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Income Eligibility and Rent in HUD Rental Assistance Programs: Frequently Asked Questions

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Summary

The Department of Housing and Urban Development (HUD) administers five main rental assistance programs that subsidize rents for low-income families: the Public Housing program, the Section 8 Housing Choice Voucher program, the Section 8 Project-Based Rental Assistance program, the Section 202 Supportive Housing for the Elderly program, and the Section 811 Supportive Housing for Persons with Disabilities program. Together, these programs serve more than 4 million families and make up well over three-quarters of HUD's budget. All five programs provide rental assistance in the form of below-market rent available to low-income individuals and families. While the programs vary in some important ways—how assistance is provided, who administers the assistance, whether the assistance is restricted to certain populations—they use many of the same or similar standards when establishing tenants' income eligibility and their minimum contributions toward rent.

Families are generally eligible for HUD assistance if their incomes are below certain income standards set by HUD. Unlike the poverty measurement used by some other federal benefits programs that target low-income populations, income eligibility for HUD-assisted housing varies by locality and is tied to local area median income. Income, for the purposes of eligibility, is defined as income from all sources earned by all members of the family, with some exclusions (e.g., income earned by minors). Although a family may be eligible for assistance, they are not guaranteed to receive it. Housing assistance programs are not entitlements, thus, due to funding limitations they serve only roughly one in four eligible households. Families wishing to receive assistance are generally placed on waiting lists.

Once a family is determined eligible for HUD assistance and is selected to receive assistance, the rent they pay is generally based on 30% of their *adjusted* income. Those adjustments include deductions for elderly and disabled families, certain medical costs, and certain child care costs. Families' incomes, adjusted incomes, and contributions toward rent are typically recertified annually.

The laws governing both income eligibility and tenant rents were standardized in the early 1980s, although the origins of the current policies date back earlier and are derived from experiences with the public housing program, which was the first federal rental assistance program.

The income and rent policies in the five primary HUD rental assistance programs are also used to some extent by other HUD programs such as the homeless assistance programs and the HOME Investment Partnerships program. Looking at non-HUD housing programs, the Department of Agriculture's rural rental assistance program largely uses HUD's income and rent policies, and the Department of Treasury's Low-Income Housing Tax Credit program uses some HUD standards, but not all of them. Comparing HUD's primary rental assistance programs to other federal assistance programs that serve similar populations, HUD's programs differ in important ways; most notably, other assistance programs devolve more decisionmaking about income determination and eligibility to state administrators, whereas the HUD policies are largely set by federal statute and regulation.

While the income and rent policies that govern HUD's five main rental assistance programs are designed to accurately calculate and capture family incomes and financial circumstances, they can also lead to confusion among recipients as well as difficulties for local program administrators. In response to the rather complicated rules, stakeholders and some policymakers have called for changes to the current system; in fact, several laws were enacted in the 114th Congress to streamline income and rent calculations and those policy changes are in various stages of implementation.

This report provides answers to some of the most common questions about the income and rent policies in federal rental assistance programs, including questions about where these policies came from and how they compare to other federal assistance programs that serve the same or similar purposes or populations. It is intended to help answer commonly asked questions, as well as provide information to policymakers seeking to understand and evaluate proposed changes to the current system.

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Introduction

For more than a decade, Congress has considered proposals to change the income and rent calculation policies governing the primary federal rental assistance programs. The current policies base families' eligibility for assistance on their incomes and their contributions toward their rent on a share of their *adjusted* incomes. The income-based eligibility system is meant to ensure that limited federal subsidies go to those families that most need them. The income-based rent structure is intended to ensure that low-income families pay rent that is "affordable" to them, with affordability currently defined as 30% of family income. The process of calculating families' incomes and, subsequently, their rent contributions, involves a system of inclusions, exclusions, imputations, and deductions. While the current, rather complicated system is designed to ensure that the most accurate estimate of family income is calculated and that families' financial circumstances are fully captured, it can also lead to confusion among recipients as well as difficulties for local program administrators.

This report provides answers to some of the most common questions about the income and rent policies in federal rental assistance programs, including questions about where these policies came from and how they compare to other federal assistance programs that serve the same or similar purposes or populations. It is intended to help answer commonly asked questions, as well as provide information to policymakers seeking to understand and evaluate proposed changes to the current system.

Recent Legislation

The 114th Congress enacted several laws related to income and rent calculations in HUD assisted housing programs, which will be implemented during the 115th Congress.

The Tenant Income Verification Relief Act of 2015, enacted as a part of the Fixing America's Surface Transportation Act (P.L. 114-94), permits administrators of federal rental assistance programs to recertify the incomes of certain tenants—those with 90% or more of their income from fixed sources, such as Social Security—every three years instead of annually. As of the date of this report, HUD had not issued final implementing regulations for this provision.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA; P.L. 114-21) made a number of changes to HUD rental assistance programs, including some involving income and rent policies. For example, the law

- specifies new standards for interim income reviews (§101),
- changes income verification procedures to allow administrators to use prior-year income (§101),
- makes several changes to adjustments to income (§101),
- sets new restrictions on over-income tenants in public housing (§103), and
- establishes new asset limits and changes to the way assets are calculated (§104).

Many of these provisions will not be effective until HUD completes the rulemaking process; as of the date of this report, that process was not complete. Throughout this report, it is noted in footnotes where HOTMA made changes but rulemaking has not yet occurred. For more information about HOTMA, see CRS Report R44358, *Housing Opportunity Through Modernization Act (H.R. 3700)*.

What Are the Main Federal Rent Assistance Programs?

This report discusses the five main Department of Housing and Urban Development (HUD) programs that subsidize rents for low-income families. Together, these programs serve more than

4 million families and make up well over three-quarters of HUD's budget.[1] These rental assistance programs are

- **Public Housing**[2]—housing developments owned and operated by local Public Housing Authorities (PHAs) for which the federal government provides capital and operating assistance;
- **Section 8 Housing Choice Vouchers (HCVs)**[3]—rent subsidies that tenants can use to subsidize their rents in the private market housing of their choice;
- **Section 8 project-based rental assistance**[4]—subsidies provided directly to private owners of multifamily housing to subsidize the rents of specific units;
- **Section 202 Supportive Housing for the Elderly**[5]—multifamily housing developments owned by private nonprofit organizations for which the federal government provides capital grants and project-based rental assistance; and
- **Section 811 Supportive Housing for Persons with Disabilities**[6]—similar to Section 202, but serves persons with disabilities.

