

ANNUAL INCOME-WHAT IS INCLUDED

1. Question: What amounts must I consider or include in the determination of a family's annual income?

Answer: When determining a family's annual income, PHAs must consider all amounts, monetary or not, including the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, compensation for personal services, and more, as defined in **24 CFR 5.609**. Annual income is a family's anticipated total or gross income minus allowable exclusions (e.g., TOTAL/GROSS INCOME - EXCLUSIONS = ANNUAL INCOME).

2. Question: If a tenant's Supplemental Security Income (SSI) is reduced to make up for a prior overpayment, what amount should the tenant's annual income include? For example, the tenant should receive \$600 per month, but due to the discovery of a prior overpayment of \$300, the Social Security Administration (SSA) reduces the tenant's SSI benefits to \$540 per month for 5 months. Should the PHA calculate the family's income based on the number of months the family will receive \$540 in SSI payments and the number of months the family will receive \$600 in SSI payments during the period covered by the reexamination.

Answer: Yes. After obtaining and documenting in the family file third-party verification of annual income and the reason for the payment reduction (**24 CFR 960.259(c)** and **24 CFR 982.516(a)(2)**), the PHA should calculate the family's annual income using the \$540 net amount for the five months, and then conduct an interim reexamination when the reduction ends because of the change in the family's income.

As defined in **24 CFR 5.609**, annual income is the anticipated amount to be received from a source outside the family during the 12-month period following admission or annual reexamination. When a tenant's SSI benefits are reduced to make up for a prior overpayment, the recipient's income should include the anticipated amount the SSA will provide, not the amount that would have been provided if no error were made.

As described above, the \$300 overpayment has already been included in the calculation of the family's rent, so if the PHA continues to count the \$600 instead of the \$540, the family will end up paying on that \$300 overpayment again. In essence, the family will have had \$600 counted as income when it only received \$300. This position is consistent with the new **Handbook 4350.3, *Occupancy Requirements of Subsidies Multifamily Housing Programs* (Chapter 5, p. 5-6H)**.

3. Question: If a family's Social Security income is reduced because of an IRS garnishment, should annual income be calculated using the gross income or net income?

Answer: The PHA must use the gross amount to calculate income. Annual income, per **24 CFR 5.609**, includes the full amount of periodic amounts from Social Security.

4. Question: If a tenant receives a pension payment and half of the pension is garnished for an alimony payment, what amount does the PHA count towards annual income?

Answer: The PHA must use the gross amount to calculate annual income. Annual income, per **24 CFR 5.609**, includes the full amount of periodic amounts from pensions.

5. Question: If a tenant received an additional \$500 payment for past due amounts owed in child support-the PHA verified the additional amount and the reason for such payment through third-party verification-should the \$500 payment be considered in the calculation of the family's annual income?

Answer: Maybe. In this case, the PHA has verified that the additional \$500 child support payment was for past due amounts (or a delayed sum) of periodic payments. In accordance with **24 CFR 5.609(b)(7)**, annual income includes periodic and determinable allowances, such as alimony and child support payments. Therefore, by definition, the \$500 payment is considered when determining annual income. However, other factors, including the type of reexamination that is being conducted (annual or interim) and the PHA's interim reporting policies also need to be considered. This is necessary because annual income is based on amounts that are "anticipated" to be received from a source outside the family during the 12-month period following admission or the annual reexamination effective date. See scenarios below:

PHAS WITH NO INTERIM REPORTING REQUIREMENTS:

New Admission & Annual Reexamination

The PHA would need to determine the likelihood of the resident receiving another similar payment(s) within the next twelve months before deciding whether or not this amount should be included in the calculation of annual income. To make this determination, the PHA would need more information from the tenant and the third party paying the child support or the agency providing the information. If the PHA determines and can appropriately verify that the tenant in all likelihood will not receive a similar payment the following year, then the amount **should not** be considered when calculating annual income. On the other hand, if the PHA determines that it is likely that the tenant will receive a similar payment and can appropriately verify it, the amount should be included in annual income.

Interim Reexamination

The tenant does not need to report the receipt of an additional child support payment, because the PHA does not require reporting of interim changes in income. In the event the tenant does report the additional payment, the PHA will not increase the tenant's income or rent.

PHAS WITH INTERIM REPORTING REQUIREMENTS:

New Admission & Annual Reexamination

The PHA would need to go through the same process described above to determine "anticipated" annual income. Again, this determination would need to be based on appropriate income verification. However, in this case, the PHA would also have to determine if the family had reported all increases of income between annual reexaminations as required. If they had not, the PHA would take appropriate action (e.g., calculate and charge family retroactive rent, etc.).

Interim Reexamination

If the PHA is completing an interim reexamination for the family, the PHA would include the additional income in the calculation of income and rent.

For additional guidance on the determination of annual income and annual/interim reexamination requirements, see chapters 10, 12, and 13 of the **Public Housing Occupancy Guidebook**, and chapters 5 and 12 of the **Housing Choice Voucher Program Guidebook**.

