the award if:

LSHA receives verification from the agency responsible for enforcement or collection.

The family furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency or has filed an enforcement or collection action through an attorney.

It is the family's responsibility to supply documentation and a copy of the divorce decree, if necessary.

LSHA will use the following guidelines for calculating amounts when less than award amount:

- If the amounts received are consistent within the past 3-6 months, then the amounts will be used to calculate the next 12 months (ie: started 3 months ago at \$250 per month equals \$250 times 12 months).
- If the amounts are sporadic during the past 12 months, then the total amount received during the past 12 months will be used.
- If the amount(s) received have completely stopped, the family must furnish the information outlined above along with a statement that the support is not being received and that they understand they must report the change if it starts again.

K. LUMP-SUM RECEIPTS [24 CFR 5.609(b)(5), (c)]

Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, are not included in income, but may be included in assets, if the amount has been invested in an allowable asset.

Lump-sum payments caused by delays in processing periodic payments (unemployment or welfare assistance) are counted as income. Lump sum payments from Social Security, SSI or VA Disability are excluded from income, but any amount remaining that is invested will be considered an asset. Deferred periodic payments that have accumulated due to a dispute will be treated the same as periodic payments that are deferred due to delays in processing.

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

LSHA uses a calculation method that calculates retroactively or prospectively depending on the circumstances.

LSHA will calculate prospectively if the family reported the payment within 10 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.

LSHA will determine the percent of the year remaining until the next annual recertification as of the date of the interim (three months would be 25% of the year).

At the next annual recertification, LSHA will apply the percentage balance (75% in this example) to the lump sum and add it to the rest of the annual income.

The lump sum will be added in the same way for any interims that occur prior to the next annual recertification.

Retroactive Calculation Methodology

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

LSHA 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 LSHA.

At LSHA's option, LSHA 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.

Attorney Fees

The family's attorney fees may be deducted from lump-sum payments when computing Annual Income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the family does not include an additional amount in full satisfaction of the attorney fees.

L. CONTRIBUTIONS TO RETIREMENT FUNDS – ASSETS

Contributions to company retirement/pension funds are handled as follows:

While an individual is employed, count as assets only amounts the family can withdraw without retiring or terminating employment.

After retirement or termination of employment, count any amount the employee elects to receive as a lump sum less the amount the employee contributed to the retirement.

M. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

LSHA must count assets disposed of for less than fair market value during the two years preceding the date of divestiture. LSHA will count the difference between the market value and the actual payment received for less than market value in calculating total assets.

Assets disposed of as a result of foreclosure or bankruptcy are not considered to be assets disposed of for less than fair market value. Assets disposed of as a result of a divorce or separation are not considered to be assets disposed of for less than fair market value.

LSHA's minimum threshold for counting assets disposed of for less than Fair Market value is \$5,000. If the total value of assets disposed of within the two-year period is less than \$5,000, they will not be considered an asset.

N. 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 income from the account is zero.

- In determining the value of a checking account, the LSHA will use the average monthly balance.
- In determining the value of a savings account, the LSHA will use the average monthly balance.
- In determining the anticipated income from an interest-bearing checking or savings account, the LSHA 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 LSHA 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 twelve months).

O. CHILD CARE EXPENSES

Child care expenses for children under 13 may be deducted from annual income, to determine adjusted income, if they enable an adult to work or attend school, or to actively seek employment.

In the case of a child attending private school, only after-hours care can be counted as child-care expenses.

Child care expenses must be reasonable. Reasonable is determined by what the average child care rates that have been determined by the TANF Agency in the LSHA's jurisdiction.

Allowability of deductions for child care expenses is based on the following guidelines:

Child care to work: The maximum child care expense allowed cannot exceed the amount of earned income by the person enabled to work that is included in the family's annual income. The "person enabled to work" will be the adult member of the household that is now released to perform work.

Child care for school: The number of hours claimed for child care may not exceed the number of hours the family member is attending school and study time, including reasonable travel time to and from school.

