

## Chapter 6

### INCOME AND SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982; HOTMA Final Rule (2023) & PIH Notice 2023-27]

#### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and LMHA's subsidy. LMHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and LMHA 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 LMHA policies for calculating annual income are found in Part I.

Part II: Assets. HUD Regulations specify the types of assets which are excluded from a family's annual income. These requirements and LMHA policies for calculating income from assets are found in Part II.

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

Part IV: Calculating Family Share and LMHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining LMHA subsidy and required family payment

#### PART I: ANNUAL INCOME [24 CFR 5.609; PIH Notice 2023-27]

##### 6-I.A. OVERVIEW

~~The general regulatory definition of Annual Income shown below is from 24 CFR 5.609.~~

~~5.609 Annual income.~~

~~(a) Annual income means all amounts, monetary or non-monetary, 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 [5.609(e)].~~

~~(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.~~

~~The regulatory definition of *Annual Income* [24 CFR 5.609] as follows:~~

~~Annual Income [24 CFR 5.609; HOTMA Final Rule 2023])~~

Annual income includes, with respect to the family:

- All amounts, not specifically excluded in 24 CFR 5.609(b).
- All amounts that are received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household.
- Unearned income by or on behalf of each dependent who is under 18 years of age, and:
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. Generally, all income is included unless it is specifically excluded by regulation.

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [PIH Notice 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [PIH Notice 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations 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 Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-23)
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4): \*Eliminated per HUD regulations (PIH NOTICE 2023-27, G.20)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-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. Verification requirements for annual income are discussed in Chapter 7.

## 6-I.B. HOUSEHOLD COMPOSITIONS AND INCOME

### Overview

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 in accordance with HUD regulations and LMHA policies in Chapter 11. 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	<del>Income from all sources is excluded [24 CFR 5.609(e)(5)].</del> Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	<del>Income from all sources is excluded [24 CFR 5.609(e)(2)].</del> Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or co head Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Children under 18 years of age	<del>Employment income is excluded [24 CFR 5.609(e)(1)].</del> Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)].  All other sources of income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or co head)	<del>Employment income above \$480/year is excluded [24 CFR 5.609(e)(11)].</del> Earned income excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)].  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].

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

Generally, an individual who is or is expected to be absent from the assisted unit for 180 consecutive calendar days or less is considered temporarily absent and continues to be considered a family member. Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit. An individual who is or is expected to be absent from the assisted unit for more than 180 consecutive calendar days is considered permanently absent and no longer a family member. Exceptions to this general policy are military personnel. Other exceptions are discussed below.

### ***Absent Students***

#### LMHA 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 LMHA 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 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].

#### LMHA Policy

If a child has been placed in foster care, LMHA will verify with the appropriate agency whether and when the child is expected to return to the home, the child will be counted as a family member.

Children who are temporarily absent due to placement in foster care who have been placed in another subsidized unit will be reviewed by the PHA on a case-by-case basis.

### ***Absent Head, Spouse, or Co head***

#### LMHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive calendar days will not continue to be considered a family member.

### ***Family Members Permanently Confined for Medical Reasons***

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

#### LMHA Policy

LMHA 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 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.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co head qualifies as an elderly person or a person with disabilities.

### ***Joint Custody of Dependents***

#### **LMHA Policy**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they reside with the applicant or participant family 51 percent or more of the time.

When more than one applicant or participant family is 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, LMHA will make the determination based on available documents such as court orders, school enrollment or an IRS return showing which family has claimed the child for income tax purposes.

### ***Caretakers for a Child***

#### **LMHA Policy**

- 1) If neither a parent nor a designated guardian remains in a household receiving HCV assistance, LMHA will take the following actions.
- 2) If a responsible agency has determined that another adult is to be brought into the assisted 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.
- 3) 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 LMHA will extend the caretaker's status as an eligible visitor.
- 4) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker, upon completion all eligibility processing for the caretaker. When the voucher has been transferred to the caretaker, the parent/ designated guardian who left the unit is no longer considered a family member. However, if the initial parent/designated guardian who did not remain in the unit returns, the family may determine whether or not to add the parent/guardian to the household. The returning parent/designated guardian must also complete all eligibility processing prior to returning to the unit.
- 5) 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.

## 6-I.C. CALCULATING ANNUAL INCOME

~~LMHA 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.~~

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

### ANTICIPATING ANNUAL INCOME [24 CFR 5.609(c)(1)]

At admission and for an interim reexamination of family income, LMHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date. Additionally, LMHA is required to count all income “anticipated to be received from sources outside the family during this 12-month period following admission, annual reexamination, or effective date” [24 CFR 5.609(a-c)(2 1)]. Policies related to anticipating annual income are provided below.

#### Basis of Annual Income Projection

LMHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes LMHA 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 b)]
- LMHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

#### LMHA Policy

LMHA is 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 LMHA to use paystubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where LMHA does not determine it is necessary to obtain additional third-party data.

#### LMHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, LMHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, LMHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

LMHA 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 LMHA determines additional information is needed

In such cases, LMHA 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 LMHA annualized projected income.

When LMHA cannot readily anticipate income based upon current circumstances (e.g., in the case of teacher's employment, seasonal employment, unstable working hours, or suspected fraud), LMHA 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. Where the anticipated income is determined by LMHA to be predictable, LMHA will use all income expected to be earned over the course of a year for the annual income amount.

### **Example – Calculating Anticipated Annual Income**

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. LMHA will calculate the family's income using the following method:

1. Calculate annual income based on anticipated changes through the year:

\$11,700	(\$1,300 x 9 months)
+1,800	(\$ 600 x 3 months)
\$13,500	

LMHA would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to LMHA to show why the historic pattern does not represent the family's anticipated income.

### **Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); PIH Notice 2023-27]**

Section 102 of HOTMA lessens administrative burdens with regards to interim reexaminations. HOTMA creates a 10% adjusted income increase/decrease threshold for conducting Interim Reexaminations, and in most cases, requires that increases in earned income are not processed until the next Annual Reexamination. This allows families to keep more of their earnings before receiving a rent increase. These requirements should lead to fewer interim reexaminations overall, alleviating the burden for both participants and PHAs.

## LMHA Policy

At annual reexamination, LMHA will first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with LMHA policies in **Chapter 11** and HUD regulations, must be considered.

If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance.

Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in **Chapter 11**.

## LMHA Policy

- HOTMA requires LMHA to conduct an interim reexamination of family income when they become aware that the family's annual adjusted income has changed by an amount that would result in an estimated increase of ten percent or more in annual adjusted income (or another amount established through a HUD notice).
- In addition, a family may request an interim reexamination of family income for any change since the last determination; however, LMHA may decline to conduct an interim reexamination of family income if LMHA estimates the family's adjusted income will decrease by an amount that is less than 10% of the family's annual adjusted income [24 CFR 5.657(c)(3); 882.515(b)(3); 960.257(b)(3); and 982.516(c)(3);CFR 891.105; 891.410(g)(2); and 891.610(g)(2)] PIH Notice 2023-27.
- LMHA may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased—unless the family has previously received an interim reduction during the same reexamination cycle.
- LMHA will not establish ~~a different~~ threshold other than ten percent to conduct interim reexaminations for increases in adjusted income.
- LMH may choose not to include earned income increases in determining whether the ten percent threshold is met for increases in adjusted income when the family previously had an interim reexamination performed for a decrease in annual adjusted income (earned, unearned, or combined) since the last annual reexamination.

