**Chapter 6.B.**

**INCOME AND RENT DETERMINATIONS UNDER HOTMA 102/104**

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

**This chapter is applicable upon the PHA’s HOTMA 102/104 compliance date. Prior to this date, the PHA will follow policies as outlined in Chapter 6.A. of the model policy.**

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to income and rent determinations as follows:

* Part I: Annual Income
* Part II: Assets
* Part III: Adjusted Income
* Part IV: Calculating Rent

PART I: ANNUAL INCOME

6-I.A. OVERVIEW [24 CFR 5.609]

Section 6-I.A of the model ACOP provides the general definition of *annual income* and explains how Part I is organized. The full texts of HUD regulations are provided in exhibits at the end of Chapter 6 of the ACOP as follows:

* *Annual Income Full Definition* (Exhibit 6-1)
* *Treatment of Family Assets* (Exhibit 6-2)
* *The Effect of Welfare Benefit Reduction* (Exhibit 6-3)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of Part I 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.

**No PHA policy decisions are required.**

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

**Overview**

This section in the ACOP discusses household composition only as it relates to income calculations. Additional information on household composition as it relates to eligibility is found in Chapter 3 of the model ACOP.

Review the chart included in the model ACOP that summarizes how family composition affects income determinations. **No PHA policy decisions are required.**

**Temporarily Absent Family Members**

Unlike the previous version of the regulations, the current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence. This section of the plan provides PHA policies on several types of temporarily absent family members.

**☑ Decision Point: How will the PHA determine whether a family member is temporarily or permanently absent?**

Things to Consider

* The regulations no longer specifically address temporarily absent family members. Option 1 makes clear that the income of all family members approved to live in the unit, even if temporarily absent, are included in income, unless specifically excluded by the regulations.
* The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.
* It may or may not be financially advantageous for the family to continue to consider an absent person as a member of family. The model ACOP uses 180 days as the dividing line between temporary and permanent absences. This is not regulatory. However, the concept is consistent with the HCV regulation that address absence of the entire family from the unit [24 CFR 982.312].
* The definition of “temporarily” absent is also contained in section 3-I.L., Absent Family Members. If changes are made to the policy here, they must also be made in Chapter 3.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Absent Students***

HUD does not specifically address students who are absent from a household. Although this issue would also apply to students under 18 years who are living away from the family, the major focus of this policy is to deal with students 18 and above who may or may not still be family members.

**☑ Decision Point: How does the PHA wish to address family membership for students living away from home?**

Things to Consider

* Since the earned income of a full-time student above the amount of the dependent deduction is excluded from annual income, a family generally benefits by continuing to count the student as a family member. The family retains the dependent deduction. The student’s presence in the family may or may not make a difference in voucher size.
* The model language basically enables staff to assume the student is a family member unless evidence to the contrary is available or the family declares the student is no longer a family member.
* This policy is also contained in section 3-I.L., Absent Family Members. If changes are made to the policy here, they must also be made in Chapter 3.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***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].

**☑ Decision Point: How will the PHA determine whether a child’s placement in foster care is temporary or permanent?**

Things to Consider

* This policy is also contained in section 3-I.L., Absent Family Members. If changes are made to the policy here, they must also be made in Chapter 3.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will continue to be counted as a family member.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

**☑ Decision Point: Will the PHA permit an exception to the 180-day rule for absent persons in the case of an absent head, cohead or spouse?**

Things to Consider

* The model policy makes an exception for persons designated as the head, cohead, or spouse if the reason for the absence is employment. This would include, for instance, a head of household who does construction work in another state, or a spouse who has been called to active military duty. In such circumstances the absent family member remains a member of the family and all of the employment income is considered available to the household.
* Alternatively, the PHA could follow the general 180 day policy, determine that the absent person is no longer a member of the family, and count only regular income that the absent person sends to the family.
* This policy is also contained in section 3-I.L., Absent Family Members. If changes are made to the policy here, they must also be made in Chapter 3.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Edit the model ACOP to reflect the PHA’s policy.*

🞎 *Option 3: Delete the model ACOP language.*

*Note: This means that a head, spouse, or cohead absent more than 180 consecutive days will not be considered a member of the family.*

***Family Members Confined for Medical Reasons***

If a family member is confined to a nursing home or hospital on a permanent basis, PHAs may determine that that person is no longer a member of the assisted household, and the income of that person is not counted [New PH OCC GB, *Income Determinations*, p. 12].

**☑ Decision Point: How will the PHA treat family membership for a family member who is permanently confined for medical reasons?**

Things to Consider

* Counting the confined person as a family member could be either an advantage or a disadvantage to the family. If income attributable to the family member is limited and deductible expenses are high, the family generally will pay a lower rent by counting the confined person as a member of the family. If the reverse were true (high income, low expenses), not counting the person would be more advantageous.
* Using the same regulation, Handbook 4350.3 (for multifamily housing programs) permits the family to decide whether to consider the person a family member but specifies that a permanently absent family member cannot be the head or spouse. This policy is offered as Option 2. However, you should be aware that using this policy means not following HUD’s safe harbor recommendation for the HCV program (there are no safe harbor recommendations for the public housing program). Although a HUD reviewer could question the decision, using Option 2 should not result in a monitoring finding.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA 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 cohead qualifies as an elderly person or a person with disabilities.

🞎 *Option 2: Use the policy permitted by Handbook 4350.3. Delete the language in the model ACOP and insert the language below.*

An individual permanently confined to a nursing home or hospital may not be named family head, spouse, or cohead but may continue as a family member at the family’s discretion. The family has a choice with regard to how the permanently confined individual’s income will be counted. The family may elect either of the following:

*Include* the individual’s income and receive allowable deductions related to the medical care of the permanently confined individual.

*Exclude* the individual’s income and do not receive allowances based on the medical care of the permanently confined individual.

🞎 *Option 3: Use another PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Joint Custody of Children**

When a joint custody agreement causes a child to live in more than one location, the PHA must determine whether the child is a member of an assisted family.

**☑ Decision Point: How will the PHA determine family membership in the case of joint custody?**

Things to Consider

* Generally speaking, a family declares who the members of the family are. The PHA’s main concern in this area is that a child not be counted as a dependent in two assisted households.
* Two major considerations in making this decision are whether or not the family has primary custody, and the amount of time dependents subject to a joint custody arrangement actually live in the household.
* The model ACOP states that a dependent in these circumstances must live in the unit 50 percent or more of the time, in order to be considered a member of the assisted family. This language is based on guidance in Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs.*
* PHA staff need guidance about how to handle the situation when there is a dispute about who should benefit from the dependent deduction. The model ACOP includes this guidance.
* This policy is also contained in section 3-I.L., Absent Family Members. If changes are made to the policy here, they must also be made in Chapter 3.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, an IRS income tax return showing which family has claimed the child for income tax purposes, school records, or other credible documentation.

🞎 *Option 2: Use another PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Caretakers for a Child**

This policy is intended to address those relatively rare and temporary circumstances in which children remain in a unit without a parent or designated guardian. This might happen in the case of the death of the parent. In such circumstances, the care arrangements for the child may be formal or informal.

**☑ Decision Point: How will the PHA determine whether a caretaker is a family member?**

Things to Consider

* The model ACOP makes a distinction between an official caretaker (designated by a public agency) and an informal one (friend or relative).
* The PHA must address whether and when a caretaker becomes a family member.
* The PHA must address how the income of the new guardian will be handled and at what point entitlement to the voucher transfers to the caretaker.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

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.

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

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

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-I.C. CALCULATING ANNUAL INCOME

The methodology used for calculating annual income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination.

**Anticipating Annual Income [24 CFR 5.609I(1)]**

At initial occupancy and for an interim reexamination of family income, the PHA is required to use anticipated income (current income) of the family for the upcoming 12-month period.

**☑ Decision Point: How will the PHA anticipate annual income at new admission and reexam?**

Things to Consider

* The PHA generally will use current circumstances to determine anticipated income for the coming 12-month period. However, HUD authorizes the PHA to use past income in certain circumstances.
* The PHA must have a policy that determines under what conditions current circumstances will not be used. The purpose of this policy is to help staff and families understand both when another method would be appropriate and what the alternative approach would be.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed*.

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, seasonal employment, unstable working hours, or suspected fraud), the PHA 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.

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 the PHA to show why the historic pattern does not represent the family’s anticipated income.

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

***Known Changes in Income***

If the PHA verifies an upcoming increase or decrease in income at admission or annual reexamination, annual income will be projected 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 new admission or interim reexamination. In such a case the PHA would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 40 hours × 45 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 the PHA 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 PHA policy in Chapter 9.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy*.

**Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2)]**

The PHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA uses a streamlined income determination under 24 CFR 5.657(d) or 960.257. Policies relating to this topic are located in Chapter 9. **No PHA policy decisions are required.**

6-I.D. EARNED INCOME

This section of the model ACOP lists types of **earned** income and specifies whether they are included in or excluded from annual income. Read the model ACOP to review the complete list of earned income sources to make sure that your PHA is complying with HUD’s requirements. PHA policy decisions are needed in some areas.