For determining reasonable child care expenses for education, training or seeking employment: The LSHA will determine reasonable limits to be the amount determined by the state welfare agency. If the rate per child verified by the family exceeds the guideline, the LSHA may use the state welfare agency's determination for the area to be the cap in order to calculate the allowance. Family's seeking employment shall be limited to 60 days of child care each year, and must provide additional documentation (verification) of where the family member has sought employment.

Child Care Expense Verification Information/Form

The form to be completed by the child care provider that will be used to verify child care expense will include:

- The name of the care provider;
- The address of the care provider;
- The telephone number of the care provider;
- The Social Security number of the care provider;
- The names and ages of the children for whom care is being provided;
- The hours of care provided for each child for each day of the week;
- The amount actually paid by the family;
- The amount reimbursed from other sources for the child care expenses

P. MEDICAL EXPENSES [24 CFR 5.603]

When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, or the amount that will be allowed, the current IRS Publication 502 will be used as a guide.

Nonprescription medicines must be doctor-recommended in order to be considered a medical expense.

Nonprescription medicines will be counted toward medical expenses for families who qualify if the family furnishes legible receipts with identification of the type of purchase.

Chiropractic services are included under IRS Publication 502 and will be considered allowable medical expenses.

Q. PRORATION OF ASSISTANCE FOR "MIXED" FAMILIES [24 CFR 5.520]

Applicability

Proration of assistance must be offered to any "mixed" applicant or participant family. A "mixed" family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible members.

An applicant mixed-family is entitled to prorated assistance. Tenant families that become mixed families by the addition of an ineligible member are entitled to prorated assistance.

Prorated Assistance Calculation

Prorated assistance will be calculated by subtracting the Total Tenant Payment from the applicable Flat Rent for the unit the family occupies to determine the Family Maximum Subsidy.

The specific method of prorating assistance for Public Housing covered programs is as follows:

Step 1. Determine the total tenant payment in accordance with section 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

Step 2. Subtract the total tenant payment from the LSHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

Step 3. Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

Step 4. Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

The product of steps 1 through 4 of this section is the amount of subsidy for which the family is eligible ("eligible subsidy").

The family's rent is the LSHA- established flat rent minus the amount of the eligible subsidy.

Method of prorating assistance when the mixed family's total tenant payment (TTP) is greater than the public housing flat rent.

When the mixed family's TTP is greater than the flat rent, the LSHA must use the TTP as the mixed family TTP. The LSHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

Mixed families with the TTP is less than the Flat rent can pay the flat rent. In the case of paying the flat rent, they shall not receive a prorated rent calculation. An adult member that is ineligible for assistance in a mixed family is also ineligible for an earned income disallowance.

R. INCOME CHANGES RESULTING FROM WELFARE PROGRAM REQUIREMENTS

QHWRA revised the situations in which a PHA is required to reduce rent for special cases. In order to comply with the requirement, LSHA will make income revisions for changes resulting from Welfare program requirements as follows:

The LSHA will not reduce the rental contribution for families whose welfare assistance is reduced specifically because of:

- fraud by a family member in connection with the welfare program; or
- failure to participate in an economic self-sufficiency program; or
- noncompliance with a work activities requirement

However, the LSHA will reduce the rental contribution if the welfare assistance reduction is a result of:

- The expiration of a lifetime time limit on receiving benefits; or
- A situation where a family member has not complied with a general welfare agency requirements; or
- A situation where a family member has complied with welfare agency economic self-sufficiency or work activities requirements but cannot or has not obtained employment, such as the family member has complied with welfare program requirements, but the durational time limit, such as a cap on the length of time a family can receive benefits, causes the family to lose their welfare benefits; or
- A situation of an inadvertent overpayment.

Imputed welfare income is the amount of annual income not actually received by a family as a result of a specified welfare benefit reduction that is included in the family's income for rental contribution.

Imputed welfare income is not included in annual income if the family was not an assisted resident at the time of sanction.

