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## ATTACHMENT 6-G

### ACQUIRING AUTOMATION SUPPORT FOR MINC OR OTHER AUTOMATION NEEDS

The Agency will approve the use of project funds to acquire automated support to participate in MINC. While operating costs will be reduced in the long term, there may be some short-term increases to accommodate the initial acquisition of automated support.

Guidelines for obtaining automated support for MINC are as follows:

- With prior Agency approval, borrowers may use project operating or reserve funds to purchase or lease hardware or software needed to participate in MINC.
- Once borrowers have acquired automation capabilities, they may allow their management agent to use them to participate in MINC. This cost may be prorated over several projects owned by different borrower entities with a common management agent.
- When the cost of acquiring management software or hardware is not cost effective for a project (or multiple projects with common management), the Agency may allow the cost of contracting with a service bureau to provide automation support as a project operating expense.
- To request Agency approval, borrowers must submit a brief proposal that documents the anticipated costs and benefits of adopting the automation strategy being proposed.

#### **I. Acquiring Additional Automation Capabilities**

It is important to note that the approval for the use of project funds discussed above extends only to the portion of the computer software and hardware needed to participate in MINC. If additional software or hardware capacity is desired by the borrower, the following applies:

MFH borrowers are encouraged to use automated systems to manage MFH projects and to prepare and process paperwork associated with project management. Where economically feasible, computer applications can improve management efficiency and reduce errors and omissions. However, the purchase of computer hardware and software out of project funds should be carefully analyzed.

If a borrower entity's purchase of computer hardware or software to be used solely at a project can be expected to show a reduction in project operating and maintenance expenses, the purchase cost may be approved by the Agency as a line item project expense. The expense may be approved at project inception out of the project's two percent initial operating account or subsequent to project start-up out of annual operating revenues. The cost may be prorated over several projects owned by the same borrower entity. Any computer hardware or software purchased with project funds must remain with the project if there is any subsequent change in management or ownership of the project.

The purchase or use of computer hardware or software by a management company, versus a borrower entity with or without an identity of interest with a borrower, may not be considered an allowable line item expense on an Agency approved project budget.

## 2. Choosing to Use a Service Bureau

If acquiring automation is not a sound decision, borrowers may consider using a service bureau to provide automation services at a fee. The fee can be a project expense and should be reasonable. The Agency must approve a borrower's determination that it is in the best interest of the project to contract with a service bureau.

The cost of a service bureau is essentially an "add-on expense" to an operating budget, since the function is not currently performed by any project. Borrowers who find that their project budget will not support the cost of acquiring automation support or a service bureau fee should contact their servicing office to be exempted from mandatory participation in MINC.

The Agency will not allow an add-on fee for the cost of a service bureau if the borrower's analysis demonstrates that it is less expensive to acquire an automation capacity, unless extenuating circumstances exist.

The Agency will not approve the use of an add-on service bureau fee as a project expense for a contract with a firm that has an Identify-of-Interest (IOI) with the project borrower or management agent, without detailed documentation indicating that the IOI service bureau is clearly more cost effective than a non-IOI service bureau. While this policy does not restrict the formation of IOI firms to process tenant certifications, service bureau companies or the payment for their services from a management fee, it is intended to address concerns expressed by the Office of the Inspector General (OIG) that IOI firms may unnecessarily inflate project operating expenses.

The following individuals and companies have expressed an interest in developing or marketing software to provide an industry interface with Rural Development's housing programs Multiple Family Housing tenant files, or providing automated support through a service bureau to transmit tenant certifications to the Agency. Rural Development expresses no preference or opinion on the products or services of any of the individuals and companies listed below.

**LISTING OF PRIVATE SOFTWARE DEVELOPERS AND VENDERS WHO HAVE  
INDICATED AN INTEREST IN THE MANAGEMENT AGENT INTERACTIVE  
NETWORK CONNECTION (MINC) VOLUNTARY FIELD TEST  
(Updated as of March 2004)**

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**ATTACHMENT 6-H**  
**FEDERAL REGIONAL INCOME LIMITS**  
**FOR HIRED FARMWORKERS**

Region I—(\$7,200) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II—(\$5,400) New Jersey and New York. (Includes Puerto Rico and the USVI.)

Region III—(\$6,000) Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV—(\$6,150) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V—(\$6,300) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI—(\$6,900) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII—(\$7,200) Iowa, Kansas, Missouri, and Nebraska.

Region VIII—(\$7,350) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX—(\$8,850) Arizona, California, Hawaii, and Nevada.

Region X—(\$7,050) Alaska, Idaho, Oregon, and Washington.

#### **7.4 DETERMINING TENANT RENT PAYMENT [7 CFR 3560.203]**

Tenants pay rents in an amount that depends on the project type, whether utilities are included in the rent, the tenant's income, and the availability of rental subsidy.

*Form RD 3560-8, Tenant Certificate* is used to determine individual rents. Borrowers must adjust net tenant contribution and unit rents, if applicable, whenever there is a change in tenant household status sufficient to generate a new certification in accordance with 7 CFR 3560.152.

##### **A. Net Tenant Contribution**

*Form RD 3560-8* is used to calculate a tenant's rent based on their income. The net tenant contribution to rent must not exceed the highest of:

- Thirty percent of monthly adjusted income, with an adjustment for any utility allowances, or
- Ten percent of gross monthly income, with an adjustment for any utility allowances, or
- If the household is receiving payment for public assistance from a public agency, the portion of such payment which is specifically designated by that agency to meet the household's shelter costs, or
- The basic rent, unless Rural Housing Service (RHS) rental assistance is provided to the household.

For an example of how to calculate the net tenant contribution, refer to Exhibit 7-2.

**Exhibit 7-2**

**Examples—Net Tenant Contribution**

**(Where Rental Assistance (RA) is Available)**

**Example 1:** The basic rent for a one-bedroom unit at Beautiful Acres Apartments is \$350 and the note rate rent is \$450. Tenants at Beautiful Acres pay their utilities directly, so there is a utility allowance of \$60. *Form RD 3560-8* for Joe Smith shows that he has an annual income of \$12,000. Since he is elderly, he receives a \$400 adjustment for elderly status, giving him an adjusted annual income of \$11,600. In completing *Form RD 3560-8*, the site manager calculates that 30 percent of Mr. Smith's adjusted monthly income is \$290 and 10 percent of his gross monthly income is \$100. Since he is receiving no payment for public assistance, the site manager enters \$290 on line 30 (which is the highest of 30 percent of adjusted income, or 10 percent of monthly gross income, or the public assistance payment) of *Form RD 3560-8* as the Gross Tenant Contribution. The utility allowance must then be deducted, leaving a unit rent payment by Mr. Smith of \$230.

Basic Rent	\$350
Note Rate Rent	\$450
Utility Allowance	\$60
Mr. Smith's Annual Income	\$12,000
Adjustment for Elderly Status	\$400
Adjusted Annual Income	\$11,600
30 Percent Adjusted Monthly Income	\$290
10 Percent Gross Annual Income	\$100
Payment for Public Assistance	\$0
Highest of Above	\$290
Deduction for Utility Allowance	\$60
Unit Rent Payment for Mr. Smith	\$230

**Example 2:** Joe Smith has decided to move to Cozy Home Apartments. The rents there include utilities. The basic rent for a one-bedroom unit for which he qualifies is \$360 and the note rate rent is \$460. His income information is the same, which means \$290 is again entered onto line 30, Gross Tenant Contribution, of *Form RD 3560-8*. Since there is no utility allowance, Mr. Smith will make a unit rent payment of \$290.