Three of the five programs—Section 8 project-based rental assistance, Section 202, and Section 811—provide project-based rental assistance to private owners of multifamily housing properties. Throughout this report, we refer to these three programs as the "project-based programs." Project-based rental assistance subsidizes tenant rents in specific rental units; often, all units in a building receive rental assistance. Project-based assistance differs from both public housing and Section 8 HCVs; public housing developments receive federal operating subsidies rather than direct rental assistance, while HCVs are tenant-based, meaning that tenants may use the vouchers to find housing of their choice in the private market from landlords willing to accept them.

Each of the five programs discussed in this report is governed by the same statute and regulations regarding tenant eligibility and rent (although there may be some variation in HUD guidance and handbooks). The statute that establishes eligibility and rent determination is 42 U.S.C. Section 1437a, and the regulations are at 24 C.F.R. Part 5, Subpart F (§5.601 et. seq.).[7]

This report does not directly address eligibility for a number of other assisted housing programs. For example, there are several HUD programs, such as the Homeless Assistance Grants, the Housing Opportunities for Persons with AIDS program, and the HOME Investment Partnerships program, that provide grant funding that can be used to provide rental assistance, but rules and regulations may be different. And non-HUD programs, such as the Department of Agriculture

[1] Estimates of families served taken from HUD Annual Performance Report, February 2012, available at http://portal.hud.gov/hudportal/documents/huddoc?id=fy2011apr.pdf. As shown in CRS Report R41700, *Department of Housing and Urban Development (HUD): FY2012 Appropriations*, coordinated by Maggie McCarty, in FY2011 the five programs received appropriations of approximately $34 billion, compared to total HUD appropriations of approximately $41 billion.

[2] For more information, see CRS Report R41654, *Introduction to Public Housing*, by Maggie McCarty.

[3] CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by Maggie McCarty.

[4] Ibid.

[5] CRS Report RL33508, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents*, by Libby Perl.

[6] CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by Libby Perl.

[7] The Section 202 statute (12 U.S.C. §1701q) and Section 811 statute (42 U.S.C. §8013(k)) refer to 42 U.S.C. §1437a for the definition of "very low-income," the population that is eligible for housing. And the Section 202 regulations (24 C.F.R. §891.105) and Section 811 regulations (24 C.F.R. §891.305) refer to the definitions of "annual income" and "adjusted income" in 24 C.F.R. Part 5, Subpart F.

Rural Housing Service rental assistance programs and the Low Income Housing Tax Credit, also have different policies for eligibility and assistance. For more information about other programs and a brief summary of how their eligibility rules compare to the rules of the five programs addressed in this report, see the section entitled "Comparisons." Finally, this report does not address eligibility for two HUD legacy rental assistance programs from the 1960s and 1970s where units have largely been converted to Section 8 project-based rental assistance. These are the Rental Assistance Program (RAP) and the Rent Supplement program.

The Basics

Who Is Eligible?

Eligibility for HUD's five main rent assistance programs is based on family income, their citizenship or immigration status, and, in some cases, other characteristics. It is important to note that even though a family may be eligible for assistance, they are not guaranteed to receive it. Housing assistance programs are not entitlements, thus, due to funding limitations, they serve only roughly one in four eligible households. Families wishing to receive assistance are generally placed on waiting lists.

The statute establishing eligibility for HUD rent assistance programs uses the term "family" to describe the entity that is eligible for assistance.[8] In regulation, family is defined broadly to include, but is not limited to (regardless of actual or perceived sexual orientation, gender identity, or marital status) the following:

- A single person;
- A group of persons residing together, and such group includes, but is not limited to
  - elderly families—those where the head of household (including cohead), spouse, or sole member is age 62 or older;
  - near-elderly families—those where the head of household (including cohead), spouse, or sole member is at least age 50, but younger than 62;
  - disabled families—those where the head of household (including cohead), spouse, or sole member has a disability as defined by statute;
  - families in which two or more elderly or near-elderly individuals or persons with disabilities live together; and
  - families in which an elderly person, near-elderly person, or person with a disability lives together with one or more people who are "determined under the public housing agency plan to be essential to their care or well-being."[9]

The term "household" is also used occasionally in the statute (for example, the statute refers to "heads of household" or "household income"), and is defined in regulation to include a family and any necessary live-in aid.[10] However, since the term family is used most often in describing eligibility, we use that term instead of "household" throughout this report.

[8] 42 U.S.C. §1437a(b)(3).

[9] Ibid. and 24 C.F.R. §5.403.

[10] 24 C.F.R. §5.403.

Income Eligibility

Unlike some other federal assistance programs, the five housing programs discussed in this report do not use the federal poverty level as the basis for eligibility.[11] Instead, income eligibility for housing assistance is generally based on a percentage of local area median income (AMI). Each year, HUD reports area median incomes for metropolitan statistical areas and nonmetropolitan counties.[12] HUD then establishes three income limits based on a percentage of these area median incomes.[13] Whether a family qualifies for assistance varies by program. The three income limits are

- **Low-Income**—families who have incomes at or below 80% of area median income;
- **Very Low-Income**—families who have incomes at or below 50% of area median income; or
- **Extremely Low-Income**—families who have incomes at or below the greater of 30% of area median income or the federal poverty level.

According to the authorizing statute, families are initially income eligible for the HUD rental assistance programs if they are low-income.[14] For the Section 8 HCV program, families must also be very low-income, have previously received assistance, or meet other criteria established by the Secretary of HUD.[15] Section 202 and Section 811 properties funded after 1990 are available only to elderly residents and persons with disabilities who are very low-income. In the case of the project-based programs, owners may, with HUD's permission, admit some families with incomes above the low-income limit if they are having difficulty leasing all of their units.[16]

Income Targeting

In addition to setting basic income eligibility standards, the authorizing statutes for several housing assistance programs require that some share of the assistance be set aside for, or targeted to, families with the lowest incomes.

- In the Section 8 HCV program, PHAs must provide 75% of all vouchers issued each year to families who are extremely low-income.[17]
- PHAs and owners must provide 40% of all public housing and Section 8 project-based rent-assisted units made available each year to families who are extremely low-income.[18]
- For Section 8 project-based rent-assisted properties, depending on the date the project became available, most assistance has to be provided to families that are

[11] While the federal poverty level is not the basis for eligibility, under the terms of Section 238 of Division L of P.L. 113-76, the federal poverty level is now used as a floor when calculating the "extremely low-income" limit.