The amount of imputed welfare income is offset by the amount of additional income (new income) a family receives that begins after the sanction was imposed.

When additional income is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

Verification Before Denying a Request to Reduce Rent

LSHA will obtain written verification from the welfare agency stating that the family's benefits have been reduced for fraud or noncompliance before denying the family's request for rent reduction.

Cooperation Agreements

LSHA has an unwritten cooperation agreement in place with the local welfare agency that assists the PHA in obtaining the necessary information regarding welfare sanctions.

S. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS

If the cost of utilities (excluding telephone) is not included in the Tenant Rent, a utility allowance will be deducted from the total tenant payment. The Utility allowance is intended to help defray the cost of utilities not included in the rent. The allowances are based on the monthly cost of reasonable consumption utilities in an energy conservative household, not on a family's actual consumption.

When the Utility Allowance exceeds the family's Total Tenant Payment, LSHA will provide a Utility Reimbursement Payment for the family each month. The check will be made out directly to the tenant.

If at any time the LSHA changes its utility payout and if the LSHA elects to pay the utility supplier, the LSHA must notify the family of the amount of utility reimbursement paid to the utility supplier. This is done through the notice of rent adjustments that are sent out at the time of annual or interim recertification and the rent adjustments.

The LSHA may elect at any time to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

The LSHA maintains the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the LSHA must reimburse the family for a prorated share of the applicable reimbursement.

If LSHA exercises this option, it must have a hardship policy in place for tenants. Hardship policies include loss of income for a period of greater than 90 days due to no fault of the family.

Resident-Paid Utilities

The following requirements apply to residents living in developments with resident-paid utilities or applicants being admitted to such developments:

If a resident or applicant is unable to get utilities connected because of a previous balance owed to the utility company, the resident/applicant will not be permitted to move into a unit with resident paid utilities.

Paying the utility bill is the resident's obligation under the lease. Failure to pay utilities is grounds for eviction and is considered a health and safety violation. Utilities must be reinstated in 72 hours.

Reasonable Accommodations in Adjusting the Utility Allowances

It is the policy of the LSHA to adjust the amount of tenant-paid utilities or PHA consumption levels for tenant allowances in documented situations when a qualified family is entitled to the adjustments. Such adjustments shall be made based on the qualification of the disabled individual's special need, and shall be no more than the difference of the usage of the reasonable cost of a reasonable increased consumption level for the additional required apparatus used to address the need.

T. FAMILY CHOICE IN RENTS

Authority for Family to Select

LSHA shall provide for each family residing in a public housing unit to elect annually whether the rent paid by such family shall be 1) determined based on family income or 2) the flat rent. LSHA may not at any time fail to provide both such rent options for any public housing unit owned, assisted or operated by LSHA.

Annual choice: LSHA shall provide for families residing in public housing units to elect annually whether to pay income-based or flat rent at the time of the annual recertification.

Allowable Rent Structures

Flat Rents (PIH 2015-13 and Streamlining Rule March 8, 2016)

The Streamlining rule of 2016 amended the public housing rent requirements for flat rents. Specifically, the regulation was amended to require that flat rents must be set at no less than the lower of 80 percent of:

1. the applicable fair market rental established under section 8(c) of the; or
2. at the discretion of the Secretary, such other applicable fair market rental established by the Secretary that the Secretary determines more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used for purposes of the applicable fair market rental under

section 8(c);

LSHA may apply for an exception waiver allowing for a flat rental amount for a property that is lower than the amount outlined in the options above. HUD may grant such an exception if HUD determines that the fair market rent for the applicable market area does not reflect the market value of the property and the proposed lower flat rental amount is based on a market analysis of the applicable market.

The regulations maintained the protection that any rent increase of more than 35 percent due to the flat rent changes must be phased in as necessary.

