

Chapter 6

FACTORS RELATED TO TOTAL TENANT PAYMENT AND FAMILY SHARE DETERMINATION

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

INTRODUCTION

HOC uses the methods as set forth in this Administrative Plan to verify and determine that family income at admission and at annual reexamination is correct. The accurate calculation of Annual Income and Adjusted Income ensures that families are not paying more or less money for rent than their obligation under the Regulations.

This Chapter defines the allowable expenses and deductions subtracted from Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with 24 CFR Part 5, Subparts E and F, and further instructions set forth in HUD Notices and Memoranda. The formula for the calculation of TTP is specific and not subject to interpretation. HOC's policies in this chapter address those areas which allow HOC discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

A. INCOME AND ALLOWANCES [24 CFR 5.609]

Income: Includes all monetary amounts, which are received on behalf of the family, except any financial assistance received for mandatory education fees and charges (in addition to tuition). For purposes of calculating the Total Tenant Payment, HUD defines what is calculated and what is excluded in the federal regulations. In accordance with this definition, all income that is not specifically excluded in the regulations is counted.

Annual Income: is defined as the gross amount of income anticipated to be received by the family during the 12 months after certification or recertification. Gross income is the amount of income prior to any HUD allowable expenses or deductions, and does not include income that has been excluded by HUD. Annual income is used to determine whether or not applicants are within the applicable income limits. A family who actually works less than 12 months, as required by their employment, will have their income treated as though they worked 12 months.

Adjusted Income: is defined as the annual income minus any HUD allowable expenses and deductions.

HUD has five allowable deductions from Annual Income:

- 1. Dependent Allowance:** \$480 each for family members (other than the head or spouse) who are minors, and for family members who are 18 and older who are full-time students or who are disabled.

2. **Elderly/Disabled Allowance:** \$400 per family for families whose head or spouse is 62 or over or disabled.
3. **Allowable Medical Expenses:** Deducted for all family members of an eligible elderly/disabled family.
4. **Child Care Expenses:** Deducted for the care of children under 13 when child care is necessary to allow an adult member to work, attend school, or actively seek employment.
5. **Allowable Disability Assistance Expenses:** Deducted for attendant care or auxiliary apparatus for persons with disabilities if needed to enable the individual or an adult family member to work.

Allowable deductions from Annual Income are reviewed at annual reexamination.

Earned Income Disallowance/Disregard [24 CFR 5.617]

The Earned Income Disregard (EID) is designed to promote self-sufficiency for families with disabilities in the housing Choice Voucher (HCV) program who meet the definition of a “qualified family.”

Disallowance of increase in annual income

- (1) *Initial 12-month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, HOC must exclude from annual income of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.
- (2) *Second 12-month exclusion and phase-in.* Upon the expiration of the 12-month period defined in paragraph (1) of this section and for the subsequent 12-month period, HOC must exclude from 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 two-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (1) or (2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (1) of this section and a maximum of 12 months for disallowance under paragraph (2) of this section, during the 24-month period starting from the initial exclusion under paragraph (1) of this section. Previously, families were eligible to receive the EID benefit for no more than 24 months, but which could be spread across a 48-month time period to account for potential changes in the employment status of the family member whose original employment caused the

family to be eligible for EID. That is no longer the case. EID eligibility is now limited to a maximum of only 24 straight months.

B. MINIMUM RENT [24 CFR 5.630]

Minimum Rent

"Minimum rent" is \$50. Minimum rent refers to the TFC and includes the combined amount a family pays towards rent and/or utilities when it is applied.

Hardship Requests for an Exception to Minimum Rent

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

Criteria for Hardship Exception

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

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

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

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

Loss of employment

Death in the family

Other circumstances as determined by HOC or HUD

HOC Notification to Families of Right to Hardship Exception

HOC will notify all families subject to minimum rents of their right to request a minimum rent hardship exception. "Subject to minimum rent" means the minimum rent was the greatest figure in the calculation of the greatest of 30 percent of monthly-adjusted income, 10 percent of monthly income, minimum rent, or welfare rent.

If the minimum rent is the greatest figure in the calculation of TTP, HOC staff will include a copy of the notice regarding hardship request provided to the family in the family's file.

HOC notification will advise families that hardship exception determinations are subject to HOC's review and hearing procedures.

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

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

HOC will request documentation as proof of financial hardship.

HOC will use its standard verification procedures to verify circumstances that have resulted in financial hardship.

Requests for minimum rent exception must include a statement of the family hardship that qualifies the family for an exception.

Suspension of Minimum Rent

HOC will grant the minimum rent exception to all families who request it, effective the first of the following month.

