

# **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

## CHAPTER 7: INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

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### **Introduction**

A family's annual income is used to determine their income eligibility for the public housing program and is also used to calculate the amount of the family's rent payment. The HACCP will use the policies and methods described in this chapter to ensure that only income-eligible families receive assistance and that no family pays more or less rent than is required under the regulations. This chapter describes HUD regulations and HACCP policies related to these topics in three parts as follows:

### **Part I: Annual Income**

HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and HACCP policies for calculating annual income are found in Part I.

### **Part II: Adjusted Income**

Once annual income has been established HUD regulations require the HACCP to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and HACCP policies for calculating adjusted income are found in Part II.

### **Part III: Calculating Rent**

This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice in rents.

## Part I: Annual Income

### **7-I.A. Overview**

The general regulatory definition of annual income shown below is from 24 CFR 5.609.

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### **24 CFR 5.609 Annual income**

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

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph [24 CFR 5.609(c)].
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

- Annual Income Inclusions (Exhibit 7-1)
- Annual Income Exclusions (Exhibit 7-2)
- Treatment of Family Assets (Exhibit 7-3)
- Earned Income Disallowance (Exhibit 7-4)
- The Effect of Welfare Benefit Reduction (Exhibit 7-5)

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

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### **7-I.B. Household Composition and Income**

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

#### **Summary of Income Included and Excluded by Person**

##### Live-in aides

- Income from all sources is excluded [24 CFR 5.609(c)(5)].

##### Foster child or foster adult

- Income from all sources is excluded [24 CFR 5.609(a)(1)].

##### Head, spouse, or cohead Other adult family members

- All sources of income not specifically excluded by the regulations are included.

##### Children under 18 years of age

- Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.

##### Full-time students 18 years of age or older (not head, spouse, or cohead)

- Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

#### **Temporarily Absent Family Members**

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

#### **HACCP Policy**

Generally, an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally, an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is

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considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

### **Absent Students**

#### **HACCP Policy**

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

### ***Absences Due to Placement***

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

#### **HACCP Policy**

If a child has been placed in foster care, the HACCP will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member. This does not apply to elderly and senior sites.

### ***Absent Head, Spouse, or Cohead***

#### **HACCP Policy**

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

### **Individuals Confined for Medical Reasons**

#### **HACCP Policy**

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

If there is a question about the status of a family member, the HACCP will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The

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family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

### **Joint Custody of Children**

#### **HACCP Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time. When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the HACCP will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, social service agency records, or other credible documentation. This does not apply to elderly and senior sites.

### **Caretakers for a Child**

#### **HACCP Policy**

The approval of a caretaker is at the HACCP's discretion and subject to the HACCP's screening criteria. If neither a parent nor a designated guardian remains in a household, the HACCP will take the following actions.

If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the HACCP will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.

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During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

This does not apply to elderly and senior sites.

### **7-I.C. Anticipating Annual Income**

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

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

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

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

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

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

#### **HACCP Policy**

When EIV is obtained and the family does not dispute the EIV employer data, the HACCP will use current tenant-provided documents to project annual income.

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When the tenant provided documents are pay stubs, the HACCP will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

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

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the HACCP determines additional information is needed
- In such cases, the HACCP will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the HACCP annualized projected income

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

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the HACCP would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

### **Projecting Income**

In HUD's EIV webcast of January 2008, HUD made clear that PHAs are not to use EIV quarterly wages to project annual income.

### **7-I.D. Earned Income**

Types of Earned Income Included in Annual Income Wages and Related Compensation [24 CFR 5.609(b)(1)] The full amount, before any payroll

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deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income. HACCP Policy For persons who regularly receive bonuses or commissions, the HACCP will verify, and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the HACCP will use the prior year amounts. In either case the family may provide, and the HACCP will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the HACCP will count only the amount estimated by the employer. The file will be documented appropriately.

### **Some Types of Military Pay**

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

### **Types of Earned Income Not Counted in Annual Income Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]**

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

### **HACCP Policy**

Sporadic income is income that is not received periodically and cannot be reliably predicted.

**Example:** Daniel works occasionally as a handyman. He claims to have worked only a couple of times last year and he has no documentation to support this claim. His earnings are neither reliable (he cannot depend on them) nor do they recur at regular intervals. Daniel's handyman earnings are not included in annual income.