6. Question: How is unemployment counted? Do PHAs count what the tenant receives monthly and then multiply that amount by 12, or do PHAs just count the whole amount eligible to tenants for the upcoming year?

Answer: The method that a PHA uses to determine annual income is dependent on the way in which the income data is presented and verified. If the unemployment income is presented as an annual amount, then the PHA could use that amount as the annual income. If the verification is for a period other than a full year, the PHA must convert the reported income to an annual figure in accordance with **24 CFR 5.609**. Use the following for calculations:

- Multiply weekly insurance benefits by 52
- Multiply bi-weekly insurance benefits by 26
- Multiply monthly insurance benefits by 12

It is important to note when the benefits are scheduled to expire, since a recertification may be required at that time.

7. Question: Is there a handbook or regulatory citation that requires PHAs to use 52 weeks as the multiplier for the number of weeks worked per year? If a person works part-time, can his or her annual income be determined by multiplying weekly income by 50, rather than 52, because of an assumed two week unpaid vacation?

Answer: As defined in **24 CFR 5.609**, annual income means all amounts, monetary or not, which are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination. Therefore, all 'verified' hourly, weekly, bi-weekly, semi-weekly, or monthly wages, earnings, or benefits must be annualized in order to determine annual income. If an applicant or participant is paid on a weekly basis, then his or her weekly earnings must be multiplied by 52 (weeks in a year) in order to annualize the income. If it can be verified that the individual only works and gets paid for a certain number of weeks per year, that information can and should be considered when annualizing the income. However, a PHA should not be arbitrary in adopting a method for calculating income or assume circumstances that may or may not apply.

8. Question: What if a tenant declares that he or she has no income, but that his or her mother (not in the family) pays all of his or her utility or furniture bill every month, and the PHA verifies with the mother that she pays an average of \$80 per month in this manner and anticipates that this will continue for the next 12 months. Is the \$80 per month the tenant receives from the mother counted as income for the family?

Answer: Yes. The \$80 is counted as income. The definition of annual income includes "all amounts monetary or not" which go to the family, in accordance with **24 CFR 5.609(a)**. In addition, the regulation states that annual income includes "regular contributions or gifts received from organizations or from persons not residing in the dwelling (**24 CFR 5.609(b)(7)**). The mother paying the utility bill would fit under the category of a "regular contribution."

9. Question: What can a PHA do if a zero income family declines some form of assistance for which they are eligible? Can the PHA charge rent based on the amount of income the family is eligible to receive?

Answer: No. PHAs cannot require a family to receive any type of financial assistance; therefore, they cannot base the rent on amounts not received (this situation should not be confused with the inclusion of imputed welfare income in the calculation of rent).

10. Question: What is imputed welfare income?

Answer: As defined in **24 CFR 5.615**, imputed welfare income is the amount of annual income that is not actually received by a family (as a result of a specified welfare benefit reduction), but is included in the family's annual income for purposes of determining rent. A specified welfare benefit reduction is defined as a reduction in the welfare benefit due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program. Before imputed welfare income is included in a family's annual income, a PHA must have proper verification from the TANF agency.

11. Question: According to 24 CFR 5.609 (b)(2), expenditures for business expansion should not be used as deductions in determining net income from a business. What is the definition of expenditures for business expansion?

Answer: The regulation, **24 CFR 5.609(b)(2)**, does not provide a definition of business expansion; therefore, it is up to a PHA to determine what types of activities fall under this category. To ensure consistency, a PHA's policies (**24 CFR 903.7** and **24 CFR 982.54**) should define or provide examples of business expansion activities.

12. Question: If a tenant puts \$10,000 in an IRA, and 10 years later the IRA was worth \$15,000 and that tenant began withdrawing monthly amounts from the IRA, are the amounts withdrawn considered income?

Answer: The withdrawal of cash or assets from an investment that is received as periodic payments should be counted as income, **unless** the family can document and the PHA verifies that amounts withdrawn are reimbursement of amounts invested. When a family is making a withdrawal from an account in which it has made an investment (e.g. annuity, IRA, etc.), the withdrawals will count as income only after the amount invested has been totally paid out. This interpretation is consistent with the **24 CFR 5.609(b)(3)**.

ANNUAL INCOME-WHAT IS EXCLUDED

13. Question: If a family receives income that by definition is excluded from "annual income" (e.g. food stamps), should the PHA record that amount on the Form HUD-50058?

Answer: Yes. The family should report, and the PHA should record, all amounts of income the family receives on Form HUD-50058. In the case of food stamps, on **Form HUD-50058**, a PHA would list food stamps as income code "G," under column 7b, and then exclude the full amount under column 7e. For a full listing of income exclusions and how they should be recorded, see the "Income and Exclusions Chart" in the **Form HUD-50058 Instruction Booklet**, pages 25-32.