## ***Known Changes in Income***

If LMHA verifies an upcoming increase or decrease in income outside of a three-month (90 day) period prior to a family's reexamination, 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, LMHA would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases LMHA will calculate annual income using current circumstances and then, should the change in income require the PHA to conduct an interim reexamination, conduct an interim reexamination in accordance with LMHA policy in **Chapter 11**. ~~require an interim reexamination when the change actually occurs. This requirement will be imposed even if LMHA's policy on reexaminations does not require interim reexaminations for other types of changes.~~

### LMHA Policy

**Increases in Income:** HUD allows LMHA to choose not to conduct an interim reexamination if a family reports an increase in income within three months of their next annual reexamination effective date. Therefore, LMHA will not conduct an interim reexamination for any income increases more than ten percent within three months of a family's next annual reexamination effective date. Calculated percentage increases less than 10% will not be rounded up to the nearest whole number.

**Decreases in Income:** An interim reexamination will be conducted when LMHA becomes aware that the family's adjusted income has changed by an amount that is estimated to result in a decrease of 10% or more of the family's annual adjusted income. Calculated percentage decreases less than 10% will not be rounded up to the nearest whole number.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

EIV quarterly wages will not be used to project annual income at an annual or interim reexamination.

### ***Projecting Income***

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

## **6-I.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### ***Wages and Related Compensation [24 CFR 5.609(a); PIH Notice 2023-27]***

~~The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].~~

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

*Earned income* means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27]. For persons who regularly receive bonuses or commissions, LMHA will verify and then average amounts received for the two years preceding admission or interim reexamination. If only a one-year history is available, the LMHA will use the prior year amounts. In either case the family may provide, and the LMHA 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, LMHA will count only the amount estimated by the employer. The file will be documented appropriately.

### LMHA Policy

For persons who regularly receive bonuses or commissions, LMHA will verify, and then average amounts received for the two preceding admission or reexamination. If less than one-year history is available, LMHA will use the information available. In either case the family may provide, and LMHA 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, LMHA 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(e)(7)].~~

### ***Military Pay***

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

**Types of Earned Income ~~Not Counted in~~ Excluded from Annual Income**  
(For an exhaustive list, refer to 24 CFR 5.609 (b))

***Temporary, Nonrecurring, or Sporadic Income*** [24 CFR 5.609~~(e)(9)~~ (b) (24)].

***Earnings of a Minor [24 CFR 5.609(b)(3)]***

A minor is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors are not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included.

***Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]***

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. 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 for a full discussion of live-in aides.)

***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.

**Income Exclusion Under Other Federal Program**

***Income Earned under Other Federal Programs.*** Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act. S.C. 1552(B)
- 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)

### ***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)].

### **LMHA Policy**

LMHA 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].

LMHA 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, LMHA 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 LMHA's interim reporting requirements.

### ***Resident Service Stipend***

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 LMHA 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 LMHA’s governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

### ***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.

### ***Economic Stimulus or Recovery Payments*** [24 CFR § 5.609(b)(24)(ii)]

Direct federal or state payments intended for economic stimulus or recovery are excluded from annual income. HUD will continue to advise PHAs which payments are considered economic stimulus or recovery payments for the purposes of income calculation.

### ***State Tax Refunds*** [24 CFR § 5.609(b)(24)(ii)]

Amounts directly received by the family as a result of state refundable tax credits or state tax refunds at the time they are received are excluded from annual income.

### ***Federal Tax Refunds*** [24 CFR § 5.609(b)(24)(iv)]

Amounts directly received by the family as a result of federal refundable tax credits and federal tax refunds at the time they are received are excluded from annual income.

### ***Earned Income Disallowance***

The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

## **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617] ~~ELIMINATED PER HOTMA FINAL RULE (2023) PIH Notice 2023-27 [24 CFR 5.611]~~**

The earned income disallowance (EID) encouraged people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below; however, HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will end on January 1, 2026, and LMHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

### **LMHA Policy**

With regard to HUD policy on elimination of the EID, for families who remain eligible during the remaining HUD specified time-period: LMHA defines prior *income*, or pre-qualifying *income*, as the family member's last certified income prior to the qualifying event for the EID.

- During the initial 12-month exclusion period, ending at the latest HUD-HOTMA specified start date of December 31, 2024, 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.

- During the second 12-month exclusion period, applying only to families who have enrolled prior to January 1, 2024, 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.

LMHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

Although HOTMA eliminated the EID from HUD regulations, families who were receiving the EID benefit as of December 31, 2023, may continue to receive the full benefit until the remaining timeframe for an individual or family's EID expires. Because the EID lasts up to 24 consecutive months, no family will still be receiving the EID benefit after December 31, 2025. (PIH Notice 2023-27)

**Note:** The EID policies described above are distinct from similar policies in the Jobs Plus program. Families eligible to receive the Jobs Plus program rent incentive (Jobs Plus Earned Income Disregard (JPEID)) pursuant to the FY2023 Notice of Funding Opportunity (NOFO) or earlier appropriation distributed through prior Jobs Plus NOFOs may continue to receive JPEID under the terms of the NOFO. The JPEID was established by HUD as an alternative requirement to EID for Jobs Plus grantees by waiving section 3(d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(d)) and § 960.255(b) and (d). (PIH Notice 2023-27)

### **Eligibility: Ended January 1, 2024, per HOTMA (2023) [PIH Notice 2023-27]**

This disallowance applies (until December 31, 2025) and applied only to individuals in families already participating in the HCV program who were confirmed as eligible prior to January 1, 2024. To qualify, the family must have experienced an increase in annual income that is/was the result of one of the following events:

- Employment of a family member who is a person with disabilities and 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 who is a person with disabilities and whose earnings increased 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 is a person with disabilities and who has/had 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 six months prior to January 1, 2024. If the benefits are/were received in the form of monthly cash maintenance, there is no minimum amount. If the benefits or services are/were received in a form other than monthly maintenance, such as one- time payments, wage

subsidies, or transportation assistance, the total amount received over the six-month period must be or have been at least \$500.

### **Calculation of the Disallowance: For Families who Qualified Prior to January 1, 2024.**

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 "prior income."

#### LMHA Policy

LMHA defines prior *income*, or prequalifying *income*, as the family member's last certified income prior to the qualifying EID event which must have taken place prior to January 1, 2024 according to the HOTMA Final Rule (2023).

The family member's prior, or prequalifying, income must remain constant throughout the period that he or she is receiving the EID until the disallowance ends on December 31, 2025.

### ***Initial 12-Month Exclusion: For Families who Qualified Prior to January 1, 2024***

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

#### LMHA Policy

The initial EID exclusion period began on the first of the month following the date an eligible member of a qualified family was first employed or first experienced an increase in earnings, whether the family reported the earnings or not.

### ***Second 12-Month Exclusion and Phase-In: For Families who Qualified Prior to January 1, 2024***

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, lasting only until December 31, 2025.

#### LMHA Policy

During the second 12-month exclusion period not to exceed the date of December 31, 2025, LMHA will exclude 50 percent of any increase in income attributable to new employment or increased earnings.

### ***Lifetime Limitation: For Families who Qualified Prior to January 1, 2024***

From December 31, 2023, the last qualifying date for the EID, the EID will have a two-year (24 month) lifetime maximum for eligible families. The two-year eligibility period begins at the same time that the initial exclusion period begins and will end 24 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.

LMHA Policy: *For Families who Qualified Prior to January 1, 2024*

During the 24 month eligibility period until the EID ending date of December 31, 2025, LMHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

**6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

**6-I.F. BUSINESS INCOME AND SELF-EMPLOYMENT [24 CFR 5.609(b)(28); PIH Notice 2023-27]**

Annual income includes “the net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

Expenditures for business expansion or amortization of capital indebtedness may not be used as deductions in determining net income ~~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)].