[12] See, for example, U.S. Department of Housing and Urban Development, *FY2016 HUD Income Limits Briefing Material*, March 10, 2016, https://www.huduser.gov/portal/datasets/il//il16/IncomeLimitsBriefingMaterial-FY16.pdf.

[13] To access area median income by metropolitan statistical area or county, see http://www.huduser.org/portal/datasets/il/il2012/select_Geography.odn.

[14] 42 U.S.C. §1437a.

[15] 42 U.S.C. §1437a(a) and 42 U.S.C. §1437f(o)(4).

[16] HUD Multifamily Occupancy Guidebook 4350.3 REV-1, Chapter 3, p. 3-8.

[17] 42 U.S.C. §1437f(o)(4) and 42 U.S.C. §1437n(b).

[18] 42 U.S.C. §1437n(a) and (c).

very low-income; only a limited percentage of units may be leased to families with incomes above the very low-income standard.[19]

Treatment of Over-Income Families

Circumstances may occur where families living in assisted housing who were once eligible for assistance see their incomes increase to the point where they exceed the income eligibility standards. At that point, families are considered "over-income." The statute governing HUD's rental assistance programs does not directly address the treatment of over-income families. Instead, HUD has adopted regulations that govern what occurs when family incomes increase.

[19] For properties that came under contract before 1981, no more than 25% of units may be made available to families above 50% of AMI; for properties that became available after 1981, not more than 15% of units may be made available to families above 50% of AMI. 42 U.S.C. §1437n(c).

- In the case of public housing, the PHAs that administer the program are not required to evict over-income families, but they are permitted to do so.[20]
- In the case of the Section 8 HCV program, families no longer qualify for assistance when their incomes increase to the point that they no longer mathematically qualify for a subsidy (when 30% of the family income is equal to the rent). At that point, the family can continue in the program receiving no subsidy for up to six months.[21]
- In the case of project-based rental assistance, families are considered to have an "increased ability to pay" when, similar to the HCV program, their incomes increase to the point that they no longer qualify for a subsidy. Owners must terminate assistance to those families with an increased ability to pay,[22] although a family's assistance may be reinstated if their income declines again. Note that a termination of assistance does not necessarily mean an eviction. Instead, the family may continue to live in its unit paying market rent. An exception exists for

[20] 24 C.F.R. §960.261, which includes an exception such that PHAs may not evict over-income families that are receiving certain employment incentives. Note that P.L. 114-201 placed new restrictions on over-income tenants in public housing that are pending regulatory implementation. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Solicitation of Comments on Implementation of Public Housing Income Limit," 81 *Federal Register* 85996-85997, November 29, 2016.

[21] 24 C.F.R. §982.455. Note that families that lose voucher assistance may continue to live in their private market apartments as long as they continue to meet the terms of their private market lease.

[22] HUD Multifamily Occupancy Guidebook 4350.3 REV-1, Chapter 8, section 8-5 and Glossary p. 15.

residents living in Section 202 and Section 811 developments that were funded after 1990. In those cases, assistance may not be terminated.[23]

Noncitizen Eligibility

In order to receive assistance under all of the HUD rental assistance programs, each household member must be a citizen or an eligible noncitizen (e.g., persons with Green Cards). However, a household can receive prorated assistance if the family is a mixed family, meaning it has some citizen/eligible noncitizen members and some ineligible noncitizen members.[26] For more detailed information, see CRS Report RL31753, *Immigration: Noncitizen Eligibility for Needs-Based Housing Programs*, by Maggie McCarty and Alison Siskin.

Special Populations

For some of the HUD rental assistance programs, only special populations are eligible. The Section 202 program serves only elderly families.[27] The Section 811 program serves only persons with disabilities.[28] While both the public housing program and the Section 8 project-based rental assistance program are generally available to all types of families, PHAs and owners may designate some properties as available only to elderly families or disabled families. Similarly, while the Section 8 HCV program is available to all types of families, some vouchers are designated by Congress as available only to certain populations. For example, Veterans Affairs Supported Housing (VASH) vouchers are only available to homeless veterans

Are Students Eligible?

Beginning in 2005 (P.L. 109-115, §327) and continuing in each annual HUD appropriations act since, special rules related to income eligibility and rent have applied to full-time and part-time postsecondary students in the Section 8 Housing Choice Voucher program and Section 8 project-based rental assistance program. These rules do not apply to other HUD rental assistance programs, including public housing.

Eligibility

Full-time students are not eligible to receive Section 8 housing assistance unless they meet one of the following criteria: they are age 24 or older; married; a veteran; have a dependent child; are a person with a disability who was receiving housing assistance on November 30, 2005; or they and their parents are otherwise income-eligible. Note that parental income eligibility is not required for those students determined to be "independent students" by the PHA or under the criteria established by the Department of Education.[24]

Prior to enactment of this law, students were eligible for assistance, regardless of their parents' income eligibility.

Income

For all students (except persons over the age of 23 with dependent children), grants, scholarships, and work study in excess of tuition do count as income for purposes of eligibility and rent setting in the Section 8 program.[25]

Prior to enactment of this law, grants, scholarships, loan proceeds, and work study did not count as income for purposes of eligibility and rent setting in the Section 8 program.

[23] Prior to 1990, units in Section 202 properties were subsidized with Section 8 project-based rental assistance (Section 811 did not exist prior to 1990). But as part of the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625), Congress created a new form of rental assistance for Section 202 and Section 811 called "project rental assistance contracts" or "PRAC." Residents in Section 202 and Section 811 PRAC developments cannot have their subsidy terminated if their income exceeds eligibility limits. Multifamily Occupancy Guidebook 4350.3 REV-1, Chapter 8, section 8-4.

[24] 24 C.F.R. §5.609(b) and §5.516.

[25] Ibid.

[26] 42 U.S.C. §1436a.

[27] For more information about this program, including how the term "elderly" is defined, see CRS Report RL33508, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents*, by Libby Perl.

[28] For more information about this program, including how the term "persons with disabilities" is defined, see CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by Libby Perl.

and Family Unification Program (FUP) vouchers are only available to families involved with the child welfare system.

What Counts as Income?[29]

In general, the statute and regulations governing HUD rental-assistance programs define income by what is *excluded*, rather than by what is included; most common sources of income from all family members count in determining a family's eligibility for HUD-assisted housing, unless they are otherwise excluded by statute or regulation.