Basic Rent	\$360
Note Rate Rent	\$460
Utility Allowance	\$0
Mr. Smith's Annual Income	\$12,000
Adjustment for Elderly Status	\$400
Adjusted Annual Income	\$11,600
30 Percent Adjusted Monthly Income	\$290
10 Percent Gross Monthly Income	\$100
Payment for Public Assistance	\$0
Highest of Above	\$290
Deduction for Utility Allowance	\$0
Unit Rent payment for Mr. Smith	\$290



## **B. Unit Rents**

### **1. Note Rents**

In projects with note rents only, tenants will pay the note rent, regardless of income, unless they are income ineligible, in which case they will pay a surcharge.

When a Plan II project is experiencing severe vacancies due to market conditions, the Agency may allow the borrower to charge a Special Note Rent (SNR) to attract or retain tenants whose income level would require them to pay note rent. An SNR is less than the note rent but is higher than the basic rent. The requirements for requesting and receiving an SNR are established under 7 CFR 3560.454.

### **2. Basic Rents**

In projects with basic and note rents, tenants will pay their net tenant contribution, but no less than the basic rent and no more than the note rent.

### **3. Rental Assistance Rents**

Tenants who are eligible to receive available rental assistance in a project pay the net tenant contribution. Rental assistance makes up the difference between the net tenant contribution and approved shelter costs (basic rent). Chapter 8 provides further details on charging and collecting rents from tenants with rental assistance.

### **4. HUD Section 8/USDA Section 515 Rents**

In projects with HUD Section 8 housing assistance contracts, HUD sets the rents and utility allowances and tenants pay the borrower rent the total tenant payment (TTP), which is the greater of: 30 percent of monthly adjusted income or 10 percent of gross income; welfare rent or; \$25. The HUD rent should never be less than the basic rent. If it is, the borrower must make up the difference, since it cannot be collected from the tenant.

### **5. Tenant-Based Subsidies**

Tenants with tenant-based subsidies such as HUD vouchers pay the rents established at the project. If the voucher is less than the project rent, the tenant is responsible for the difference.

## **C. Overage**

Overage is that portion of a tenant's net tenant contribution that exceeds basic rent up to note rent. Full overage is an amount equal

### **Example**

Jimmy Smits pays \$180 a month in rent, which is 30 percent of his adjusted monthly income. The basic rent is \$150. The \$30 difference between the basic rent and Mr. Smits's rent payment is called overage.

to the difference between the note rent for a unit and the basic rent.

#### **D. Unit Rents for Ineligible Tenants**

There will be times when ineligible tenants occupy multi-family housing units. Such tenants must pay rent based on the type of project they occupy.

##### ***1. Surcharge for Ineligible Tenants in Plan I Projects***

Ineligible tenants occupying a Plan I project must pay the established note rate rent plus a rent surcharge of 25 percent of the established rent. A Plan I project is defined in 7 CFR 3560.11.

##### ***2. Income-Ineligible Tenants in Plan II Projects***

Income-ineligible tenants occupying Plan II projects must pay the note rate rent. A Plan II project is defined in 7 CFR 3560.11.

#### **E. Unit Rents for Site Managers, Caretakers, and Owner-Occupied Units**

When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form.

When the unit is used as a non-revenue producing unit, the project cost of providing the unit will be treated the same as those of other non-revenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the units were rented at basic rent. A tenant certification form will not be prepared for this situation.

With prior approval of the State Director, an owner may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or site manager. If the unit is a revenue-producing unit, rental rates will apply to the borrower as they would to any other caretaker or manager.

#### **F. Unit Rents for Low Income Housing Tax Credit Units**

##### ***1. Setting and Collecting Rents***

Unit rents in projects with LIHTCs will be set in accordance with regular Agency program rules. Two examples of setting such rents are provided in Exhibit 7-3. The Field Office must be aware that the LIHTC program prohibits owners from charging tenants more than a certain amount of rent in LIHTC units. Borrowers who do this risk recapture of their tax credits and stiff penalties. While the law does not allow the borrower to collect basic rent from the tenant if it exceeds the LIHTC limitation, overage

may be collected from the tenant in only those projects with 1991 and later tax credit allocations, if necessary, according to *Form RD 3560-8* even if that rent exceeds the LIHTC limitations.

**Exhibit 7-3****Setting Unit Rents for Section 515 Projects with LIHTCs**

**Example 1:** Assume the units receive only interest credit and no rental assistance or HUD Section 8 assistance. One-bedroom apartment: basic rent = \$275, LIHTC rent = \$250. The expense level required to meet financial requirements of the project exceeds the rent allowed to be charged by the low-income housing LIHTC program by \$25.

**Example 2:** Assume a project where LIHTC rent is equal to or greater than the basic rent, and a previously eligible tenant's household income increases beyond the LIHTC rent. In this case, the tenant may or may not have previously received rental assistance or HUD Section 8. Example: One-bedroom apartment: basic rent = \$250, LIHTC rent = \$300. Only one co-tenant works. Household pays \$200 per month and rental assistance is \$50. Household is Agency and LIHTC eligible. Second co-tenant goes to work, causing the household rent to go up to \$350. The new rent level exceeds both basic and LIHTC rents. Overage of \$100 is due. LIHTC rent limitations require that the owner charge tenants no more than \$300, which causes a shortage of \$50 per month in overage due the Agency. Therefore, the owner is accountable for this shortage if the project was allocated LIHTCs prior to 1991. For projects allocated LIHTCs after 1990, the owner is allowed to collect the overage due from the tenants because gross rent that tenants pay in the LIHTC unit does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Agency under Section 515. The tenant cannot be required to move based on LIHTC ineligibility.

## **2. Agency Review and Monitoring of LIHTC Rents**

The law does not excuse the borrower from paying the basic rents required to the Agency; these rents must be deposited into the operating account in full. Borrowers must be informed by Loan Servicers that the borrowers are responsible for funding any gap between basic rents and tax credit rents collected from tenants when basic rent exceeds LIHTC rents. This fact should be noted when the Loan Servicer reviews the project operating budget.

Borrowers must not use project funds to make up any difference between rents required under Agency program rules and the maximum allowed rents under the LIHTC program, and they must collect the required rents. During the annual review process, Loan Servicers should review the previous year's budget with a focus on any cash shortfalls. If the Loan Servicer determines that a shortfall exists due to differences between tax credit limitations and basic rents, they must ensure that a provision is made in the coming year's budget and future years on line 11, "Cash-non project" of *Form RD 3560-7* for the owner to contribute necessary funds to meet the required rents.

## **G. Adjustments to Unit Rents**

Borrowers must adjust net tenant contribution and unit rents, if applicable, whenever there is a change in tenant household status sufficient to generate a new certification in

accordance with 7 CFR 3560.152. Borrowers are not required to recertify a household prior to the annual recertification unless a change in household income of \$100 or more per month occurs. If a tenant requests it, the borrower must recertify the tenant for a change in household income of \$50 or more per month (see Chapter 6 for further details on interim recertifications).