As flat rents are fully implemented, the higher rent levels will ensure that families with higher incomes pay an appropriate market-based rent. It is an important policy goal to provide scarce public resources to those most in need of deeply affordable housing. LSHA is therefore reminded that they have the discretion, in accordance with federal law and regulations (24 CFR 960.261; FR-4824-F-02), to establish occupancy policies that include the eviction of public housing tenants who are above the income limits for eligibility to participate in public housing programs. HUD encourages LSHA to provide a balance between the important goals of supporting the sustained self-sufficiency of families with the ever-increasing demand for affordable housing units among families on their waiting lists.

Flat Rent, FMRs AND Utility Payments

Fair Market Rents (FMRs) are gross rent estimates that cover the shelter rent plus the cost of all necessary utilities regardless of who actually pays the utilities. Although the inclusion of utilities in the FMR is an accurate estimate of the cost of renting a unit in a particular area, their inclusion for purposes of setting Public Housing flat rents may lead to families paying more in gross rent if the shelter rent is not adjusted to reflect utility payments. Specifically, families that pay a flat rent for public housing units and that pay their own utilities would pay more in gross rent (i.e., shelter rent plus utilities) than a family in a similarly situated unit where the LSHA pays the utilities.

For example, if LSHA sets the flat rent for 1-BR units at exactly 80 percent of the FMR, totaling (\$400), a family renting a unit where the LSHA pays the utilities would pay

\$400, and a family that rents a unit where they are responsible for paying utilities would pay \$400 plus the cost of utilities. In this case, the family paying for utilities directly pays more because they are renting a unit where they are responsible for their own utility payments.

To address this issue when establishing flat rents, LSHA must consider who is responsible for direct utility payments to the utility company, and adjust the flat rent accordingly.

Specifically, if the LSHA is responsible for paying for utilities to the utility company, no adjustment is necessary when setting flat rents. However, if the family is responsible for making direct utility payments to the utility company, the LSHA must adjust the flat rent amount downward, using a utility allowance, to account for reasonable utility costs of an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. For flat rents that are set at 80 percent of FMR, the LSHA must first determine 80

percent of FMR for each bedroom-size, and then reduce that amount by the utility allowance. For example, if 80 percent of FMR for a 1-BR unit is \$400, then the resulting rent after a reasonable utilities reduction of \$50 per month would be \$350. LSHA should also consider utility payments where flat rents are set above 80 percent of FMR and incorporate such adjustments as necessary. Can also use Small Area FMR's (PIH Notice 2015-13)

LSHA will adjust fair market rents downward to account for reasonable utility cost by subtracting the utility allowance allowed for the appropriate size apartment from the published fair market rent to establish the flat rate rent that will be charged to the family.

LSHA shall review the income of families paying flat rent not less than once every three years.

LSHA shall review the income of families paying flat rent not less than once every three years.

Exceptions to Flat Rent

The regulation permits LSHA to request an exception flat rent that is lower than either 80 percent of the lower of the FMR or SAFMR/unadjusted rent if the LSHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, LSHA is required to submit a market analysis methodology that demonstrates the value for the unit. While HUD does not prescribe a particular formula for determining the market analysis, LSHA must compare the public housing unit to unassisted units in the area using the following factors:

- Location, quality, size, unit type, age of the unit, and
- Amenities, housing services, maintenance, and utilities the PHA will provide under the lease.

These criteria are meant to assist LSHA in developing a common sense approach to valuing a unit. It remains important to note that HUD places a high priority on accurate rent determinations and requires that such determinations be performed in a documented, reasonable, and consistent manner. It is not, however, necessary or cost-effective to try to quantifiably document or separately evaluate each of these criteria. To the extent possible, rent valuation should be based on rents paid for similar units in the same general location that are also generally similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

LSHA may request an exception flat rent by sending an e-mail to flatrentexceptionrequests@HUD.GOV with the following information attached:

- The address, including unit number(s) of the unit or property for which the LSHA is seeking an exception flat rent;
- The market analysis; and
- The proposed flat rent schedule.