**Business Expenses**

LMHA Policy

To determine business expenses that may be deducted from gross income, LMHA 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 herein.

**Independent Contractors**

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An independent contractor is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

**Business Expenses**

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

**LMHA Policy**



To determine business expenses that may be deducted from gross income, LMHA 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 Expansion**

HUD regulations do not permit LMHA to deduct from gross income expenses for business expansion.

### LMHA 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 LMHA to deduct from gross income the amortization of capital indebtedness.

### LMHA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means LMHA 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 LMHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

### LMHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, LMHA 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**

### LMHA 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.

## **Assets Owned by a Business Entity**

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [PIH Notice 2023-27].

## **6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and PIH Notice 2023-27]**

### **Introduction**

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations. For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).

While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills. For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. LMHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below. During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

### **Pre-HOTMA Section 8 Student Financial Assistance Limitation [FR 4/10/06; PIH Notice 2015-21]**

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies. The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Chapter 3, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
  - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
  - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
  - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
  - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
  - Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.

Any student financial assistance not subject to inclusion under the regulations is fully excluded from annual income, whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

### **HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]**

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students.

#### **Types of Assistance**

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

- Federal Pell Grants
- Teach Grants

- Federal Work Study Programs
- Federal Perkins Loans
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
  - The Higher Education Tribal Grant
  - The Tribally Controlled Colleges or Universities Grant Program

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. *Actual covered costs* are defined as the actual costs of:

- Tuition, books, and supplies
  - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the PHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government
- A state, tribal, or local government
- A private foundation registered as a nonprofit
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance does not include:

- Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);

- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

### **Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; PIH Notice 2023-27]**

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

#### LMHA Policy

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, LMHA will exclude the full amount of the assistance received under Title IV from the family's annual income. LMHA will not calculate actual costs covered in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, LMHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). LMHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. LMHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

#### **Example 1**

- **Actual covered costs: \$20,000**
- **Other student financial assistance: \$25,000**
- **Excluded income: \$20,000 (\$25,000 in financial assistance – \$20,000 in actual covered costs)**
- **Included income: \$5,000**

#### LMHA Policy

When a student receives assistance from both Title IV of the HEA and from other sources, LMHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance” would be excluded from income.

#### **Example 2**

- **Actual covered costs: \$25,000**
- **Title IV HEA assistance: \$26,000**
- **Title IV HEA assistance covers the students entire actual covered costs.**
- **Other Student Financial Assistance: \$5,000**
- **Excluded income: The entire Title IV HEA assistance of \$26,000**
- **Included income: All other financial assistance of \$5,00**

#### LMHA Policy

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, LMHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

#### **Example 3**

- **Actual covered costs: \$22,000**
- **Title IV HEA assistance: \$15,000**
- **The remaining amount not covered by Title IV HEA assistance is \$7,000 (\$22,000 in actual covered costs - \$15,000 in Title IV HEA assistance).**
- **Other Student Financial Assistance: \$5,000**
- **\$7,000 in remaining actual covered costs - \$5,000 in other financial assistance**
- **Excluded income: \$15,000 entire amount of the Title IV HEA Assistance + \$5,000 in other financial assistance**
- **Included income: \$0**

#### **Example 4**

- Actual covered costs: \$18,000
- Title IV HEA assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000 in Title IV HEA Assistance)
- Other Student Financial Assistance: \$5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000 (\$3,000 in actual covered costs - \$5,000 in other financial assistance).
- Included income: \$2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

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

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments not included in annual income. Regulations do not specify which types of periodic payments are included in annual income.

Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one year.

#### **LMHA Policy**

LMHA will include in annual income 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.



LMHA will include payments in lieu of earnings, such as unemployment and disability compensation, and severance pay are also counted as income if they are received in the form of periodic payments.

### **Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]**

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or and deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income. The PHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

#### LMHA Policy

When a delayed-start payment is received that is to be included and the family reports this during the period in which LMHA is processing an annual reexamination, LMHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time that LMHA is processing an annual reexamination, then LMHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, LMHA will conduct an interim in accordance with PHA policies in **Chapter 11**. If not, the PHA will consider the amount when processing the family's next annual recertification.

### **Retirement Accounts [24 CFR 5.609(b)(26); PIH Notice 2023-27]**

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

### **Social Security Benefits [PIH Notice 2023-27]**

LMHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, LMHA is required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family



income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27].

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive.

#### LMHA Policy

When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, LMHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount. Further, if a family’s social security income is garnished for any reason, LMHA will use the net amount after the garnishment in order to calculate the family’s income.

### **Alimony and Child Support**

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [PIH Notice 2023-27].

#### LMHA Policy

LMHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement. LMHA will count court-awarded amounts for alimony and child support unless the family certifies and LMHA verifies that the payments are not being made. In order to verify that payments are not being made, LMHA will review child support payments over the last three months.

If payments are being made regularly, LMHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, LMHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, LMHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If LMHA determines and can appropriately verify that the family likely will not receive a similar payment, then the amount will not be considered when projecting annual income.

If LMHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income. If no payments have been made in the past three months and there are no lump sums, LMHA will not include alimony or child support in annual income.

## **6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24 and PIH Notice 2023-27)]**

Nonrecurring income, which is income that will not be repeated in beyond the coming year (e.g., 12 months following the effective date of the certification) based on information provided by the family, is excluded from annual income. The PHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. **See Chapter 7** for PHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies. Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities.
- Payments for eviction prevention.
- Security deposits to secure housing.
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

## **6-I.J. WELFARE ASSISTANCE OVERVIEW**

### **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.

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

LMHA will 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 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance 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)]

#### ***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, LMHA will include in annual income “imputed” welfare income.

#### **LMHA Policy**

LMHA will 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)].

#### ***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)].

**6-I.K. Determination of Income Using Other Means Tested Public Assistance (i.e., “Safe Harbor”)**  
**Regulation [24 CFR 5.609(c)(3) and 891.105; 891.410(b)-(c) and (g); and 891.610(b)-(c) and (g)]**

LMHA may determine a family’s annual income, including income from assets, prior to the application of any deductions based on income determinations made within the previous 12-month period, using income determinations from the following types of means-tested federal public assistance programs:

- The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).
- Medicaid (42 U.S.C. 1396 et seq.).
- The Supplemental Nutrition Assistance Program (42 U.S.C. 2011 et seq.).
- The Earned Income Tax Credit (26 U.S.C. 32).
- The Low-Income Housing Tax Credit (26 U.S.C. 42).
- The Special Supplemental Nutrition Program for Woman, Infants, and Children (42 U.S.C. 1786).
- Supplemental Security Income (42 U.S.C. 1381 et seq.).
- Other programs administered by the Secretary.
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding.
- Other federal benefit determinations made by other means-tested federal programs that the Secretary determines to have comparable reliability and announces through a *Federal Register* notice.

LMHA Policy

If LMHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family (i.e., the family members listed in the documentation must match the family’s composition in the assisted unit, and must state the amount of the family’s annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family’s income, LMHA will neither further inquire about a family’s net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618.

The Safe Harbor verification may be in the form of an award letter from the relevant federal program and must show that the family’s income determination was made in the previous 12 months.

HUD clarifies that the verification will be considered acceptable if the documentation meets the criteria that the income determination was made within the 12 months prior to the receipt of the verification by the PHA. This satisfies all verification date requirements for Safe Harbor income determinations.