The minimum rent will be suspended until HOC determines whether the hardship is:

Covered by statute

Temporary or long term

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

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

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

Temporary Hardship

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

HOC will offer a repayment agreement to the family for any such rent not paid during the temporary hardship period. (See "Owner and Family Debts to HOC" in the chapter which discusses the Repayment Agreement Policy).

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

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

Retroactive Determination

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

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

C. DEFINITION OF TEMPORARILY/PERMANENTLY ABSENT

[24 CFR 982.54(d)(10), 982.551]

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

"Temporarily absent" is defined as away from the unit for more than 30 days.

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

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

Absence of Any Member

Any member of the household is considered permanently absent if s/he is away from the unit for 90 consecutive days, except as otherwise provided in this Chapter.

Absence due to Medical Reasons

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

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

Absence Due to Full-time Student Status

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

Full time students who attend school away from home and live with the family during school recesses are considered temporarily absent from the household.

Absence due to Incarceration

If the sole member is incarcerated for more than 90 consecutive days, s/he is considered permanently absent. Any member of the household, other than the sole member, is considered permanently absent if s/he is incarcerated for 180 consecutive days.

HOC will determine if the reason for incarceration is for drug-related or violent criminal activity. If it is, then HOC must terminate the family

Absence of Children due to Placement in Foster Care

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

If the time period will be greater than 12 months from the date of removal of the child/ren, the voucher size is reduced. If all children are removed from the home permanently, the voucher size is reduced in accordance with HOC's subsidy standards (see Chapter 5).

Absence of Entire Family

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

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

Families must notify HOC at least 30 days before leaving the unit, if they are going to be absent from the unit for more than 60 consecutive days.

If it is determined that the family is absent from the unit, HOC will discontinue assistance payments.

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

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

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

Write letters to the family at the unit

Telephone the family at the unit

Interview neighbors

Verify if utilities are in service

Check with the post office

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

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

Caretaker for Children

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

If by the end of that period, court-awarded custody or legal guardianship is awarded to the caretaker, the voucher is transferred to the caretaker.

If the appropriate agency cannot confirm the guardianship status of the caretaker, HOC will review the status at six month intervals.

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

The caretaker is allowed to remain in the unit, as a visitor, until a determination of custody is made.

HOC will transfer the voucher to the caretaker, in the absence of a court order, if the caretaker has been in the unit for more than 180 days and it is reasonable to expect that custody will be granted.

When HOC approves an adult to reside in the unit as caretaker for the child/ren, their income is counted pending a final disposition. HOC will work with the appropriate service agencies and the landlord to provide a smooth transition in these cases.

If a member of the household is subject to a court order that restricts him/her from the home for more than 180 days, the person is considered permanently absent.

Visitors

Any adult not included on the HUD 50058 who has been in the unit more than 30 consecutive days without HOC approval, or a total of 60 days in a 12-month period, is considered to be living in the unit as an unauthorized household member.

Absence of evidence of any other address is considered verification that the visitor is a member of the household.

Statements from neighbors and/or the landlord are considered in making the determination.

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

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

Minors and college students who were part of the family but who now live away from home during the school year and are no longer on the lease may visit for up to 60 days per year without being considered a member of the household.

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

Reporting Additions to Owner and HOC

Reporting changes in household composition to HOC is both a HUD and an HOC requirement.

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

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

In the event that a visitor continues to reside in the unit after the maximum allowable time, the family must report it to HOC in writing within 10 days of the maximum allowable time.

Families are required to report any additions to the household in writing to HOC within 10 days of the move-in date.

An interim reexamination is conducted for any additions to the household.

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

Reporting Absences to HOC

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

If a family member leaves the household, the family must report this change to HOC, in writing, within 10 days of the change and certify as to whether the member is temporarily absent or permanently absent.

HOC will conduct an interim evaluation for changes that affect the TTP in accordance with the interim policy.

D. AVERAGING INCOME

When Annual Income cannot be anticipated for a full 12 months, HOC may:

Average known sources of income that vary to compute an annual income, or

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

If there are bonuses or overtime which the employer cannot anticipate for the next 12 months, bonuses and overtime received the previous year will be used.

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

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

E. MINIMUM INCOME

There is no minimum income requirement. Families who report zero income are required to complete a written certification every 90 days.

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

If the family's expenses exceed their known income, HOC will make inquiry of the head of household as to the nature of the family's accessible resources.

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

If a family member is permanently confined to a hospital or nursing home and there is a family member left in the household, HOC calculates the income by using the following methodology, and uses the income figure that would result in a lower payment by the family:

Exclude the income of the person permanently confined to the nursing home and give the family no deductions for medical expenses of the confined family member.