A change in household status could take place in any one of the following circumstances:

- The tenant has had a change in income (increase or decrease);
- The tenant has had a change in the size of the household (increase or decrease in number of people residing in the unit); or
- The tenant has had a change in the type of household (the household may become handicapped or elderly, or a 17-year-old child may turn 18).

If *Form RD 3560-8* shows that a change in rents is in order as a result of the change in household status, the effective date of a tenant's changed rent is the first day of the month following third-party verification of the tenant's reported changes. However, the management agent must complete the verification process no later than 30 days following the tenant's notice of the change.

## **7.5 RENTS DURING EVICTION OR FAILURE TO RECERTIFY [7 CFR 3560.208]**

Tenants must continue to pay rents during termination through eviction and if they are not recertified for occupancy.

### **A. Rents for Tenants Being Evicted**

Tenants must continue to pay rents as per *Form RD 3560-8* while the eviction process is underway.

### **B. Rents for Tenants without a Current Certification**

A tenant who is not recertified is technically an ineligible tenant, and note rate rent must be collected and deposited to the general operating account for that tenant. Whether the tenant or the borrower/management agent pays the note rate depends upon who is to blame for the failure to recertify.

#### ***1. Tenant Failure to Recertify***

If a borrower can document that a tenant received a notice specifying a tenant recertification date, and the tenant fails to comply by the specified date or fails to cooperate with verification or other procedures related to the tenant's recertification so that the tenant recertification cannot be completed by the recertification date, the borrower, within 10 days of the recertification date, will give the tenant and the Agency written notification that:

- Termination proceedings are being initiated, in accordance with 7 CFR 3560.159; and
- The tenant will be charged note rent until the tenant's lease is terminated.

## **2. Borrower Failure to Recertify**

If a borrower cannot document that a tenant received a recertification notice, and a tenant is not recertified within 12 months of the most recently executed tenant certification, tenants will continue to make net tenant contributions to rent based on their most recent *Form RD 3560-8*. The borrower must remit to the Agency from non-project funds, full overage as if the tenant was paying the note rent until the tenant is re-certified.

## **7.6 IMPROPERLY ADVANCED RENTS [7 CFR 3560.209]**

Improperly advanced interest credit or rental assistance, whether it was the fault of the borrower or the tenant, will be recaptured in accordance with the requirements established by 7 CFR part 3560, subpart O.

### **A. Borrower Error**

When rents have been improperly collected from a tenant due to borrower error, such as a miscalculated *Form RD 3560-8* the borrower must make up the difference to the Agency for any additional rents that should have been collected or reimburse the tenant for any excess rents collected.

### **B. Tenant Fraud**

When the borrower has collected an incorrect rent amount from the tenant due to tenant fraud, the borrower must make every attempt to recapture the rent due from the tenant. Once the borrower has delivered documentation to the Loan Servicer of failed attempts to collect, the Loan Servicer must comply with the requirements of 7 CFR part 3560, subpart O to pursue collection.

## **7.7 MONITORING TENANT CONTRIBUTION AND UNIT RENTS**

### **A. Borrower Monthly Submissions**

The Loan Servicer monitors unit rents and tenant contributions on a monthly basis via *Forms RD 3560-29* and *RD 3560-8*.

### **B. Site Visits**

The Loan Servicer will verify information on *Forms RD 3560-29* and *RD 3560-8* during site visits through random tenant interviews. If the Loan Servicer is told by any tenant that they pay a different amount of rent than is shown on *Form RD 3560-29*, *Interest Credit and Rental Assistance Agreement*, for that tenant, the Loan Servicer must ask the borrower or management agent to explain the discrepancy.

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## SECTION 2: SECURITY DEPOSITS

### 7.8 SECURITY DEPOSITS [7 CFR 3560.204]

Borrowers should collect security deposits as assurance of rental payment or charges for damages when it is reasonable and customary for the area in which the project is located. Security deposits are largely governed by state and local laws; Loan Servicers must familiarize themselves with those laws.

#### A. Allowable Amounts

The borrower must specify the amount of the security deposit that will be charged in a project by unit size in the management plan and in the dwelling lease. This amount may not be changed without prior consent of the Agency. The following requirements must be met:

- Borrowers may charge security deposits in an amount that is typical for the area, but the security deposit charged to a tenant may not exceed that tenant's contribution for one month's rent or the basic rent, whichever is greater;
- Households receiving a HUD rental subsidy must pay security deposits according to HUD requirements;
- Members in a cooperative must pay a membership fee equal to one month's occupancy charge; and
- Security deposits for tenants may not be increased in later years, even if the tenant has been residing in the project for a long time and the initial amount charged is not representative of current basic rents or security deposits.

#### B. Payment Plans

If tenants cannot pay the full amount of the security deposit initially, they may be placed on a payment plan. Should installments not be met, the total charge may become due and payable in full.

#### C. Authorized Uses

Funds in the security or membership fund account must only be used for authorized purposes as specified by the borrower's management plan.

Borrowers may charge tenants for damage or loss caused or allowed by the tenant equal to the cost of the damage or loss.

Borrowers must consider expenses due for addressing normal wear and tear as normal operating expenses and must not charge tenants a fee or withhold security deposits to pay for such costs.



Borrowers may withhold security deposits and may charge tenants for damage or loss costs above security deposit amounts. An itemized accounting for any charges against the security deposit must be presented to the tenant after the move-out inspection, unless the tenant has abandoned the project and their whereabouts are unknown and cannot be ascertained after reasonable inquiry. Resolution of any security deposit disputes must be handled in accordance with state and local laws.

Any amount which is kept by the borrower as a result of lease or occupancy agreement violation must be transferred to the general operating account and treated as project income.

#### **D. Accounting and Interest**

Security deposits must be held in a separate bank account in a Federally insured institution in accordance with 7 CFR 3560.302 (see Chapter 3). These funds are held in trust for the tenant until used or returned to the tenant.

Any interest earned on security deposits will accrue in accordance with state law, but in no case will it accrue to the project management or the borrower. If a state requires the borrower to pay the interest earned on security deposits and the borrower collects more interest than is required by the state, the additional interest must be deposited into the general operating account for use by the project.

Any interest on security deposits unclaimed by a tenant must accrue to the project and must be deposited by the borrower into the general operating account.

#### **E. Additional Deposits**

Borrowers may charge additional deposits for pets; however, these must not exceed basic rent for the animal owner's unit. Where a service animal is necessary for the normal function of a household member, an additional security deposit must not be charged.

Borrowers must not charge additional security deposits based on disabilities of tenants or other personal characteristics.

### **7.9 MONITORING SECURITY DEPOSITS**

Loan Servicing staff will monitor security deposits charged to and collected from tenants during supervisory visits by:

- Reviewing project annual financial statements;
- Reviewing dwelling leases and comparing the amount charged with what has been specified in the current management plan;
- Reviewing bank statements to see what the deposits of security deposits total; and

- Asking tenants to confirm what they have paid as security deposits.

Any discrepancies must be explained by the borrower or management agent. Monitoring of security deposit accounts is further addressed in Chapter 3.