LMHA Policy

The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by LMHA:

- Income determination effective date;

- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that LMHA is permitted to use to determine income under this Safe Harbor is the total income determination made by the federal means-test program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information **must not** be considered by the LMHA for purposes of the HOTMA Safe Harbor provision. LMHA is not permitted to mix and match Safe Harbor income determinations and other income verifications.

LMHA is not required to accept or use determinations of income from other federal means-tested forms of assistance but must establish in policy whether and when they will accept Safe Harbor income determinations (e.g., at reexamination only or at admission and reexamination), including which programs from which they will accept income determinations. LMHA must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs (e.g., to accept the most recent income determination).

#### LMHA Policy

LMHA will not determine a family's annual income (including income from assets prior to the application of any deductions based on income determinations made within the previous 12-month period) using income determinations from means-tested federal public assistance programs except for:

- 1) Supplemental Security Income (SSI)
- 2) The Temporary Assistance for Needy Families block grant (TANF)

~~The only information LMHA is permitted to use to determine income under Safe Harbor is the total income determination made by the federal means-test program administrator.~~

LMHA will continue to use these two forms of assistance during the income verification process at admission and interim and annual reexaminations. When these third-party documents are provided, verified, and used to anticipate annual income, they will be dated within the last 60 days of the admission or reexamination date.

The third-party verification must state the family size, must be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit), and must state the amount of the family's annual income.

#### **6-1.L. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]**

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

#### **6-I.M. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]**

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the PHA or owner chooses not to conduct the examination.

#### **6-I.N. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b)]**

Other exclusions contained in 24 CFR 5.609(b) that have not been discussed earlier in this chapter include the following:

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR



5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income [PIH Notice 2023-27].

- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [PIH Notice 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in PIH Notice 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by PIH Notice 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(128)(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(bc)(128)(ii)].

- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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 [24 CFR 5.600(b)(12)(iii)].
- Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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 unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

### LMHA Policy

LMHA 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:

- Classroom training in a specific occupational skill,
- On-the-job training with wages subsidized by the program, or
- Basic education” [expired Notice PIH 98-2, p. 3].

LMHA defines *incremental earnings and benefits* as the difference between

- The total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and
- The total amount of welfare assistance and earnings of the family member after enrollment in the program [expired PIH Notice 98-2, pp. 3–4].

In calculating the incremental difference, LMHA 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 LMHA’s ~~the PHA’s~~ interim reporting requirements (see Chapter 11).

- 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(bc)(130)].
- Adoption assistance payments for a child in excess of \$480the amount of the dependent deduction per adopted child [24 CFR 5.609(bc)(152)].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(bc)(2015)].
- Amounts that HUD is required by federal statute to exclude 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(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.



HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. 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)
- 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 1965j, 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 and mandatory fees 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) (See Section 6-I.L. for exceptions.)
- v. Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- 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 PIH Notice 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
- aa. Distributions from an ABLÉ account, and actual or imputed interest on the ABLÉ account balance [See also PIH Notice 2019-09]

## PART II: ASSETS

### 6-II.A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [PIH Notice 2023-27].

The HOTMA Final Rule (2023) set maximum asset limits for Public Housing and Section 8 applicants and participants. There was previously no asset limitation for participation in the HCV program. Asset requirements in 24 CFR 5.603 and 5.609 apply to:

- HCV (including Project-Based Vouchers and all special purpose vouchers)
- Public Housing
- Section 8 Moderate Rehabilitation
- Section 8 Moderate Rehabilitation SRO, and
- MFH programs [PIH Notice 2023-27]

~~Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of investment, except as excluded (see Attachment F (paragraph F.4.b) (Exclusions from Net Family Assets) of this notice)~~

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.

~~However,~~ HUD also requires that LMHA include in annual income the “interest, dividends, and other net income of any kind from real or personal property” [24 CFR 5.609(b)(3)]. This section discusses how asset value is categorized and how the income from various types of assets is determined. For most types of assets, LMHA must determine the value of the asset 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 LMHA policies related to each type of asset.

Per PIH Notice ~~2013-03-2023-27~~, LMHA may use a family’s declaration, or self-certification, of the amount of assets of less than ~~\$5,000~~ \$50,000, and the amount of income expected to be received from those assets. The PHA’s application and reexamination documentation, which is signed by all adult family members, can serve as the declaration.

Optional policies for family self-certification of assets are found here and in Chapter 7. **Policies related to the asset limitation may be found in Chapter 3.**

## General Policies

### Income from Assets

#### ~~Income from Assets~~

~~LMHA 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 LMHA 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) LMHA 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, LMHA can take into consideration past rental income along with the prospects of obtaining a new tenant.~~

#### LMHA Policy

~~Anytime 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 LMHA to show why the asset income determination does not represent the family's anticipated asset income.~~

Income from assets is always anticipated, irrespective of the income examination type.

LMHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. LMHA will use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected,
- It is not feasible to anticipate a level of income over 12 months, or
- LMHA 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, LMHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

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 LMHA to show why the asset income determination does not represent the family's anticipated asset income.

#### **Asset Limitations [24 CFR 5.618;24 CFR 982.5160]**

The HOTMA Final Rule (2023) imposed asset limitations for participation in the HCV program are as follows:

- A \$100,000 asset limit for eligibility and continued assistance
- Families are also ineligible for assistance if they own real property suitable for occupancy.

HUD allows LMHA the option of delaying enforcement/termination for up to six months if the family is over the asset threshold at the time of annual reexamination. This is known as a “cure period.” ~~(See following LMHA policy including cure period.)~~

#### LMHA Policy

LMHA will not admit a family to the program and must initiate termination of an assisted family’s HCV program assistance (no later than six months after the effective date of an annual or interim reexamination) for the following:

- Net assets exceeding \$100,000.
- Present family ownership, interest in, legal right to reside in, or effective legal authority to sell real property that is suitable for occupancy by the family as a residence.

**Cure Period:** LMHA will give existing participants a six-month cure period as an opportunity to remedy non-compliance. This policy does not apply to new admission applicants.

### **6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]**

LMHA will include the value of any business or family assets disposed of by an applicant or participant 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 or reexamination, as applicable, in excess of the consideration received for the asset.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [PIH Notice 2023-27].

#### ***Minimum Threshold***

#### LMHA Policy

LMHA 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 \$1,000.

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***

#### LMHA 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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

### ***Assets with Negative Equity***

The cash value of real property or other assets with negative equity would be considered \$0 for the purpose of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets (PIH Notice 2023-27).

### ***Asset Owned by a Business Entity***

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [PIH Notice 2023-27].

### ***Family Declaration***

#### **LMHA 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. LMHA may verify the value of the assets disposed of if other information available to LMHA does not appear to agree with the information reported by the family.

## **6-II.C. ASSET INCLUSIONS AND EXCLUSIONS**

### ***Checking and Savings Accounts*** [PIH Notice 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not necessarily personal property is counted toward net family assets depends on the combined value of all of the family's assets.

When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.

When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

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.

#### LMHA Policy

In determining the value of a checking or savings account, LMHA ~~may~~ will use the family's self-certification or may use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, LMHA ~~may~~ will use the family's self-certification or may multiply the value of the account by the current rate of interest paid on the account.

#### ***ABLE Accounts [24 CFR 5.609(b)(10); PIH Notice 2019-09]***

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means tested programs. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income.

However, all wage income received, regardless of which account the money is paid to, is included as income.

#### ***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds [24 CFR 5.603(b)(1)]***

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's checking and/or savings accounts would be counted toward net family assets.

When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0.