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

The regulation at 24 CFR 5.609(a) requires the PHA to include in annual income 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. 24 CFR 5.100 defines *earned income* as 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. While some forms, like regular wages and salaries, may be fairly easy to anticipate, other forms, like bonuses and commissions, may vary considerably from one pay period to the next.

**☑** **Decision Point: How will the PHA calculate earned income?**

Things to Consider

* The regulations do not explicitly state that gross wages are included in annual income. Therefore, the model policy makes clear the PHA will count the gross amount of earned income.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will include in annual income the gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, the PHA 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 PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Military Pay***

No PHA policy decisions are required.

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

No PHA policy decisions are required.

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

No PHA policy decisions are required.

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

24 CFR 5.609(b)(28) indicates that net income from a business or profession must be included in annual income. The complete text of the regulation is provided in the model ACOP. PHA policies are required in the following areas:

* Definitions for calculating business income
* Treatment of negative net income
* Withdrawals from a business
* Co-owned businesses

HUD uses several financial terms in the regulation but does not define them. The model ACOP clarifies the meaning of these terms.

**☑** **Decision Point: How will the PHA determine what qualifies as a business expense?**

Things to Consider

* IRS regulations provide a consistent standard for evaluating business expenses. However, IRS rules also address issues that are rare for the types of business that generally will be owned by families receiving housing assistance. The PHA may wish to develop its own description of business expenses that is tailored to the types of businesses actually encountered.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

To determine business expenses that may be deducted from gross income, the PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Independent Contractors**

No PHA policy decisions are required.

**Business Expansion**

HUD rules specify that the cost of business expansion may not be used to determine net income from a business but does not define *business expansion*.

**☑** **Decision Point: How will the PHA define *business expansion*?**

Things to Consider

* The definition provided in the model ACOP is not found in IRS rules but provides a supportable, yet simple, definition of *business expansion*.

🞎 *Option 1*: *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate a 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Capital Indebtedness**

HUD rules specify that amortization of capital indebtedness cannot be counted as a business expense for the purpose of determining net income. The language included in the model ACOP explains what this means and clarifies how capital indebtedness is handled in rent calculations.

**☑** **Decision Point: How is *capital indebtedness* defined?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Negative Business Income**

The model ACOP borrows language from HUD Handbook 4350.3 [p. 5-10] to clarify that no income will be counted if business income is negative and that losses cannot offset other income. **No PHA policy decisions are required.**

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

The regulation requires the PHA to include in annual income the value of cash or assets withdrawn from a business unless the withdrawal reimburses a family member for investments the family has made in the business. However, it gives no guidance about what constitutes an investment that may be reimbursed.

**☑** **Decision Point: How will the PHA define investments in a business that may be reimbursed?**

Things to Consider

* The model ACOP identifies both cash investments and “in-kind” contributions that would be considered investments in a business. You may want to identify other types of investments that are typical of businesses encountered among public housing residents.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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, the PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Co-owned Businesses**

The regulation and HUD guidance do not provide information about how to treat a business that is co-owned by someone who is not a member of the family.

**☑** **Decision Point: How will the PHA treat the income from a business that is co-owned by someone who is not a member of the family?**

Things to Consider

* Since HUD is silent on this subject, the ACOP could also remain silent. If co-owned businesses are rare, you may wish to eliminate this language.
* The intent of including this language is to help staff evaluate whether the income the family claims from the business is realistic.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Assets Owned by a Business Entity**

This section described assts owned by a business entity. **No PHA policy decisions are required.**

**6-I.F. STUDENT FINANCIAL ASSISTANCE [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: Title IV HEA Assistance and other Student Financial Assistance. The full amount of assistance under Title IV of the HEA is excluded, and may include the amounts that exceed the actual covered costs of the student for other types of financial assistance.

**☑** **Decision Point: How will the PHA calculate income from student financial assistance?**

Things to Consider

* All assistance under Title IV HEA Assistance must be excluded from income. This exclusion must be taken first. Student Financial Assistance can then be applied to any remaining actual covered costs. Once actual costs are covered, any remaining Student Financial Assistance would be considered income. However, if there is no remaining actual covered costs, this assistance would be counted as income.
* In the Student Financial Assistance Resource Sheet, HUD lists the following steps to calculate student financial assistance. The model policy in Option 1 is based on these steps.
  1. Calculate the “actual covered costs.”
  2. Apply the Title IV HEA Assistance.
  3. Subtract the actual covered costs from the total amount of Title IV HEA Assistance.
     1. If the amount of assistance excluded as Title IV HEA Assistance is equal to or exceeds the actual covered costs, none of the assistance included under “Student Financial Assistance” would be excluded from income. This is because this assistance would no longer be needed to cover actual costs and therefore would not meet the definition of Student Financial Assistance.
     2. If the amount of Title IV HEA Assistance is less than the actual covered costs, go to the next step. 4. Exclude the amount of Student Financial Assistance up to the amount of the remaining actual covered costs (those not covered by Title IV HEA Assistance).
* Student financial assistance excluded from income is the lower of either:
  + The total amount of scholarships and grants the student received that are not covered by 479B of the of the HEA or
  + The amount by which the student’s actual covered costs exceeds the assistance the student received that is excluded under section 479B of the HEA.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

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

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| **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 |

When a student receives assistance from both Title IV of the HEA and from other sources, the PHA 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, the full amount of the other financial assistance will be included in the family’s annual income.

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| **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 $5,000 |

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

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| **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 |

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| **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. |

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-I.G. PERIODIC PAYMENTS [Notice PIH 2023-27]

HUD regulations specify periodic payments that are not included in annual income.

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

HUD requires that PHAs include in annual income most lump-sums and prospective amounts that are received as the result of delays in the processing of ongoing forms of periodic income. However, the regulation specifically exempts deferred Social Security and SSI lump-sum payments, and deferred disability benefits from the Department of Veterans Affairs from this requirement. Deferred lump-sum payments from these sources are **not** counted as income whether they are paid in a single lump-sum or in prospective monthly amounts [24 CFR 5.609(b)(16)].

There are three issues the PHA must address related to lump-sums received as a result of the delayed start of a periodic payment:

* When must the family report receipt of the payments?
* When the lump-sum is reported, will the PHA make a retroactive adjustment of the family’s share or include the amount in prospective rent calculations?
* If the family owes the PHA as a result of a retroactive calculation, under what circumstances will the PHA offer a repayment agreement?

**☑** **Decision Point: How will the PHA handle lump-sum delayed-start payments?**

Things to Consider

* **Interim Reporting.** The PHA will need to consider whether the amounts received would trigger an interim under the regulations. If so, then the PHA is required to conduct an interim.
* **Prospective and Retroactive Calculations.** The second major consideration is whether the PHA will include the lump sum prospectively (as anticipated income at the time of a new reexamination) or complete a retroactive calculation of family share and PHA subsidy. This will largely depend on whether the PHA is conducting an annual or an interim recertification at the time the lump sum is reported.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

When a delayed-start payment is received that is to be included and the family reports during the period in which the PHA is processing an annual reexamination, the PHA 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 the PHA is processing an annual reexamination, then the PHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PHA will conduct an interim in accordance with PHA policies in Chapter 9. If not, the PHA will consider the amount when processing the family’s next annual recertification.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

No PHA policy decisions are required.

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

The regulations do not address overpayments by the Social Security Administration.

**☑** **Decision Point: How will the PHA handle overpayments by the Social Security Administration?**

Things to Consider

* The gross amount of Social Security benefit income, prior to Medicare or other deductions, must be counted as income. However, if Social Security benefits are reduced to make up for prior overpayments, HUD’s previous policy dictated that PHAs count the income the Social Security Administration will provide (the amount received)—not the amount that would have been provided if no error had been made.
* Notice PIH 2023-27 states “Annual income includes ‘all amounts received,’ not the amount that a family may be legally entitled to receive but which they do not receive.”
* Based on previous HUD guidance and the statement in Notice PIH 2023-27, the model states the PHA will include the lower amount of the payment when it results from a previous overpayment by the SSA.
* However, this does not apply when the family member’s benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts. The PHA must use the gross amount of the income, prior to the reduction, to determine a family’s annual income.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the PHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**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 [Notice PIH 2023-27].

**☑ Decision Point: How will the PHA handle payments for alimony and child support?**

Things to Consider

* The regulations do not explicitly state that alimony and child support is counted as income. Option 1 of the model policy makes this clear.
* Notice PIH 2023-27 states the 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.
* HUD strongly encourages PHAs to determine in their policies what documentation is required to show what the family receives. Chapter 7 indicates how the PHA will verify child support and alimony payments.
* The PHA should specify in the PHA’s policy the time period considered to be a lapse in payments. The model policy relies on language from the Public Housing Occupancy Guidebook to define this.
* Depending on the agency, parents who owe child support arrears may have a large lump sum taken from their annual tax refund. The PHA will need to determine how to handle these lump sums. However, HUD advises PHAs to avoid annualizing these amounts, which can result in grossly over counting the tenant’s anticipated income from child support.
* The PHA must also determine what it will consider to be a lump sum payment and whether to include that payment in the family’s annualized amount. The model policy relies on language from the *Public Housing Occupancy Guidebook* to define this amount.
* PHAs may want to distinguish between regular and irregular payments. The model policy relies on language from *the Public Housing Occupancy Guidebook* to define this.
* The PHA’s policy will determine how it will handle irregular child support payments. The PHA can specify a time period to add payments and then annualize. The PHA’s policy also will determine if lump sum payments will be added after annualizing.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement unless the family certifies and the PHA verifies that the payments are not being made.