If Daniel is the sole household member and has no other sources of income or benefits, he would fall under the zero income verification and reexamination requirements.

### **Children's Earnings [24 CFR 5.609(c)(1)]**

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income.

(See Eligibility chapter for a definition of foster children.)

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### **Certain Earned Income of Full-Time Students**

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

### **Income of a Live-in Aide**

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility Chapter 7 for a full discussion of live-in aides.)

### **Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]**

Income from some federal programs is specifically excluded from consideration as income, including:

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

Resident Service Stipend [24 CFR 5.600(c)(8)(iv)] Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the HACCP, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the HACCP’s governing board. No resident may receive more than one such stipend during the same period of time.

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### **State and Local Employment Training Programs**

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income.

Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

### **HACCP Policy**

The HACCP defines training program as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3]. The HACCP defines incremental earnings and benefits as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4]. In calculating the incremental difference, the HACCP will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058. End of participation in a training program must be reported in accordance with the HACCP’s interim reporting requirements (see chapter on reexaminations).

### **HUD-Funded Training Programs**

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

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### **HACCP Policy**

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

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

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

### **HUD-Funded Training Programs**

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

### **HACCP Policy**

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

### **Earned Income Tax Credit**

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

### **Earned Income Disallowance**

The earned income disallowance is discussed in section 6-I.E below.

### **7-I.E. Earned Income Disallowance [24 CFR 960.255; Streamlining Final Rule (SFR) Federal Register 3/8/16]**

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time.

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The full text of 24 CFR 960.255 is included as Exhibit 7-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

### **Eligibility**

This disallowance applies only to individuals in families already participating in the public housing program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

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

### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in

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the EID. While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Residents qualifying prior to May 9, 2016 will have the disallowance calculated under the “Original Calculation Method” described below, which requires a maximum lifetime disallowance period of up to 48 consecutive months. Residents qualifying on or after May 9, 2016 will be subject to the “Revised Calculation Method,” which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

### **Original Calculation Method**

#### ***Initial 12-Month Exclusion***

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

### **HACCP Policy**

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

**Second 12-Month Exclusion and Phase-In** During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

### **Lifetime Limitation**

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

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### **HACCP Policy**

#### **Revised Calculation Method**

#### **Initial 12-Month Exclusion**

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

### **HACCP Policy**

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

#### **Second 12-Month Exclusion**

During the second exclusion period of 12 consecutive months, the HACCP must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

### **HACCP Policy**

During the second 12-month exclusion period, the HACCP will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

#### **Lifetime Limitation**

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

#### **Individual Savings Accounts [24 CFR 960.255(d)]**

### **HACCP Policy**

The HACCP chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID. The following rules pertaining to ISAs do not apply to this public housing program. A qualified family paying income-based rent may choose an ISA instead of being given the EID. The HACCP must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the HACCP will deposit the difference between the higher rent

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and the EID rent in the savings account. Amounts deposited to ISAs may only be withdrawn for the following reasons:

- Because the family is purchasing a home
- To pay education costs of family members
- Because the family is moving out of public or assisted housing
- To pay any other expenses the HACCP authorizes to promote economic self-sufficiency The HACCP is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The HACCP may not charge the family a fee for maintaining the account. At least once each year the HACCP must provide the family with a statement of the balance in their account, including any interest earned, if required by state law. If the family moves out of public housing, the HACCP must return the balance in the family's ISA, less any amounts the family owes the HACCP

### **7-I.F. Business Income [24 CFR 5.609(b)(2)]**

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

### **Business Expenses**

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

### **HACCP Policy**

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

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Expansion HUD regulations do not permit the HACCP to deduct from gross income expenses for business expansion. HACCP Policy Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

### **Business Expansion**

HUD regulations do not permit the HACCP to deduct from gross income expenses for business expansion. HAACP Policy Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

### **Capital Indebtedness**

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

### **HACCP Policy**

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

### **Negative Business Income**

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

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

HUD regulations require the HACCP to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the

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withdrawal reimburses a family member for cash or assets invested in the business by the family.