The term "income" is defined at 42 U.S.C. Section 1437a(b)(4) as "income from all sources of each member of the household, as determined in accordance with criteria prescribed by the [HUD] Secretary, in consultation with the Secretary of Agriculture." HUD, through regulation, has developed a list of items that are excluded from income. In addition, statutes governing other federal benefit programs may exclude their benefits from income for purposes of determining eligibility for HUD-assisted housing. This section first gives examples of what is included in income, and then discusses what is excluded.

What Is Included in Income?

HUD regulations provide an illustrative list of items included in income, which includes income earned on assets (described in more detail in the next section).[30] Among items included in income are

- earnings from employment, including overtime pay, tips, and bonuses;
- payments from Social Security, pensions, or other retirement benefits;
- disability income, including veterans disability benefits, death benefits, and insurance payments;
- unemployment compensation, disability compensation, and workers' compensation; Temporary Assistance for Needy Families (TANF) cash assistance (with exceptions);
- alimony and child support; and
- military pay.

Sometimes questions arise about whether veterans' benefits are included in determining eligibility for HUD-assisted housing. Under the law and HUD regulations, all forms of veterans' benefits are included as income except for lump-sum disability payments, as mentioned in the next section.[31]

What Is Excluded from Income?

Items excluded from income can be found in various places in statute and regulation.

[29] Several changes were made to sources included and excluded in the definition of income and adjusted income by P.L. 114-201. Those changes have not taken effect, as they are pending regulatory implementation. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Initial Guidance," 81 *Federal Register* 73030-73034, October 24, 2016.

[30] 24 C.F.R. §5.609(b).

[31] One of the changes made pursuant to the Housing Opportunity Through Modernization Act (P.L. 114-201) is that expenses related to aid and attendance received by low-income veterans for non-service-connected disabilities will be excluded from income. This change has not taken effect and is pending regulatory implementation.

- **Items excluded in 42 U.S.C. §1437a(b)(4):** The housing assistance statute where income is defined specifically excludes lump sum deferred payments for Supplemental Security Income (SSI), Social Security, or veterans disability. Such payments may occur when back payments are made to cover the period during which the beneficiary appealed a denial of benefits or if prior payments were underestimated.
- **Items excluded in HUD regulation:** The HUD Secretary also has discretion in determining items that are excluded from income. These are listed in regulation at 24 C.F.R. Section 5.609(c). As of the date of this report, there were 17 items in the regulation excluded from income. Among the excluded items are employment income earned by children under age 18; payments received for the care of foster children; adoption assistance in excess of $480 per child; amounts received to pay for medical expenses; income of a live-in aide; and special pay of a family member in the Armed Forces exposed to hostile fire.

Items excluded in other federal statutes: One of the 17 items excluded in the HUD regulation is "[a]mounts specifically excluded by any other Federal statute."[32] As of the date of this report, there were 26 categories of federal payments or benefits excluded from income.[33] HUD has published notices in the *Federal Register* when new categories of assistance were excluded; the last instance was in 2014.[34] Some of the programs where benefits are excluded include Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) benefits;[35] payments under the Low Income Home Energy Assistance Program (LIHEAP);[36] child care provided under the Child Care and Development Block Grant (CCDBG);[37] payments or earnings for those participating in Workforce Investment Act (WIA) programs;[38] and major disaster and emergency assistance received by individuals and families.[39]

What Are the Rules for Assets?[40]

There is no asset limit for eligibility under the five programs discussed in this report. Instead, PHAs and owners of multifamily housing must either count the actual income earned on assets, or impute income from assets, and include that amount in a household's annual income calculation for purposes of determining eligibility and rent. Assets include real property, savings accounts, stocks, and bonds.[41] They do not include necessary personal items such as furniture and automobiles.[42]

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[32] 24 C.F.R. §5.609(c)(17).

[33] The most recent list can be found at U.S. Department of Housing and Urban Development, "Federally Mandated Exclusions from Income," 79 *Federal Register* 28938, May 20, 2014.

[34] Ibid.

[35] 7 U.S.C. §2017(b).

[36] 42 U.S.C. §8624(f).

[37] 42 U.S.C. §9858q.

[38] 29 U.S.C. §2931.

[39] 42 U.S.C. § 5155(d).

[40] Several changes were made to the treatment of assets by P.L. 114-201. Those changes have not taken effect, as they are pending regulatory implementation. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Initial Guidance," 81 *Federal Register* 73030-73034, October 24, 2016.

[41] 24 C.F.R. §5.603.

[42] Ibid.

- Pursuant to regulation, if a family's net assets (the cash value excluding costs of disposal) are **at or below $5,000,** then any **actual income** received from the assets (e.g., interest on a savings account) is included in annual income for determining program eligibility.[43]
- If a family's net assets **exceed $5,000,** then the **greater of actual income or imputed income** is attributed to the family. Imputed income is "a percentage of the value of such assets based on the current passbook savings rate ... " and for most programs is currently set below 1%.[44] For example, if a family has $6,000 in a non-interest-bearing checking account (so earning no actual income), the PHA or owner would multiply the amount by 1% and add the resulting amount ($60) to the family's annual income. Or, if a family owns a house, the PHA or owner would determine its market value, subtract any mortgage owed as well as costs of disposal, and multiply the resulting cash value by 1%. The greater of this amount or any actual rental income would be added to the family's annual income.

How Is Tenant Rent Determined?

Families receiving HUD rental assistance are generally required to contribute toward their rent. The subsidy the family receives then generally makes up the difference between the tenant contribution toward rent and the actual cost of the housing (rent and utilities). Families' contributions are statutorily set as the greatest of

- 30% of a family's adjusted income,
- 10% of a family's gross income,
- welfare rent (if applicable),[45] or
- in the case of public housing and the Section 8 HCV program, the minimum rent set by the PHA (not to exceed $50, with a hardship exemption).[46]

If a family participating in the Section 8 HCV program chooses to live in a unit for which their minimum tenant contribution plus their allowable subsidy are not sufficient to fully cover the rent, the family may choose to pay the difference, as long as their total contribution does not exceed 40% of their income in the first year (although the family may choose to pay more than 40% in subsequent years).[47]

[43] 24 C.F.R. §5.609(b)(3).