*Family Claims No Payments Being Received:* In order to verify that payments are not being made, the PHA will review child support payments over the last three months. If no payments have been made in the past three months and there are no lump sums, the PHA will not include alimony or child support in annual income.

*Payments Being Received:* If payments are being made regularly, the PHA 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, the PHA will average all payments that have been made.

*Lump Sum Payments:* At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the PHA 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 the PHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

The regulations define nonrecurring income as income that will not be repeated in the coming year based on information provided by the family, is excluded from annual income. 24 CFR 5.609(b)(24) provides a list of income that is excluded as temporary, nonrecurring or sporadic. **No PHA policy decisions are required.**

**6-I.I. WELFARE ASSISTANCE**

The model ACOP identifies welfare assistance as a type of income that must be counted. It also summarizes the rules for counting welfare income when a sanction has been imposed by a welfare agency for noncompliance with certain requirements. Read the language in the model ACOP to make sure that your PHA is in compliance. **No PHA policy decisions are required.**

6-I.J. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]

No PHA policy decisions are required.

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

No PHA policy decisions are required.

6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b); FR Notice 1/31/2024]

Other exclusions contained in 24 CFR 5.609(b) and FR Notice 1/31/2024 that have not been discussed earlier in this chapter are listed here.

***State and Local Employment Training Programs [24 CFR 5.609(b)(12)(iv)]***

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.

**☑** **Decision Point: How will the PHA treat income from state and local employment training programs?**

Things to Consider

* The PHA must clarify the meaning of *training program* and *incremental earnings and benefits.* Since both of these terms were defined by HUD in expired Notice PIH 98-2, the model ACOP adopts these HUD definitions as safe harbor.
* The PHA must develop a policy indicating how it will determine pre-enrollment income. HUD permits the PHA to make a policy that would define pre-enrollment income based upon recent history rather than current circumstances [see expired Notice PIH 98-2].
* The regulation permits this exclusion only while the individual participates in the training program. Therefore, the PHA must specify what kind of notification is required when the family member stops participating in the training program. The model ACOP references the PHA’s reexamination policy. Therefore, the family would be required to report the end of the training program only if the PHA’s interim reporting policy covers this kind of change. You may wish to consider modifications to your interim reporting policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The PHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3-4].

In calculating the incremental difference, the PHA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the PHA's interim reporting requirements (see Chapter 11).

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**PART II: ASSETS**

**6-II.A.** **OVERVIEW**

Part II of the model ACOP discusses net family assets, which are defined in 24 CFR 5.603(b)(1). While the regulations also provide a list of assets that are excluded from the calculation of annual income, they do not provide a list of those assets that are included. The model policy explicitly states both assets that are included and excluded from annual income.

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

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The model ACOP provides a policy clarifying how the PHA will deal with situations in which something other than current circumstances is used to determine income from an asset.

**☑** **Decision Point: What actions will the PHA take when information other than current circumstances is used to determine income from an asset?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The PHA will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) the PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income, but the property is currently vacant, the PHA 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 the PHA to show why the asset income determination does not represent the family’s anticipated asset income.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

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

***Minimum Threshold***

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

**☑** **Decision Point: What minimum threshold will the PHA establish for disregarding small amounts of assets disposed of for less than fair market value?**

Things to Consider

* Establishing such a policy enables the PHA to disregard minimal amounts given as charitable contributions or cash gifts to persons outside the family.
* The amount should be high enough to relieve the PHA and the family of dealing with small gifts or contributions. The model ACOP language is consistent with *guidance* given for HUD’s multifamily housing programs in Handbook 4350.3. Although this handbook does not apply to the public housing program, it does reflect an amount that HUD has determined is reasonable.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA 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.

🞎 *Option 2: Keep the model ACOP language but change the threshold from $1,000 to $\_\_\_\_\_\_\_\_\_.*

🞎 *Option 3: Do not establish a threshold. Delete the model ACOP language related to this item.*

🞎 *Option 4: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Separation or Divorce***

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

**☑** **Decision Point: How will the PHA address the regulatory requirement to determine whether a family member received important consideration in a separation or divorce settlement?**

Things to Consider

* The PHA is not in a position to assess the nature or value of the consideration an individual receives as a result of a divorce or separation. Therefore the model ACOP specifies that in the case of separation or divorce, the PHA will always assume the family member receives acceptable consideration.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Foreclosure or Bankruptcy***

No PHA policy decisions are required.

***Family Declaration***

**☑** **Decision Point: The PHA needs to describe the declaration process.**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

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

**☑** **Decision Point: How will the PHA determine the value of personal property held as an investment?**

Things to Consider

* Determining what is a necessary item of personal property is a highly fact-specific determination, and therefore it is incumbent on PHAs to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

🞎 *Option 1*: *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Checking and Savings Accounts***

HUD considers bank accounts as non-necessary items of personal property. Whether or not non‑necessary personal property is counted toward net family assets depends on the combined value of all of the family’s assets. **No PHA policy decisions are required.**

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

No PHA policy decisions are required.

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

**☑** **Decision Point:** **How will the PHA calculate income from investment accounts?**

Things to Consider

* The regulations do not specifically address all types of investment accounts. 24 CFR 5.603(b)(1) lists stocks, bonds, and other forms of capital investments.
* For clarity, Option 1 lists stocks, bonds, savings certificates, money market funds, and other investment accounts.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will include interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

In determining the market value of an investment account, the PHA will use the value of the account on the most recent investment report.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Lump-Sum*** ***Additions to Net Family Assets [24 CFR 5.609(b)(24(viii)******; Notice PIH 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 [24 CFR 5.609(b)(24)(vii)]. Lump-sums received as part of civil rights settlements or judgments, including settlements or judgments for back pay are also excluded under the regulations [24 CFR 5.609(b)(24)(viii)].

**☑** **Decision Point:** **When will lump sum receipts be counted as assets?**

Things to Consider

* PHAs would consider any actual or imputed returns from lump-sum receipts as income at the next applicable income examination. Policies related to conducting interims when a lump sum is received are found in Chapter 11.
* 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. As an example, consider a family with no net family assets that receives a civil rights settlement in the amount of $20,000. Upon receiving the settlement, the family’s assets increased to $20,000, but the $20,000 settlement is not included in the family’s income. At the family’s next income examination, any actual income earned from the $20,000 (e.g., interest or investment income) will be included in the family’s income. For instance, if at the family’s next annual income examination after the family received the $20,000 civil rights settlement, the actual income earned from investing the $20,000 is $500, then $500 will be included in the family’s income.
* Furthermore, if a civil rights settlement or judgment increases the family’s net family assets such that they exceed the HUD-published threshold amount (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)](https://www.ecfr.gov/current/title-24/section-5.609#p-5.609(a)(2)). This threshold amount is $51,600 for 2025.
* If the imputed income, which HUD considers unearned income, increases the family’s annual adjusted income by ten 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.

🞎 *Option 1*: *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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 $10,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

This section describes policies regarding jointly owned assets. **No PHA policy decisions are required.**

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

This section discusses revocable and irrevocable trusts and whether they are included in net family assets. **No PHA policy decisions are required.**

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

While the cash value of an insurance policy is considered an asset, the face value of any policy is not. **No PHA policy decisions are required.**

***Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 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. **No PHA policy decisions are required.**

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

24 CFR 5.603(b) lists asset exclusions. **No PHA policy decisions are required.**

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

***Net Family Assets***

This section defines net family assets.

**☑** **Decision Point: What are considered reasonable costs that would be incurred when disposing of an asset?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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 [New PH OCC GB, *Income Determinations,* p. 24].

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Actual Income from Assets***

This section discusses when actual income from assets is calculated. **No PHA policy decisions are required.**

***Imputed Income from Assets***

This section discusses when actual income from assets is calculated. **No PHA policy decisions are required.**

PART III: ADJUSTED INCOME

6-III.A. INTRODUCTION

**Overview**

Part III of the model ACOP discusses five mandatory deductions from annual income provided for in the regulations at 24 CFR 5.611. These deductions include:

* $480 for each dependent (adjusted annually for inflation)
* $525 for any elderly family or disabled family (adjusted annually for inflation)
* Unreimbursed health and medical care expenses
* Unreimbursed disability assistance expenses that enable a family member to work
* Reasonable childcare expenses that enable a family member to seek work, be employed, or pursue his or her education

Section 6-III.A of the model ACOP discusses PHA policies with respect to calculating expenses.

**Anticipating Expenses**

**☑ Decision Point: How will the PHA calculate expenses related to deductions?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt 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. The PHA may require the family to provide documentation of payments made in the preceding year.