### **HACCP Policy**

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, the HACCP will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation. Co-owned Businesses HACCP Policy If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

### **7-I.G. Assets [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]**

#### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that the HACCP include in annual income the anticipated "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the HACCP must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

Optional policies for family self-certification of assets are found in Chapter 8.

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### **General Policies**

#### ***Income from Assets***

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

#### **HACCP Policy**

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

#### **Valuing Assets**

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

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account)
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash. HACCP Policy Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121]

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

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum

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receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see section 7-I.H)

### **Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]**

When net family assets are \$5,000 or less, the HACCP will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the HACCP will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by an average passbook savings rate as determined by the HACCP.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The “safe harbor” is now for the HACCP to establish a passbook rate within 0.75 percent of a national average
- The HACCP must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average

### **HACCP Policy**

The HACCP initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC). The HACCP will review the passbook rate annually, generally in October of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate. Changes to the passbook rate will take effect on December 1 following the October review.

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

It may or may not be necessary for the PHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property’s market value. However, if the asset is a savings account, the

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anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

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

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

### **Jointly Owned Assets**

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

### **HACCP Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the HACCP will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners. If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the HACCP will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the HACCP will prorate the asset evenly among all owners.

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

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

### **Minimum Threshold**

The HACCP may set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

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### **HACCP Policy**

The HACCP will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$5,000. When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s). Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

### **Separation or Divorce**

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

### **HACCP Policy**

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

### **Foreclosure or Bankruptcy**

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

### **Family Declaration**

#### **HACCP Policy**

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

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### **Types of Assets Checking and Savings Accounts**

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

#### **HACCP Policy**

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

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

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

#### **HACCP Policy**

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

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

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25 and PH, p. 121].

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### **HACCP Policy**

In determining the equity, the HACCP will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value or an appraisal conducted within the prior year.

The HACCP will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the HACCP will use the basic loan balance information to deduct from the market value in the equity calculation.

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 7-I.F
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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

### **HACCP Policy**

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

A family may have real property as an asset in two ways:

- (1) Owning the property itself; and
- (2) Holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in

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the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

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

### **HACCP Policy**

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

### **Trusts**

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

### **Revocable Trusts**

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust. Nonrevocable Trusts In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 7-I.G. Lump-sum receipts are discussed earlier in this section.)

### **Retirement Accounts Company**

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

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

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

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5- 26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 7-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

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

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

### **Personal Property**

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

### **HACCP Policy**

In determining the value of personal property held as an investment, the HACCP will use the family's estimate of the value. The HACCP may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal. Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset. Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

### **HACCP Policy**

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

### **Life Insurance**

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of

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the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### **7-I.H. PERIODIC PAYMENTS**

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

#### **Periodic Payments Included in Annual Income**

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

#### **HACCP Policy**

When a delayed-start payment is received and reported during the period in which the HACCP is processing an annual reexamination, the HACCP will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the HACCP. See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

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

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

### **Periodic Payments Excluded from Annual Income**

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH 2012-1] PHA Policy. The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.H.) [24 CFR 5.609(c)(14)]

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- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)]

### **7-I.I. Payments In Lieu Of Earnings**

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

### **7-I.J. Welfare Assistance**

#### **Overview**

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

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

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

#### **Covered Families**

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

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### **Imputed Income**

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the HACCP must include in annual income "imputed" welfare income. The HACCP must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

For special procedures related to grievance hearings based upon the HACCP's denial of a family's request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

### **Offsets**

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

### **7-I.K. Periodic And Determinable Allowances [24 CFR 5.609(b)(7)]**

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

#### **Alimony and Child Support**

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

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### **HACCP Policy**

The HACCP will count court-awarded amounts for alimony and child support unless the HACCP verifies that: (1) the payments are not being made, and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47]. The HACCP will generally verify the amount of alimony or child support that was received by the family over the prior 12 months and use this amount as the anticipated income over the 12 month period following admission or reexamination. The family may present documentation demonstrating why this amount does not accurately represent the anticipated amount of income the family will receive, and the HACCP will consider the justification.

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

### **Regular Contributions or Gifts**

The HACCP must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)].

Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

### **HACCP Policy**

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the HACCP. For contributions that may vary from month to month (e.g., utility payments), the HACCP will include an average amount based upon past history.