[44] For HUD's Multifamily Housing Programs, the rate, as of the date of this report, is 0.06%. See U.S. Department of Housing and Urban Development, *Multifamily Housing Notice 2016-01, Passbook Savings Rate Effective February 1, 2016*, January 19, 2016, https://portal.hud.gov/hudportal/documents/huddoc?id=16-01hsgn.pdf. Public Housing Authorities may set a passbook savings rate based on guidance issued by HUD that the rate be within 75 basis points of the National Savings Rate published by FDIC. As of the date of this report, the National Savings Rate was 0.06%. See Public and Indian Housing Notice 2012-29, Establishing the Passbook Savings Rate, June 21, 2012, http://portal.hud.gov/huddoc/12-29pihn.pdf.

[45] Welfare rent is defined as the portion of a cash assistance benefit that is designated towards housing costs. Not all cash assistance benefits include a "welfare rent" component.

[46] 42 U.S.C. §1437a(a).

[47] 42 U.S.C. §1437f(o)(3).

Families living in public housing must be offered the option to pay an alternative market-comparable flat rent.[48]

Utility Costs

In cases where utility costs (e.g., natural gas, electricity,[49] other heat sources, water, sewer, and garbage) are not included in rent—meaning utilities are tenant-paid—tenants are provided with a utility allowance.[50] A utility allowance is meant to cover the approximate cost of tenant-paid utilities, based on a utility allowance schedule developed by the PHA or property owner.[51] Utility allowances are deducted from a tenant's monthly rental contribution, or, in the case where a utility allowance exceeds a tenant's monthly rental contribution, a utility reimbursement is paid to the tenant.

What Is Adjusted Income?[52]

As mentioned in the previous section, adjusted income is used to determine a family's contribution toward rent in assisted housing. PHAs and property owners calculate adjusted income after taking deductions from total annual income. By statute, there are a number of mandatory deductions from annual income when calculating adjusted income:[53]

- **Elderly and Disabled Families:** $400 is deducted for elderly or disabled families.
- **Certain Unreimbursed Medical Expenses:** To the extent that the sum of certain unreimbursed health-related expenses exceeds 3% of a family's income, they may be deducted in the following cases: (1) medical expenses for elderly and

[48] 42 U.S.C. §1437a(a)(2)-(3). PHAs are required to establish flat rents for each of their public housing units. Giving families the option to pay a flat rent is meant to reduce families' disincentives to increase their earnings, since, under a flat rent system, families' contributions towards rent will not increase along with income. Under the terms of Section 210 of Division L of P.L. 113-76, flat rents must be at least 80% of the local Fair Market Rent.

[49] Air conditioning costs are explicitly excluded from allowable utility costs in Public Housing (24 C.F.R. §965.505(e)) and are only permitted in the Section 8 Housing Choice Voucher program when air conditioning is predominant in the local housing market (24 C.F.R. §982.517(b)).

[50] For more information about utility allowances, see 24 C.F.R. §982.517 (Section 8 Housing Choice Voucher), 24 C.F.R. §965 Subpart E (Public Housing), and 24 C.F.R. §880.610 and 882.150 (Multifamily). See also: Evan White, "Utilities in Federally Subsidized Housing: A Report on Efficiency, Utility Savings, and Consistency," (Goldman School of Public Policy and U.C. Berkeley Law at Boalt Hall, 2012), available at http://aceee.org/files/pdf/resource/white_utilities_in_federally_subsidized_housing_2012.pdf.

[51] Section 243 of Title II of P.L. 113-76, the Consolidated Appropriations Act of 2014, capped utility allowances for families in the HCV program at the lesser of the unit size authorized by the voucher or the actual size of the unit leased by the family.

[52] Several changes were made to sources included and excluded in the definition of income and adjusted income by P.L. 114-201. Those changes have not taken effect, as they are pending regulatory implementation. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Initial Guidance," 81 *Federal Register* 73030-73034, October 24, 2016.

[53] 42 U.S.C. §1437a(b)(5). In addition, the statute also gives PHAs discretion to exclude certain expenses for families residing in Public Housing. This may include, for example, travel expenses to reach employment or school (not to exceed $25 per family per week). PHAs are required to have a written policy explaining their discretionary deduction policies. It is important to note that additional subsidy expenses incurred as a result of discretionary deductions are not reimbursed by the federal government and are therefore borne by PHAs. 24 C.F.R. §5.611(b)(1). The statute also excludes earned income of family members under the age of 18 from adjusted income. However, HUD, by regulation, has also excluded earned income of minors from *annual* income, so the exclusion should not be necessary (see "What Is Excluded from Income?").

disabled families,[54] and (2) attendant care or apparatus expenses for a family member with a disability if the expenses allow any family member to work.

- **Reasonable Child Care Expenses:** These are deductible to the extent that they allow a family member to be employed or further his or her education.
- **Dependents:** $480 is deducted for each member of the family who is not the head of household and who is either (1) younger than 18; (2) a full-time student; or (3) 18 or older and has a disability.
- **Earned Income of Certain Public Housing and Section 8 Voucher Residents:** Current law includes an earned income disregard for certain public housing residents and Section 8 HCV holders. Specifically, certain residents of public housing who begin employment or increase their earnings can have 100% of their increased earnings disregarded in the first year and 50% disregarded in the second year. Disabled Section 8 HCV holders are eligible for the same disregard.[55]

Additionally, the law includes deductions for child support and spousal support payments, provided that Congress provides additional funding expressly to cover the cost of those deductions. Specifically, child support paid by a family member on behalf of a child who does not live in the household may be deducted, up to $480 per child. Similarly, spousal support for a spouse who lives outside the household may be deducted. Neither of these deductions have ever been funded by Congress, so they are not currently in effect.

How Often Is Family Income Recertified?[56]

The statute governing tenant income eligibility states that family income must be reviewed upon selection for assistance and at least annually thereafter.[57] HUD regulations require annual recertification of tenant income[58] and rent and give guidance regarding interim recertification.[59]

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[54] The statute also specifies that Congress may allow other families to deduct unreimbursed medical expenses, but only if funds to pay for the provision are authorized in an appropriations act.

[55] 42 U.S.C. §1437a(b)(5)(B).

[56] Several changes were made to sources included and excluded in the definition of income and adjusted income by P.L. 114-201. Those changes have not taken effect, as they are pending regulatory implementation. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Initial Guidance," 81 *Federal Register* 73030-73034, October 24, 2016.

[57] 42 U.S.C. §1437a(a)(1).