When calculating health and medical care expenses, the PHA 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 re-examination, the expenses were calculated based on the appropriate verification” [New PH OCC GB, *Income Determinations,* p. 30]. For annual reexaminations, the PHA will use information for the previous 12-month period.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-III.B. DEPENDENT DEDUCTION

No PHA policy decisions are required.

6-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION

No PHA policy decisions are required.

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

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

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

**☑ Decision Point: Will the PHA further define *health and medical care expenses* beyond the HUD-definition?**

Things to Consider

* While PHA policies may not specifically align with IRS Publication 502, HUD recommends PHAs use it as a standard for determining allowable expenses, and the PHA may list examples of allowable expenses in their policy provided they comply with HUD’s definition at 24 CFR 5.603.
* The PHA may not define *health and medical care expenses* more narrowly than the regulation.
* The PHA may simply list HUD’s definition of health and medical care expenses in its policy without further elaborating on allowable expenses, however, Option 1 lists some typical allowable expenses in order to cut down on inconsistencies in interpretation. Note, the chart is not all inclusive and the PHA may allow other types of health and medical care expenses.
* The chart in Option 1 uses IRS Publication 502 as a guide. While the PHA could develop its own list of eligible medical expenses, this would be time-consuming and would likely not be substantially different from the IRS list.
* NMA recognizes the multitude of fair housing issues that arise when setting medical expense policies. We strongly suggest that you consult with all available HUD and FHEO resources before finalizing this portion of your policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will use the most current IRS Publication 502 as a standard for determining if expenses claimed by eligible families qualify as health and medical care expenses. However, under no circumstances will the PHA deduct any expenses listed in IRS Publication 502 that do not conform with HUD’s definition of *health and medical care expenses.*

|  |  |
| --- | --- |
| **Summary of Typical Allowable Health and Medical Care Expenses** | |
| Services of medical professionals  Surgery and medical procedures that are necessary, legal, and non-cosmetic  Services of medical facilities  Hospitalization, long-term care, and in-home nursing services  Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor  Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)  Medical insurance premiums or the cost of a health maintenance organization (HMO)  Medicare Part B and Part D premiums | Substance abuse treatment programs  Psychiatric treatment  Ambulance services and some costs of transportation related to medical expenses. The PHA will use the most current medical mileage rate listed in IRS Publication 502.  The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)  The costs of buying, training, and maintaining a guide dog or other service animal to assist a visually impaired or hearing disabled person, or a person with other physical disabilities. In general, this includes any costs, such as food, grooming, and veterinary care, incurred in maintaining the health and vitality of the service animal so that it may perform its duties. |
| **Note:** This chart provides a summary of eligible health and medical care expenses only. In all cases, the PHA will consider whether health and medical expenses care expenses claimed by the family are eligible under HUD’s definition. | |

Before placing health, medical, or disability expense bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual’s specific diagnosis, information regarding the individual’s treatment, and/or information regarding the nature or severity of the person’s disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual’s file. If the information needs to be disposed of, the PHA will note in the individual’s file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will the PHA include an applicant’s or resident’s medical records in the file [Notice PIH 2010-26].

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

In elderly or disabled households, it is possible that the same expense could be considered either a medical expense or a disability assistance expense. The PHA must clarify for staff how these expenses will be handled.

**☑ Decision Point: How will the PHA count expenses that could be classified as either medical or disability assistance expenses?**

Things to Consider

* It might appear to make no difference as long as the expense is deducted. But, the decision can have a significant impact on a family’s adjusted income because medical expenses are not limited by the earned income of a person enabled to work. See the example below.

|  |  |
| --- | --- |
| **Example: Impact of Counting an Expense as Medical or Disability Assistance**  A family consists of a head of household and a spouse who is a person with disabilities. The family has expenses of $10,000 annually in nursing care for the spouse. The family’s annual income is $15,000, including $8,000 earned by the head of household and $7,000 from other sources. | |
| If the care is considered a medical expense, the PHA will deduct $9,550 from annual income.  All medical expenses that exceed 10% of annual income will be deducted:  0.10 × $15,000 = $1,500  $10,000 – $1,500 = $8,500 | If the care is considered a disability assistance expense, the PHA will deduct $8,000 from annual income.  The expense will be capped by the income that the disability assistance allows the head of household to earn, or $8,000. |

* The model ACOP provides the maximum allowable benefit to families by recommending that expenses that could be classified as either medical or disability assistance expenses be classified as medical expenses.
* This does not prevent the PHA from determining that some expenses must be classified as disability assistance expenses. For example, if a person with disabilities is the one who is enabled to work, an expense that is obviously completely work related (such as special equipment used only to permit a deaf person to communicate with other employees) would not be considered a medical expense.
* The alternatives to the model ACOP language would be (1) to count all such expenses as disability assistance expenses or (2) to develop a list of expenses and explain how each should be handled.
* The decision here should be consistent with the language used in section 6-II.E below.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, the PHA 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.

🞎 *Option 2: Count all expenses that could be classified either way as disability assistance expenses. Delete the model ACOP language and insert the following:*

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, the PHA will consider them disability assistance expenses.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-III.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 5.611(a)(3)(ii)]

Unreimbursed disability assistance expenses may be deducted to the extent that the sum of those expenses and any medical expenses for which a family is eligible exceed three percent of annual income.

HUD recommends that PHAs further define and describe eligible auxiliary apparatus [VG, p. 30]. The model ACOP recommends that the PHA further elaborate on the following topics:

* Implementing the earned income limit, including determining which family is enabled to work
* Defining eligible, necessary, and reasonable disability expenses
* Classifying medical and disability expenses

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

When more than one family member is enabled to work, the PHA must establish whose earned income to count when determining the cap on disability expenses. The earned income used to limit the deduction is earned income before any exclusions or disallowances are taken (column 7d of form HUD-50058).

**☑ Decision Point: How will the PHA determine who is enabled to work as a result of disability assistance expenses?**

Things to Consider

* Determining which family member is enabled to work may be straightforward in some situations, but in others it can be quite complex (e.g., when the person with disabilities and another family member are both enabled to work or when a family includes two other working adults).
* A family may be able to demonstrate that disability assistance expenses enable more than one family member to work. The model ACOP follows the safe harbor guidance in the *Public Housing Occupancy Guidebook,* which states that, in such instances, the incomes of the family members enabled to work
* are to be combined to determine the cap on expenses. [New PH OCC GB, *Income Determinations,* p. 28]

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the PHA 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 the PHA 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. [New PH OCC GB, *Income Determinations*, p. 28]

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Eligible Auxiliary Apparatus [Notice PIH 2023-27]***

No PHA policy decisions are required.

***Eligible Attendant Care*** ***[Notice PIH 2023-27]***

When a family includes a person with disabilities, the family determines the type of attendant care, if any, that is appropriate for the person. HUD has not provided detailed guidance on the types of attendant care that are eligible for deduction. To ensure consistency, the PHA should elaborate on what this care includes.

**☑** **Decision Point: What activities can be considered attendant care?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Payments to Family Members***

No policy decisions required.

**Necessary and Reasonable Expenses**

The regulation requires disability assistance expenses to be “necessary” and “reasonable,” but HUD provides no further definition of these terms. It is not appropriate for PHA staff to determine the medical or care needs of a person with disabilities. Therefore the person’s family, not the PHA, must determine the type of attendant care or auxiliary apparatus that is necessary. However, the PHA must still determine whether the cost of the disability assistance is reasonable.

**☑** **Decision Point: How will the PHA determine whether disability assistance expenses are necessary and reasonable?**

Things to Consider

* The model ACOP language requires the PHA to investigate typical costs in order to determine what is reasonable in the area. You may wish to elaborate on this discussion to describe how the PHA will collect the information (e.g., whether a formal or informal survey will be conducted, who will be contacted, how often, etc).

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the PHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the PHA will consider, the family’s justification for costs that exceed typical costs in the area.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

In elderly or disabled households, it is possible that the same expense could be considered either a health and medical care expense or a disability assistance expense. The PHA must clarify for staff how these expenses will be handled.

**☑ Decision Point: How will the PHA count expenses that could be classified as either health and medical care or disability assistance expenses?**

Things to Consider

* See section 6-III.D for a full discussion of this issue.
* To ensure consistency, the PHA should specifically address this issue and be consistent in the language stated here and in section 6-II.D.
* The alternatives to the model ACOP language would be (1) to count all such expenses as disability assistance expenses or (2) to develop a list of expenses and specify how each would be counted.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, the PHA 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.

🞎 *Option 2:* *Count all expenses that could be classified either way as disability assistance expenses. Delete the model ACOP language and insert the following:*

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either health and medical care or disability assistance expenses, the PHA will consider them disability assistance expenses.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-III.F. CHILDCARE EXPENSE DEDUCTION

HUD provides a definition of *childcare expenses* in the regulations at 24 CFR 5.603(b), and additional guidance is found in the *HCV Guidebook* and in HUD’s verification guidance. All of this information is in the model ACOP. The PHA must clarify implementation issues including:

* How the family qualifies for each eligible activity
* How the earned income limit on childcare that enables a family member to work is administered
* What childcare expenses are eligible, reasonable, and necessary

**Qualifying for the Deduction**

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

Reasonable childcare expenses that enable a family member to be gainfully employed, to seek work, or to pursue their education can be deducted from annual income.