14. Question: What requires a PHA to record amounts excluded from annual income on the Form HUD-50058?

Answer: Although there is currently no regulatory requirement for PHAs to record all income exclusions on the HUD-50058, the Form HUD-50058 instruction booklet instructs PHAs to do so.

15. Question: Where can PHAs go to get answers to questions related to PIC Form-50058?

Answer: For questions related to the form itself, please refer to the **Form HUD-50058 Instruction Booklet**. For answers to questions related to the Form-50058 module, PHAs may call 1-800-366-6827 to talk to a live help specialist. If all lines are busy, callers may leave a voice mail with their name and number and a specialist will call you back within four (4) hours or less. Or, callers may send a message to PICHelp@hud.gov.

For training materials on PIC Form-50058, callers may go to PIH's Technical Support and Training Web page at:

<http://www.hud.gov/offices/pih/systems/pic/trainin/g/index.cfm>

16. Question: According to 24 CFR 5.609(c)(11), earnings in excess of \$480 for each full-time student 18 years old or older (excluding head of household or spouse) are excluded from the calculation of annual income. Is there an age limit on a full-time student?

Answer: No. Per **24 CFR 5.603**, a full-time student is a person who is attending school or vocational training on a full-time basis, as defined by the educational/vocational institution the family member is attending. The definition does not specify a maximum age.

17. Question: What is considered temporary or sporadic income?

Answer: The regulation, **24 CFR 5.609(c)(9)**, does not define temporary or sporadic income. Therefore, PHAs must determine what is considered temporary or sporadic income, and define it in their policies. Generally, amounts that are neither reliable nor periodic are considered sporadic, and should be excluded from annual income.

ANNUAL INCOME-EARNED INCOME DISALLOWANCE (EID)

18. Question : Would a tenant residing in public housing or a Section 8 HCV assisted unit be eligible for the earned income disallowance (EID), as authorized under the 1998 Quality Housing and Work Responsibility Act (QHWRA) if he or she received the full 18-month self sufficiency/training disregard of income prior to current law?

Answer: Yes. A tenant residing in public housing or a Section 8 HCV assisted unit would be eligible for EID under the current law, **Title V, Section 508 of the 1998 QHWRA** (effective October 1, 1999), even if he or she received the full 18-month self sufficiency/training disregard of income under the prior rule. The tenant, however, must meet one of the three qualifying eligibility factors outlined in **24 CFR 960.255** for public housing and **24 CFR 5.617** for the HCV program.

19. Question: Are the eligibility requirements for EID the same for the HCV and the public housing program?

Answer: No. They're similar, but not the same.

For the public housing program, EID applies to a family member residing in public housing whose annual income increases as a result of employment or increased earnings. [See **24 CFR 960.255** for the full definition of "qualified family" in public housing and a full discussion of all of the criteria the family member must meet in order to be eligible for EID].

For the Section 8 HCV program, EID applies to a family receiving tenant-based assistance whose annual income increases as a result of employment or increased earnings of a family member *who is a person with disabilities*. [See **24 CFR 5.617** for the full definition of "qualified family" in the Section 8 HCV program and a full discussion of all of the criteria the *disabled* family member must meet in order to be eligible for EID]. Note the key distinction. To qualify for EID in public housing, **any** family member may become employed or experience increased earnings. To qualify for EID in the Section 8 HCV program, only a **disabled** family member may become employed or experience increased earnings.

It is important that PHAs are well versed on **both** the public housing requirements in **24 CFR 960.255** as well as the less common Section 8 HCV requirements in **24 CFR 5.617**, both of which fully outline the qualification and disallowance provisions for the respective programs.

20. Question : Does the family member whose annual income increases as a result of new employment or increased earnings during or within six months after receiving TANF have to be that same family member who receives or received TANF to qualify for EID?

Answer: Yes. Implicit in **24 CFR 960.255** and **24 CFR 5.617**, the family member whose annual income increases as a result of new employment or increased earnings during or within six months after receiving TANF has to be that same family member who receives or received TANF to qualify for EID.

21. Question: Does HUD consider a person/family a new admission into public housing for the first 12 months following admission, and consider a Section 8 HCV program participant a new admission for the first 12 months of residing in assisted housing? Does the length of time a family has been residing in public and assisted housing affect their eligibility for EID? What if new applicants were unemployed for at least 12 months prior to or during their admission to public housing or residency in Section 8 assisted housing?

Answer: For purposes of EID, the regulations define a qualified family as a family residing in public housing (**24 CFR 960.255**) or a disabled person residing in Section 8 HCV assisted housing (**24 CFR 5.617**) that meets one of the three qualifying factors. Therefore, individuals are not eligible for EID at the time of admission. To be eligible for EID, the qualifying event must occur after admission, or in other words, while the individual is residing in public or assisted housing. The length of time the individual has been residing in public or assisted housing (two weeks, two months, two years, etc.) is irrelevant.