### SECTION 3: RENT COLLECTION

#### 7.10 RENT COLLECTION [7 CFR 3560.209]

Borrowers must collect rent on a monthly basis. Rents should be due on the first day of the month. The time and place of onsite collection and/or the address for payment by mail should be well publicized and consideration should be given to an after-hours depository, if needed. Borrowers must maintain an accounting system to collect and track receipts that can be audited.

##### A. Tracking Rents

Any collection system employed by the borrower must include the following:

- A serially numbered receipt book or similar device to track collections;
- A ledger that shows which tenants have paid their rents and which have not; and
- If collections are held onsite, they must be secure. A safe may be used to ensure security.

The borrower must explain how the above requirements are to be met in the management plan. The Loan Servicer will verify that these requirements are being met during onsite supervisory visits by asking to see the receipt book or similar tracking device, the ledger, and the onsite collection device, if any.

##### B. Fees for Late Payments

Borrowers may adopt a late fee schedule for overdue rental payments. Late fee schedules must be submitted to the agency for approval as part of the housing project's management plan, be in accordance with state and local law, and consistent with the following requirements:

- (1) A grace period of 10 days from the rental payment due date must be allowed for all tenants.
- (2) The late fee must not exceed the higher of \$10 or an amount equal to 5 percent of the tenant's gross tenant contribution.
- (3) Tenants receiving housing benefits from sources other than the Agency may be subject to the late rent fee requirements of the other funding sources.

Any other type of schedule must be submitted by the borrower to the Agency for approval. All schedules must be in accordance with state and local laws and must be

justifiable. To approve the schedule, the Loan Servicer needs to make sure that the fees are not excessive, are customary for the area, and allow for a reasonable grace period.

The borrower must describe any late fee schedule in the management plan. During the onsite supervisory visit, the Loan Servicer must ask tenants about the late fees schedule to make sure it is as the borrower has described it. The Loan Servicer must also check leases to confirm that the late fee schedule is stated and matches its description in the most current management plan. Any discrepancies must be explained by the borrower.

## 7.11 BORROWER REPORTING OF RENTS

Borrowers must report to the Agency on *Form RD 3560-29, Notice of Payment Due Report* all rents, overages, and surcharges collected. This form shows the occupancy status of each unit, rents collected from each tenant, and borrower payment and agency tracking of overage. Overage is the amount by which total rental payments paid or to be paid by the tenants of a project exceed the total basic monthly charge (see paragraph 7.4). Borrowers identify any overage collected on *Form RD 3560-29*. Overage is returned by the borrower to the Agency. Overage for an account with an interest credit agreement is charged to the account as additional interest on the initial loan. Tenant contributions must be applied first to rental charges rather than to miscellaneous charges and fees, such as late fees.

### A. Agency Tracking of Overage

The Loan Servicer must process overage that is reported and returned by the borrower with *Form RD 3560-29* through the use of MFIS. Overage is coded for Agency accounting purposes depending upon the type of project it is collected from as follows:

**Overage Type 1:** Occupancy surcharge paid by ineligible tenants in Plan I projects. Occupancy surcharge is equal to twenty-five percent (25%) of note rate rent.

**Overage Type 2:** Rents paid by tenants in a Section 8/515 Project with an Interest Credit Plan Code of 7 or 8 that are greater than the basic rent, up to the note rent.

**Overage Type 3:** Rents paid by tenants in a Plan II project that are in excess of the basic rent up to the note rate rent. This includes HUD contract rents in a Section 8/515 project with an Interest Credit Plan Code of 2 that are greater than the basic rent, up to the note rate rent.

Overage collected that is in excess of the note rate rent in Section 8/515 projects with interest credit, where the HUD contract rent exceeds note rate rent, is reported on *Form RD 3560-29* as excess Section 8 funds and is deposited into the project reserve account.

For additional information on how the Agency handles overage, please refer to the Automated Multi-Family Housing Accounting System (AMAS) manual.

- Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established for existing projects, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.
- If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants ineligible for RA, the borrower may request a transfer of unused RA units. However, applicants ineligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.
- If there are still vacant units, those applicants bypassed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

#### **D. Continued Eligibility**

Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for occupancy, are eligible for RA under 7 CFR 3560.254(c)(2), and RA units are available.

#### **E. Timing of RA Assignment**

Rental assistance is paid to the borrower on the first of the month based on the prior month's occupancy.

When a tenant who has been receiving RA vacates the project, the borrower must immediately assign that unit of RA to the next existing eligible tenant or applicant on the waiting list.

When a tenant receiving RA vacates before the end of the month and the borrower reassigns the RA, the Agency will provide RA for the newly designated tenant starting on the first day of the following month.

When an RA unit is assigned to an eligible existing tenant on a day other than the first day of a month, the Agency will not provide rental assistance for the newly assigned existing tenant and the tenant will not pay reduced rental charges until the first day of the month following the assignment of the rental assistance.

#### **F. Incorrectly Assigned RA**

Incorrectly assigned RA is viewed as unauthorized assistance and handled in accordance with the requirements established under 7 CFR part 3560, subpart O.

When the tenant has correctly reported income and household size but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are handled in accordance with the unauthorized assistance requirements established under 7 CFR part 3560, subpart O.

Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Loan Servicer. If the Loan Servicer verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days' written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. It should be noted that some states require a 60-day notice of rent increases, in which case the written notice must be extended to 60 days. The borrower will also notify the tenant in writing that:

- The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant;
- The RA granted in error will not be recaptured from the tenant; and
- The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal for the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under 7 CFR 3560.160.

The RA unit will be reassigned to the next eligible household, based on *Form RD 3560-29* from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

Tenants may appeal determination of ineligibility for available RA under 7 CFR 3560.160. See paragraph 1.8 of Chapter 1 for information on the appeals process.

**G. Dealing with Tenants Who Attempt to Receive RA Simultaneously in Two Different Projects**

A tenant may not receive RA in two different multi-family housing projects at the same time. If part of the household is occupying a unit and the tenant attempts to occupy a seasonal unit in another project, MFIS will identify the duplicate tenancy through the tenant's Social Security Number.

**8.11 TENANT PAYMENTS [7 CFR 3560.256(d)]**

**A. Rents**

Tenants receiving RA must pay the net tenant contribution toward rent, which will not exceed the higher of:



# **PART 4**

**4350.3 Revision 1 Excerpts**





## Section 1: Determining Annual Income

### 5-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- 24 CFR 5.609 Annual Income

### 5-4 Key Requirements

- A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:
1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or
  2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.
- B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.
- C. Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.

### 5-5 Methods for Projecting and Calculating Annual Income

- A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are two acceptable methods for calculating the annual income anticipated for the coming year:
1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.
  2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year\*\*. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through

the year, the owner may add the total income for the months before, and the total for the months after the increase\*\*.

### Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for \$600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: \$15,600 ( $\$1,300 \times 12$  months).

The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of \$7,200 ( $\$600 \times 12$  months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

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

\$11,700	( $\$1,300 \times 9$ months)
<u>+ 1,800</u>	( $\$ 600 \times 3$ months)
\$13,500	

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

- B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
2. Weekly wages by 52;
3. Bi-weekly wages (paid every other week) by 26;
4. Semi-monthly wages (paid twice each month) by 24; and
5. Monthly wages by 12.

