

Frequently Asked Questions: Calculating Rent for Tenants in Federal Multifamily Housing with Project-Based Section 8 subsidy (updated 5/12 by Greater Boston Legal Services)

Q#1: What's the formula for calculating rent in **federal multifamily housing with a project-based Section 8 subsidy**? Isn't it just 30% of income?

A#1: That's a common way to express it, but it's a little more complicated than that. You need to know three things:

(1) What's the "**annual income**" for the household—i.e., all household income minus certain types of income that are **excluded** ("**exclusions**")

(2) What's the "**adjusted income**" for the household—i.e., the annual income minus certain amounts that are **deducted** ("**deductions**")

(3) If the tenant has to pay for his/her own utilities, what "**utility allowances**" are used to cover this. This often varies by bedroom size and by development.

Rent is set at either (a) 30% of adjusted income, (b) 10% of annual income, or (c) the minimum rent, whichever is highest. See discussion of minimum rent in Q#4 below. (Utility allowances are deducted from each of these figures where the tenant pays his/her own utilities.) For most tenants, 30% of adjusted income is the usual figure—but the 10% of annual income figure can be used occasionally, particularly if the tenant has large deductions from income (usually associated with medical or child care expenses). If the income-based rent exceeds the overall contract rent for the unit, then the tenant's rent is set at the contract rent. See Q#5, below.

Where a tenant household includes individuals who are neither U.S. citizens nor "eligible non-citizens", as this term is defined by HUD in its non-citizen rule, the family usually must pay a "pro-rated" rent based on the percentage of the household members who are citizens or eligible non-citizens. This figure is often much higher than the regular rent. Here again, the pro-rated rent may not exceed the overall contract rent for the unit.

Q #2: What's **included and excluded from income** in determining annual income in **federal multifamily housing with a project-based Section 8 subsidy**?

A#2: See the attached chart. Some important things to notice here:

- **Lump sum retroactive SSI and OASDI awards are not counted as income.** This is different than for state public housing, where they are counted.
- **Foster care and adult foster case payments are not counted as income.** Here again, state public housing rules are different.

- **Payments made by household members to others outside the household for child support or alimony are not excluded from income.**
- **Income from employment of minors under the age of 17, and earnings in excess of \$480/year for each full-time student 18 years and older, are not counted,** as long as the person is neither the head of the household nor the spouse. A full-time student is defined as a person attending school or vocational training on a full time basis.

There is no earned income disregard as there is in federal public housing, or in tenant-based Section 8 housing for persons with disabilities. As noted in the list of exclusions, there are some temporary exclusions for persons participating in certain types of training or self-sufficiency programs during the period of such programs.

Q#3: What's **deducted from annual income** in determining adjusted income in **federal multifamily housing with a project-based Section 8 subsidy**?

A#3: There are several standard deductions:

(A) **For each member of the household, other than the head of household and/or his/her spouse, who is a dependent, i.e., under 18 years of age, a full time student, or a disabled adult, there is a \$480/year deduction from income;**

(B) **If the head of household or his/her spouse is elderly (62 years of age or older) or disabled, there is a \$400/year deduction.** There can only be one such deduction per household.

(C) If the household has **expenses for the care of children under the age of 13 which are necessary so that an adult household member can work (or seek work) or go to school or training,** these expenses can be deducted. Where an individual is employed, the child care expenses cannot exceed the employment income. This deduction doesn't include tuition to private or parochial school but may include after school care payments.

(D) **If the head of household and/or spouse is 62 years of age or older or a person with disabilities, and the household has medical expenses that exceed 3% of gross annual income,** the portion of the expenses which exceeds 3% of gross annual income can be deducted. These expenses can include many things: **payments or co-payments for services of doctors or other health care professionals; hospitalization, clinic, or treatment costs; medical or dental insurance premium costs; out-of-pocket prescription drug costs or non-prescription medicines which are doctor recommended; costs for dental care/work, eyeglasses, hearing aids (including batteries), special footwear which is medically required, etc. ; transportation to**

medical treatment; live-in or periodic medical assistance at home; monthly payments on accumulated medical bills; payments for auxiliary apparatus such as wheelchairs, etc. It is necessary, however, that the household has actually paid for these—unpaid medical bills, or bills which are paid by third parties (such as Medicaid or Medicare) do not count. **This is a big category and many tenants often do not know to seek these deductions, or to keep the kind of records needed to get the deductions.**