## LMHA Policy

LMHA will include interest or dividends earned by investment accounts 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. In determining the market value of an investment account, LMHA will use the value of the account on the most recent investment report.

### ***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].~~

## LMHA Policy

~~LMHA may determine the equity using a self-certification.~~

~~If LMHA does not use a self-certification in determining the equity, LMHA 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. LMHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, LMHA 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)]~~

~~The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]~~

~~Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]~~

~~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 6.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]~~

~~LMHA 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].~~

## LMHA Policy

~~For the purposes of calculating expenses to convert to cash for real property, LMHA may use self-certification.~~

~~If LMHA does not use self-certification for the purposes of calculating expenses to cash for real property, LMHA 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 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~~

***Asset Verification and Self Certification [24 CFR 882.515(a); 882.808(i)(1); 960.259(c)(2); 982.516(a)(3)].*** **Move this section?**

~~PIH Notice 2013-03 and the updated~~ The HOTMA Final Rule (2023) allows LMHA to use a family's declaration, or self-certification, of the amount of assets less than **\$50,000**, and the amount of income expected to be received from those assets. The PHA's application and reexamination documentation, which is signed by all adult family members, can serve as the declaration.

### LMHA Policy

LMHA will accept family self-certification to verify all net family assets equal to or less than \$50,000 (adjusted annually for inflation) and anticipated income earned from assets without taking additional steps to verify accuracy, at admission and at reexamination. LMHA's application and reexamination documentation, which is signed by all adult family members, will serve as self-certification.

### LMHA Policy

LMHA will rely upon ~~third party verification and/or~~ self-certification from the family at both admission and reexamination stating that they do not have any present ownership ~~in assets exceeding \$100,00~~ or interest in any real property. LMHA's application and reexamination documentation, which is signed by all adult family members, can serve as self-certification for Property ownership that is suitable for occupancy.

For re-examinations, LMHA must fully verify net family assets every three years through an established tracking method.

### ***Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]***

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*. Personal property includes tangible items, like boats, as well as intangible items, like bank accounts. For example, a family could have non-necessary personal property with a combined value that does not exceed \$50,000 but also own real property such as a parcel of land. Even though the non-necessary personal property would be excluded from net family assets, the real property would be included in net family assets regardless of its value unless the real property meets a different exclusion under 24 CFR § 5.603 [PIH Notice 2023-27]

### **Necessary Personal Property**

HUD defines Necessary Personal Property as:

- Items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal

property includes more than merely items that are indispensable to the bare existence of the family [PIH Notice 2023-27].

- Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items.

### LMHA Policy

LMH will exclude necessary personal property from net family assets.

### **Non-Necessary Personal Property**

Non-necessary personal property with a combined value greater than \$50,000, as adjusted by inflation, is considered part of net family assets. When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

### LMHA Policy

- LMH will include *non-necessary* personal property with a combined value greater than \$50,000, as adjusted by inflation a part of net family assets.
- When the combined value of all *non-necessary* personal property does not exceed \$50,000, as adjusted by inflation, LMH will exclude all non-necessary personal property from net family assets.

Determining what is a necessary item of personal property is a highly fact-specific determination. Therefore, it is necessary for PHAs to gather enough facts to qualify whether an asset is necessary or non-necessary personal property. Items of personal property that do not qualify as necessary personal property will be classified as non-necessary personal property [PIH Notice 2023-27].

While not an exhaustive list, the following table from PIH Notice 2023-27 provides examples of necessary and non-necessary personal property.

**Examples of Necessary and Non-Necessary Personal Property**  
**(Table F-1 - PIH Notice 2023-27)**

Necessary Personal Property	Non-Necessary Personal Property
<ul style="list-style-type: none"> <li>• Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</li> <li>• Furniture, carpets, linens, kitchenware</li> <li>• Common appliances</li> <li>• Common electronics (e.g., radio, television, DVD player, gaming system)</li> <li>• Clothing</li> <li>• Personal effects that are not luxury items cultural value, or which does not hold family (e.g., toys, books) significance</li> <li>• Wedding and engagement rings</li> <li>• Jewelry used in religious/cultural celebrations and ceremonies</li> <li>• Religious and cultural items</li> <li>• Medical equipment and supplies</li> <li>• Health care–related supplies</li> <li>• Musical instruments used by the family</li> <li>• Personal computers, phones, tablets, and related equipment</li> <li>• Professional tools of trade of the family, for example professional books</li> <li>• Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</li> <li>• Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</li> </ul>	<ul style="list-style-type: none"> <li>• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs))</li> <li>• Bank accounts or other financial investments (e.g., checking accounts, savings account, stocks/bonds)</li> <li>• Recreational boat/watercraft</li> <li>• Expensive jewelry without religious or cultural value, or which does not hold family significance.</li> <li>• Collectibles (e.g., coins/stamps)</li> <li>• Equipment/machinery that is not used to generate income for a business</li> <li>• Items such as gems/precious metals, antique cars, artwork, etc.</li> </ul>

In determining the value of non-necessary personal property, LMHA will use the family’s estimate of the value. LMHA 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.

***Real Property Ownership* [PIH Notice 2023-27; 24 CFR 5.100; 5.603]**

The HOTMA Final Rule (2023); [24 CFR 5.618] creates a restriction on the eligibility of a family to receive assistance if the family owns real property that is suitable for occupancy by the family as a residence or has assets in excess of \$100,000, as adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers. Real property encompasses land,

buildings, and any fixtures permanently attached to the land (HOTMA resident Fact Sheet: Assets and Real Property)

HUD has classified eligibility restrictions within the context of real property ownership as:

- 1) Whether or not the family has the legal right to reside in the property.
- 2) Whether or not the family has the effective legal authority to sell the property.
- 3) Whether or not the property is suitable for occupancy by the family as a residence.

***Real Property Exclusions*** [PIH Notice 2023-27; 24 CFR 5.603(b)(3)–(b)(4)]

Are as follows:

- 1) A manufactured home for which the family is receiving Section 8 assistance
- 2) Families that receive homeownership assistance from LMHA
- 3) Persons who are victims of domestic violence as defined by VAWA
- 4) Families that are offering the property for sale

***Lump-Sum Additions to Net Family Assets*** [24 CFR 5.609(b)(24)(viii); PIH Notice 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) 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 in prospective monthly amounts are also excluded from income. However, these amounts may count towards net family assets.

LMHA Policy

LMHA will consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months (90 days) of the family's income certification period and the LMHA chooses not to conduct the examination.

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIIP FAQs]. For example, if the family receives a \$1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

### ***Jointly Owned Assets [PIH Notice 2023-27]***

For assets owned jointly by the family and one or more individuals outside of the assisted family, LMHA will include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

### **LMHA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, LMHA 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, LMHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, LMHA will prorate the asset evenly among all owners.

### ***Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]***

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).

The following types of trust distributions are excluded from annual income:

- Distributions of the principal or corpus of the trust; and
- Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, revocable and irrevocable.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Irrevocable trusts not under the control of any member of the family or household are not assets. Typically, special needs trusts are considered irrevocable. The value of the trust is not included in net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Where an irrevocable trust is excluded from net family assets, the PHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed. If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets. If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family.

### LMHA Policy

LMHA will count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable.

### ***Life Insurance [FR Notice 2/14/23 and PIH Notice 2023-27]***

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

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 the value of the family's assets. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### ***Tax Refunds [24 CFR 5.603(b)(3)(xi) and PIH Notice 2023-27]***

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered \$0.

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the PHA to subtract the amount of the deposit from the value of the excluded asset).