To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

**Example – Anticipated Increase in Hourly Rate**

February 1 Certification effective date  
\$7.50/hour Current hourly rate  
\$8.00/hour New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x \$7.50 =	\$1,800
\$1,840 hours x \$8.00 =	\$14,720
Annual Income	\$16,520

(See **Appendix 8** for an explanation of the correct approach to rounding numbers.)

- C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

**Examples – Irregular Employment Income**

Seasonal work. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

### Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

## 5-6 Calculating Income—Elements of Annual Income

### A. Income of Adults and Dependents

1. Figure 5-2 summarizes whose income is counted.
2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

**NOTE:** If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

- a. *Earned* income of minors (family members under 18) is not counted.
- b. Benefits or other *unearned* income of minors is counted.

**Figure 5-2: Whose Income is Counted?**

<b>Members</b>	<b>Employment Income</b>	<b>Other Income (including income from assets)</b>
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult *(including foster adult)*	Yes	Yes
<b>Dependents</b>		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
*Foster child under 18	No	Yes*
<b>Nonmembers</b>		
Live-in aide	No	No

**NOTE:** The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.

- c. When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.
- d. When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than \$480 annually, count all the income. If the annual income exceeds \$480, count \$480 and exclude the amount that exceeds \$480.
- e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.
- g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments

made through the official foster care relationships with local welfare agencies.

- h. Adoption assistance payments in excess of \$480 are not counted.

**B. Income of Temporarily Absent Family Members**

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD-50059.
3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.
  - a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.
  - b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

**Examples – Income of Temporarily Absent Family Members**

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income.  
During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.
- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.
- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

**C. \*Deployment of Military Personnel to Active Duty**

Owners are encouraged to be as lenient as responsibly possible to support affected households in situation where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:\*

1. \*Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.
2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.
3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).
4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.
5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment) beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.\*

**D. Income of Permanently Confined Family Members**

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.
  - a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or
  - b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.
2. If the family elects to include the permanently confined member, the individual is listed on the HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059,

the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.\*\*

#### E. Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income \*\*except for students receiving Section 8 assistance.\*\* This is true whether the assistance is paid to the student or directly to the educational institution

\*\*For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.\*\*

#### F. Alimony or Child Support

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

1. The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.
2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as "pass-through" payments. These amounts must be counted as annual income.
3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

#### G. Regular Cash Contributions and Gifts

1. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility



payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

**Examples – Regular Cash Contributions**

- The father of a young single parent pays her monthly utility bills. On average he provides \$100 each month. The \$100 per month must be included in the family's annual income.
- The daughter of an elderly tenant pays her mother's \$175 share of rent each month. The \$175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.
3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

**H. Income from a Business**

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.
2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.
3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

**I. \*\*Periodic Social Security Payments**

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.\*\*

**J. Adjustments for Prior Overpayment of Benefits**

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

**Example – Adjustment for Prior Overpayment of Benefits**

Lee Park's social security payment of \$250 per month is being reduced by \$25 per month for a period of six months to make up for a prior overpayment. Count his social security income as \$225 per month for the next six months and as \$250 per month for the remaining six months.

**K. Public Assistance Income in As-Paid Localities**

1. Special calculations of public assistance income are required for "as-paid" state, county, or local public assistance programs. An "as-paid" system is one:
  - a. In which the family receives an amount from a public agency specifically for shelter and utilities; and
  - b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.
2. The public assistance amount specifically designated for rent and utilities is called the "welfare rent."
3. To determine annual income for public assistance recipients in "as-paid" localities, include the following:
  - a. The amount of the family's grant for other than shelter and utilities; and
  - b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.
4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

**Example – Welfare Income in “As Paid” Localities**

At application, a family’s welfare grant is \$300, which includes \$125 for basic needs and \$175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is \$190.

Count the following as income:

\$125 Amount family receives for basic needs

\$190 Maximum for shelter and utilities

\$315 Monthly public assistance income

**L. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits**

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.
2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.7 G.4).

**Example – Withdrawals from IRAs or 401K Accounts**

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn \$2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward the gross annual income. (**NOTE:** Payment of long-term care insurance premiums are an eligible medical expense – see paragraph 5-10 D.8.k.)
4. \*Federal Government/Uniformed Services pension funds paid to a former spouse.\*

\*Federal Government/Uniformed Services pension funds paid directly to\* an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.

**Example:** Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of \$20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of \$20,000. The \$20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been

authorized by OPM, the reduced pension amount paid to the retired Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. \*Other State, local government, social security or private pensions paid to a former spouse.

Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.\*

#### **M. Income from Training Programs**

1. Amounts received under HUD-funded training programs are excluded from annual income.
2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.
  - a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion
  - b. Training income may be excluded only for the period during which the family member participates in the employment training program.
  - c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.

- d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.
  - e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.
2. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.
- a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.
  - b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

#### **N. Resident Services Stipends**

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds \$200 per month, owners must include the entire amount in annual income.
2. If the resident stipend is \$200 or less per month, owners must exclude the resident services stipend from annual income.

**O. Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects**

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term "intermediate care facility" is one used by state mental health departments for group homes serving these residents.
2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.
3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.
4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:
  - a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus
  - b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.
  - c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use \$30.
5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident's SSI income may be reduced between annual recertifications if the resident's earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

**P. Withdrawal of Cash or Assets from an Investment**

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. \*\*Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.\*\*

**Q. Lump Sum Payments Counted as Income**

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.
3. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

How lump sum payments for delayed start of benefits are counted depends upon the following:

- a. When the family reports the change;
- b. When an interim re-examination is conducted; and
- c. Whether the family's income increases or decreases as a result.

A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

4. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.



**Figure 5-3: Treatment of Delayed Benefit Payments Received in a Lump Sum**

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of \$700 in December to cover the period from 10/20 to 12/5 and begins to receive \$100 a week effective 12/6.

**Option A:** The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

\* The family's income is calculated at \$0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

\*\* Family's actual income for 1/1 is \$100/week x 52 weeks = \$5,200 / 12 = \$433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the \$700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

\$100/week benefit x 52 weeks = \$5,200 + \$700 lump sum payment = \$5,900 annual gross income / 12 = \$492.

\*\*\* Increased rent does not start until 2/1 in order to give the family notice of rent increase.

**Option B:** The owner processes one interim re-examination after unemployment benefits are known.

	<u>10/1</u>	<u>11/1</u>	<u>12/1</u>	<u>1/1</u>	<u>2/1</u>
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 - 94=)	-	110	110	-	-

\* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using \$800 as monthly gross income. Beginning 1/1, monthly gross income is known to be \$100/week, or \$433/month.

\*\* The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as \$5,200 / 12 = \$433 monthly gross income.

\*\*\* TTP for November and December recalculated as \$433 monthly gross income and \$313 monthly adjusted income x .30 = 94 with credit or refund to family of \$110/month for each of these two months for difference between TTP paid of \$204 and recalculated TTP of \$94.

**R. Exclusions from Income**

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.
2. Among the items that are excluded from annual income are the value of food provided through:
  - a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;
  - b. Groceries provided by persons not living in the household; and
  - c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

**Examples – Income Exclusions**

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

\*\*

3. Some additional examples of income that is excluded from the calculation of annual income follow.

### Examples – Income Exclusions

- Resident service stipends. Rich Fuller receives \$50 a month for distributing flyers for management. This amount is excluded from annual income.
- Deferred periodic payments of social security benefits. Germain Johnson received \$32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.
- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The \$250 a week she receives as a part-time typist is included in annual income. The \$150 a week she receives for participation in the training program is excluded in annual income.
- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

\*\*

## 5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

### A. What is Considered to Be an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.
2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.
3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

### B. Determining Income from Assets

**Note:** For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed \$5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:
  - a. The total cash value of the family's assets; and
  - b. The amount of income those assets are earning or could earn.
2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is \$5,000 or less, or is more than \$5,000.