22. Question : The regulations (24 CFR 960.255 and 24 CFR 5.617) state that the 48-month maximum period of the EID is over the course of a lifetime. If a person qualifies for EID and the PHA begins the initial 12-month exclusion and the person moves out of public housing or an HCV assisted unit before the 48-month period ends, does the person lose or forfeit the remainder of his or her 48-month income exclusion?

Answer: No. A person in these circumstances does not automatically lose or forfeit the remaining months of their exclusion. For example, if a person moves out of public housing during the cumulative 24-month exclusion period, and then moves back into a public housing unit, under the same or another PHA's jurisdiction, within the 48-month maximum period, the person continues to qualify for EID.

Under these circumstances, a PHA would be required to resume the exclusion until the two cumulative 12-month exclusion periods, or the 48-month maximum period expire (whichever comes first). It is important to note that in order for the PHA to be aware of such circumstances, they would have to be reported by the tenant. The PHA would then have to verify the information. Although this example relates to a public housing tenant, the same would be true for an HCV participant who left and then returned to the HCV program.

23. Question: In a mixed family, is the member of the family who does not have eligible immigration status eligible for EID?

Answer: Although it is not specifically addressed in the EID rule, non-citizens are not eligible for EID. As specified in **24 CFR 5.500(a)**, Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making financial assistance available to non-citizens who do not have eligible immigration status. Allowing a family member who does not have eligible immigration status to benefit from EID would result in that individual receiving "financial assistance."

24. Question: Does a family living in public housing qualify for EID in the following situation: A 17 year old member of the family (not a full-time student) earning \$12,000 per year, turns 18 years old and continues to earn \$12,000 per year? Does the increase in the family's annual income due to the 17-year-old turning 18 qualify the family for EID?

Answer: No. A qualified family, as defined in **24 CFR 960.255**, is a family residing in public housing, whose annual income increases due to one of the following reasons:

- Employment of a family member who was previously unemployed for one or more years prior to employment.
- Increased earnings by a family member during participation in any economic self-sufficiency or other training program.
- New employment or increased earnings of a family member during or within 6 months after receiving assistance, benefits, or services under any state program for temporary assistance (TANF, Welfare-to-Work).

In this case, the family experienced an increase in annual income due to the minor turning 18, and not

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for any of the reasons stated above. Therefore, the family does not qualify for EID.

25. Question: Does a 17-year-old family member who has been making \$1500 per year while in high school, qualify for EID if, after graduation and turning 18, he begins making \$10,000?

Answer: Yes. In this case the individual would meet the requirement under **24 CFR 960.255**, of someone who was previously unemployed for one or more years prior to employment. Remember, "previously unemployed" includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

26. Question: Has HUD developed a form for PHAs to use to determine if someone qualifies for the Earned Income Disallowance (EID)?

Answer: HUD does provide an EID worksheet as a companion piece to the EID calculator. Both the **EID calculator and worksheet** (MS-Excel) can be accessed at the **Earned Income Disallowance (EID) Worksheet and Calculator Web Page**.

27. Question: Has HUD developed a form to help PHAs calculate the amount excluded under EID and track the time someone qualifies for the exclusion?

Answer: While there is no tracking form available, an Excel-based calculator that can be used to collect information on EID family members is currently available. Also available are EID in-depth examples and training materials from the **January and February Rental Integrity Summit trainings**, held in Orlando, FL and Anaheim, CA. The **EID calculator and worksheet** (MS-Excel) can be accessed at the **Earned Income Disallowance (EID) Worksheet and Calculator Web Page**.

28. Question: Is HUD going to use the HUD-50058 to track EID?

Answer: Potentially. HUD will consider this suggestion for future edits to the form.

ASSETS AND INCOME FROM ASSETS

29. Question: According to 24 CFR 5.609, "Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access." How does HUD define assets and how are family assets treated in determining a family's annual income?

Answer: In general terms, an asset is cash or non-cash items that can be converted to cash, including real property, savings, stocks, bonds, and other forms

of capital investment. Note that when assets are included in the calculation of annual income, as defined in **24 CFR 5.609**, it is the income earned from the asset, not the value of the asset that is counted.

If the value of net family assets is \$5000 or less, the actual income from assets is included in the calculation of annual income.

If the value of net family assets is greater than \$5,000, annual income includes the greater of:

- Actual income from the assets
- A percentage of the value of net family assets based on the passbook savings rate, as determined by HUD

Example: The Smith family has \$6,000 (average balance over six months) in a non-interest-bearing checking account. The PHA would include in the annual income an amount based on the current HUD passbook savings rate. Assuming the current Passbook savings rate is 2 percent, the calculation would be: $\$6,000 \times .02 = \120 .

30. Question: Who establishes the passbook savings rate and how is it determined?

Answer: Currently, each Field Office establishes the passbook savings rate to be used by PHAs within its jurisdiction. A Field Office determines the rate based on the average interest rate received on passbook savings accounts at several banks in the local area (**24 CFR 5.609** and **Form HUD-50058 Instruction Booklet**, p. 22.)