### ***Asset Exclusions [24 CFR 5.603(b)]***

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to
- sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
  - *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
  - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; an inherited property in dispute [PIH Notice 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];
- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any “baby bond” account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];



- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [PIH Notice 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [PIH Notice 2023-27].

## 6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [PIH Notice 2023-27].

### *Net Family Assets* [24 CFR 5.100; 5.603]

*Net family assets* are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks bonds, and other forms of capital investment.

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 such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

### LMHA Policy

LMHA defines reasonable costs as those 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~~ \*PIH Notice 2023-27 ~~supersedes relevant portions of HUD's HCV Guidebook, currently subject to applicable revisions~~].

The calculation of asset income sometimes requires LMHA 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.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not



prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [PIH Notice 2023-27].

### *Actual Income from Assets*

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

### LMHA Policy

LMHA must determine if the family's total net family assets are equal to or less than **\$50,000**, and they must determine the actual income earned from the asset(s) [PIH Notice 2023-27].

LMHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

LMHA will not calculate or include any imputed income from assets when net family assets total \$50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases, LMHA will accept self-certification by adult family members, or the family may present information and documentation to LMHA to show why the asset income determination does not represent the family's anticipated asset income.

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

~~LMHA must determine if the family's total net family assets are equal to or less than **\$50,000**, and they must determine the actual income earned from the asset(s) (The HOTMA Final Rule (2023); PIH Notice 2023-27).~~

~~LMHA 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 LMHA 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) LMHA 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, LMHA can take into consideration past rental income along with the prospects of obtaining a new tenant.~~

### LMHA Policy

~~Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases, LMHA will accept self-certification by adult family members, or the family may present information and documentation to LMHA 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 LMHA to make a distinction between an asset's market value and its cash value.~~

~~The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in 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.~~

### ***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 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) [RHHP 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 sections 6 I.H and 6 I.I.)~~

### ***Imputed Income from Assets: Net Family Assets Equal to or Less Than \$50,000*** *[24 CFR 5.609(b)(3)(1)] [24 CFR 5.603; 5.609; 5.618; 882.515(a); 882.808(i)(1)]*

~~When net family assets exceed \$50,000 (adjusted annually by HUD), LMHA will not rely on self-certification. If actual returns can be calculated, LMHA will include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, LMHA will calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If LMHA can compute actual income from some but not all assets, LMHA will compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].~~

~~An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the~~

asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

### **IMPUTED INCOME FROM ASSETS OVER \$50,00 EXAMPLE:**

#### **COMPARE ACTUAL INCOME FROM ASSETS TO IMPUTED INCOME FROM ASSETS**

An applicant has \$57,900 in assets. (Assume 2025 passbook rate of .45 percent.)

An applicant's actual income from assets is paid at 1.5% simple interest annually - \$869.

Assets:	\$57,900
HUD-determined passbook rate	<u>x .45</u>
Imputed income from assets	<u>\$ 261.00</u>

Compare actual interest of \$869 to imputed interest of \$261.

The interest of \$869 (the greater of the two) will be used as income from assets in the calculation of annual income.

~~LMHA must determine if the family's total net assets are equal to or less than \$50,000, and they must determine the actual income earned from the asset(s). When net family assets are \$50,000 or less, LMHA 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 \$50,000, LMHA 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 the current HUD established passbook savings rate.~~

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

It may or may not be necessary for the LMHA 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 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 the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the

amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

### Amended Net Family Assets:

The HOTMA Final Rule (2023); [24 CFR 5.603]

### Determining Net Family Assets by Asset Type

The HOTMA Final Rule (2023), HUD has amended the definition of “net family assets” [24 CFR 5.603] and clarifies that net family assets do not include the value of all non-necessary items of personal property with a total combined value of \$50,000 or less, as adjusted annually by an inflationary factor.

\* Further guidance will be issued for PHAs, to determine whether an item is a “necessary item of personal property” or whether the value of the item should be included in calculating the value of all non-necessary items.

### Asset Specifications: Personal Property [24 CFR 5.603]

All assets are categorized as either real property (e.g., land, a home) or personal property. Personal property includes tangible items, like boats, as well as intangible items, like bank accounts. For example, a family could have non-necessary personal property with a combined value that does not exceed \$50,000 but also own real property such as a parcel of land. Even though the non-necessary personal property would be excluded from net family assets, the real property would be included in net family assets regardless of its value unless the real property meets a different exclusion under 24 CFR § 5.603 (PIH Notice 2023-27)

## ~~PART II~~ PART III: ADJUSTED INCOME

### 6-III.A. INTRODUCTION

#### Overview

HUD regulations require LMHA to deduct from annual income any of five mandatory deductions for which a family qualifies **and allow the LMHA to deduct other permissive deductions in accordance with LMHA policy.** The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611~~(a)~~ *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

***Mandatory Deductions*** ~~In determining adjusted income, the responsible entity [LMHA] must deduct the following amounts from annual income:~~

- 1) ~~\$480~~ **\$525** for each dependent **(adjusted annually by HUD, rounded to the next lowest multiple of \$25)**  
~~\$400~~
- 2) **\$525** for any elderly family or disabled family **(adjusted annually by HUD, rounded to the next lowest multiple of \$25)**
- 3) The sum of the following, to the extent the sum exceeds ~~three~~-ten percent of annual income:
  - (i) Unreimbursed **health and** medical expenses of any elderly family or disabled family
  - (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~~
- 4) Any reasonable child care expenses necessary to enable a member of the family to be employed, or to further his or her education. ~~or seek employment.~~

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7.

#### Anticipating Expenses

##### LMHA Policy

~~Generally, LMHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), LMHA will estimate costs based on historic data and known future costs.~~

~~If a family has an accumulated debt for health and medical or disability assistance expenses, LMHA will include as an eligible expense the portion of the expense that the family expects to pay during the period for which the income determination is being made. However, amounts~~

~~previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. LMHA may require the family to provide documentation of payments made in the preceding year.~~

When calculating health and medical care expenses, LMHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, LMHA will use information for the previous 12-month period.

### **6-III.B. DEPENDENT DEDUCTION**

~~A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co head 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)].~~

An allowance of **\$525** is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [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)].

### **6-III.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, co head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co head, or sole member is a person with disabilities [24 CFR 5.403].~~

A single deduction of ~~\$400~~ **\$525** is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [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].

### **6-III.D.- ~~MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]~~ HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b)]**

~~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 co-head 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].~~

Unreimbursed health and medical care expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed ten (10%) percent of annual income.

The 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 health and medical expense deduction, the health and medical expenses of all family members are counted.

#### **Definition of *Health and 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.”~~

HUD regulations define *health and medical expenses* at 24 CFR 5.603(b) to mean “any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.” Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

~~The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses.~~ Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting LMHA to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD’s mandatory deduction for health and medical care expenses.

#### LMHA Policy

LMHA will review each expense to determine whether it is eligible in accordance with HUD’s definition of *health and medical care expenses*.

LMHA may not defer to IRS Publication 502 to determine whether an expense is eligible for the health and medical care expenses deduction; certain expenses deemed ineligible in IRS Publication 502 may be considered eligible expenses in HUD programs (HOTMA Talking Points and Q&A for Multifamily Programs, 2024).