LSHA must receive written HUD approval to utilize an exception flat rent prior to implementing the exception flat rent. When LSHA utilizes exception flat rents, they must conduct a new market analysis, and obtain HUD approval, annually.

If HUD denies an exception flat rent request, HUD will provide a detailed written response regarding the reasons for the denial. If, after reviewing HUD's written denial, LSHA believes that HUD's decision was in error, LSHA may appeal the decision in writing to their local HUD field office no later than 30 days after receiving notification of the denial. The appeal should include any new information the LSHA believes is necessary to supplement the original submission. If HUD denies the appeal, LSHA must immediately set flat rents at no less than the lower of 80 percent of the FMR or SAFMR pursuant to the regulations. While awaiting HUD response for any exception request or the appeal for an exception request, flat rents must be set at no less than 80 percent of the lower of the FMR or SAFMR, or at the exception flat rent level previously approved by HUD.

Flat Rent Increase Phase-in Requirements

If the LSHA determines that the updated flat rent amount would increase a household's rental payment by more than 35 percent, the family may choose to pay the phased-in flat rent amount resulting from the flat rent impact analysis or the previously calculated income-based rent.

Income-Based Rents

The monthly Total Tenant Payment amount for a family shall be an amount, as verified by the PHA, which does not exceed the greatest of the following amounts:

30 percent of the family's monthly adjusted income;

10 percent of the family's monthly income; or

LSHA's Minimum TTP of \$50

Switching Rent Determination Methods Because of Hardship Circumstances

In the case of a family that has elected to pay LSHA's flat rent, LSHA shall immediately provide for the family to pay rent in the amount determined under income-based rent, during the period for which such choice was made, upon a determination that the family is unable to pay the flat rent because of financial hardship, including:

- Situations in which the income of the family has decreased because of changed circumstances, loss of or reduction of employment, death in the family, and reduction in or loss of income or other assistance; or
- An increase, because of changed circumstances, in the family's expenses for medical costs, child care, transportation, education, or similar items; or

- Such other situations as may be determined by LSHA.

All hardship situations will be verified.

Annual Reexamination

120 days in advance of annual reexamination, the family will be notified of their annual reexamination. During this reexamination period, the family will be given the option to choose flat rent or income-based rent. LSHA will provide a form that states what the flat rent would be and what the family's income-based rent would be. The family will be required to make a choice and sign the form prior to the effective date of their reexamination. The form will be retained in the tenant's file. (See Chapter 11 for further details).

Whether the family indicates they choose income-based or a flat rent, a reexamination appointment will be scheduled according to LSHA policy. The family during the reexamination will be provided information on the anticipated rent and may choose to pay flat rent prior to the new rent going into effect.

U. LSHA'S FLAT RENT METHODOLOGY

In order to comply with the flat rent requirements annually, no later than 90 days after issuance of new FMRs or SAFMRs by HUD, the LSHA must:

- 1) Compare the current flat rent amount to the applicable FMR and SAFMR/unadjusted rent:
 - a) If the flat rent is at least 80 percent of the lower of the FMR or SAFMR/unadjusted rent, the LSHA is in compliance with the law, and no further steps are necessary;
 - b) If the flat rent is less than 80 percent of the lower of the FMR and SAFMR, the LSHA must set flat rents at no less than 80 percent of the lower of the FMR or SAFMR/unadjusted rent, subject to the utilities adjustment in section 5 of PIH 2015-13, or the PHA may request an exception flat rent pursuant to the requirements of Section 4 of this notice;
- 2) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP) as necessary;
- 3) At all new admissions, permit the family to choose between the flat rent amount and the income-based rent; and
- 4) For families that are current public housing residents, offer the updated flat rent amount at the next annual rent option, and permit the family to choose between the flat rent amount and the income-based rent, subject to the requirements of Section 7 of PIH 2015-13.

The Schedule of Flat Rents is posted at the public housing developments and designated posting areas within the LSHA.

V. LSHA'S CEILING RENT

LSHA does not have ceiling rents.