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### **7-I.L. Additional Exclusions from Annual Income**

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 5/20/14 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)]

### **HACCP Policy**

Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment is not considered student financial assistance and is included in annual income.

- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

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- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17), FR Notice 5/20/14]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
  - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
  - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobell et al. v. Ken Salazar et al., for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
  - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)

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- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any childcare 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)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) 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)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

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- (w) 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)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

## Part II: Adjusted Income

### **7-II.A. Introduction**

#### **Overview**

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

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (PHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;

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- (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (5) Any reasonable childcare expenses necessary to enable a member of the family to be employed or to further his or her education

### **7-II.B. Dependent Deduction**

An allowance of \$480 is deducted from annual income for each dependent [24 CFR 5.611(a)(1)]. Dependent is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

### **7-II.C. Elderly or Disabled Family Deduction**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An elderly family is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a disabled family is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

### **7-II.D. Medical Expenses Deduction [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

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

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### **Definition of Medical Expenses**

HUD regulations define medical expenses at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

### **HACCP Policy**

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

### **Summary of Allowable Medical Expenses from IRS Publication 502**

- Services of medical professionals
- Surgery and medical procedures that are necessary, legal, noncosmetic
- Services of medical facilities
- Hospitalization, long-term care, and in-home nursing services
- Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor
- Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)
- Substance abuse treatment programs
- Psychiatric treatment
- Ambulance services and some costs of transportation related to medical expenses
- The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
- Cost and continuing care of necessary service animals
- Medical insurance premiums or the cost of a health maintenance organization (HMO)

**Note:** This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

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

#### **HACCP Policy**

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities. When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the HACCP will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

#### **7-II.E. Disability Assistance Expenses Deduction [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they:

- (1) are necessary to enable a family member 18 years or older to work
- (2) are not paid to a family member or reimbursed by an outside source
- (3) in combination with any medical expenses, exceed three percent of annual income, and
- (4) do not exceed the earned income received by the family member who is enabled to work

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

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

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

#### **HACCP Policy**

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the HACCP will consider factors such as how the work schedule of the relevant family members

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work. When the HACCP determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members' incomes [PH Occ GB, p. 124].

### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the PH Occupancy Guidebook as follows: "Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals" [PH Occ GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30].

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

### **Eligible Auxiliary Apparatus**

#### **HACCP Policy**

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

### **Eligible Attendant Care**

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

#### **HACCP Policy**

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

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

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

### **Payments to Family Members**

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

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

### **HACCP Policy**

The HACCP determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the HACCP will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the HACCP will consider, the family's justification for costs that exceed typical costs in the area. Families That Qualify for Both Medical and Disability Assistance Expenses HACCP Policy This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities. When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the HACCP will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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### **7-II.F. Child Care Expense Deduction**

HUD defines child care expenses at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

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

### **Qualifying for the Deduction**

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

##### **HACCP Policy**

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

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

##### **Seeking Work**

##### **HACCP Policy**

If the childcare expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member’s efforts to obtain employment at each reexamination. The deduction may be reduced or

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

denied if the family member's job search efforts are not commensurate with the childcare expense being allowed by the HACCP.

### **Furthering Education**

#### **HACCP Policy**

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

### **Being Gainfully Employed**

#### **HACCP Policy**

If the childcare expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that childcare is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

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

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

The HACCP must not limit the deduction to the least expensive type of childcare. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30]. HACCP Policy When the childcare expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the HACCP generally will limit allowable childcare expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

### **Eligible Child Care Expenses**

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

### **Child Care Activities**

#### **HACCP Policy**

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care. The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible. If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the HACCP will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **Necessary and Reasonable Costs**

Child care expenses will be considered necessary if:

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

### **HACCP Policy**

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class. To establish the reasonableness of childcare costs, the HACCP will use the schedule of childcare costs from a qualified local or state agency. Families may present, and the HACCP will consider, justification for costs that exceed typical costs in the area.

### **7-II.G. Permissive Deductions [24 CFR 5.611(b)(1)]**

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the HACCP offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128].

The Form HUD-50058 Instruction Booklet states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

### **HACCP Policy**

The PHA has opted not to use permissive deductions.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### Part III: Calculating Rent

#### **7-III.A. Overview of Income-Based Rent Calculations**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by the HACCP.