<p style="text-align: center;"><b>For Reference Only:</b>  <b>Summary of Allowable Medical Expenses from IRS Publication 502</b></p>	
<p>Services of medical professionals</p> <p>Surgery and medical procedures that are necessary, legal, non-cosmetic</p> <p>Services of medical facilities</p> <p>Hospitalization, long-term care, and in-home nursing services</p> <p>Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor</p> <p>Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)</p>	<p>Substance abuse treatment programs</p> <p>Psychiatric treatment</p> <p>Ambulance services and some costs of transportation related to medical expenses</p> <p>The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)</p> <p>Reasonable cost and continuing care of necessary service animals not to exceed the income of adult members claiming the expense.</p> <p>Medical insurance premiums or the cost of a health maintenance organization (HMO)</p>
<p><b>Note:</b> To be used for guidance only, PHA's may not defer to IRS Publication 502 to construct policy or determine whether an expense is eligible for the health and medical care expenses deduction. Certain expenses deemed ineligible in IRS Publication 502 may be considered eligible expenses in HUD programs (HOTMA Talking Points and Q&amp;A for Multifamily Programs, 2024).</p> <p><del><b>Note:</b> 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.</del></p>	

### **6-III.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.~~

Unreimbursed reasonable expenses for attendant care and auxiliary apparatus for each member of the family who is a person with disabilities 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.

### LMHA 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, LMHA will consider factors such as how the work schedule of the relevant family members 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 LMHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

### *Eligible Disability Expenses*

### *Eligible Auxiliary Apparatus*

~~Examples of auxiliary apparatus are provided in the HCV Guidebook as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].~~

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type or special equipment to assist a person who is deaf or hard of hearing.

### LMHA Policy

Expenses 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. Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. 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.

### LMHA 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.~~

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, LMHA 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 assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

## ***Necessary and Reasonable Expenses***

LMHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, LMHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and LMHA will consider, the family's justification for costs that exceed typical costs in the area. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

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

### LMHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older, a disabled family, or when a family also includes a person with disabilities that qualifies for a disability expense.

~~When expenses anticipated by a family could be defined as either health and medical or disability assistance expenses, LMHA will consider the health and medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.~~

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, LMHA will consider them health and medical care expenses unless ~~it is clear that~~ the expenses are incurred exclusively to enable a person with disabilities to work.

## **6-III.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *childcare 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 childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

### **Clarifying the Meaning of *Child* for This Deduction**

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 childcare expenses [HCV GB, p. 5-29].

### **Qualifying for the Deduction**

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

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).

### LMHA Policy

In evaluating the family’s request, LMHA 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***

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 denied if the family member's job search efforts are not commensurate with the child care expense being allowed by LMHA.

## ***Furthering Education***

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 child care claimed.

## ***Being Gainfully Employed***

### LMHA 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. The time spent in employment activities must be commensurate with the childcare claimed.

## **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)].

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, LMHA 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.

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 with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above **\$480** is excluded, childcare 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. (See Chapter 6-I.E. HOTMA eliminated the EID from HUD regulations. No new families may be added on or after January 1, 2024, and no family will still be receiving the EID after December 31, 2025).

### LMHA Policy

LMHA will 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].

### **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. LMHA 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 childcare [VG, p. 26].

### ***Allowable Child Care Activities***

#### LMHA 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 childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, LMHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare 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.

### ***Necessary and Reasonable Costs***

Childcare 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.

#### LMHA Policy

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care 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, LMHA will use the schedule of childcare costs from either the local welfare agency or from qualified professional services in the area. Families may present, and LMHA will consider justification for costs that exceed typical costs in the area.

## 6.III.G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]

### Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

#### Phased-In Relief

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible as of January 1, 2024. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first.

- For these families, the threshold amount is phased-in as follows:
- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.

Phased in Relief for Unreimbursed Health and Medical Care and/or Reasonable Attendant Care or Auxiliary Apparatus		
1	1 <sup>st</sup> (12 Months)	Expenses that exceed 5% of annual income
2	2 <sup>nd</sup> (12 Months)	Expenses that exceed 7.5% of annual income
3	After 24 Months	Expenses that exceed the 10% threshold of annual income

#### LMHA Policy

When an eligible family's phased-in relief begins at an interim reexamination, LMHA will process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a noninterim reexamination transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered



in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

### LMHA Policy

LMHA will track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in will continue for families who move to another public housing unit within LMHA's jurisdiction.

When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), LMHA will not continue the phased-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

When a family moves with continued assistance or ports to a new PHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The PHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

## **General Relief**

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in LMHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above.

### LMHA Policy

LMHA will obtain third-party verification of the hardship or will document in the file the reason third-party verification was not available. LMHA will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances.

LMHA defines a change in circumstances as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexam in accordance with LMHA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

- The family is awaiting eligibility determination for federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;
- The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or
- Other circumstances as determined by LMHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, LMHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

#### LMHA Policy

- LMHA will promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].
- LMHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 15 calendar days of the determination.
- If LMHA denies the hardship exemption request, the LMHA notice will also state that if the family does not agree with LMHA's determination, the family may request a hearing.
- If the family qualifies for an exemption, LMHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.
- If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.
- The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, LMHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. LMHA is not limited to a maximum number of 90-day extensions.

#### LMHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period.

- LMHA will extend relief for an additional 90-days if the family demonstrates to LMHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above.

- LMHA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by case basis provided the family continues to request extensions prior to the end of each hardship exemption period.
- Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.
- At any time, LMHA may terminate the hardship exemption if LMHA determines that the family no longer qualifies for the exemption.

### **Child Care Expense Hardship Exemption [24 CFR 5.611(d) and PIH Notice 2023-27]**

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the LMHA's satisfaction that the family is unable to pay their rent because of the loss of the child care expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, LMHA will recalculate the family's adjusted income and continue the childcare deduction.

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. LMHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. LMHA will consider qualification under this criterion on a case-by-case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

### **Hardship Requests**

#### LMHA Policy

- The family must provide third-party verification of the hardship with the request. If third-party verification is not available, LMHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period. LMHA will promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.
- If LMHA denies the request, the notice must specifically state the reason for the denial. LMHA will provide families 30 days' notice of any increase in rent.

- If LMHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to LMHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [PIH Notice 2023-27].
- LMHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 15 calendar days of the determination.
- If LMHA denies the hardship exemption request, the LMHA notice will also state that if the family does not agree with LMHA's determination, the family may request an informal hearing.
- If the family qualifies for an exemption, LMHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.
- Upon family qualification, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

## **Hardship Extensions and Terminations**

### LMHA Policy

LMHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in LMHA policies. LMHA is not limited to a maximum number of 90-day extensions.

- LMHA will promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If LMHA denies the request, the notice must specifically state the reason for the denial.
- LMHA will notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable. The family may request an extension either orally or in writing prior to the end of the hardship exemption period.
- LMHA will extend relief for an additional 90-days if the family demonstrates to LMHA's satisfaction that the family continues to qualify for the hardship exemption.
- LMHA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period.

- Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, LMHA may terminate the hardship exemption if LMHA determines that the family no longer qualifies for the exemption.

#### **6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(ii)] HOTMA**

Permissive are optional deductions that a Public Housing Agency (PHA) can choose to apply to a family's annual income to calculate their rent. These deductions are not mandatory, but if a PHA chooses to adopt them, they must be included in their Agency Compliance Plan (ACOP) and applied consistently to all eligible families.

##### LMHA Policy

LMHA has opted not to use permissive deductions.