W. ANNUAL INCOME INCLUSIONS AND EXCLUSIONS DEFINITION

Annual Income Includes:

- (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 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 a deduction in determining net income. An allowance for depreciation is permitted only as authorized within 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 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 payments received from social security, annuities, insurance policies, retirement funds, pensions, lotteries, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment (but see No. 13 under Income Exclusions);
- (5) Payments in lieu of earnings, such as unemployment, worker's compensation, and severance pay (but see No. 3 under Income Exclusions);
- (6) Welfare Assistance.
 - a. Welfare assistance received by the household.
 - b. The amount of reduced welfare income that is disregarded specifically because the family engaged in fraud or failed to comply with an economic self-sufficiency or work activities requirement.
 - c. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustments by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare income to be included

as income shall consist of:

- (i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
- (ii) 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 persons not residing in the dwelling; and

(8) All regular pay, special pay, and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit (but see paragraph (7)) under Income Exclusions.

(9) For the section 8 programs only and as provided under the restrictions on assistance to students enrolled in an institution of higher education, 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 income inclusion is not considered income for persons over the age of 23 with dependent children. Financial assistance does not include loan proceeds for determining income.

Annual Income Excludes:

(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 individuals 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 (but see No. 5 under Income Inclusions);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide (as defined by regulation);

(6) Except for the required income inclusions in the Section 8 Program as stated income inclusions #9, 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) Certain amounts received that are related to participation in the following programs
- (a) Amounts received under training programs funded by HUD;
 - (b) Amounts received by a person with disabilities that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
 - (c) Amounts received by a participant in other publicly assisted programs 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;
 - (d) A resident service stipend. This is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the development. This may include, but is not limited to fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time; or
 - (e) 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). For example, amounts earned by temporary census employees whose terms of employment do not exceed 180 days (Notice PIH 2000-1).
- (10) Reparations 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 or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump-sum payment or in prospective monthly payments;

(14) 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;

(15) Amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and,

(16) 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 the 1937 Act. A notice will be published in the *Federal Register* and distributed to PHAs identifying the benefits that qualify for this exclusion. Updates will be distributed when necessary. The following is a list of income sources that qualify for that exclusion:

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 *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 spinal 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) Incentive payments received under the Medicare Discount Program
- u) Kin Care or Guardian Care

- v) Assistance from the Richard B Russell National School Lunch Program Payments Under the Seneca Nation Settlement Act
- w) 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
- x) Federal major disaster and emergency assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance

(17) Earned Income Disallowance

- (a) Initial Twelve Month Exclusion
- (b) Second Twelve Month Exclusion and Phase-In
- (c) Maximum Two-Year Disallowance

X. ASSET INCLUSIONS AND EXCLUSIONS

Assets Include:

- a) Amounts in savings and checking accounts.
- b) Stocks, bonds, savings certificates, money market funds and other investment accounts.
- c) Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the assets and reasonable costs (such as broker fees) that would be incurred in selling the assets.
- d) The cash value of trusts that may be withdrawn by the family.
- e) IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.
- f) Some contributions to company retirement/ pension funds. Note the discussion below on accessibility of the funds.
- g) Assets, which although owned by more than one person, allow unrestricted access by the applicant.
- h) Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
- i) Personal property held as an investment such as gems, jewelry, coin collections, antique cars,

etc.

- j) Cash value of life insurance policies.
- k) Assets disposed of for less than fair market value during the two years preceding certification or re-certification.

Assets Exclude:

- a) Necessary personal property, except as noted in assets inclusions.
- b) Interest on Indian trust lands.
- c) Assets that are part of an active business or farming operation.
 - o *NOTE:* Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant's/tenant's main occupation.
- d) Assets not controlled by or accessible to the family and which provide no income for the family
- e) Vehicles especially equipped for the disabled.
- f) Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

NOTE: A key factor in whether or not to include an asset in the calculation of annual income is whether any member of the family has access to the asset