

CHAPTER 6

FACTORS RELATED TO TOTAL TENANT PAYMENT AND FAMILY SHARE DETERMINATION

[24 CFR Part 5, Subparts E and F; 982.153, 982.551]

INTRODUCTION

The HA will use the methods as set forth in this Administrative Plan to verify and determine that family income at admission and at annual reexamination is correct. 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 expenses and deductions to be subtracted 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, Subparts E and F, and further instructions set forth in HUD Notices and Memoranda. The formula for the calculation of TTP is specific and not subject to interpretation. The HA's policies in this Chapter address those areas which allow the HA 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. INCOME AND ALLOWANCES [24 CFR 5.609]

Income: Includes all monetary amounts, which 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, which 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, which 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 five allowable deductions from Annual Income:

- Dependent Allowance: \$480 for each family member who is:
 1. under 18 years of age;
 2. a person with disability;
 3. a full time student
- Elderly/Disabled Allowance: \$400 per family for families whose head or spouse is 62 or over or disabled.
- Allowable Medical Expenses: Deducted for all family members of an eligible elderly/disabled family.
- Child Care Expenses: Deducted for the care of children under 13 when child care is necessary to allow an **adult** member to work, attend school, or actively seek employment.
- Allowable Disability Assistance Expenses: Deducted for attendant care or auxiliary apparatus for persons with disabilities if needed to enable the individual or an **adult** family member to work.

B. MINIMUM RENT [24 CFR 5.616]

Minimum Rent

"Minimum rent" is **\$25**. Minimum rent refers to the Total Tenant Payment and includes the combined amount a family pays towards rent and/or utilities when it is applied.

Hardship Requests for an Exception to Minimum Rent

The HA recognizes that in some circumstances even the minimum rent may create a financial hardship for families. The HA will review all relevant circumstances brought to the HA's attention regarding financial hardship as it applies to the minimum rent. The following section states the HA's procedures and policies in regard to minimum rent financial hardship as set forth by the Quality Housing and Work Responsibility Act of 1998. HUD has defined circumstances under which a hardship could be claimed.

Criteria for Hardship Exception

In order for a family to qualify for a hardship exception the family's circumstances must fall under one of the following HUD hardship 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;

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- The income of the family has decreased because of changed circumstances, including:
 - ✓ Loss of employment
 - ✓ Death in the family
 - ✓ Other circumstances as determined by the HA or HUD

HA Notification to Families of Right to Hardship Exception

The HA will notify all families subject to minimum rents of their right to request a minimum rent hardship exception. “**Subject To Minimum Rent**” means the minimum rent was the greatest figure in the calculation of the greatest of 30% of monthly-adjusted income, 10% of monthly income, minimum rent or welfare rent.

If the minimum rent is the greatest figure in the calculation of Total Tenant Payment, HA staff will include a copy of the notice regarding hardship request provided to the family in the family’s file.

The HA notification will advise families that hardship exception determinations are subject to HA review and hearing procedures.

The HA will review all family requests for exception from the minimum rent due to financial hardships.

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

- ✓ The HA will request documentation as proof of financial hardship.
- ✓ The HA will use its standard verification procedures to verify circumstances which have resulted in financial hardship.

Suspension of Minimum Rent

The HA will grant the minimum rent exception to all families who request it, effective the first of the following month. The minimum rent will be suspended until the HA determines whether the hardship is:

- ▶ Covered by statute
- ▶ Temporary or long term

"Suspension" means that the HA must not use the minimum rent calculation until the HA has made this decision.

During the minimum rent suspension period, the family will not be required to pay a minimum rent and the housing assistance payment will be increased accordingly.

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

Temporary Hardship

If the HA determines that the hardship is temporary, a minimum rent will not be imposed for a period of up to 90 days from the date of the family’s request. At the end of the temporary suspension period, a minimum rent will be imposed retroactively to the time of suspension.

The HA will offer a repayment agreement to the family for any such rent not paid during the temporary hardship period. (See "Owner and Family Debts to the HA" chapter for Repayment agreement policy).

Long-Term Duration Hardships [24 CFR 5.616(c)(3)]

If the HA determines that there is a qualifying long-term financial hardship, the HA must exempt the family from the minimum rent requirements.

Retroactive Determination

The HA will reimburse the family for any minimum rent charges which took effect after October 21, 1998 that qualified for one of the mandatory exceptions.