## PART IV: CALCULATING FAMILY SHARE AND PHA SUBSIDY

### 6-IV.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

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

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted 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 LMHA

#### LMHA Policy

LMHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section **6-IV.B.**

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

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

#### LMHA Policy

Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 CFR 5.630; **FR-6476-N-01 – HUD-VASH OPERATING REQUIREMENTS**]***

#### LMHA Policy

The minimum rent for this locality is \$50, **including VASH voucher holders.**

#### **Family Share [24 CFR 982.305(a)(5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds LMHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy LMHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section **6-III.C.)**

#### **LMHA Subsidy [24 CFR 982.505(b)]**

LMHA will pay a monthly housing assistance payment (HAP) for a family that is equal to

the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section **6-IV.C.)**

### **Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]**

When the LMHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. ~~HUD permits LMHA to pay the reimbursement to the family or directly to the utility provider.~~

#### LMHA Policy

- LMHA will make utility reimbursements to the family.
- LMHA will issue all utility reimbursements monthly.

### **6-~~III~~.IV.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

#### **Overview**

~~LMHA establishes a minimum rent greater than zero; therefore, LMHA 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 LMHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

#### LMHA Policy

LMHA establishes a minimum rent greater than zero; therefore, LMHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

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

A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

Financial hardship includes the following situations:

- 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.
- The family would be evicted because it is unable to pay the minimum rent.
- Family income has decreased because of changed family circumstances, including the loss of employment.



- A death has occurred in the family.
- The family has experienced other circumstances determined by LMHA.

### LMHA Policy

Provision 1: For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following:

- Implementation of assistance, if approved, or
- The decision to deny assistance.

Provision 2: 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 to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

Provision 3: Family income has decreased because of changed family circumstances, including the loss of employment.

Provision 4: 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).

Provision 5: LMHA has not established any additional hardship criteria.

## **Implementation of Hardship Exemption**

### ***Determination of Hardship***

When a family requests a financial hardship exemption, LMHA must suspend the minimum rent requirement beginning the first of the month following the family's request.

LMHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

### LMHA Policy

LMHA 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.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

<b>Example: Impact of Minimum Rent Exemption</b>	
<b>Family Share – No Hardship</b>	<b>Family Share – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
Minimum rent applies  TTP = \$50	Hardship exemption granted  TTP = \$15

#### LMHA 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.

#### ***No Financial Hardship***

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

#### LMHA Policy

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

#### ***Temporary Hardship***

If LMHA determines that a qualifying financial hardship is temporary, LMHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay LMHA the amounts suspended. HUD requires LMHA to offer a reasonable repayment agreement, on terms and conditions established by LMHA. LMHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

## LMHA Policy

LMHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### ***Long-Term Hardship***

If LMHA determines that the financial hardship is long-term, LMHA 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 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.

## LMHA 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.

## **6-IV.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]**

### **Overview**

LMHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of LMHA's payment standards. The establishment and revision of LMHA's payment standard schedule are covered in Chapter 16.

*Payment standard* is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under LMHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If LMHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, LMHA must use the appropriate payment standard for the exception area.

LMHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, LMHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

### **Changes in Payment Standards**

When LMHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations [as described below](#):

#### ***Decreases***

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. LMHA will determine the payment standard for the family as follows:

**Step 1:** At the first regular reexamination following the decrease in the payment standard, LMHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

**Step 2:** LMHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by LMHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. LMHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless LMHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

#### ***Increases***

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

### ***Changes in Family Unit Size***

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

### **Reasonable Accommodation**

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, LMHA is allowed to establish a payment standard of not more than 120 percent of the current and effective fair market rent (FMR) without HUD approval as a reasonable accommodation per PIH notice 2013-03.

## **6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

### **Overview**

An LMHA-established utility allowance schedule is used in determining family share and LMHA subsidy. LMHA must use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using LMHA subsidy standards. See Chapter 5 for information on LMHA's subsidy standards.

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

### **Reasonable Accommodation**

HCV program regulations require a LMHA to approve a utility allowance amount higher than shown on LMHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation for air-conditioning, LMHA will approve an allowance for air-conditioning, even if LMHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide LMHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

## **Utility Allowance Revisions**

At reexamination, LMHA must use LMHA current utility allowance schedule [24 CFR 982.517(d)(2)].

### LMHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

## **6-III.E. PRORATED ASSISTANCE 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. LMHA must prorate the assistance provided to a mixed family. LMHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if LMHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, LMHA subsidy would be reduced to \$250.

## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS ANNUAL INCOME FULL DEFINITION

### 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~~

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

(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;~~

~~(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 260.31<sup>1</sup>; 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~~

~~(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, from private sources, or from an institution of higher education, shall be considered income to the 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.~~

~~(10) The amount of the "housing" portion of an athletic scholarship.~~

**(b) Annual income does not include the following:**

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family

assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from—

- (1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

(4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

(5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section);

(3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving

assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

(i) 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);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out of pocket expenses incurred (e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) 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.

(14) Earned income of dependent fulltime

students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) 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 in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) 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.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude 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 paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no

longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) 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; and

(ii) 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.



## HEALTH AND HUMAN SERVICES (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).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and childcare 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 childcare 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, childcare 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.

## EXHIBIT 6-2: 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 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 the inclusions, 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, childcare, 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 LMHA 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 LMHA'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 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;~~

~~(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.]~~

~~Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits~~

~~a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));~~

~~b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);~~

~~c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));~~

~~d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);~~

~~e) Payments or allowances made under the Department of Health and Human Services' Low Income Home Energy Assistance Program (42 U.S.C. 8624(f));~~

~~f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);~~

~~g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L. 94-540, 90 Stat. 2503-04);~~

~~h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);~~

~~i) Except as indicated in the ineligible student provisions of included income, the amounts of scholarships funded under title IV of the~~

~~Higher Education Act of 1965, including awards under federal work study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);~~

~~j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));~~

~~k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent product liability litigation, M.D.L. No. 381 (E.D.N.Y.);~~

~~l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);~~

~~m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e);~~

~~n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));~~

~~o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);~~

~~p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));~~

~~q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);~~

~~r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and~~

~~s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);~~

~~t) The Medicare incentive allowance~~

## EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

### 24 CFR 5.603(b) Net Family Assets

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must 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 therefore. 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 consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement

arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) 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 trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

## EXHIBIT 6-3: TREATMENT OF NET FAMILY ASSETS

### 24 CFR 5.603(b) Net Family Assets

(1) Net family assets are the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must 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. Therefore. 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 consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all non-necessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that

the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) 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 trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

<b>EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES: ELIMINATED PER HUD REGULATIONS (PIH NOTICE 2023-27, G.20)</b>
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**24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income. \*Note: EID end date: 12/31/2025**

*(a) Applicable programs.* The disallowance of increase in annual income provided by this section was applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

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

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities who had 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 who resided in housing assisted under one of the programs listed in paragraph (a) of this section or who received tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increased as a result of employment of a family member who was a person with disabilities and who was previously unemployed for one or more years prior to employment.

(2) Whose annual income increased as a result of increased earnings by a family member who

was a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increased as a result of new employment or increased earnings of a family member who was a person with disabilities, 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 responsible entity 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 and 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.

*(c) Disallowance of increase in annual income—*

(1) Initial twelve-month exclusion. During the cumulative twelve-month period which began on the date a member who is a person with disabilities of a qualified family was first employed or the family first experienced an increase in annual income attributable to employment, the responsible entity must have exclude from annual income (as defined in the regulations governing the applicable program

listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who was a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve-month exclusion and phase- in. During the second cumulative twelve-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experienced an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four-year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) was limited to a lifetime 24-month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the period starting from the initial exclusion under paragraph (c)(1) of this section.

*(d) Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## EXHIBIT 6-5: 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).

**(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 Sec. 5.603.

*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.**

(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 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 Sec. 966.55(e) 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 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.