HUD leaves to the PHA the determination of who is enabled to work, seek employment, or further their education. When this section uses the term *eligible activity,* it means one or more of these three purposes.

**☑ Decision Point: How will the PHA determine which family member is enabled to pursue an eligible activity?**

Things to Consider

* While the determination may be straightforward in some situations, in others it can be quite complex (e.g., the care may enable one adult to further their education and another to work at different times during the day).
* The model ACOP language places on the family responsibility for identifying which family members are enabled to pursue an eligible activity and provides criteria that the PHA can use in evaluating the family’s assessment.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

In evaluating the family’s request, the PHA 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.

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

The model ACOP clarifies how the PHA will determine whether the family qualifies based upon the type of eligible activity. A decision point is provided below for each of the activities.

***Seeking Work***

**☑ Decision Point: How will the PHA determine whether a family qualifies for the childcare expense deduction because a family member is “seeking work”?**

Things to Consider

* For family members seeking work, the PHA must establish a method for confirming that an individual is actively seeking employment.
* Individuals receiving welfare or unemployment assistance must comply with rules regarding level of effort that are imposed by the agencies providing the assistance. Information about a family member’s efforts may be available directly from the family or from these sources.
* The PHA should select a method of tracking and documenting the family member’s efforts to seek employment that is not unduly burdensome to PHA staff or the family member. The model ACOP assumes that the PHA will address the adequacy of the family member’s job-seeking efforts only in conjunction with a reexamination. Alternatively, the PHA could establish a policy of conducting more frequent interim reexaminations for families in this category.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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 childcare expense being allowed by the PHA.

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

***Furthering Education***

The PHA must define the types of educational activities that would qualify a family for childcare based upon furthering education.

**☑ Decision Point: How will the PHA determine whether a family qualifies for the childcare expense deduction because a family member is “furthering their education”?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

***Being Gainfully Employed***

The PHA must determine whether a family qualifies for the childcare expense deduction because a family member is gainfully employed.

**☑ Decision Point: How will the PHA determine whether a family qualifies for the childcare expense deduction because a family member is “gainfully employed”?**

Things to Consider

* Although the PHA will be verifying each family member’s employment as part of determining annual income, the request for a childcare expense deduction may require additional information (such as more information about a family member’s work schedule).

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed*.

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.

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**Earned Income Limit on Childcare Expense Deduction**

When more than one family member may be enabled to work, the PHA must determine whose earned income to count when determining the cap on childcare expenses. The earned income used to limit the deduction is earned income after any disallowances or exclusions are applied (column 7f of form HUD-50058).

**☑ Decision Point: How will the PHA determine which family member is enabled to work?**

Things to Consider

* HUD rules state that the PHA cannot automatically choose the family member with the lowest income but do not specify another method for determining who is enabled to work.
* The policy the PHA establishes for childcare should be consistent with its policy for disability assistance expenses.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed*.

When the childcare expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the PHA 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.

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**Eligible Childcare Expenses**

HUD permits each assisted family to determine the type of childcare to be provided. The PHA 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].

To ensure consistency, the PHA should specify:

* What activities are included under the definition of *childcare*
* How the PHA will determine whether childcare expenses are necessary and reasonable

***Allowable Childcare Activities***

**☑ Decision Point: What activities are included under the definition of *childcare*?**

Things to Consider

The model ACOP provides clarification related to several common issues as follows:

* The model ACOP tries to make a distinction between childcare and school by stating that, for school-age children, costs for activities provided by a school during normal school hours are not considered childcare. An option would be for the PHA to make a distinction between classroom time and other activities that happen during the day (e.g., field trips).
* The model ACOP clarifies that general housekeeping is not eligible and that childcare paid to a family member living in a family’s unit is not eligible.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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, the PHA 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.

🞎 *Option 2:* *Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

***Necessary and Reasonable Costs***

HUD regulations require childcare expenses to be “necessary” and “reasonable,” but HUD provides no further definition of these terms. It is not appropriate for PHA staff to determine the childcare needs of individual children. Therefore, the family, not the PHA, must determine the type of childcare that is necessary. However, PHA staff must still evaluate whether the timing and duration of the childcare are consistent with the eligible activities and whether the costs are reasonable for the type of care being provided.

**☑ Decision Point: How will the PHA determine that childcare expenses claimed by a family are necessary and reasonable?**

Things to Consider

* The ACOP enables a family to claim childcare expenses not only for the period of time that a family member is engaged in an eligible activity but also for “reasonable transportation time.” This general statement leaves it to staff to determine what is reasonable. An alternative would be for the PHA to impose a specific time (e.g., up to one hour per day for transportation).
* For childcare expenses that enable a family member to go to school, the model ACOP allows one hour of study for each hour spent in class. The PHA could decide to allow no study time at all or change the time allowed.
* The model ACOP states that, in determining the reasonableness of childcare expenses, the PHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. This is the simplest and most cost-effective method of determination. However, you may need or prefer to collect your own data. If so, you may want to use a method similar to the one used for determining whether disability assistance expenses are necessary and reasonable (see section 6-II.E).

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of childcare costs, the PHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

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

HOTMA created hardship exemption categories related to health and medical care and disability expenses and for childcare expenses. This section explains how family qualify for those hardship exemptions.

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

There are two categories of hardship exemptions. **No PHA policy decisions are required.**

***Phased-In Relief***

**☑ Decision Point: Will the PHA elect to continue the phase-in hardship relief?**

The first category is for families who qualified for and were taking one or both of the deduction prior to January 1, 2024. Unless the PHA has a written policy to continue the phased-in relief upon admission, the family’s expense deduction will be calculated using the 10 percent threshold unless request for general relief is approved by PHA/MFH Owner.

Things to Consider:

* If the PHA elects to continue the phased-in hardship relief, then the following documentation is required: Copy of forms HUD–50058 or 50059 from the family showing phased-in relief. If the forms are unavailable, then the PHA may obtain self-certification from family declaring effective date of 5 percent or 7.5 percent phase-in. The PHA must document in the file the reason that the forms HUD-50058 or 50059 were unavailable.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will not continue the phased-in relief for families who move from the HCV program to public housing. 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.

🞎 *Option 2: Delete the model ACOP language and insert the following:*

The PHA will continue the phased-in relief for families who move from the HCV program to public housing.

🞎 *Option 3: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**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 PHA policy) that would not otherwise trigger an interim reexamination.

**☑ Decision Point: How does a family request a hardship exemption?**

Things to Consider

* The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available.
* PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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. The PHA 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 reexamination in accordance with PHA policies.

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

The family is awaiting an eligibility determination for a 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 the PHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA 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.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA notify the family of its determination?**

Things to Consider

* The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family’s rent resulting from hardship exemptions. PHA policy should define *promptly.* In order to align with other policies, Option 1 defines *promptly* as within 10 business days of the date of the PHA’s determination.
* While the regulations do not require that the PHA offer the family a hearing if the PHA denies the family’s request, Option 1 states the PHA notice to the family will offer the opportunity for a hearing since this is in line with regulations governing the denial of minimum rent hardship exemption requests.
* HUD regulations require that the notice must inform the family of when the hardship exemption will begin and expire.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PHA 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.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**☑ Decision Point: Will the PHA extend the hardship exemption for additional 90 days periods, and if so, under what circumstances?**

Things to Consider

* The PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family’s hardship condition continues.
* Option 1 allows for the PHA to grant an additional 90-day extension and subsequent extensions should the family request them. This gives the PHA the flexibility to grant extensions if needed.
* HUD stated the PHA may also terminate the hardship exemption if the responsible entity determines that the family no longer needs the exemption and Option 1 reflects this language.
* HUD has not placed a limit on the maximum number of 90-day extensions.
* PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions.
* PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA’s satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The PHA will require updated verification based on the family’s current circumstances. Additional extension(s) 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, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**Childcare Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 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 PHA’s satisfaction that the family is unable to pay their rent because of the loss of the childcare 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, the PHA must recalculate the family’s adjusted income and continue the childcare deduction.