If the family is owed a retroactive payment, the HA will offset the family’s future rent contribution payments by the amount in which the HA owes the family.

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C. DEFINITION OF TEMPORARILY/PERMANENTLY ABSENT [24 CFR 982.54(d)(10), 982.551]

The HA must compute all applicable income of every family member who is on the lease, including those who are temporarily absent. In addition, the HA must count the income of the spouse or the head of the household if that person is temporarily absent, even if that person is not on the lease.

"Temporarily absent" is defined as away from the unit for more than 7 days.

Income of persons permanently absent will not be counted. If the spouse is temporarily absent and in the military, all military pay and allowances (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

It is the responsibility of the head of household to report changes in family composition. The HA will evaluate absences from the unit using this policy.

Absence of Any Member

Any member of the household will be considered permanently absent if s/he is away from the unit for **6 consecutive months/180 days** except as otherwise provided in this Chapter.

Absence due to Medical Reasons

If any family member leaves the household to enter a facility such as hospital, nursing home, or rehabilitation center, the HA will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the family member will be permanently confined to a nursing home, the family member will be considered permanently absent. If the verification indicates that the family member will return in less **180 consecutive days**, the family member will not be considered permanently absent.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with the HA's "Absence of Entire Family" policy.

Absence Due to Full-time Student Status

Full time students who attend school away from the home will be treated in the following manner:

"A student (other than head of household or spouse) who attends school away from home but lives with the family during school recesses may, at the family's choice, be considered either temporarily or permanently absent. If the family decides that the member is permanently absent, income of that member will not be included in total household income, the member will not be included on the lease, and the member will not be included for determination of Voucher size."

Absence due to Incarceration

If the sole family member is incarcerated for more than 180 consecutive days, s/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if s/he is incarcerated for 6 consecutive months/180 days in a twelve-month period.

The HA will determine if the reason for incarceration is for drug-related or violent criminal activity.

Absence of Children due to Placement in Foster Care

If the family includes a child or children temporarily absent from the home due to placement in foster care, the HA will determine from the appropriate agency when the child/children will be returned to the home.

If the time period is to be greater than **6 months/180 days** from the date of removal of the child/ren, the Voucher size will be reduced. If all children are removed from the home permanently, the voucher size will be reduced in accordance with the HA's subsidy standards.

Absence of Entire Family

These policy guidelines address situations when the family is absent from the unit, but has not moved out of the unit. In cases where the family has moved out of the unit, the HA will terminate assistance in accordance with appropriate termination procedures contained in this Plan.

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Families are required both to notify the HA before they move out of a unit and to give the HA information about any family absence from the unit.

Families must notify the HA at least 5 working days before leaving the if they are going to be absent from the unit for more than 30 consecutive days.

If the entire family is absent from the assisted unit for more than 180 consecutive days, the unit will be considered to be vacated and the assistance will be terminated.

If it is determined that the family is absent from the unit, the HA will continue assistance payments for a maximum of 6 months, not to exceed 180 days.

HUD regulations require the HA to terminate assistance if the entire family is absent from the unit for a period of more than 180 consecutive calendar days.

"Absence" means that no family member is residing in the unit.

In order to determine if the family is absent from the unit, the HA may:

- ▶ Write letters to the family at the unit
- ▶ Telephone the family at the unit
- ▶ Interview neighbors
- ▶ Verify if utilities are in service
- ▶ Check with the post office

A person with a disability may request an extension of time as an accommodation, provided that the extension does not go beyond the HUD-allowed 180 consecutive calendar day's limit.

If the absence which resulted in termination of assistance was due to a person's disability, and the HA can verify that the person was unable to notify the HA in accordance with the family's responsibilities, and if funding is available, the HA may reinstate the family as an accommodation if requested by the family, as long as the period was within 180 days.

Caretaker for Children

If neither parent remains in the household and the appropriate agency has determined that another adult is to be brought into the assisted unit to care for the children for an indefinite period, the HA will treat that adult as a visitor for the first **30 days**.

If by the end of that period, court-awarded custody or legal guardianship has been awarded to the caretaker, the Voucher will be transferred to the caretaker.

If the appropriate agency cannot confirm the guardianship status of the caretaker, the HA will review the status at **30-day** intervals.