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

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

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the HACCP  
The HACCP has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 7-III.B.

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

HACCP Policy Welfare rent does not apply in this locality.

***Minimum Rent* [24 CFR 5.630]** HACCP Policy the minimum rent for this locality is \$50.

#### **Optional Changes to Income-Based Rents [24 CFR 960.253(c)(2) and PH Occ GB, pp. 131-134]**

HACCPs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated

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using the TTP and mandatory deductions. At the discretion of the HACCP, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The HACCP's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to HACCP designed income-based rents in the same manner as they are applied to the regulatory income-based rents.

The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

### **HACCP Policy**

The HACCP chooses not to adopt optional changes to income-based rents.

### **Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]**

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent. Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ GB, p. 135].

### **HACCP Policy**

The HACCP utilizes ceiling rents.

### **Utility Reimbursement [24 CFR 960.253(c)(4)]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits the HACCP to pay the reimbursement to the family or directly to the utility provider.

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### **HACCP Policy**

The HACCP will make utility reimbursements to the utility provider.

The HACCP may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter, either prospectively or retroactively, and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The HACCP must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship. The HACCP must issue reimbursements that exceed \$15.00 per month on a monthly basis.

### **HACCP Policy**

The HACCP will issue all utility reimbursements monthly.

### **7-III.B. Financial Hardships Affecting Minimum Rent [24 CFR 5.630]**

#### **Overview**

If the HACCP establishes a minimum rent greater than zero, the HACCP must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship. The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the HACCP determines that a hardship exists, the TTP is the highest of the remaining components of the family's calculated TTP.

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

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **HACCP Policy**

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

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following:

- (1) implementation of assistance, if approved, or
- (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances
- (3) The family would be evicted because it is unable to pay the minimum rent

### **HACCP Policy**

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent or tenant-paid utilities:

- (1) Family income has decreased because of changed family circumstances, including the loss of employment
- (2) A death has occurred in the family. HACCP Policy In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income)
- (3) The family has experienced other circumstances determined by the HACCP

### **HACCP Policy**

The HACCP has not established any additional hardship criteria.

### **Implementation of Hardship Exemption**

#### **Determination of Hardship**

When a family requests a financial hardship exemption, the HACCP must suspend the minimum rent requirement beginning the first of the month following the family's request. The HACCP then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

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### **HACCP Policy**

The HACCP defines temporary hardship as a hardship expected to last 90 days or less.

Long term hardship is defined as a hardship expected to last more than 90 days.

The HACCP may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption. When the minimum rent is suspended, the TTP reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

### **Example: Impact of Minimum Rent Exemption**

Assume the PHA has established a minimum rent of \$50.

#### **TTP – No Hardship**

\$0 30% of monthly adjusted income  
\$15 10% of monthly gross income  
N/A Welfare rent  
\$50 Minimum rent  
Minimum rent applies. TTP = \$50

#### **TTP – With Hardship**

#### **TTP – No Hardship**

\$0 30% of monthly adjusted income  
\$15 10% of monthly gross income  
N/A Welfare rent  
\$50 Minimum rent  
Minimum rent applies. TTP = \$15

## **HACCP ADMISSION AND CONTINUED OCCUPANCY POLICY (ACOP)**

### **HACCP Policy**

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent. The HACCP will make the determination of hardship within 30 calendar days.

### **No Financial Hardship**

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

For procedures pertaining to grievance hearing requests based upon the HACCP's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

### **HACCP Policy**

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

### **Temporary Hardship**

If the HACCP determines that a qualifying financial hardship is temporary, the HACCP must reinstate the minimum rent from the beginning of the first of the month following the date of the family's request for a hardship exemption.

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

For procedures pertaining to grievance hearing requests based upon the HACCP's denial of a hardship exemption, see Chapter 14, Grievances and Appeals.

### **HACCP Policy**

The HACCP will enter into a repayment agreement in accordance with the HACCP's repayment agreement policy (see Chapter 16).

### **Long-Term Hardship**

If the HACCP determines that the financial hardship is long-term, the HACCP must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month

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following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

### **HACCP Policy**

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

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

### **7-III.C. Utility Allowances [24 CFR 965, Subpart E]**

#### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, the HACCP must use the utility allowance applicable to the type of dwelling unit leased by the family.