**☑ Decision Point: How will the family demonstrate that they qualify for the hardship exemption?**

Things to Consider

* Neither the regulation nor the final rule define how the family demonstrates that they are unable to pay rent because of the loss of the childcare expense deduction. Therefore, the PHA must describe how the family will demonstrate this “to the PHA’s satisfaction.”
* Neither the regulation nor the final rule define how the family demonstrates that they still require the childcare expense deduction. Therefore, the PHA must describe how the family will demonstrate this “to the PHA’s satisfaction.”
* The final rule does provide one example which is used in Option 1 of the policy.
* As this determination will be case specific, the model policy uses the example provided in the final rule and then states that the PHA will make the decision on a case-by-case basis.
* The PHA must develop a policy to define what constitutes a hardship, which includes the family’s inability to pay rent.
* The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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. The PHA 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. The PHA 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).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA 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.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA notify the family of its determination?**

Things to Consider

* The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family’s rent resulting from hardship exemptions. PHA policy should define *promptly.* In order to align with other policies, Option 1 defines *promptly* as within 10 business days of the date of the PHA’s determination.
* While the regulations do not require the PHA offer the family a hearing if the PHA denies the family’s request, Option 1 states the PHA notice to the family will offer the opportunity for a hearing since this is in line with regulations governing the denial of minimum rent hardship exemption requests.
* HUD regulations require that the notice must inform the family of when the hardship exemption will begin and expire.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

**☑ Decision Point: Will the PHA extend the hardship exemption for additional 90 days periods, and if so, under what circumstances?**

Things to Consider

* The PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family’s hardship condition continues.
* Option 1 allows for the PHA to grant an additional 90-day extension and subsequent extensions should the family request them. This gives the PHA the flexibility to grant extensions if needed.
* HUD stated the PHA may also terminate the hardship exemption if the responsible entity determines that the family no longer needs the exemption and Option 1 reflects this language.
* HUD has not placed a limit on the maximum number of 90-day extensions.
* PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.
* PHAs must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the PHA denies the request, the notice must specifically state the reason for the denial.
* PHAs must notify the family if the hardship exemption is no longer necessary and 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.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA’s satisfaction that the family continues to qualify for the hardship exemption. The PHA 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, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

🞎 *Option 2: Use PHA-developed policy. Edit or delete the model ACOP language and insert the PHA’s policy.*

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

PHAs may choose to offer any number of permissive deductions in order to encourage self-sufficiency or other economic purposes. If offered by the PHA, the deductions must be granted to all families that qualify for them and should complement existing income exclusions and deductions.

The *Public Housing Occupan*c*y Guidebook* provides some examples of permissive deductions, as follows [PH Occ GB, p. 128]:

* A deduction for the reasonable cost of looking for work
* A deduction for a secondary wage earner
* A deduction of $500 (or more) from the net income of any new business operation
* A medical deduction for non-elderly and non-disabled families with extremely low incomes
* A deduction for family members who are going to school or vocational training on a part-time basis
* A deduction for reasonable transportation cost to the childcare site, or transportation cost to the site, and then to work or school (for those families with childcare expenses)

**☑ Decision Point: Will the PHA offer permissive deductions?**

Things to Consider

* The financial impact of implementing the permissive deductions must be carefully evaluated prior to adoption of any policy. PHAs must be able to “afford” the deduction. The loss of rental income is not compensated by an increase in operating subsidy. A PHA would be wise to determine the impact on the agency’s operating budget prior to any change in policy. The PHA should review pages 129 and 130 of the *Public Housing Occupancy Guidebook* for further guidance.
* PHAs should review the definitions of annual income and the mandatory deductions used to calculate adjusted income. It needs to be determined whether or not the proposed permissive deduction duplicates an income exclusion or mandatory deduction already addressed in the definitions of annual or adjusted income.
* PHAs should determine how permissive deductions will affect HAP payments and weigh the costs of administering the deductions against the savings to families who would be affected. If the deduction would result in minimal savings to the families likely to qualify but adds significantly to the administrative costs of the PHA in verifying and calculating the deduction, it may not be worth consideration.
* PHAs can respond to community needs by using a wide range of permissive deductions, including permissive deductions to provide incentives to work.
* These permissive deductions impact the calculation of the family’s adjusted income that is then used to determine the total tenant payment (TTP), which is then used to calculate the family subsidy. Permissive deductions do not affect the family’s annual income and consequently have no impact on the family’s income eligibility for the program.
* The PHA may wish to adopt a permissive deduction to offset the increase in the threshold for health and medical expenses from three to 10 percent.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA has opted not to use permissive deductions.

🞎 *Option 2: Use PHA-developed policy. Delete the model ACOP language in Option 1 above and insert the PHA’s policy.*

PART IV: CALCULATING FAMILY SHARE AND PHA SUBSIDY

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

This section of the model ACOP presents the regulatory formula for calculating total tenant payment (TTP). The application of payment standards is covered separately in section 6-IV.C, and utility allowances are discussed in section 6-IV.D.

Only three policy decisions must be made by the PHA in this section:

* + 1. The PHA must specify whether any part of its jurisdiction is an “as-paid” welfare locality.
    2. The PHA must establish a minimum rent from $0 to $50.
    3. The PHA must determine to whom utility reimbursement payments will be made.

Each of these decisions is discussed below.

**TTP Formula [24 CFR 5.628]**

A family’s total tenant payment (TTP) is the greatest of:

* 30 percent of the family’s monthly adjusted income
* 10 percent of the family’s monthly gross income
* The welfare rent (in as-paid states only)
* The minimum rent (established by the PHA)

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

The third item considered when determining TTP is the welfare rent, which is defined at 24 CFR 5.628(a)(3) as follows: “If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family’s actual housing costs, is specifically designated by such agency to meet the family’s housing costs, the portion of those payments which is so designated [is considered the welfare rent].”

24 CFR 5.628 requires the PHA to enter a welfare rent as part of the TTP formula when welfare assistance in the jurisdiction is provided “as paid.” *As paid* refers to a system in which a separate amount within a family’s welfare grant is specifically designated for shelter and utilities and is adjusted based upon the family’s actual housing costs.

**☑** **Decision Point: Does welfare rent apply in the PHA’s jurisdiction?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Welfare rent does not apply in this locality.

🞎 *Option 2: If only some parts of the PHA’s jurisdiction have as-paid welfare systems, delete the sentence in the model ACOP and insert the following text:*

Welfare rent applies only in the following areas of the PHA’s jurisdiction:

[Enter the appropriate areas.]

**Note:** The as-paid system also requires a special calculation of annual income. This requirement is discussed in section 6-I.J.

***Minimum Rent [24 CFR 5.630]***

HUD requires the PHA to establish a minimum rent that may be from $0 to $50.

Minimum rent applies only when the PHA-established minimum rent is the highest amount in the TTP calculation. See below for an example of how the minimum rent applies.

|  |  |
| --- | --- |
| **Example: Impact of Minimum Rent on TTP Calculations**  A family receives $3,000 annually, or $250 monthly, in welfare assistance. The family has three children and no other deductions. The dependent deduction for the three children amounts to $480 × 3 = $1,440, so the family’s annual adjusted income is $3,000 – $1,440 = $1,560, making its monthly adjusted income $1,560 ÷ 12 = $130. The family’s utility allowance is $65. The welfare rent is not applicable. | |
| **With Minimum Rent of $0**  TTP equals the greatest of:  $39 Monthly adjusted income × 0.30  $25 Monthly gross income × 0.10  N/A Welfare rent (N/A)  $0 Minimum Rent  $39 TTP  –65 Utility allowance  $26 Utility reimbursement | **With Minimum Rent of $50**  TTP equals the greatest of:  $39 Monthly adjusted income × 0.30  $25 Monthly gross income × 0.10  N/A Welfare rent (if applicable)  $50 Minimum Rent  $50 TTP  –65 Utility allowance  $15 Utility reimbursement |

HUD regulations provide for hardship exemptions from minimum rent. See section 6-III.G for a discussion of hardship policies.

The PHA should consider the following when setting its minimum rent.

* Imposing a minimum rent greater than $0 saves operating subsidy funds by increasing rental income or by reducing the required utility reimbursement payments for some very low income families and addresses the concern that all families should pay something.
* But a minimum rent may place a hardship on some families who do not qualify for the hardship exemption. In addition, the higher the minimum rent, the more likely it is that the PHA will be processing requests for hardship exemptions.
* Since the PHA is required to establish a minimum rent, the model ACOP enables the PHA to establish $0 as the minimum rent, rather than saying that the PHA has no minimum rent.
* The model ACOP assumes that the PHA has chosen $0 as its minimum rent.

**☑** **Decision Point: What amount will the PHA establish as its minimum rent?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The minimum rent for this locality is $0.

🞎 *Option 2: Establish a minimum rent greater than $0. Delete $0 and enter the minimum rent established by your PHA.*

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

As with permissive deductions, PHAs have been given broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. The PHA may structure a rent calculation system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

The *Public Housing Occupancy Guidebook* offers the following examples of alternatives to the standard formula for income-based rents:

* Adjust the percentage of income used to calculate rent rather than use 30 percent of monthly adjusted income or 10 percent of gross monthly income
* Use a rent schedule or sliding scale for rent based on income ranges, or other reasonable systems

**☑** **Decision Point: Will the PHA adopt any optional changes to income-based rent?**

Things to Consider

* Rents calculated using different percentages or other reasonable systems cannot exceed TTP under the regulatory formula.
* No matter what system or percentage is used, the PHA’s minimum rent policy and rent choice still apply to affected families.
* Utility allowances are applied to PHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents.
* Before adopting an alternative income-based rent policy, PHAs should consider the financial impact of such a rent policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-developed policy. Delete the model ACOP language and insert the PHA’s policy.*

**Ceiling Rents [24 CFR 960.253(d)]**

**☑** **Decision Point: Does the PHA use ceiling rents?**

Things to Consider

* Because of the mandatory use of flat rents, the usefulness of ceiling rents has been reduced to assisting families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.
* If a PHA had established traditional ceiling rents as of October 1, 1999, or has since decided to establish a ceiling on tenant rent under the authority provided in 960.253(c)(2), select Option 2 below and describe how and where they are implemented.
* As of October 1, 2002, ceiling rents must be adjusted to the flat rent level. The *Public Housing Occupancy Guidebook* interprets this to mean the flat rent plus utility allowance for the unit, so that the actual tenant rent paid by the family under the ceiling rent (income-based) is the same as if they had chosen to pay the flat rent for the unit [PH Occ GB, p. 135].
* When considering whether to continue ceiling rents, or to establish a ceiling on tenant rents in accordance with 960.253(c)(2), PHAs should consider the financial impact of such a rent policy.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA chooses not to use ceiling rents.