If custody or legal guardianship has not been awarded by the court, but the action is in process, the HA will secure verification from social services staff or the attorney as to the status.

If custody is awarded for a limited time in excess of stated period, the HA will state in writing that the transfer of the Voucher is for that limited time or as long as they have custody of the children. The HA will use discretion as deemed appropriate in determining any further assignment of the Voucher on behalf of the children.

When the HA approves a person to reside in the unit as caretaker for the child/ren, the income should be counted pending a final disposition. The HA will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.

If a member of the household is subject to a court order that restricts him/her from the home for more than **6 months**, the person will be considered permanently absent.

Visitors

Any adult not included on the HUD 50058 who has been in the unit more 15 consecutive days without HA approval, or a total of **30 days** in a 12-month period, will be considered to be living in the unit as an **unauthorized** household member.

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Absence of evidence of any other address will be considered verification that the visitor is a member of the household. Statements from neighbors and/or the landlord will be considered in making the determination.

Use of the unit address as the visitor's current residence for any purpose that is not explicitly temporary shall be construed as permanent residence.

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

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 **60 days** per year without being considered a member of the household.

In a joint custody arrangement, if the minor is in the household less than **180 days** per year, the minor will be considered to be an eligible visitor and not a family member.

Reporting Additions to Owner and HA

Reporting changes in household composition to the HA is both a HUD and a HA requirement.

The family obligations require the family to request HA approval to add any other family member as an occupant of the unit and to inform the HA of the birth, adoption or court-awarded custody of a child. **The family must request prior approval of additional household members in writing.**

If the family does not obtain prior written approval from the HA, any person the family has permitted to move in will be considered an unauthorized household member.

An interim reexamination will be conducted for any additions to the household.

In addition, the lease may require the family to obtain prior written approval from the owner when there are changes in family composition other than birth, adoption or court awarded custody.

Reporting Absences to the HA

Reporting changes in household composition is both a HUD and a HA requirement.

If a family member leaves the household, the family must report this change to the HA, in writing, within **30 business days** of the change and certify as to whether the member is temporarily absent or permanently absent.

The HA will conduct an interim evaluation for changes which affect the Total Tenant Payment in accordance with the interim policy.

Reporting Household Income Changes to the HA

Families must report any change in any income source of any family member 18 years or older **within 30 days** of the change in income in writing. All reported changes will result in an interim re-examination.

D. AVERAGING INCOME

When Annual Income cannot be anticipated for a full twelve months, the HA may:

- Average known sources of income that vary to compute an annual income, or
- Annualize current income and conduct an interim reexamination if income changes.
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If there are bonuses or overtime that the employer cannot anticipate for the next twelve months, bonuses and overtime received the previous year will be used.

If, by averaging, an estimate can be made for those families whose income fluctuates from month to month, this estimate will be used so as to reduce the number of interim adjustments.

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

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E. MINIMUM INCOME

There is no minimum income requirement. Families who report zero income are required to *complete a written certification every 30 days and undergo an interim re-certification every 3 months.*

Families that report zero income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc.

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.

F. INCOME OF PERSON PERMANENTLY CONFINED TO NURSING HOME [24 CFR 982.54(d)(10)]

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, the HA will calculate the income by using the following methodology and use the income figure which would result in a lower payment by the family:

1. Exclude the income of the person permanently confined to the nursing home and give the family no deductions for medical expenses of the confined family member.
OR
Include the income of the person permanently confined to the nursing home and give the family the medical deductions allowable on behalf of the person in the nursing home.
2. Exclude the income and deductions of the member if his/her income goes directly to the facility.
OR
Include the income and deductions of the member if his/her income goes to a family member.

G. REGULAR CONTRIBUTIONS AND GIFTS [24 CFR 5.609]

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 every 2 months or more frequently will be considered a "regular" contribution or gift, unless the amount is less than **\$250.00** per year. 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 "Verification Procedures" chapter for further definition.)

If the family's expenses exceed its known income, the HA will inquire of the family regarding contributions and gifts.

H. ALIMONY AND CHILD SUPPORT [24 CFR 5.609]

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, the HA will use the amount awarded by the court unless the family can verify that they are not receiving the full amount and verification of item(s) below are provided, and can demonstrate that they are pursuing enforcement.