(E) **Disability assistance expenses.** These are unreimbursed expenses related to the care of a disabled family member necessary to allow another family member to work. Only the portion which exceeds 3% of gross annual income is deductible, and the deduction may not exceed the employment income of the family member who would otherwise be available to provide this care. This can include the cost of care attendants or auxiliary apparatus such as wheelchairs, ramps, lifts, or special equipment to enable a blind person to read. This can be combined with (D) above if (D) and (E) standing alone do not exceed 3% of gross annual income.

Q#4: What is the **minimum rent in federally assisted multifamily housing with a project-based Section 8 subsidy**? What if I have no income for a prolonged period of time—do I still have to pay the minimum rent?

A#4: Federal law requires that the owner impose a minimum rent of \$25/month if the rent calculated at either 10% of annual income or 30% of adjusted income is less than \$25/month. (Payments that the tenant makes toward utilities count toward this minimum rent.) If you have a financial hardship due to unemployment, death or illness in the household, loss of public assistance benefits, or the like, you can request that the minimum rent charges be suspended or waived. Once you make the request, the owner must determine if the hardship is temporary (expected to last less than 90 days) or not; if it is temporary, the minimum rent charges are suspended for the temporary period, but eventually you will be required to repay them with a reasonable repayment plan after the temporary hardship ends. If it is clear that the hardship is not temporary, or if the hardship extends beyond the temporary period, then the minimum rent charges must be waived until the hardship ends.

Q#5: Is there such a thing as a “flat rent” in **federal multifamily housing with a project-based Section 8 subsidy**? Can I be kicked out of federal multifamily housing if my income is too high?

A#5: While there is a required “flat rent” for federal public housing, there is no “flat rent” per se in federal multifamily housing. There is, however, a HUD approved contract rent for the apartment. You cannot be charged more than the contract rent. If 30% of your adjusted income is greater than the contract rent, you are not required to vacate, but there is simply no subsidy paid on your behalf. Unlike the Section 8 tenant-based program, you can be in this situation for an indefinite period—years, in some cases. If and when your

income decreases so that 30% of your adjusted income is less than the contract rent, subsidy may again be paid on your behalf. If, however, you are in a development which is “mixed income” (i.e., has some Section 8 project-based units and some moderate income or market rate units), your subsidy may have been reassigned to another family in the meantime, and you may have to go onto a waiting list for future subsidy. Check with the manager of your property about how this is likely to work in your development. (For the Section 8 tenant-based program, you can only remain “over-income” and eligible for continued subsidy for a six month period—after this, your right to continued subsidy ends, and you would have to reapply for subsidy in the future.)

Q#6: When do I have to report on my income and family composition? What are the reporting deadlines? What happens if I don’t complete the report on time? If my income goes up and I don’t report this right away, can I get in trouble?

A#6: You have to report on your income and family composition every year at the time of your annual re-examination (sometimes called recertification), and the information you give the owner at that time must be accurate. You are also required to immediately report, in between annual reviews, on: (1) any change in household composition; (2) any employment of an adult household member who was previously listed as unemployed; and (3) any increase in household income of more than \$200/month. As is discussed further in Q #9 below, if your income decreases, it is a good idea to report this immediately to the owner.

As part of the annual re-examination process, the owner must give you an **initial written notice** to provide information at least 75-90 days in advance of the effective date of the annual re-examination. The notice must advise you that you have until the 10th of the month prior to that date in which to contact the owner; the notice must also state the days and hours that staff are available for interviews, the information you must bring with you, whom you should contact to schedule the interview, and how contact should be made.