Although the new **Public Housing Occupancy Guidebook**, page 122, footnote 35, states that "Consistent with the Multi-family Housing Program, PHAs will use a standard 2% passbook rate," the current method described above will remain in effect until superceded by PIH Notice.

31. Question: Are one-time, lump sum payments (inheritance, lottery winnings, etc.) automatically counted as assets?

Answer: No. Where the family receives some type of payment as "cash" and then retains this "cash" in some verifiable form-deposited in a checking or savings account, invested in stock or mutual fund, or used to purchase bonds or real estate as an investment-then the "cash" becomes clearly identifiable and recognizable as an "asset." This is consistent with the concept of "Net Family Assets" as outlined in **24 CFR 5.603(b)**.

On the other hand, if the family receives some type of cash payment and does *not* retain the cash in one of

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these forms, it is nearly impossible to see how a PHA would determine that an asset actually exists. Simply knowing, or even verifying, that the family received a lump sum cash payment of a certain amount does not automatically classify that amount as an "asset."

Families receiving lump sum cash payments may use this cash to pay bills, buy items of personal property, or for other purposes that have nothing to do with holding on to the cash as an asset. Where these payments are not retained in some verifiable form, the PHA would have no basis for projecting that the cash will, in fact, be identifiable as an asset for the 12-month period following admission/reexamination effective date.

32. Question: If a family member has lottery winnings of \$75,000 and gives it away, is this considered disposing of an asset for less than fair market value?

Answer: Not necessarily. See the discussion above re: one-time, lump-sum payments as assets. If the lump sum amount is never classified as an asset, then it logically cannot be classified as an asset disposed of for less than fair market value.

On the other hand, a lump sum amount (such as one-time \$75,000 lottery winnings) that is retained as an asset and is identifiable as an asset, can potentially qualify as an asset disposed of for less than fair market value. If the family indicates that the asset was given away with no compensation of equal value, as the question suggests, then the asset would seem to fit the definition of an asset disposed of for less than fair market value. Of course, if the family indicates that the "asset" was liquidated to pay bills, buy items of personal property, or for other purposes where fair compensation was received, the asset could not be said to have been disposed of for less than fair market value. Ultimately, as with many other aspects of income and rent, PHA policy may be necessary to identify the type of verification and documentation the PHA will need to establish that fair value was received for a verified, identifiable asset that no longer exists.

33. Question: If a tenant puts \$10,000 in an IRA, and 10 years later the IRA was worth \$15,000 and that tenant began withdrawing monthly amounts from the IRA, are the amounts withdrawn considered income?

Answer: The withdrawal of cash or assets from an investment that is received as periodic payments should be counted as income, **unless** the family can document and the PHA verifies that amounts withdrawn are reimbursement of amounts invested. When a family is making a withdrawal from an

account in which it has made an investment (e.g. annuity, IRA, etc.), the withdrawals will count as income only after the amount invested has been totally paid out. This interpretation is consistent with the **24 CFR 5.609(b)(3)**.

34. Question: A number of financial institutions charge tenants a user's fee (e.g., debit the tenant's account) to pay for third-party verification requested by the PHA. Can a PHA pass on the cost for third-party verification to an applicant or tenant?

Answer: No. The PHA cannot pass on the cost of bank user fees to an applicant or tenant for payment of third party verification requests made by the PHA. (See the **Notice PIH 2004-01, Verification Guidance** for more information.)

ADJUSTED INCOME

35. Question: What is adjusted income and how does it differ from a family's annual income?

Answer: Adjusted income, as defined in **24 CFR 5.611**, means a family's annual income *minus* a number of mandatory deductions.

ANNUAL INCOME - DEDUCTIONS =
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The mandatory deductions include amounts for:

- Dependents
- Status as an elderly or disabled family
- Unreimbursed childcare expenses
- Unreimbursed medical expenses (elderly/disabled family only)
- Unreimbursed disability assistance expenses

36. Question: When calculating adjusted income, are the deductions the same for both the public housing and the Section 8 HCV programs?

Answer: Almost.

Both the public housing and the Section 8 HCV programs have the same mandatory deductions, as defined in **24 CFR 5.611** and listed under **Question 37**.

However, for the public housing program, PHAs may adopt *additional* deductions from annual income. These additional deductions (also known as "permissible" or "permissive" deductions) are discretionary on the part of a PHA. Any PHA adopting permissive deductions must do so by establishing written policy for these deductions.

Because they are "permissive," at the discretion of the PHA, the deductions may vary from PHA to PHA. The vast majority of PHAs have not elected to adopt permissive deductions for the public housing program, and use only the required mandatory deductions.