OR

Include the income of the person permanently confined to the nursing home and give the family the medical deductions allowable on behalf of the person in the nursing home.

G. REGULAR CONTRIBUTIONS AND GIFTS [24 CFR 5.609]

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

Any contribution or gift received every 180 days, or more frequently, is considered a "regular" contribution or gift, unless the amount is less than \$500 per year. This includes rent and utility payments made on behalf of the family and other cash or non-cash contributions provided on a regular basis. It does not include casual contributions or sporadic gifts. (Please see the "Verification Procedures" chapter in this Administrative Plan for further information.)

If the family's expenses exceed its known income, HOC investigates the family regarding any contributions and/or gifts received.

H. ALIMONY AND CHILD SUPPORT [24 CFR 5.609]

Regular alimony and child support payments are counted as income for calculation of the TTP.

If the amount of child support or alimony received is less than the amount awarded by the court, HOC will use the amount awarded by the court; unless the family can verify that they are not receiving the full amount and verification of item(s) below are provided.

HOC accepts verification that the family is receiving an amount less than the amount awarded by the court if:

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

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

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

I. LUMP-SUM RECEIPTS [24 CFR 5.609]

Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health, accident insurance, and worker's compensation), capital gains, and settlement for personal or property losses, are not included in income but may be included in assets.

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

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

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

Prospective Calculation Methodology

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

The lump sum is added in the same way for any interim adjustments that occur prior to the next annual recertification.

If amortizing the payment over one year will cause the family to pay more than 50 percent of the family's adjusted income (before the lump sum was added) for TTP, HOC and the family may enter into a Repayment Agreement, with the approval of the Director of the Housing Resources Division, for the balance of the amount over the 50 percent calculation. The beginning date for this Repayment Agreement will start at the next annual reexamination of income.

Retroactive Calculation Methodology

HOC goes back to the date of receipt of the lump-sum payment, or to the date of admission, whichever is closer.

At HOC's option, HOC may enter into a Repayment Agreement with the family.

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

Attorney Fees

The family's attorney fees are eligible for deduction from the lump-sum payments when computing annual income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the family does not include an additional amount in full satisfaction of the attorney's fees.

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

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

While an individual is employed, HOC counts contributions to company retirement/ pension funds as assets only for amounts which the family can withdraw without retiring or terminating their employment.

After retirement or termination of employment, HOC counts any amount the employee elects to receive as a lump sum from a company retirement/ pension fund.

K. ASSETS

Income from assets is calculated based on the current balance of the account.

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

HOC must count assets disposed of for less than fair market value during the two years preceding certification or reexamination. HOC counts the difference between the market value and the actual payment received in calculating total assets.

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

HOC's minimum threshold for counting assets disposed of for less than Fair Market value is \$1,000. If the total value of assets disposed of within a one-year period is less than \$1,000, they are not considered an asset.

M. CHILD CARE EXPENSES [24 CFR 5.603]

Child-care expenses for children under 13 are eligible for deduction from annual income if they enable an adult to work or attend school full time, or to actively seek employment.

In the case of a child attending a private school, only before/ after-hours care are permitted for counting as child-care expenses.

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

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

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

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

When it is unclear in the HUD rules as to whether or not to allow an item as a medical expense, Internal Revenue Service (IRS) Publication 502 is used as a guide.

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

Acupressure, acupuncture, and related herbal medicines, as well as chiropractic services are also considered allowable medical expenses.

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

Applicability

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

Prorated Assistance Calculation

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

P. REDUCTION IN BENEFITS

Please see the chapter of this Administrative Plan on recertifications for a description of how to handle income changes resulting from welfare program requirements.

Q. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS

[24 CFR 982.153, 982.517]

The same utility allowance schedule is used for all tenant-based programs.

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

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

HOC does not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

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

An allowance for tenant-paid air conditioning is provided in those cases where the majority of housing units in the market have central air conditioning or are wired for tenant installed air conditioners [24 CFR 982.517].

HOC reviews the utility allowance schedule annually. If the review finds a utility rate changed by 10 percent or more since the last revision of the utility allowance schedule, the schedule is revised to reflect the new rate. Revised utility allowances are applied to a participant family's rent calculation at their next reexamination.

The utility allowance is based on the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under HOC's subsidy standards (please see the Subsidy Standards chapter in this Administrative Plan for more information). In cases where HOC provided a reasonable accommodation to a family that includes a person with disabilities, HOC will use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

Where the calculation on the HUD 50058 results in a utility reimbursement payment due to the family, HOC will provide a Utility Reimbursement Payment to the family each month. The check is made out directly to the tenant.