**C. Determining the Total Cash Value of Family Assets**

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds \$5,000.
  - a. The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:
    - (1) Penalties for premature withdrawal;
    - (2) Broker and legal fees; and
    - (3) Settlement costs for real estate transactions.

The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

**Example – Calculating the Cash Value of an Asset**

A family has a certificate of deposit (CD) in the amount of \$5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$$\$5,000 \times 0.04 = \$200 \text{ in annual income}$$

$$\$200 / 12 \text{ months} = \$16.67 \text{ interest per month}$$

$$\$16.67 \times 3 \text{ months} = \$50.01$$

$$\$5,000 - \$50 = \$4,950 \text{ cash value of CD}$$

- b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

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**D. Assets Owned Jointly**

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.
2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.
3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

**Example – Determining the Cash Value of an Asset**

The “cash value” of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family’s equity in the property as well as the expense to sell the property.

To determine the family’s equity, subtract amounts owed on the property from its market value:

$$\begin{array}{r} \text{Market value} \\ - \text{Mortgage amount owed} \\ \hline \text{Equity in the property} \end{array}$$

Calculate the cash value by subtracting the expense of selling the property:

$$\begin{array}{r} \text{Equity} \\ - \text{Expense of selling} \\ \hline \text{Cash Value} \end{array}$$

Juanita Player owns a rental house. The market value is \$100,000. She owes \$60,000. The cost to dispose of this house would be \$8,000. The owner would determine the cash value as follows:

Market Value	\$100,000
Mortgage amount	- <u>\$60,000</u>
	40,000
Cost of disposing of the asset (real estate commission, and other costs of sale)	- <u>\$8,000</u>
<b>Cash Value</b>	<b>\$32,000</b>

- a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.
- b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

**Examples – Jointly Owned Assets**

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

**E. Calculating Income from Assets When Assets Total \$5,000 or Less**

If the total cash value of all the family's assets is \$5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

**F. Calculating Income from Assets When Assets Exceed \$5,000**

1. When net family assets are more than \$5,000, annual income includes the greater of the following:
  - a. Actual income from assets; or
  - b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.
2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

**Example – Use Actual Income from Assets When  
Total Net Family Assets are \$5,000 or Less**

Type of Asset	Cash Value	Actual Yearly Income
<i>Certificate of Deposit</i> \$1,000 withdrawal fee \$50 interest @ 4%	\$950	\$40
<i>Savings Account</i> \$500 interest @ 2.5%	\$500	\$13
<i>Stock</i> \$300 Not paying dividends	\$300	\$0
	<hr/>	<hr/>
Total	\$1,750	\$53

The total cash value of the family's assets is \$1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or \$53.

**Example – Imputed Income from Assets**

"Imputed" means "attributed" or "assigned." Imputing income from assets is "assigning" an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a savings account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than \$5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.



**Example – Determining Income from Assets  
When Net Family Assets Exceed \$5,000**

Type of Asset	Cash Value	Actual Yearly Income
<i>Checking Account</i> (non-interest bearing)	\$455	\$0
<i>Savings Account</i> (interest at 2.5%)	\$6,000	\$150
<i>Stocks</i> (not paying dividends this year)	\$3,000	\$0
<b>Total</b>	<b>\$9,455</b>	<b>\$150</b>

Total cash value of assets is greater than \$5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets (\$9,455) is multiplied by 2% to determine the imputed income from assets.

$$.02 \times \$9,455 = \$189$$

\$189 is greater than the actual income from assets (\$150).

In this case, therefore, the owner will add \$189 to the annual income calculation as income from assets.

**G. Calculating Income from Assets - Specific Types of Assets**

1. Trusts.

a. Explanation of trusts.

- (1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.
- (2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.
- (3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the

beneficiary's 21<sup>st</sup> birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

- (4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

- (1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.
- (2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

**Example – A Trust Accessible to Family Members**

Assez Charaf lives alone. He has placed \$20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the \$20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

- (3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

- (4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted

housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

- If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

**Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value**

Sarah Gordy placed \$100,000 in a nonrevocable trust for her grandson. Last year, the trust produced \$8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, \$100,000, is included in net family assets for two years from the date the trust was established.

- Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

**Example – Nonrevocable Trust Distributing Income to the Creator/Tenant**

Reggie Bouchard has established a nonrevocable trust in the amount of \$35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received \$3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, \$35,000, is counted as an asset disposed of for less than fair market value for two years.

- (5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

**Example – Payment of Principal Amounts from a Trust**

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received \$18,000 from the trust. The attorney managing the trust reported that \$3,500 of the funds distributed was interest income and \$14,500 was from principal. Jared receives a payment of \$1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire \$18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

- (1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.
- (2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

**Example – Special Needs Trust**

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

- (1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.
  - A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.
  - A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.
  - A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.
- (2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.
- (3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.
- (4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

- (1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

- (2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. \*\*

c. Calculations when an annuity is considered an asset.

- (1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. \*\*It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.
- (2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.
- (3) The owner will need to verify with the insurance agent or other appropriate source:
- The right of the holder to withdraw the balance (even if penalties are involved).
  - The basis on which the annuity may be expected to grow during the coming year.
  - The surrender or early withdrawal penalty fee.
  - The tax rate and the tax penalty that would apply if the family withdrew the annuity.
- (4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.
- (5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)
- (6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

imputed income from assets is calculated on the total cash value of all family assets.

3. Lump sum receipts counted as assets.
  - a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:
    - (1) Inheritances;
    - (2) Capital gains;
    - (3) Lottery winnings paid in one payment;
    - (4) Cash from the sale of assets;
    - (5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and
    - (6) Any other amounts that are received in one-time lump sum payments.

#### **Example – Calculating the Cash Value of an Annuity**

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of \$20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of \$3,000. If the annuity is withdrawn, then the applicant will owe \$1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, \$20,400; the surrender fee, \$3,000; and the tax penalties, \$1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be \$16,200.

The cash value, \$16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset:  $\$20,400 \times .045 = \$918$ .

- b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset—a car or a vacation or education—the lump sum must not be counted.
- c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regularly scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measurable by the tenant (e.g., gems, stamp collection).

**Examples – Lump Sum Additions to  
Family Assets (One-Time Payment)**

- JoAnne Wettig won \$500 in the lottery and received it in one payment. Do not count the \$500 as income. At JoAnne's next annual recertification, she will report all of her assets.
- Mia LaRue, a tenant in a Section 8 property, won \$75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of \$24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is \$205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than \$200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than \$5,000).

4. Balances held in retirement accounts.
  - a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.
  - b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.
  - c. Include contributions to company retirement/pension funds:
    - (1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.



- (2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.
- d. Include in *annual income* any retirement benefits received through periodic payments.