[58] HUD published a regulatory change that took effect in April 2016 that allows for PHAs and owners to choose to undertake a streamlined annual recertification process for tenants with fixed income (i.e., Social Security, pensions, annuities, etc.), with full recertification required only once every three years. See Department of Housing and Urban Development, "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs; Final Rule," 81 *Federal Register* 12354-12377, March 8, 2016. Additionally, the Tenant Income Verification Relief Act of 2015, enacted as a part of the Fixing America's Surface Transportation Act (P.L. 114-94), made similar statutory changes to permit administrators of federal rental assistance programs to recertify the incomes of certain tenants with fixed incomes—those with 90% or more of their income from fixed sources, such as Social Security—every three years instead of annually. As of the date of this report, HUD had not issued final implementing regulations for this provision. See Department of Housing and Urban Development, "Housing Opportunity Through Modernization Act of 2016: Initial Guidance," 81 *Federal Register* 73030-73034, October 24, 2016.

[59] For public housing, see 24 C.F.R. §960.257, for Section 8 HCV, see 24 C.F.R. §982.516 for Section 8 project-based rental assistance, see 24 C.F.R. §5.657 and §5.659, for Section 202 and Section 811 see 24 C.F.R. §891.410 (for tenants living in PRAC-assisted housing) and §891.610 (for tenants living in housing subsidized by Section 8 project-based

Across all programs, families must report any changes in family composition when they occur and family income must be reexamined at that time.

If a family experiences a decrease in income, the family may request a mid-year reexamination. If a family experiences an increase in income, PHAs and owners are required to reexamine income, though the circumstances of how this occurs vary by program.[60] In the three project-based rental assistance programs, if the family experiences an increase in income, the owner must reexamine family income if it increases by $200 or more per month. For the public housing and Section 8 HCV program, the regulations do not establish a reexamination threshold for increases in income and, instead, leave the discretion to the PHA to establish their own thresholds.[61]

History

What Is the Origin of the Current Income Limits Used in Housing Assistance Programs?

Income limits as we know them today, which are based on percentages of area median income (AMI), were introduced in the 1970s as part of the then-new Section 8 program. Prior to the introduction of Section 8, public housing, which has existed since the 1930s, provided housing for "low income" families.[62] While the federal law governing public housing included rules regarding rent-to-income ratios (e.g., a family's income could not be more than five times the rent), each PHA made the determination of what was considered "low income" for the area that it served. Further, two other multifamily housing programs enacted in the 1960s used different measures for income eligibility. The Section 221(d)(3) program generally based eligibility on costs to support a unit, but not to exceed area median income, while the Section 236 program set eligibility at 135% of public housing income limits.[63]

Proposals to standardize eligibility using median income came from HUD. In both 1970 and 1971, Administration-sponsored bills[64] proposed to simplify income eligibility for FHA-insured multifamily housing programs, which at the time primarily consisted of the Section 236 program, by tying eligibility to median income rather than local public housing income limits. The rationale was that the variability of public housing income limits resulted in regional disparities in who was eligible for assistance in multifamily housing. The area median income measure was meant to "provide the needed flexibility to serve all geographic areas equitably."[65]

rental assistance).

[60] In the three project-based rental assistance programs, the HUD Multifamily Occupancy Guidebook, Chapter 7 sets out specific instances when income must be reexamined (e.g., income increases above $200). In the case of public housing and Section 8 HCV, PHAs have discretion to set their own policies. 24 C.F.R. §5.609, §5.657 and §982.516.

[61] 24 C.F.R. §5.609 and §982.516.

[62] For more information about the early years of Public Housing, including targeting to low-income families, see CRS Report R41654, *Introduction to Public Housing*, by Maggie McCarty.

[63] President's Commission on Urban Housing, *A Decent Home*, December 11, 1968, pp. 62, 65.

[64] S. 3639 and S. 2049 respectively in the 91st and 92nd Congresses.

[65] U.S. Congress, Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Housing and Urban Affairs, *1971 Housing and Urban Development Legislation*, statement of HUD Secretary George Romney, 92nd Cong., 1st sess., August 2-3, 1971, p. 40.

The Administration proposals to standardize income eligibility were not adopted.[66] However, a few years later when Congress enacted the Housing and Community Development Act of 1974 (P.L. 93-383), it incorporated area median income into the newly enacted Section 8 program eligibility guidelines, as well as Section 236, setting eligibility at 80% of AMI. In addition, the term "very low-income" was introduced and defined as income that does not exceed 50% of area median income. P.L. 93-383 changed the law regarding public housing so that at least 20% of new units were available to very low-income families, but eligibility criteria for public housing generally were not changed to define low-income as 80% of AMI until 1981, as part of the Omnibus Reconciliation Act (P.L. 97-35).

What Is the Origin of the Income-Based Rent Setting Standard?

Most families receiving federal rental assistance pay 30% of their adjusted income toward rent (or 10% of gross income, or welfare rent, if higher). This has been the standard across HUD rental assistance programs since 1981. Before that time, minimum tenant contribution standards varied based on program and tenant income.

The so-called "Brooke Amendment" in 1969 is credited with creating today's income-based rent standard.[67] The Brooke Amendment limited tenant contributions toward rent in public housing at no more than 25% of family income. Prior to that time, tenant contributions toward rent were set by PHAs based on the cost of maintaining public housing. As public housing properties aged, the cost of maintaining them grew and families were asked to pay higher and higher rents. The Brooke Amendment was intended to cap tenants' contributions toward rent in public housing at a level that was deemed affordable. The 25% standard of affordability that was adopted under the Brooke Amendment was based on pre-Great Depression standards for mortgage qualification: a week's wages for a month's rent (or, 25% of income).[68]

The Brooke Amendment proved influential; the Section 8 program, which was created in 1974, included income-based rents, set at between 15% and 20% of family income, depending on household characteristics.[69]

The Omnibus Budget Reconciliation Act of 1981 (OBRA, P.L. 97-35) standardized rents across all HUD rent assistance programs at 30% of adjusted gross income (or 10% of gross income or welfare rent). The new standard was higher than previous standards, which meant families' contributions towards rent were increased. Since increases in families' contributions reduce federal subsidy costs, this policy change achieved budget savings for the federal government, which was the intent of OBRA 1981.

Comparisons

The five HUD rental assistance programs discussed in this report are the largest, but not the only, rental housing programs administered by the federal government. HUD operates additional

[66] In 1971, the Administration's median income provisions were incorporated into S. 3248, the Housing and Urban Development Act of 1972. The bill was approved by the Senate Committee on Banking, Housing and Urban Affairs and passed by the Senate but was not taken up by the House. See S.Rept. 92-647.