37. Question: If parents have joint custody of a child-child lives with one parent for half the year and lives with the other parent the other half of the year-and both live in public housing units, how should PHAs handle the \$480 dependent deduction? Can PHAs give each parent a \$240 deduction or should they give each parent the \$480 deduction?

Answer: The regulation, **24 CFR 5.611(a)(1)**, does not address this issue specifically. HUD recommends that when parents share custody of a child and both live in assisted housing, only one parent at a time claims the dependent deduction for that child. A PHA could rely on tax returns to determine which parent claimed the child for income tax purposes. This position is consistent with the **4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook, chapter 5, 5-10A(4)**.

ADJUSTED INCOME-MEDICAL EXPENSES

38. Question : Regarding medical expense deductions and the \$400 disabled or elderly family deduction, the HUD Form-50058 instructions refer to the head, co-head, and spouse. The regulations refer only to the head and spouse for these mandatory deductions. Can a disabled or elderly co-head qualify a family for the \$400 elderly or disabled family deduction and medical expense deductions?

Answer: Yes. As defined in **24 CFR 5.403**, a disabled family may include two or more persons with disabilities living together and an elderly family may include two or more persons who are at least 62 years of age living together. An example of this would be an unmarried couple or two persons living together and listed as head and co-head on the lease agreement. Therefore, a disabled or elderly co-head may qualify a family for the \$400 elderly or disabled family deduction and medical expense deductions in accordance with **24 CFR 5.611**. The **Form HUD-50058 instructions** should be followed in this case, which is consistent with **Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs (Chapter 5, p. 5-9B2)**. See also FAQs under "**Annual Income-What Is Excluded**" of this page for questions related to income exclusions and **Form HUD-50058**.

39. Question: Are the medical expenses of an elderly/disabled family's grandchild (assuming the grandchild is a member of the assisted family) included in the calculation of the medical deduction?

Answer: Yes. If the family meets the definition of elderly or disabled under **24 CFR 5.403**, all family members are entitled to having their unreimbursed medical expenses included in the calculation of the medical expense deduction, per **24 CFR 5.611**.

40. Question: Should a PHA count as a medical expense a medical bill that the family is not paying anything on?

Answer: No. Per **24 CFR 5.603**, medical expenses are anticipated expenses, including medical insurance premiums, during the period for which annual income is computed that are not covered by insurance, or some other source. If the family is not paying anything towards its medical bill, it should not receive the deduction. Keep in mind the medical expense deduction is for *unreimbursed* medical expenses of any elderly family or disabled family, per **24 CFR 5.611**.

41. Question: If a family takes out a loan to pay medical expenses, can the PHA use the payment on the loan as a medical expense deduction?

Answer: The source of income that a family will use to pay a medical expense, such as a loan, does not impact the eligibility of the expense itself. Just like any other medical expense, a PHA would be required to determine whether or not the family qualifies as an elderly or disabled family (see **24 CFR 5.403**) and has eligible medical expenses, per **24 CFR 5.611**, and then calculate and verify those expenses based on the PHA's adopted policies.

42. Question: What happens if a PHA calculated a medical expense deduction based on projected medical expenses, but the family then does not incur the medical expenses? Can the PHA calculate an underpayment by the family? What recourse does the PHA have to rectify this situation?

Answer: All components of annual and adjusted income, including medical expenses are, by definition, based on what is anticipated for the 12-month period following admission or annual reexamination, per **24 CFR 5.603**. Therefore, it is not only possible, but likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on appropriate verification. The only

time this situation could be considered an underpayment by the family is if a PHA's interim reporting policy explicitly required families to report changes in medical expenses. It is unlikely that a PHA would have this type of a policy.

ADJUSTED INCOME-CHILDCARE EXPENSES

43. Question : May a PHA disallow a deduction for childcare expense because there is an unemployed adult family member available to provide childcare?

Answer: A PHA may not disallow a deduction for childcare expense because there is an unemployed adult family member that may be available to provide childcare. A PHA may not decide who will provide childcare for a participant's child(ren), nor may the PHA decide the type of childcare available for a participant's child(ren).

44. Question: How does a PHA determine reasonable costs for childcare expenses?

Answer: A PHA should have adopted policies on how they will determine reasonable childcare expenses, which should include some type of market survey to determine the rates for childcare, for comparable situations, within the local market.

45. Question: Since the earned income disallowance (EID) reduces the amount of annual income, how does this affect the amount of childcare expenses a family qualifies for?

Answer: If the childcare is necessary to permit employment, per **24 CFR 5.603**, the amount of the childcare deduction cannot exceed the amount of employment income included in annual income. For example, if a family member earns \$15,000 a year but because they qualify for EID, only \$5,000 is included in the calculation of annual income, the amount of childcare expenses that can be deducted from annual income is limited to \$5,000.

MINIMUM RENT

46. Question: Under what circumstances are PHAs required to suspend the minimum rent requirement for families who are paying minimum rent?