For policies on establishing and updating utility allowances, see Chapter 16.

#### **Reasonable Accommodation [24 CFR 8]**

On request from a family, HACCPs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ GB, p. 172]. Residents with disabilities may not be charged for the use of certain resident-supplied appliances

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if there is a verified need for special equipment because of the disability [PH Occ GB, p. 172].

See Chapter 3 for policies related to reasonable accommodations.

### **Utility Allowance Revisions [24 CFR 965.507]**

The HACCP must review its schedule of utility allowances each year. Between annual reviews, the HACCP must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ GB, p. 171]. The tenant rent calculations must reflect any changes in the HACCP's utility allowance schedule [24 CFR 960.253(c)(3)].

### **HACCP Policy**

Unless the HACCP is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

### **7-III.D. Prorated Rent for Mixed Families [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The HACCP must prorate the assistance provided to a mixed family. The HACCP will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the HACCP must:

- (1) Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy)
- (3) Multiply the member maximum subsidy by the number of eligible family members

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- (4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family

### **HACCP Policy**

Revised public housing flat rents will be applied to a mixed family's rent calculation at the first annual reexamination after the revision is adopted. When the mixed family's TTP is greater than the applicable flat rent, use the TTP as the prorated TTP. The prorated TTP minus the utility allowance is the prorated rent for the mixed family.

### **7-III.D. Prorated Rent for Mixed Families [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A mixed family is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The HACCP must prorate the assistance provided to a mixed family. The HACCP will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, the HACCP must:

- (1) Subtract the TTP from the flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible
- (2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy)
- (3) Multiply the member maximum subsidy by the number of eligible family members
- (4) Subtract the subsidy calculated in the last step from the flat rent. This is the prorated TTP
- (5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family

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- (6) When the mixed family's TTP is greater than the applicable flat rent, use the TTP as the prorated TTP. The prorated TTP minus the utility allowance is the prorated rent for the mixed family

### **HACCP Policy**

Revised public housing flat rents will be applied to a mixed family's rent calculation at the first annual reexamination after the revision is adopted.

### **7-III.E. Flat Rents and Family Choice in Rents [24 CFR 960.253]**

#### **Flat Rents [24 CFR 960.253(b)]**

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.

Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 10, and policies related to the establishment and review of flat rents are contained in Chapter 16.

#### **Family Choice in Rents [24 CFR 960.253(a) and (e)]**

Once each year, the HACCP must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. The HACCP must document that flat rents were offered to families under the methods used to determine flat rents for the HACCP.

### **HACCP Policy**

The annual HACCP offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination. The HACCP will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

The HACCP must provide sufficient information for families to make an informed choice. This information must include the HACCP's policy on switching from flat

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rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year the HACCP is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

### **Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]**

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the HACCP determines that a financial hardship exists, the HACCP must immediately allow the family to switch from flat rent to the income-based rent.

#### **HACCP Policy**

Upon determination by the HACCP that a financial hardship exists, the HACCP will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request. The action will take place the

Reasons for financial hardship include:

- The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance
- The family has experienced an increase in expenses, because of changed circumstances, for medical costs, childcare, transportation, education, or similar items
- Such other situations determined by the HACCP to be appropriate

#### **HACCP Policy**

The HACCP considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ GB, p. 137].

### **Phasing In Flat Rents [Notice PIH 2015-13; 24 CFR 960.253(b)]**

When new flat rents requirements were implemented in 2014, HUD limited the increase for existing residents paying flat rent at that time to no more than 35 percent of the current tenant rent per year. In some cases, this meant that some

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residents had or will have their flat rents phased-in at the time of their annual recertification. To do this, HACCPs conduct a flat rent impact analysis to determine whether a phase-in is or was necessary. For families whose flat rent is being phased-in, the HACCP must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under the HACCP's policies. Families who have subsequently been admitted to the program or have subsequently selected flat rent will not experience a phase-in.

Notice PIH 2015-13 requires that flat rents must be phased in at the full 35 percent per year. PHA's do not have the option of phasing in flat rent increases at less than 35 percent per year.