The HA will accept verification that the family is receiving an amount less than the award if:

- The HA receives verification from Dept. of Child Support Enforcement.
- 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 or court.

It is the family's responsibility to supply a certified copy of the divorce decree.

I. LUMP SUM RECEIPTS [24 CFR 5.609]

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.

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

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payments which 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, the HA 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.

If amortizing the payment over one year will cause the family to pay more than 35 percent of the family's adjusted income (before the lump sum was added) for Total Tenant Payment, the HA and family may enter into a Payment Agreement, with the approval of Housing Programs Manager, for the balance of the amount over the 35 percent calculation. The beginning date for this Payment Agreement will start as soon as the one-year is over.

Retroactive Calculation Methodology

The HA will go back to the date the lump-sum payment was received, or to the date of admission, whichever is closer. The family has the choice of paying this "retroactive" amount to the HA in a lump sum.

At the HA's option, the HA may enter into a Payment 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.

J. CONTRIBUTIONS TO RETIREMENT FUNDS - ASSETS [24 CFR 5.603(d)]

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.

K. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(d)(3)]

The HA must count assets disposed of for less than fair market value during the two years preceding certification or reexamination. The HA will count the difference between the market value and the actual payment received 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.

L. CHILD CARE EXPENSES [24 CFR 5.603]

Childcare expenses for children under 13 may be deducted from annual income if they enable an adult to work or attend school full time, or to actively seek employment. Child care expenses must be reasonable and documented by third-party verification.

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

Childcare expenses cannot be allowed as a deduction if there is an adult household member capable of caring for the child who can provide the childcare. Examples of those adult members who would be considered *unable* to care for the child include:

- The abuser in a documented child abuse situation, or
- A person with disabilities or older person unable to take care of a small child, as verified by a reliable knowledgeable source.

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

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Child care to work: The maximum child care expense allowed must be less than the amount earned by the person enabled to work. The "person enabled to work" will be the adult member of the household who earns the least amount of income from working.

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, including reasonable travel time to and from school.

Amount of Expense: The HA will use available market rates to determine guidelines for hourly rates. If the hourly rate actually paid exceeds the guideline, the HA may calculate the allowance using the guideline.

M. MEDICAL EXPENSES [24 CFR 5.609(a)(2), 5.603]

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

Nonprescription medicines will be counted toward medical expenses for families who qualify if the family furnishes legible receipts.

Accupressure, accupuncture and related herbal medicines, and chiropractic services will be considered allowable medical expenses.

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.

Prorated Assistance Calculation

Prorated assistance is calculated by determining the amount of assistance payable if all family members were eligible and multiplying by the percent of the family members who actually are eligible. Calculations for each housing program are performed on the HUD 50058 form.

N. REDUCTION IN BENEFITS

See Chapter on re-certifications on how to handle income changes resulting from welfare program requirements.

O. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS [24 CFR 982.153, 982.517]

The same Utility Allowance Schedule is used for all tenant-based programs.

The utility allowance is intended to cover the cost of utilities not included in the rent. The allowance is based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. Allowances are not based on an individual family's actual energy consumption.

The HA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards.

The HA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

The HA must classify utilities in the utility allowance schedule according to the following general categories: space heating, air conditioning, cooking, water heating, water, sewer, trash collection; [other electric,] refrigerator (for tenant supplied refrigerator), range (cost of tenant-supplied range); and other specified services.

An allowance for tenant-paid air conditioning will be provided in those cases where the majority of housing units in the market have central air conditioning or are wired for tenant installed air conditioners [24 CFR 982.517]. A tenant-paid air conditioning allowance will be provided throughout our jurisdiction. *The air conditioning allowance will only be granted to families when the HA has confirmed that the unit actually has an air conditioner in the unit.*

The HA will review the utility allowance schedule annually. If the review finds a utility rate has changed by 10 percent or more since the last revision of the utility allowance schedule, the schedule will be revised to reflect the new rate. Revised utility allowances will be applied in a participant family's rent calculation at their next reexamination. The approved utility allowance schedule is given to families along with their Voucher. The utility allowance is based on the actual unit size selected.

Where the calculation on the HUD 50058 results in a utility reimbursement payment due the family, the HA will provide a Utility

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Reimbursement Payment for the family each month. The check will be made out directly **to the tenant**. Reductions of up to \$25 will be made in utility allowance checks to meet minimum tenant payment.