**Examples – Balances Held in an IRA or 401K Retirement Account**

- Jed Dozier's 401K account balance is \$35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, \$18,000, is the amount that is counted as an asset.

5. \*Federal Government/Uniformed Services Pensions

In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is\* determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. \*Other state, local government, social security or private pensions.

Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.\*

7. Mortgage or deed of trust.

- a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract sale."

- b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.
8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)
- a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.
- b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than \$1,000.

**Examples – Assets of More or Less Than \$1,000 Disposed of for Less Than Fair Market Value**

- During the past two years, Alexis Turner donated \$300 to the local food bank, \$150 to a camp program, and \$200 to her church. The total amount she disposed of for less than fair market value is \$650. Since the total is less than \$1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children \$500. Because the total exceeds \$1,000, the gifts are treated as assets disposed of for less than fair market value.

- c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). \* However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.\*

## Exhibit 5-1: Income Inclusions and Exclusions

### 24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

#### INCOME INCLUSIONS

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **\*\*periodic amount** (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**\*\***
- (5) Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;
- (6) Welfare Assistance.
  - (a) Welfare assistance received by the family.

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

#### INCOME EXCLUSIONS

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in 24 CFR 5.403;
- (6) The full amount of student financial assistance paid directly to the student or to the educational institution **\*\***(see Income Inclusions (9), above, for students receiving Section 8 assistance.)**\*\***
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);

- (8) (a) Amounts received under training programs funded by HUD (e.g., training received under Section 3);
- (b) Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (c) Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (d) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or
- (e) Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
- (9) Temporary, nonrecurring, or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
- (11) Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
- (14) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
- (15) Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (16) Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

The following is a list of income sources that qualify for that exclusion:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L- 94-540, 90 Stat. 2503-04);
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- (i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;
- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- (p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina

bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- (s) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

## Exhibit 5-2: Assets

**NOTE:** There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

A. Net Family Assets include the following:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.
2. Revocable trusts. Include the cash value of any revocable trust available to the family. See discussion of trusts in paragraph 5-7 G.1.
3. Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

**NOTE:** If the person's main business is real estate, then count any income as business income under paragraph 5-6 G of the chapter. Do not count it both as an asset and business income.

4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.
5. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count withdrawals as income.)

### Example – Withdrawals from a Keogh Account

Ly Pham has a Keogh account valued at \$30,000. When she turns 70 years old, she begins drawing \$2,000 a year. Continue to count the account as an asset. Use the guidance in paragraph 5-7 to determine the cash value and imputed income from the asset. Do not count the \$2,000 she withdraws as income.



6. Retirement and pension funds.

- a. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the chapter on determining the value of assets.
- b. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.
- (1) If benefits will be received in a lump sum, include the lump-sum receipt in net family assets.
  - (2) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
  - (3) If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

**NOTE:** This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

**Example – Retirement Benefits as Lump-Sum and Periodic Payments**

Upon retirement, Eleanor Reilly received a lump-sum payment of \$15,000. She will also receive periodic pension payments of \$350 a month.

The lump-sum amount of \$15,000 is generally treated as an asset. In this instance, however, Eleanor spent \$5,000 of the lump sum on a trip following her retirement. The remaining \$10,000 she placed in her mutual fund with other savings. The entire mutual fund will be counted as an asset.

The owner has verified that Eleanor is now not able to withdraw the balance from her pension. Therefore, the owner will count the \$350 monthly pension payment as annual income and will not list the pension account as an asset.

6. Assets that are NOT effectively owned by the applicant. Assets are not effectively owned when they are held in an individual's name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

**NOTE:** Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

**Example – Assets not Effectively Owned by the Applicant**

Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

**Example:** Alexander Cumbow and his daughter, Emily Bornscheuer, have a bank account with both names on the account. Emily's name is on that account for the convenience of her father in case an emergency arises that would result in Emily handling payments for her father. Emily has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Emily does not own this account. If Emily applies for assisted housing, the owner should not count this account as her asset. This asset belongs to Alexander and would be counted entirely as the father's asset should he apply for assisted housing.

7. Assets that are not accessible to the applicant and provide no income to the applicant. Nonrevocable trusts are not covered under this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

**Example**

A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

**D. Medical Expense Deduction**

1. The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly or disabled families).
2. If the family is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all family members, including the expenses of nonelderly adults or children living in the family.
3. Medical expenses include all expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.
4. The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.
5. The medical expense deduction is that portion of total medical expenses that exceeds 3% of annual income.

**Example – Calculating the Medical Expense Deduction**

Age of head	64	Annual income	\$12,000
Age of spouse	58	Total medical expenses	\$1,500
<u>Sample Calculation</u>			
		Annual income	\$12,000
			x .03
		3% of annual income	\$ 360
		Total medical expenses	\$1,500
			- \$360
		<i>Allowable</i> medical expenses	\$ 1,140

6. In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction \*\*for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.\*\* If the tenant is under a payment plan, the expense would be counted as anticipated
  - a. There are two options for addressing one-time medical expenses. These expenses may be added to the family's total medical expenses either: (1) at the time the expense occurs, through an interim recertification, or (2) at the upcoming annual recertification

**NOTE:** If the one-time expense is added at an interim recertification, it cannot be added to expenses at the annual recertification.

- b. The following example illustrates the two options. Tenants may use either option.

### Example – One-Time, Nonrecurring Medical Expenses

Maria and Gustav Crumpler had a total of \$2,932 in medical expenses last year (Year 1). Of this amount, \$932 covered Gustav's gall bladder surgery; \$2,000 was for routine costs that are expected to re-occur in the coming year. The entire amount may be included in the Crumpler's medical costs for the coming year (Year 2) despite the fact that the gall bladder surgery is a past event that is not likely to re-occur.

If, during the coming year (Year 2), the Crumplers experience additional one-time medical costs not anticipated at the annual recertification, they may request an interim recertification or wait for their next annual recertification (during Year 3) and ask for the unanticipated expenses to be included in the medical expense calculation for the following year.

The owner may wish to explain to residents that including past one-time medical expenses in an annual recertification rather than in an interim recertification will result in a rent reduction for a larger number of months.

For example, let us assume Maria has unanticipated dental surgery during Year 2 at a cost of \$3,550 six months after the annual recertification. The Crumpler's current TTP is \$560; their annual income is \$25,000.

Annual income	\$25,000
Less elderly household deduction	- \$400
Less allowable medical deduction (\$2,932 less 3% of \$25,000)	<u>- \$2,182</u>
Adjusted annual income	\$22,418
Adjusted monthly income	\$1,868
TTP	\$560

If the Crumplers request an interim recertification, the \$3,550 additional cost will lower their rent for 6 months; if they wait for their annual recertification, the cost of the dental surgery will affect their rent for 12 months.

Annual income	\$25,000
Less elderly household deduction	- \$400
Less allowable medical deduction* (\$6,482 less 3% of \$25,000)	<u>- \$5,732</u>
Adjusted annual income	\$18,868
Adjusted monthly income	\$1,572
TTP	\$472

At the Crumplers' current annual income, the large dental bill reduces rent by \$88.

**OPTION #1:** If the Year 2 rent is adjusted through an interim recertification, the Crumplers will save 6 months times \$88 or \$528.

**OPTION #2:** If the Crumplers wait until their annual recertification, the large bill will affect their rent for the 12 months of Year 3, and they will save twice as much, or \$1,056.