Answer: As defined in **24 CFR 5.630**, the responsible entity (i.e. PHA) must grant a family an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes the following situations:

- When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program
- When the family would be evicted because it is unable to pay the minimum rent
- When the income of the family has decreased because of changed circumstances, including loss of employment
- When a death has occurred in the family
- Other circumstances determined by the PHA or HUD

47. Question: Do PHAs have to suspend the family's minimum rent requirement the day the family makes the request?

Answer: In accordance with **24 CFR 5.630**, if a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption. The suspension must continue until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long-term.

FLAT RENT

48. Question: What is the difference between income-based rent and flat rent in public housing?

Answer: Income-based and flat rents are both defined in **24 CFR 960.253**. An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rent. A PHA's rent policies may specify that the PHA will use a percentage of family income or some other reasonable system. In no case, may the income-based rent exceed the total tenant payment (TTP) for the family minus any applicable utility allowance for tenant-paid utilities.

Unlike income-based rents, flat rents do not fluctuate with changes in family income. Flat rents are based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the unit. The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

49. Question: Do PHAs have to give public housing families the option to pay income-based rent or flat rent?

Answer: Yes. As defined in **24 CFR 960.253**, once a year the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. Except for financial hardship cases, the family may not be offered this choice more than once a year.

50. Question: What are the timeframes for PHAs to convert from ceiling rents to flat rents? Can PHAs retain ceiling rents?

Answer: Per **24 CFR 960.253(d)**, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three-year period, a PHA must adjust such ceiling rents to the level required for flat rents under this section. It is important to note that PHAs may continue to impose a ceiling on tenant rents as an income-based rent option, but again, these rents must be at the level of flat rents.

51. Question: What method is required for PHAs to determine flat rents?

Answer: HUD does not require a PHA to use a particular method. However, **24 CFR 960.253(b)** requires that a PHA consider, at a minimum, the following items: location, quality, size, unit type, age of the unit, amenities, housing services, maintenance, and utilities provided by the PHA.

REEXAMINATION PROCESS

52. Question: What are the requirements for interim reexaminations?

Answer: In accordance with **24 CFR 960.257** and **24 CFR 982.516**, PHAs must adopt policies describing when interim reexaminations will be conducted and prescribing when and under what conditions the family must report a change in family income or composition. For example, a PHA's policy could:

- Require families to report all increases in income
- Require families to report only increases in excess of a certain dollar amount
- Allow families who experience an increase in income to wait to report it until their next annual reexamination.

It is important to remember that under the regulations, a family may request an interim reexamination of family income or composition because of changes since the last determination, and the PHA must make the interim changes within a reasonable time after the family's request.

53. Question: How often are PHAs required to conduct reexaminations for public housing and Section 8 HCV program participants?

Answer: In accordance with **24 CFR 960.257**, for public housing families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

For public housing families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years. A family may request an interim reexamination of family

For families receiving Section 8 HCV subsidies, in accordance with **24 CFR 982.516**, the PHA must conduct a reexamination of family income and composition at least annually.

FAIR MARKET RENTS (FMRs) AND PAYMENT STANDARDS

54. Question: What are Fair Market Rents (FMRs) and how are they used to set payment standards in the housing choice voucher (HCV) program?

Answer: FMRs are gross rent estimates. They include the shelter rent plus the cost of all utilities, except telephone and cable. The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size (**24 CFR 982.503(b)**). PHAs may set them higher or lower with HUD approval.

For more information on FMRs and payment standard schedules, see **24 CFR 982.503**.

55. Question: If the payment standard increases or decreases during the housing assistance payment (HAP) contract, are PHAs required to adjust the family's rent at that time, using the higher or lower payment standard?

Answer: As defined in **24 CFR 982.505**, if the payment standard amount increases during the term of the HAP contract, the increased payment standard amount shall be used to calculate the monthly HAP for the family beginning at the effective date of the family's first annual reexamination on or after the effective date of the increase in the payment standard amount.

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second annual reexamination, following the effective date of the decrease in the payment standard amount. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second annual reexamination, following the effective date of the decrease in the payment standard amount.

56. Question: How often does a PHA have to update its payment standards?

Answer: A PHA must update its payment standards in accordance with its written policies. Per **24 CFR 982.54(d)(14)**, a PHA must have a policy for establishing and revising voucher payment standards. That said, in accordance with **24 CFR 982.503(b)**, the payment standards must always be within 90 to 110 percent of the currently published FMR.

57. Question: How long are area exception payment standards in effect? What happens to the exception payment standards when new FMRs are issued?

HUD's Answer: An area exception payment standard remains in effect until it is exceeded by the basic range for setting payment standards - 110 percent of the current FMR. At that point, the exception payment standard is no longer needed.

UTILITY ALLOWANCES

58. Question: When does a family receive the utility allowance for the range and refrigerator?

Answer: A family is only given this allowance if the lease indicates that it is the tenant's responsibility to provide the range and/or refrigerator, in accordance with **24 CFR 982.517(a)**. The allowance is intended

to cover the family's cost in supplying the appliances, not the energy used to operate them.