If you don’t respond to that initial notice within 30 days, the owner is required to send you a **second reminder notice**. This notice includes all of the information in the original notice, but also tells you that if you fail to respond by the 10th of the month prior to the effective date of the annual re-examination, the owner may suspend your rent subsidy and **increase your rent to the full market rent**, effective as of the annual recertification date. If there is no response to this second notice in 30 days, a **third notice** is sent, saying that you must recertify within 10 days, and if you don’t respond, your rent will be raised to the full market rent.

If you fail to complete the recertification by the 10th of the month prior to the effective date of the annual re-examination, the owner may require you to pay the market rent for the next month; the owner may also implement a rent increase (based on information you submit thereafter) without the 30-day advance notice that would normally be required

(see Q#8 below). If you get the information in late, the owner must inquire whether there are **mitigating circumstances that would explain the delay**, such as hospitalization or out-of-town absence due to death or illness of family members, and excuse you from being raised to the market rent and entitle you to the regular 30-day notice of any rent increase. The owner must notify you in writing whether it agrees that there are mitigating circumstances, and your right to appeal the decision if mitigating circumstances aren't found to exist. Such an appeal involves a meeting between the tenant and an owner representative not involved in the original decision.

If you have been raised to the market rent, and still don't recertify, the owner can send you a notice of intent to terminate your assistance. The notice must advise you that the subsidy will be terminated unless you meet with the owner and supply the required information within 10 days. If you supply the information within the 10 days (or at least within the calendar month), the owner may recertify you and continue your assistance. The market rent charge, however, continues until the month after the recertification, unless mitigating circumstances are found.

Q#7: Can the owner increase my rent retroactively (effective back to some past date)?

A#7: Yes, if **you didn't report on your income, deductions or exclusions, or household composition properly**, and the owner subsequently discovers the mistake. If, on the other hand, you gave the owner the proper information in a timely manner, but the owner failed to process it, the corrected rent increase can only be prospective (effective for a future date)

Q#8: What kind of notice am I supposed to get of a rent increase?

A#8: Under HUD guidance, owners are supposed to give at least 30 days advance notice of a rent increase, and the effective date is the first of the month after the end of the 30-day period. If you didn't complete recertification on time, or if you didn't properly report on income (see Q#6 and #7 above), then the notice can be effective as of the date that the rent change would normally have taken place.

Q#9: How do I go about asking for a decrease in my rent? When should the decrease in the rent take effect? Can it be retroactive? What if I didn't report the loss in my income right away? What if the owner doesn't respond to my request for a decrease?

A#9: As soon as you know of a change in your circumstances that should reduce your rent—such as a decline in income or a change in deductions/exclusions—you should let the owner know about this right away. **It's a good idea to document this by going to the office and making a written request, or leaving a dated note for your tenant file, so that it can be determined later on when you first notified the owner of the change in your circumstances.** Under HUD guidelines, the owner can wait until it obtains

adequate verification of your change in circumstances and what your likely new income will be—for example, getting a layoff letter from your employer, and verification from DET about what you will be paid on unemployment, or a letter from DTA about TAFDC benefits—before making the rent change. However, **once the owner obtains adequate verification, the rent change should be made effective back to the first day of the month after you let the owner know of the change in circumstances. It can be retroactive.** If you didn't report the loss in income right away, the owner will usually have no obligation to make an adjustment in your rent for the time period before you informed it of the change. In some cases, however, where a “reasonable accommodation” for a disability is involved—for example, you couldn't let the owner know because you were hospitalized-- the owner may be able to make retroactive changes even where there wasn't a timely request for a decrease.

If the owner doesn't respond to your request for a decrease in your rent, you can contact the local HUD office and ask to speak to the management analyst at HUD responsible for the development. In some cases HUD will intervene and make sure that the owner takes the right steps. (Occasionally a call from a community advocacy agency or a Congressional office may also get results.) If there is a tenants' organization at your development, the tenants may also want to raise this issue as a group with the owner and/or HUD. Unfortunately, there is no “grievance procedure” available in federal multifamily housing with a project-based Section 8 subsidy on rent disputes. If the owner takes you to court in an eviction for non-payment of rent, you may be able to raise the lack of a rent adjustment as a defense—but in those cases you should seek help from your local legal services agency.