[67] Named after an amendment offered by Senator Edward Brooke (MA), enacted as a part of the Housing and Urban Development Act of 1969 (P.L. 91-152, 213(a)).

[68] Danillo Pelletiere, Getting to the Heart of Housing's Fundamental Question: How Much Can a Family Afford? A Primer on Housing Affordability Standards in U.S. Housing Policy, National Low Income Housing Coalition, February 2008, available at http://nlihc.org/library/other/periodic/housing-fundamental-question.

[69] Ibid.

housing programs, and the Departments of Agriculture and the Treasury also administer housing programs targeted to low-income families. These other housing programs serve similar populations as the five HUD rental assistance programs, and while there may be some differences in eligibility and benefit structures, they also use many of the same income and rent standards as the five HUD programs. This is important to note because if changes were to be made to the income and rent policies governing HUD's rental assistance programs, those changes may also affect other programs.

This section of the report provides brief comparisons of HUD's five main rental assistance programs to other federal housing programs as well as other federal benefits programs that serve low-income populations.

How Do These Income and Rent Policies Compare to Other HUD Programs?

HUD administers several other programs where funds are distributed to state and local governments or to community providers by formula or competition, and the recipients have the option of using the funds to provide rental assistance to low-income families living in permanent housing. These programs are the Homeless Assistance Grants, the Housing Opportunities for Persons with AIDS (HOPWA) program, and the HOME Investment Partnerships program. These programs differ from the five rental assistance programs already discussed in that they leave a number of decisions about eligibility and subsidy levels to local grantees.

Homeless Assistance Grants[70]

Permanent and transitional housing for homeless individuals is funded primarily through the Homeless Assistance Grants. The Homeless Assistance Grants consist of three separate grant programs: the Emergency Solutions Grant, the Continuum of Care (CoC) program, and the Rural Housing Stability Assistance program. Unlike the other programs discussed in this report, there is no statutory income requirement for the Homeless Assistance Grants. The statute provides that eligibility depends on requirements that are specific to the individual programs.

The CoC program is the primary source of assistance for permanent and transitional housing. The program does not have income limitations for determining eligibility. However, income could be relevant in determining a family's contribution to housing costs. Grant recipients that lease property where homeless clients reside have the option of imposing an "occupancy charge." If an occupancy charge is imposed, income is calculated in accordance with the regulations governing income and adjusted income (24 C.F.R. §5.609 and §5.611),[71] and the occupancy charge cannot exceed the greater of 30% of adjusted income, 10% of gross income, or welfare rent. In cases where homeless clients live in units receiving rental assistance, they must contribute toward rent.[72] The regulations governing income and adjusted income for the five HUD rental assistance programs and discussed in this report apply.

[70] For more information on housing programs targeted to homeless individuals, see CRS Report RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act*, by Libby Perl.

[71] See Interim regulations for the Continuum of Care program, U.S. Department of Housing and Urban Development, "Homeless Emergency Assistance and Rapid Transition to Housing Continuum of Care Program," 77 *Federal Register* 45458, July 31, 2012, http://www.hudhre.info/documents/CoCProgramInterimRule.pdf.

[72] Ibid.

Housing Opportunities for Persons with AIDS (HOPWA)[73]

Funds through the HOPWA program may be used for short-term housing assistance, permanent housing, and supportive services. HOPWA-funded permanent housing may be provided through project- or tenant-based rental assistance as well as in community residences. Residents receiving rental assistance must be low-income,[74] defined as income at or below 80% of area median income,[75] but families or individuals living in community residences need not be low-income.[76] In each case, the HOPWA program requires families to pay rent, and the general regulations governing income and adjusted income apply (24 C.F.R. §5.609 and §5.611).[77]

HOME Investment Partnerships Program[78]

HOME program funds can be used for tenant-based rental assistance and to construct, acquire, or rehabilitate properties for rental housing. Families living in HOME-funded rental housing or receiving rental assistance must be low-income (at or below 80% of area median income); however, with income targeting, 90% of families must be at or below 60% of area median income.[79] Under HOME regulations, annual income may be determined in one of three ways: (1) using the regulations at 24 C.F.R. Section 5.609, (2) as reported using the Census long form, or (3) adjusted gross income as reported to the IRS.[80] Adjusted income is determined according to the general HUD regulations (24 C.F.R. §5.611).[81]

Rent for housing that was developed using HOME funds cannot exceed the lesser of Section 8 fair market rents or 30% of the adjusted income of a family whose income is 65% of the area median income.[82] The HOME statute and regulations do not set a maximum rent contribution for tenants receiving tenant-based rental assistance, but local jurisdictions must set a minimum rent contribution level.[83]

How Do These Income and Rent Policies Compare to Non-HUD Housing Assistance Programs?

USDA Rural Housing

The U.S. Department of Agriculture's Rural Housing Service funds the construction of affordable rental housing in rural areas through its Section 515 program and ongoing rent subsidies tied to

[73] For more information about HOPWA, see CRS Report RL34318, *Housing for Persons Living with HIV/AIDS*, by Libby Perl.

[74] 42 U.S.C. §12908(a).

[75] 42 U.S.C. §12902(3).

[76] 42 U.S.C. §12910(b).

[77] 24 C.F.R. §570.310(d).

[78] For more information about HOME, see CRS Report R40118, *An Overview of the HOME Investment Partnerships Program*, by Katie Jones.

[79] 42 U.S.C. §12745(a) and §12744.

[80] 24 C.F.R. §92.203(b).

[81] 24 C.F.R. §92.203(c).

[82] 42 U.S.C. §12745(a).

[83] 24 C.F.R. §92.209.

those properties through its Section 521 program.[84] Similar to HUD rent assistance programs, families are generally eligible to live in Section 515/521 properties if they have low or very low incomes (using HUD's income limits), although, in some cases, moderate-income families may also be eligible.[85] USDA uses the same basic standards as HUD for determining family income, adjusted income,[86] and rent.[87]

Low-Income Housing Tax Credit Program

The U.S. Department of the Treasury's Low-Income Housing Tax Credit (LIHTC) program does not provide direct rental assistance; instead, it provides federal tax credits that are used to fund the construction of multifamily properties in which a portion of the units must be offered at below-market rents to lower-income families.[88] Rather than specifying maximum income eligibility for tenants, the LIHTC program sets standards that apply at the property level. In order for a property to receive tax credits under the program and be in compliance with program rules, either 20% of the units must be rented to families with incomes at or below 50% of local area median income, or 40% of units must be rented to families with incomes at or below 60% of median income. This effectively means that families must have income at either 50% or 60% of AMI in order to live in rent-restricted units. The LIHTC program uses the HUD definition of income.[89]

Low-income families in rent-restricted units pay flat, below-market rents rather than income-based rents. The below-market rents for LIHTC units are set at 30% of either 50% or 60% of AMI (depending on which standard the property meets).