59. Question: If an owner provides a range and refrigerator but the family wants to use their own, do they get the utility allowance for these appliances?

Answer: No. The allowance is only given if the owner does not provide the appliances. The lease should be used to determine what the owner provides.

NON-CITIZEN ISSUES

60. Question: Can a family be defined as a mixed family if the only family member with citizenship is a minor child?

Answer: Yes. The regulation, **24 CFR 5.504**, requires only that one member of the family is eligible. HUD's Office of General Counsel has issued an opinion clarifying the issue as follows: The head of household or spouse does not have to be a citizen or eligible immigrant in order for a family to receive housing assistance. At least one member of a family must be eligible, which could be a child. Housing assistance must be prorated so only eligible family members are subsidized. Family members who do not have eligible immigration status can be the head of household for purposes of income eligibility, determination of rent, and entering into a lease, even though their occupancy is not being subsidized.

61. Question: If a person is a "non-contending" family member, does the PHA consider them to have eligible or ineligible immigration status?

Answer: The PHA should consider the person to have ineligible immigration status. Per **24 CFR 5.508(a)**, a person's eligibility status is contingent upon that person submitting a written declaration to the responsible entity, by which that person declares whether he or she is a U.S. citizen or a non-citizen with eligible status. By not submitting the signed declaration, effectively not contending citizenship or eligible immigration status, the person cannot establish eligibility for assistance or continued assistance under Section 214-covered programs.

62. Question: If the only family member who has eligible citizenship or immigration status passes away or vacates the unit, what does the PHA have to do with the remaining ineligible members?

Answer: If there are no remaining family members with eligible immigration status residing in the unit, the family is no longer eligible to receive assistance and must be terminated from the program. (See also **24 CFR 5.518** for types of assistance available for mixed and other families.)

RHIIP FAQs

63. Question: Does the Section 214 Form (declaration of citizenship) have to be signed annually or only once?

Answer: The citizenship status of each member of an applicant or tenant family needs to only be declared once. Per **24 CFR 5.508(g)(5)**, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

64. Question: What should a PHA do if its hardware or software is not compatible with the new automated verification INS SAVE system?

Answer: PHAs that are unable to access the INS SAVE system to verify a person's immigration status will be required to manually verify citizenship by submitting **Form G-845S**, as described in **24 CFR 5.512(d)**. The instructions for this process are contained in the INS SAVE Program Users Manual. To order a copy, contact your local INS Office.

65. Question: Should a PHA evict a family that provided false citizenship documentation, or just recalculate the rent as a mixed family?

Answer: As long as the family has at least one eligible member, it is up to the PHA to determine whether or not to terminate a family under these circumstances. A PHA certainly has the right to terminate assistance when a family knowingly provides false documentation, in accordance with **24 CFR 966.4(l)(2)(ii)(C)** and **24 CFR 982.552(c)**. At a minimum, the PHA would have to charge the family retroactive rent for the time period that the PHA provided full assistance to the family.

GENERAL QUESTIONS

66. Question: How often does HUD expect the PHA to re-determine the public housing maximum rent for purposes of prorating rent for a mixed family?

Answer: Although the regulation (**24 CFR 5.520**) does not specifically address this issue, HUD recommends that the PHA re-determine the public housing maximum rent at least annually for purposes of prorating rent for a mixed family. It is reasonable to expect the PHA to re-determine the maximum rent on an annual basis since it is based on the value of the 95th percentile of the total tenant payment (TTP) for each tenant within the PHA, which changes on an on-going basis because of move-ins, move-outs, changes in tenant income, etc.

67. Question: When an owner runs a promotion, offering one free month of rent to attract new tenants, what does a PHA do when a Section 8 HCV participant moves into one of these units and receives one free month of rent? The PHA is making a HAP payment to the owner, but the tenant does not have to pay anything to the owner for that month, which causes an overpayment in the HAP.

Answer: The easiest way for a PHA to handle this situation is to have the owner prorate the one free month of rent over a 12-month period. This would lower the monthly contract rent, causing no overpayment. For example, if the one free month of rent amounts to \$600, the owner would recalculate the monthly contract rent for a 12-month period, factoring in the \$600 in free rent. Thus, the monthly contract rent would become \$550 rather than \$600.

68. Question: What is the difference between statutory and regulatory waivers?

Answer: HUD cannot waive statutory requirements or regulatory requirements that are based on statutory requirements, with one exception—the **Moving to Work Demonstration Program (MTW)**. Under MTW, HUD has the legislative authority to waive provisions of the U.S. Housing Act of 1937 for participating PHAs.

Regulatory waivers of program requirements that are not explicitly stated in a statute, may only be granted by the Assistant Secretary for Public and Indian Housing (PIH) (or his designee), on a case-by-case basis, for good cause.