Q#10: What if my income changes a lot? What if I'm working over-time now, but that's not always the case? How should the owner set my rent?

A#10: The owner sets your rent based on anticipated income. That means that it must make its “best guess” about what your income is going to be for the next 12 months. Usually the owner will rely on information released by an employer about what you have earned to date and are likely to earn over the next 12 months, or the average of recent paystubs (over-time can be counted). If you think that the information is incomplete, or doesn't accurately show what your income's likely to be for the next year, you should try to get the owner better information.

If you only work a certain number of months each year (a common situation, for example, with those who work in schools), you have the option of either having your income stretched over the 12 month period—with a lower average rent than would otherwise be the case in the months that you work, but a higher rent in the months you aren't employed—or to use the figure to set your rent for, say, the 10-month period that you are employed, and then to request a rent decrease for the months that you are not employed. This obviously won't work, however, if the owner already stretched the income out. The

same goes with changes in overtime or in hours—if your rent was set initially based on certain assumptions about overtime and hours, and you end up doing substantially less overtime or have your hours reduced, you should request a change in your rent.

Q#11: My son has left my household, and I'm no longer getting his income. The manager says that I need proof that he resides somewhere else before she'll remove him from my lease. Is this necessary?

A#11: The owner often will request proof that a family member resides elsewhere—such as a copy of a lease, utility bills in the person's name, or rent receipts—before it will remove someone from the lease. Some households may claim that family members have moved out so that their incomes no longer count, but the person is still there. It is in your interest to convince the owner that the person is no longer there—otherwise, not only can you still have a rent which includes their income, but you may be held responsible for their actions if he or she commits violent or drug-related activity on or near your development. If you have done all you can reasonably do—for example, the person who moved out was an abusive spouse or boyfriend, is not willing to cooperate in providing documentation, and attempts to contact him will endanger you—let the owner know what you've done, and if they still won't make the change, contact HUD, a community advocacy group or tenants organization, a Congressional office, or your local legal services office to see if you can get more help.

Q#12: I want to add someone to my household. What's the process for this? Can the person stay with me in the meantime? What if the person isn't approved?

A#12: You should make a request to the manager, and the best idea is to put it in writing (dated, with a copy that you keep). If the person being added to the household is born to a household member, or where a household member has adopted or obtained court-awarded custody of a minor, the owner will probably not require screening of the addition to the household; the owner may, however, want the birth certificate, adoption order, or copy of the court order. In other cases, the owner will probably require that the proposed addition be screened, including a screening of criminal history (this may also be done for teenagers who may have been adjudicated as adults). Different owners have different policies. Under HUD guidance, tenants have the right to have a guest stay with them for limited periods of time. Any longer stay requires a request to the owner showing "good cause", and written approval. Therefore, you could have the proposed addition to your household stay with you during the guest period while you make the written request for an addition; the owner would probably agree to extend the period if the request is still going through screening. Unlike federal public housing, there is no grievance procedure if your request is denied. The owner can terminate your tenancy if you let the proposed addition stay there after denial, because the person would be an unauthorized household member. Here again, if you think the owner has done the wrong thing, you can seek help from HUD, an advocacy or tenants organization, a Congressional office, or a local legal services office.

Q#13: I was called in because management discovered that I didn't fully report on income that I received in the past. They understood this wasn't intentional—I didn't understand that this was something I needed to report—but they're saying that I owe them money because they gave me more subsidy than I should have received. What are my rights?

A#13: HUD does say that if you didn't fully or accurately report income in the past, you must pay back any excess subsidy you received. You should not face eviction as long as this was not intentional and you enter into a repayment agreement and keep up with that agreement. HUD says that a tenant can ask that repayment terms not exceed 10% of adjusted income—i.e., that the combination of your regular rent payment and your repayment amount should not exceed 40% of your adjusted income. If, after you enter into the repayment agreement, your income increases or decreases by \$200/month or more, either you or the manager can renegotiate the terms of the repayment agreement so that they reflect your new income.