7. When a family is making regular payments over time on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a family has received a deduction for the full amount of a medical bill it is paying over time, the family cannot continue to count that bill even if the bill has not yet been paid.

**Example – Medical Expense Paid over a Period of Time**

Ursula and Sebastian Grant did not have insurance to cover Sebastian's operation four years ago. They have been paying \$105 a month toward the \$5,040 debt. Each year that amount (\$105 x 12 months or \$1,260) has been included in their total medical expenses. A review of their file indicates that a total of \$5,040 has been added to total medical expenses over the four-year period. However, the Grants bring a current invoice to their annual recertification interview. Over the four-year period they have missed five payments and still owe \$525. Although they still owe this amount, the bill cannot be included in their current medical expenses because the expense has already been deducted.

8. Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled families. For that reason, it is important for owners to ask enough questions to obtain complete information about allowable medical expenses. The following list highlights some of the most common expenses that may be deducted. A list of examples of eligible medical expenses may be found in Exhibit 5-3.
- a. Services of doctors and health care professionals;
  - b. Services of health care facilities;
  - c. Medical insurance premiums or costs of an HMO;
  - d. Prescription/nonprescription medicines that have been prescribed by a physician;
  - e. Transportation to treatment;
  - f. Dental expenses;
  - g. Eyeglasses, hearing aids, batteries;
  - h. Live-in or periodic medical assistance such as nursing services, or costs for an assistance animal and its upkeep;
  - i. Monthly payments on accumulated medical bills;
  - j. Medical care of a permanently institutionalized family member *if* his or her income is included in annual income; and

- k. Long-term care insurance premiums. The family member paying a long-term care insurance premium must sign a certification (\*\*see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4\*\*) that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds. The certification must be maintained in the family's occupancy file. (Paragraph 5-6 J.3 describes situations in which long-term care insurance payments must be included in annual income.)
9. Special calculation for families eligible for disability assistance and medical expense deductions. If an elderly family has both unreimbursed medical expenses and disability assistance expenses, a special calculation is required to ensure that the family's 3% of income expenditure is applied only one time. Because the deduction for disability assistance expenses is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction is calculated.
- a. When a family has unreimbursed disability assistance expenses that are less than 3% of annual income, the family will receive no deduction for disability assistance expense. However, the deduction for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds 3% of annual income.
  - b. If the disability assistance expense exceeds the amount earned by the person who was enabled to work, the deduction for disability assistance will be capped at the amount earned by that individual. When the family is also eligible for a medical expense deduction, however, the 3% may have been exhausted in the first calculation, and it then will not be applied to medical expenses.
  - c. When a family has both disability assistance expenses and medical expenses, it is important to review the collected expenses to be sure no expense has been inadvertently included in both categories.

#### E. Elderly Family Deduction

An elderly or disabled family is any family in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities. Each elderly or disabled family receives a \$400 family deduction. Because this is a "family deduction" each family receives only one deduction, even if both the head and spouse are elderly or disabled.

**Example – Special Calculation for Families Who Are Eligible  
for Disability Assistance and Medical Expense Deductions**

The following is basic information on the family:

Head (retired/disabled)—SS/pension income	\$16,000
Spouse (employed)—employment income	+ <u>\$4,000</u>
Total Annual Income	\$20,000
Total disability assistance expenses	\$500
Total medical expenses	\$1,000

Step 1: Determine if the disability assistance expenses exceed 3% of the family's total annual income.

Total disability assistance expenses	\$500
Minus 3% of total annual income	<u>-\$600</u>
	(\$100)

No portion of the disability expenses exceeds 3% of the annual income; therefore, the disability assistance deduction is \$0.

Step 2: Calculate if the medical expenses exceed the balance of 3% of the family's total annual income.

Total medical expenses	\$1,000
Minus the balance of 3% of total annual income	<u>-\$100</u>
<b>Allowable medical expenses deduction</b>	<b>\$900</b>

**F. No Deduction for Alimony or Child Support Paid to a Person outside the Assisted Family**

There is no deduction for an amount paid to a person outside the assisted family for alimony or child support. Even if the amount is garnished from the wages of a family member, it must be included in annual income.

**Example – Child Support Garnished from Wages**

George Graevette pays \$150 per month in child support. It is garnished from his monthly wages of \$950. After the child support is deducted from his salary, he receives \$800. The owner must count \$950 as George's monthly income.



**Exhibit 5-3: \*\*Examples of\*\*****Medical Expenses That Are Deductible and Nondeductible**

The following are examples of eligible items for medical expense deductions. Please note that this list is not exhaustive.

Type of Medical Expenses	May Include
Services of recognized health care professionals	Services of physicians, nurses, dentists, opticians, mental health practitioners, osteopaths, chiropractors, Christian Science practitioners, and acupuncture practitioners
Services of health care facilities; laboratory fees, X-rays and diagnostic tests, blood, oxygen	Hospitals, health maintenance organizations (HMOs), laser eye surgery, out-patient medical facilities, and clinics
Alcoholism and drug addiction treatment	
Medical insurance premiums	Expenses paid to an HMO; Medicaid insurance payments that have not been reimbursed; long-term care premiums (not prorated)
Prescription and nonprescription medicines	Aspirin, antihistamine only if prescribed by a physician for a particular medical condition
Transportation to/from treatment and lodging	Actual cost (e.g., bus fare) or, if driving in a car, a mileage rate based on IRS rules or other accepted standard
Medical care of permanently institutionalized family member IF his/her income is included in Annual Income	
Dental treatment	Fees paid to the dentist; x-rays; fillings, braces, extractions, dentures
Eyeglasses, contact lenses	
Hearing aid and batteries, wheelchair, walker, artificial limbs, Braille books and magazines, oxygen and oxygen equipment	Purchase and upkeep (e.g., additional utility costs to tenant because of oxygen machine [in properties with tenant paid utilities only])
Attendant care or periodic medical care	Nursing services, assistance animal and its upkeep
Payments on accumulated medical bills	Scheduled payments

\* Or any other medically necessary service, apparatus, or medication, as documented by third-party verification.



# S.T.A.R. ANNUAL RE-CERTIFICATION FORM

[Please complete (print or type) the following questionnaire]

NAME of Recipient: As you wish your name to appear in the STAR Guide. *If your name has changed please include prior listing.*

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ADDRESS (Where you want certificate mailed): CITY STATE ZIP

--

Company Name (must be included): As you wish your company name to appear in the STAR Guide.

--

Telephone Number:

Fax Number:

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In which state(s) do you do business? (Your name will appear under each state's listing.)

--

Credit Card Number:

Expiration Date:

V-Code:

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Continuing Education:

**List all courses (totaling 6 hours) on the back page of this sheet. Hours must have been taken during the 2011 calendar year. Attach proof of course attendance.**

**This form is due no later than January 1, 2012.**

**If you did not take a training with SPECTRUM for your course hours please include the recertification fee of \$50 in the form of a check or credit card.**

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Return to: SPECTRUM SEMINARS, INC.  
545 Shore Road  
Cape Elizabeth, ME 04107

**Please only send copies of your certificate as it will not be returned.  
Any questions please contact: [admin@spectrumseminars.com](mailto:admin@spectrumseminars.com) or  
207-767-8000 x201.**