🞎 *Option 2: Use PHA-developed policy. Delete the model ACOP language as given in Option 1 above and insert the PHA’s policy.*

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

When the PHA subsidy exceeds a family’s rent to owner, the family is due a utility reimbursement. HUD permits the PHA to make the utility payment to the family or directly to the utility provider.

**☑** **Decision Point: To whom will the PHA make utility reimbursement payments?**

Things to Consider

Three general policy options are available:

* Pay the utility reimbursement to the family in all cases. This is consistent with the overall HCV program philosophy of a private market relationship between the family and housing and utility providers.
* Pay the utility reimbursement to the provider in all cases. Providing the funds to the utility provider has the advantage of ensuring that the amount actually is used for utility costs.
* Pay the utility reimbursement to the provider at the request of the family.

The model ACOP follows the first option.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will make utility reimbursements to the family.

🞎 *Option 2: Make utility reimbursements to the family except when requested. Delete the model ACOP language and insert the following:*

Generally the PHA will pay any utility reimbursement to the family. However, if requested by the family, the PHA will pay the utility reimbursement directly to the utility provider.

🞎 *Option 3: Make utility reimbursements to the provider. Delete the model ACOP language and insert the following:*

The PHA will make any utility reimbursements directly to the utility provider.

🞎 *Option 4: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is $15.00 or less. If the PHA decides to make quarterly payments, reimbursements that exceed $15.00 per month must still be made on a monthly basis. Under this option, reimbursements of $15.00 or less must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must state how any outstanding payments will be reconciled and whether payments will be made prospectively or retroactively. Prospective payments must be made prior to the start of each quarter; while retroactive payments must be made before the end of the each quarter.

If the PHA decides to make retroactive quarterly payments, the PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create an undue financial hardship.

**☑** **Decision Point: Will the PHA issue quarterly utility reimbursements for families whose monthly reimbursement amount is $15 or less?**

Things to Consider

* The option for quarterly utility reimbursements is intended to reduce administrative burden by reducing the need for monthly check writing and mailing.
* The option may not represent an actual cost savings since PHAs exercising it are required to establish a hardship policy and many families may receive monthly payments anyway. PHAs would also have to account for partial quarters when there is a change in unit, program admission, recertification or termination of assistance as well as reconciling payments when families leave the program.
* The default policy, Option 1, calls for monthly issuance of utility reimbursements.
* If you wish to implement quarterly reimbursements, select Option 2. **You will also need to paste the accompanying hardship policy into the model ACOP.**
* The hardship policy states that the PHA will make retroactive payments. If the PHA will instead make prosp payments, the PHA must state whether the hardship exemption will take the form of monthly reimbursements or quarterly prospective payments.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA will issue all utility reimbursements monthly.

🞎 *Option 2: Make utility reimbursements on a quarterly basis when the family’s monthly reimbursement amount is $15.00 or less. Delete the model ACOP language and insert the following:*

The PHA will issue monthly utility reimbursements for any amount in excess of $15.00. The PHA will issue utility reimbursements retroactively prior to the end of each calendar year quarter for any amount that is $15.00 or less per month.

Upon admission or recertification, if the family’s utility reimbursement is $15.00 or less per month, the PHA will inform the family that reimbursements will be made retroactively at the end of each calendar year quarter.

Prorated payments for a shorter period will be made when there is a change of unit, admission to the program, a recertification or termination of assistance.

If the family leaves the program with an outstanding credit for a utility reimbursement, the PHA will reconcile the credit with the family prior to the expiration of the lease.

**☑** **Decision Point: What requirements must be met in order for a family to receive monthly utility reimbursements due to hardship?**

Things to Consider

* If you chose Option 1 above, you do not need a hardship policy. Do not paste this policy into your policy chapter.
* For ease of administration, the default policy states that families may receive monthly reimbursements if they certify that quarterly payments would create a financial hardship. The policy only applies to families receiving utility reimbursements, who are most likely already experiencing financial hardship.

🞎 *Option 1:* *Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Families who wish to receive monthly reimbursements must certify in writing that quarterly payments would create a financial hardship. If the family qualifies, the PHA will begin issuing monthly reimbursements at the end of the first calendar year quarter after the month the family makes the request. The hardship will continue as long as the family receives a utility reimbursement payment.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

The regulations governing financial hardship exemptions from minimum rent apply only to PHAs that establish a minimum rent greater than $0 (see section 6-IV.A). Hence the first decision point concerns this choice.

**☑ Decision Point: Did the PHA establish a minimum rent greater than $0?**

🞎 *Option 1: No. Leave the first paragraph of the model ACOP in place, as shown below, and ignore the rest of the material in section 6-III.B. No changes to the model ACOP are needed.*

The financial hardship rules described below do not apply in this jurisdiction because the PHA has established a minimum rent of $0.

🞎 *Option 2: No. Delete the words “described below” from the first paragraph of the model ACOP and all of the text in section 6-III.B of the model ACOP following the first paragraph.*

🞎 *Option 3: Yes. Delete the first paragraph of the model ACOP and continue.*

**Overview**

The financial hardship exemption applies only to the payment of the minimum rent and not to a family’s inability to pay based upon other elements of the TTP formula. HUD identifies four types of hardship in the regulations and permits the PHA to add other hardship criteria.

When a family requests a financial hardship exemption, the steps required by the regulations depend on whether the PHA determines that the request is valid and whether the hardship will be temporary or long-term. HUD’s requirements and PHA decision points are described below.

**HUD-Defined Financial Hardship**

HUD-defined hardships specified in 24 CFR 5.630(b) include:

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

The ACOP should clarify:

* What distinctions, if any, will be made in the treatment of families who have lost eligibility, been denied eligibility, or are awaiting an eligibility determination
* How the end of a hardship will be determined
* Whether families who have lost eligibility as a result of fraud will be permitted to receive a hardship exemption

**☑ Decision Point: How will the PHA implement HUD’s mandatory hardship criteria related to families who have lost or are awaiting federal, state, or local assistance?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

(2) The family would be evicted because it is unable to pay the minimum rent.

**☑ Decision Point: How will the PHA implement HUD’s mandatory hardship criteria related to families who may be evicted?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

**No PHA policy decisions are required.**

(4) A death has occurred in the family.

**☑ Decision Point: How will the PHA implement HUD’s mandatory hardship criteria related to a death in the family?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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).

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

(5) The family has experienced other circumstances determined by the PHA.

The PHA is permitted to establish additional hardship criteria.

**☑ Decision Point: Does the PHA wish to add any hardship criteria?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA has not established any additional hardship criteria.

🞎 *Option 2: Add PHA-developed criteria. Edit or delete the model ACOP language and insert the PHA’s policy.*

**Implementation of Hardship Exemption**

***Determination of Hardship***

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family’s request. When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. To further explain this requirement, the model ACOP contains a chart that illustrates that the family’s share is not automatically reduced to zero in hardship cases.

The PHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term. Since HUD does not define temporary or long term hardship, the PHA must decide what these terms mean. The model ACOP uses 90 days or less for its definition of temporary hardship because the PHA may not impose the minimum rent during the 90 day period beginning the month following the date of the family’s request for a hardship exemption..

**☑ Decision Point: How will the PHA define temporary and long-term hardships?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The PHA 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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

The regulation is silent on submission requirements and only requires that the PHA make its determination “promptly” [24 CFR 5.630(b)(2)(ii)(B)]. The model ACOP specifies family submission requirements and requires the PHA to make a decision within 30 days of the family’s request.

**☑ Decision Point: What requirements will the PHA impose for the family’s submission and how soon will the PHA make a decision?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

The PHA will make the determination of hardship within 30 calendar days.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***No Financial Hardship***

The regulation requires that if there is no financial hardship, the PHA must reinstate the minimum rent and require the family to repay the amounts suspended on terms and conditions set by the PHA [24 CFR 5.630(b)(2)(iii)(A)].

**☑ Decision Point: How long will the PHA give a family to repay suspended rent if the family does not qualify for a hardship suspension or exemption?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Temporary Hardship***

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

The family must resume payment of the minimum rent and must repay the PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement on terms and conditions established by the PHA. The PHA also may determine that circumstances have changed and the hardship is now a long-term hardship. The model ACOP permits the PHA and the family to agree on a repayment schedule in accordance with the PHA’s policy.

**☑ Decision Point: How will the PHA require the family to repay amounts suspended for a temporary hardship?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

***Long-Term Hardship***

If the PHA determines that the financial hardship is long-term, the PHA 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. Repayment of the minimum rent for the period of the long-term hardship is not required.