How Do These Policies Compare to Other Federal Low-Income Assistance Programs?

The low-income families who receive assistance through the HUD rental assistance programs discussed in this report may also qualify for other forms of public assistance. However, other public assistance programs use different standards for determining family eligibility, family income, and benefit levels. The policies of the Temporary Assistance for Needy Families (TANF) assistance program, the Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps), and the Medicaid health insurance program are compared to those of HUD housing assistance programs below. One important difference between these programs and HUD's rental assistance programs is that each of these three programs is administered at the state level, whereas the HUD rental assistance programs are administered at the local level.

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[84] The programs are authorized at 42 U.S.C. §1485 and §1490, respectively; program regulations can be found at 7 C.F.R. Part 3560. Note that not all Section 515 units have Section 521 rent subsidies. Some have no rent subsidies and some have Section 8 project-based rental assistance subsidies. This section discusses only those Section 515 properties with Section 521 assistance.

[85] Very low-income applicants get first priority for units, followed by low-income applicants. Moderate-income applicants are only eligible if there are no very low-income or low-income applicants on the waiting list. See 7 C.F.R. §3560.154.

[86] 7 C.F.R. §3560.153.

[87] 7 C.F.R. §3560.203.

[88] The program is authorized at 26 U.S.C. §42. For more information, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley.

[89] 26 C.F.R. §1.42-5(b)(vii).

TANF[90]

TANF differs significantly from the housing assistance programs in that it provides a block grant to states, and states are left to make most of the decisions about how assistance will be provided within the state. Eligibility for assistance, the type of benefit provided, the amount of assistance, and definitions of income are all set by states, in contrast to HUD housing assistance programs, where these aspects of programs are all determined by federal law.

SNAP[91]

SNAP (formerly Food Stamps) is more similar to HUD rental assistance than TANF, in that eligibility, type of benefit provided, and amount of assistance are all set by federal law. However, the federal eligibility standards differ substantially from those in HUD rental assistance programs. Families are eligible for SNAP benefits if they meet income eligibility standards based on federal poverty guidelines that generally apply to the entire country, rather than the local area median income limits used in the HUD rental assistance programs. Similar to HUD rental assistance programs, family income is determined for SNAP based on federal definitions that include some sources of income, exclude other sources of income, and allow for certain deductions. However, what counts as income and what is deducted from income in SNAP is different than in HUD rental assistance programs. Additionally, SNAP law's "categorical eligibility" rules permit some families to qualify for SNAP benefits based on their participation in other programs.[92] HUD rental assistance programs do not have any "categorical eligibility" provisions.

Medicaid

The income eligibility standards under Medicaid[93] are quite different from those of the HUD rental assistance programs. Whereas HUD programs use federal income and eligibility standards, the Medicaid program uses a mix of federal and state standards.

Under the Affordable Care Act (ACA), as amended, states were required to transition to a new income counting rule based on Modified Adjusted Gross Income (MAGI) when determining eligibility for most of Medicaid's nonelderly populations.[94] Under the Medicaid MAGI income counting rules, the state will look at the individual's MAGI, deduct an amount equal to 5% of the Federal Poverty Level, which the law provides as a standard disregard,[95] and compare that

[90] For more information about TANF, see CRS Report R40946, *The Temporary Assistance for Needy Families Block Grant: An Overview*, by Gene Falk.

[91] For more information about SNAP, see CRS Report R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits*, by Randy Alison Aussenberg.

[92] See CRS Report R42054, *The Supplemental Nutrition Assistance Program (SNAP): Categorical Eligibility*, by Gene Falk and Randy Alison Aussenberg.

[93] For background information on the Medicaid program, see CRS Report R43357, *Medicaid: An Overview*, coordinated by Alison Mitchell.

[94] The transition to MAGI represents a major change in terms of the types of information collected (such as what counts as income) and the definition of household (such as the inclusion of the income of a step parent) compared to former Medicaid income eligibility rules. Under the former Medicaid income counting rules, there was enormous variability across states and Medicaid eligibility categories with regard to rules for income exclusions and disregards. For more information on Medicaid's use of the Modified Adjusted Gross Income counting rule, see CRS Report R43861, *The Use of Modified Adjusted Gross Income (MAGI) in Federal Health Programs*, coordinated by Evelyne P. Baumrucker.

[95] The 5% FPL income disregard is only applicable if individual is at the highest income limit for coverage. See 42 C.F.R. §435.603(d)(4).

income to the new income standards set by each state in coordination with the federal government to determine if the individual meets the program's eligibility requirements.[96]

MAGI is defined as the Internal Revenue Code's (IRC's) adjusted gross income (AGI) plus certain foreign earned income and tax-exempt interest as calculated for tax purposes. AGI reflects a number of deductions, including trade and business deductions, losses from sale of property, and alimony payments, increased by tax-exempt interest and income earned by U.S. citizens or residents living abroad. From there, various types of income not included in AGI are added to calculate MAGI depending on the particular program (e.g., Medicare, Medicaid, and ACA exchange and premium tax credits). Additionally, under Medicaid regulations, particular types of income may be subtracted from AGI to calculate MAGI for determining Medicaid eligibility. The inclusions and exclusions under MAGI differ substantially from the inclusions and exclusions used for determining adjusted gross income under HUD's rental assistance programs.

Certain groups (e.g., individuals who are eligible for Medicaid through another federal or state assistance program such as foster care children and individuals receiving SSI, and the elderly) are exempt from income eligibility determinations for Medicaid based on MAGI. Prior law's income determination rules under Medicaid will continue to be used for determining eligibility for these groups. Federal requirements and options combined with state choices and definitions make generalizations about Medicaid eligibility policies for the MAGI-exempted groups difficult.

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[96] For state Medicaid and CHIP income eligibility standards for MAGI Groups, based on state decisions as of July 1, 2014, see http://www.medicaid.gov/AffordableCareAct/Medicaid-Moving-Forward-2014/Downloads/Medicaid-and-CHIP-Eligibility-Levels-Table.pdf.