**Example:** A family was paying a flat rent of \$500 per month. At their annual recertification, the

PHA has increased the flat rent for their unit size to comply with the new requirements to \$700.

The PHA conducted a flat rent impact analysis as follows:

$$\$500 \times 1.35 = \$675$$

Since the PHA's increased flat rent of \$700 resulted in a rent increase of more than 35 percent, the PHA offered the family the choice to pay either \$675 per month or an income-based rent. The flat rent increase was phased in. At their next annual recertification in November 2015, the PHA will again multiply the family's current flat rent by 1.35 and compare the results to the PHA's current flat rent.

### **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

Under the EID original calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while

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paying flat rent as long as the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

Under the EID revised calculation method, a family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their exclusion period would have the exclusion period continue while paying flat rent regardless whether the employment that is the subject of the exclusion continues. A family paying flat rent could therefore see a family member's exclusion period expire while the family is paying flat rent.

### **Exhibit 7-1: Annual Income Inclusions 24 CFR 5.609**

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

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

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

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

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- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);
- (6) Welfare assistance payments.
  - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
    - (A) Qualify as assistance under the TANF program definition at 45 CFR 260.311; and
    - (B) Are not otherwise excluded under paragraph (c) of this section
  - (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
    - (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

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- (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)
- (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

### **HHS Definition of "Assistance"**

#### **45 CFR: General Temporary Assistance for Needy Families 260.31**

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

- (a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).
- (2) It includes such benefits even when they are:
- (i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
  - (ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter)

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- (3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.
- (b) [The definition of “assistance”] excludes:
  - (1) Nonrecurrent, short-term benefits that:
    - (i) Are designed to deal with a specific crisis situation or episode of need;
    - (ii) Are not intended to meet recurrent or ongoing needs; and
    - (iii) Will not extend beyond four months.
  - (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
  - (3) Supportive services such as child care and transportation provided to families who are employed;
  - (4) Refundable earned income tax credits;
  - (5) Contributions to, and distributions from, Individual Development Accounts;
  - (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
  - (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

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#### **Exhibit 7-2: Annual Income Exclusions 24 CFR 5.609**

- (c) Annual income does not include the following:
  - (1) Income from employment of children (including foster children) under the age of 18 years;
  - (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
  - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance

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and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
  - (i) Amounts received under training programs funded by HUD;
  - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
  - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts

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excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

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### **Exhibit 7-3: Treatment of Family Assets 24 CFR 5.603**

#### **(b) Net Family Assets**

- (1)** Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2)** In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
- (3)** In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4)** For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

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### Exhibit 7-4: Earned Income Disallowance 24 CFR 960.255

#### Self-Sufficiency Incentive–Disallowance of Increase in Annual Income

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

*Baseline income.* The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person who is a member of a qualified family.

*Disallowance.* Exclusion from annual income. Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in public housing:

- (i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;
- (ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- (iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

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(b) Disallowance of increase in annual income.

- (1) *Initial twelve-month exclusion.* During the 12-month period beginning on the date on which a member of a qualified family is first employed, or the family first experiences an increase in annual income attributable to employment, the HACCP must exclude from the annual income (as defined in § 5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.
- (2) *Phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.
- (3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.
- (4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

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

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings

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accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:
  - (i) Purchasing a home;
  - (ii) Paying education costs of family members;
  - (iii) Moving out of public or assisted housing; or
  - (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;
- (5) At least annually the PHA must provide the family with a report on the status of the account; and
- (6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

### **Exhibit 7-5: The Effect of Welfare Benefit Reduction 24 CFR 5.615**

#### **Public Housing Program and Section 8 Tenant-Based Assistance Program:**

##### **How welfare benefit reduction affects family income**

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

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

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

***Economic self-sufficiency program.*** See definition at 24 CFR 5.603(b).

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

***Specified welfare benefit reduction.***

- (1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.
- (2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:
  - (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
  - (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
  - (iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed Welfare Income.*

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- (1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.
- (2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.
- (3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).
- (4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed
- (5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

### *(d) Review of PHA decision.*

- (1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in

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accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to 24 CFR 5.615(c) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

- (2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

### *(e) PHA relation with welfare agency.*

- (1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.
- (2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice

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by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

- (3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.