The model ACOP specifies when the hardship ends. The policy addresses hardships based upon loss of income and hardship-related expenses.

**☑ Decision Point: How will the PHA determine when a long-term hardship has ended?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

6-IV.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]

**Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. **No policy decisions are required**.

**Reasonable Accommodation and Individual Relief**

PHAs must make exceptions to their utility allowances when needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability.

Further, the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate.

**☑ Decision Point: What criteria will the PHA consider as valid reasons for providing individual relief?**

Things to Consider

* HUD’s Utility Allowance Guidebook states that the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate.
* The guidebook cites the regulation at 24 CFR 965.508, which states that PHAs must develop criteria for granting individual relief and to notify residents about the availability of individual relief, the criteria for granting the relief, and the procedures for requesting the relief [Utility Allowance GB, p. 19]. As such, the default policy includes the criteria for granting individual relief.
* The criteria listed in Option 1 include each consideration laid out in the Utility Allowance Guidebook. Should the PHA wish to add to or subtract from these criteria, select Option 2.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required.

The PHA will consider the following criteria as valid reasons for granting individual relief:

The family’s consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.

The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA determine the additional utility allowance amount for reasonable accommodations and individual relief?**

Things to Consider

* HUD is silent on how to calculate a higher utility allowance for purposes of reasonable accommodation. However, guidance in the Utility Allowance Guidebook, regarding developing criteria for granting requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, states that PHAs should develop their own policies with regard to granting such requests.
* One possibility could include a discussion with your agency’s software provider and to discuss the logistics of adding the extra utility usage into the system.
* Another possibility could include, on a case-by-case basis, taking a look at the average utility usages for specific types of equipment. For example, a quick internet search can yield the average amount per month that an electric bill would increase by using a home oxygen concentrator, for example, or some other specific type of medical equipment. Including such information in your policy would not account for other “individual relief” situations, however.
* In addition, manufacturers of medical or special equipment often provide information on the additional monthly utility costs estimated.
* Note also that some utility companies offer “Medical Baseline” discounts, which provide an additional allotment of electricity or natural gas per month to help pay for the cost of using medical equipment, and the Model ACOP does state that the PHA will provide resources to connect the family with utility relief or medical discounts that may be available through local utility providers along with the information on payment standards and utility allowances in the briefing packet.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model plan are needed.*

In determining the amount of the reasonable accommodation or individual relief, the PHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment or other reliable source, or the family or PHA may conduct an internet search for an estimate of usage or additional cost.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: How will the PHA notify families on reasonable accommodation and individual relief for higher utility allowances?**

Things to Consider

* 24 CFR 965.508 states that PHAs must notify residents about the availability of individual relief, the criteria for granting the relief, and the procedures for requesting the relief. While the regulation does not make any mention of reasonable accommodation, “individual relief” does include special needs of the elderly, ill, or residents with disabilities, and would by extension include reasonable accommodation. The Fair Housing Act and 24 CFR 8 are clear that a reasonable accommodation may be needed in any aspect of the public housing program in order for the program to be accessible to a person with a disability.
* 24 CFR 965.508 states that the notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA’s criteria for granting such relief, must be included in the information given to new residents upon admission.
* 24 CFR 965.502(c) states that he PHA must give notice to all residents of proposed allowances, scheduled surcharges, and revisions. Such notice must be given, in the manner provided in the lease, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; must describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; must notify residents of the place where the PHA’s record maintained is available for inspection; and must provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments must be retained by the PHA and must be available for inspection by residents.
* In addition, the Utility Allowance Guidebook suggests including information on the availability of special low-income or “lifeline” rates offered by the local utility company [Utility Allowance GB, p. 21]. For example, some utility companies offer “Medical Baseline” discounts, which provide an additional allotment of electricity or natural gas per month to help pay for the cost of using medical equipment. The default policy opts to include this information, as it can help keep costs down for both the family and the PHA.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all residents at move-in and with any notice of proposed allowances, schedule surcharges, and revisions. The PHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: How will families request a higher utility allowance?**

Things to Consider

* HUD’s Utility Allowance Guidebook states that the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate.
* The guidebook cites the regulation at 24 CFR 965.508, which states that PHAs must develop criteria for granting individual relief and to notify residents about the availability of individual relief, the criteria for granting the relief, and the procedures for requesting the relief [Utility Allowance GB, p. 19]. As such, the default policy includes the procedures for requesting individual relief.
* A request for increased utility allowances due to special equipment as a reasonable accommodation should follow HUD/DOJ Joint Statement on Reasonable Accommodations: if the disability is obvious or otherwise known to the PHA and the need for the requested accommodation is clear or known, the PHA may not require or request any further verification. Therefore, the PHA should follow the reasonable accommodation request policies in Chapter 2.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**☑ Decision Point: Will the PHA reverify the need for the increased utility allowance?**

Things to Consider

* As with reasonable accommodation requests (for example, an extra bedroom for medical equipment or a live-in aide), HUD gives the PHA discretion whether and when to reverify the need for the accommodation.
* The individual relief due to excessive consumption caused by a characteristic of the unit of PHA-supplied equipment will cease when the situation is remedied.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

At its discretion, the PHA may reevaluate the need for the increased utility allowance as a reasonable accommodation at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or PHA-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**Utility Allowance Revisions**

The tenant rent calculations must reflect any changes in the PHA’s utility allowance schedule [24 CFR 960.253(c)(3)].

**☑ Decision Point: At which reexamination will revised utility allowances be applied, interim or annual?**

Things to Consider

* Regulations at 24 CFR 965.507 require the PHA to adjust utility allowances retroactively when rates change by 10 percent or more. The regulations are otherwise silent as to the effective date for revisions to the PHA’s utility allowances and when they must be applied in calculating tenant rent.
* Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [24 CFR 965.507(b)].
* This policy is also contained in Chapter 9. If changes are made to the policy in this section, they must also be made in Chapter 9.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Between annual reviews of utility allowances, the PHA will only revise its utility allowances due to a rate change, when required to by the regulation.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**6-IV.D. PRORATED RENT FOR “MIXED” FAMILIES [24 CFR 5.520]**

**☑ Decision Point: At which reexamination will revised public housing flat rents be applied to mixed families, interim or annual?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy*

**6-IV.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]**

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

**No PHA policy decisions are required**.

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

Once each year, the PHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year.

**☑** **Decision Point: When will the PHA offer families the choice in rents?**

Things to Consider

* The regulations do not specify when this annual offer should occur. The PHA must determine when they wish to make this offer.
* The model ACOP uses the annual reexamination as the date of annual offer of flat rents, since this would be the easiest method to track administratively.
* This policy must be consistent with the policies in Chapter 9, Reexaminations.

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

The annual PHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

The PHA will require families to submit their choice of flat or income-based rent in writing and will maintain such requests in the tenant file as part of the admission or annual reexamination process.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

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

With the exception of non-public housing over income families, a family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If the PHA determines that a hardship exists, the PHA must immediately allow the family to switch from flat rent to the income-based rent. Since HUD does not define “immediately”, PHA staff needs guidance about when to make the switch effective for the family.

**☑** **Decision Point: When will the PHA make the switch from flat rent to income-based rent effective when a financial hardship has been determined?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

Upon determination by the PHA that a financial hardship exists, the PHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family’s request.

🞎 *Option 2: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

HUD gives two categories of financial hardship that could be used to justify a switch from flat rent to income-based rent. HUD also states in 24 CFR 960.253(f)(3)(iii) “Such other situations determined by the PHA to be appropriate.” The PHA is permitted to establish additional criteria.

**☑** **Decision Point: Does the PHA wish to add any hardship criteria?**

🞎 *Option 1: Use the model ACOP language shown below. No changes to the model ACOP are needed.*

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

🞎 *Option 2: Do not establish any additional hardship criteria. Delete the model ACOP language in Option 1 above and use the language shown below.*

The PHA has not established any additional hardship criteria.

🞎 *Option 3: Use PHA-established policy. Edit the model ACOP language or delete it and insert the PHA’s policy.*

**FINALIZING THE DOCUMENT**

Take a final look at the changes you have made in this chapter of the ACOP.  
Have you:

(1) Added or subtracted any exhibits at the end of the chapter?  Yes  No.

(2) Added, subtracted or reordered any major sections (at the A, B, or C level?)  Yes  No

If you answered yes to either of these questions, you must adjust the chapter to match your changes.

**☑ Decision Point: Are any changes required to this chapter?**

No. No changes to the model ACOP are needed.

Yes. Edits only. Edit and insert PHA language as appropriate.

Yes. PHA changed the organization of the chapter. Adjust the chapter to reflect your changes **and** review the rest of the document to make sure that any references to section numbers are correct.

**☑ Decision Point: Are changes required in other chapters as a result of changes to this chapter?**

Check the “Things to Consider” under each decision point to identify if changes to the model ACOP policy will require changes to policies in other chapters of the plan.

No. Changes to other chapters are not necessary.

Yes. Changes to the following chapters are also required: