

Rent in Public Housing

A Know Your Rights Guide for
Public Housing Tenants in Massachusetts



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Because laws and regulations change, make sure you have the most up-to-date version of the booklet by checking www.MassLegalHelp.org/housing/rent-public-housing.

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If you are a tenant in public housing in Massachusetts, this booklet will give you answers to questions about how rents are set in both state and federal public housing. In addition, if you are living in public housing that is undergoing redevelopment so that you will no longer be in public housing, but in a mixed finance site with other types of subsidies, this explains how rents may change.

Also included is a glossary. Words that are *italicized* are in the glossary.

Please share this booklet freely with tenants, housing authorities, and organizations working with tenants. It is available at:

www.MassLegalHelp.org/housing/rent-public-housing

Keep in Mind: Legislation passed by Congress in 2016 made major changes to how rents are set in federal public housing and Section 8, but HUD has not yet issued or implemented regulations for all of those changes. Check www.MassLegalHelp.org for the most up to date information.

How to Calculate Rents

1. If I live in public housing, how is my rent calculated?

Usually, rent in public housing is a percentage of your anticipated yearly income. This is called *income-based rent* because it is based on your income. (See **Question 2** for other ways that rents are set.) The way that *income-based rent* is set is:

- You give the housing authority information about the income you **anticipate** coming into your *household* for the coming 12 months.
- The housing authority then subtracts certain *deductions* and arrives at an amount called your *net income* (for state public housing) or *adjusted income* (for federal public housing).
- The housing authority then determines your rent based on a percentage of your *net* or *adjusted income*.

The exact percentage depends on whether you live in state or federal public housing. If you do not know whether you live in state or federal public housing, ask your manager or check your lease.

State public housing

For **elderly/disabled** public housing, your rent will be the following:

- If you pay no utilities separately, rent = **30%** of your *net income*
- If you pay some or all utilities, rent = **25%** of your *net income*

For **family** public housing, your rent will be the following:

- If you pay no utilities, rent = **32%** of your *net income*
- If you pay some, but not all, utilities, rent = **30%** of your *net income*
- If you pay all utilities, rent = **27%** of your *net income*.¹

Federal public housing

If you live in any kind of federal public housing, you generally pay whichever is more: **30%** of *adjusted income* or **10%** of *annual income*.² Most tenants pay 30% of adjusted income.³ If you pay utilities, then a *utility allowance* is subtracted from this monthly amount.

Find more information about rent in federal public housing at the U.S. Housing and Urban Developments (HUD) website at⁴:

http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm

2. Is my rent always based on my income?

No. There are some situations in both state and federal public housing where the rent is **not** going to be a percentage of your income. (**Note:** If you live in federal public housing in Cambridge and Holyoke, the housing authority has received special permission to create its own rules about how to set rents.⁵)

Federal public housing

Minimum rent

In federal public housing, housing authorities can charge a minimum rent of \$0-\$50 per month. For more information, see **Question 11**.

Flat rent

In federal public housing, housing authorities must establish a maximum *flat rent* for each apartment.⁶ This will vary by bedroom size, condition, location, age of the unit, and other factors. Make sure you know what the flat rent is for your apartment. You will have a choice of paying either 30% of income or the flat rent. If you have a high income and the flat rent is less than 30% of your household's income, you should choose the flat rent. If you are paying the flat rent and at any time you are unable to pay that amount because of a financial hardship, you can ask to return to an *income-based rent*.⁷ If you choose a flat rent, the housing authority must re-examine your income at least once every three years.

A number of years ago, some housing authorities set fairly low flat rents. Starting in 2014, Congress required that generally the flat rent had to be at least 80% of the Section 8 Fair Market Rent (FMR) for the area. The FMRs are revised every year, and usually increase, but not always. If there is a change in the FMRs, housing authorities must revise their flat rents.

HUD also provides that if the flat rent has been lower than 80% of FMR, the increase in the flat rent for a household can be phased in over three years so that the increase does not exceed 35% in any given year.⁸

Pro-rated rent and immigrants

If you live in federal public housing and your household includes immigrants who are not U.S. citizens or who are not *eligible noncitizens* (as defined by federal regulation), the family usually must pay a *pro-rated rent*.⁹ This figure is often much higher than the regular rent.¹⁰ For more information about pro-rated rent, see **Legal Tactics: Finding Public and Subsidized Housing, Booklet 9** (Question 9) at www.MassLegalHelp.org/housing.

Welfare sanctions and rent

If you live in federal public housing and your Transitional Aid to Families with Dependent Children (TAFDC) grant was lowered because the Department of Transitional Assistance *sanctioned* you for welfare fraud or for not doing its required work program, your public housing rent will not be lowered.¹¹

State public housing

Minimum rent

In state public housing, there is a *minimum rent* of \$5 a month.¹² For more information, see **Question 11**.

Overhoused family that refuses a transfer

In state public housing, if a family is *overhoused*, which means that the apartment is designed for a larger family, the housing authority is required to transfer this family to an appropriately sized apartment.¹³ For example, if a 3-person family is living in a 4-bedroom apartment, a housing authority can require them to transfer to a smaller unit.

If the family refuses to transfer to an available apartment, the housing authority is allowed to charge 150% of the *income-based rent*.¹⁴ This means that if the household would have paid \$300 per month under the regular income-based rules, the housing authority can charge \$450 until the family agrees to move to a smaller unit. See **Question 27**.

For more about transfer, see **Transfers in Public Housing: A Know Your Rights Guide**, available at www.MassLegalHelp.org/housing/transfers.

3. What is counted as income?

In state public housing, the income that the housing authority counts when calculating your rent is called *gross income*.¹⁵ In federal public housing it is called *annual income*.¹⁶ While the rules about what is counted are slightly different for state or federal public housing, there are also many similarities.

Both state and federal public housing

Both state and federal public housing **count** the following as income:

Income from work: Wages, salaries, tips, overtime pay, commissions, fees, and bonuses.
Income from business: Net business income if self-employed or if income is from a business or profession. ¹⁷
Income from assets: Income from property, such as rent, dividends, interest, capital gains, or trust income. For more information about <i>assets</i> , see Question 9 .
Social Security or Veterans Affairs (VA) disability periodic payments: Supplemental Security Income (SSI), Social Security Disability Income (SSDI), or Retirement, Survivors and Disability Insurance (RSDI), or VA disability benefits. Important: One big difference between state and federal housing is if you receive a deferred amount from SSI or SSDI (generally in a lump sum), it is counted as income in state public housing, but not in federal housing. VA deferred disability benefits are now treated by HUD the same way as SSI and SSDI. ¹⁸ See Question 8 .
Government benefits: Transitional Aid to Families with Dependent Children (TAFDC) or Emergency Assistance to the Elderly, Disabled and Children Program (EAEDC) benefits.
Payments to replace earnings: Unemployment compensation, workers' compensation, disability insurance or benefits.
Periodic, regular allowances: Alimony, separate support, child support.
Other payments: Annuities, retirement funds, pensions, death or disability benefits, insurance policies, or other similar types of periodic payments.
Regular gifts or contributions: From someone not living in the apartment. ¹⁹

State public housing only

If you live in state public housing, the following additional income is **counted** when determining your rent:

Lottery and gambling winnings
Foster care payments
Principal from a trust
Taxable capital gain

Federal public housing only

If you live in federal public housing, the following additional income is **counted** when determining your rent:

Severance pay
Imputed welfare income for certain sanctions: The amount of income not received by a family as a result of a welfare benefit reduction for certain sanctions (See Question 2)

4. What is NOT counted as income?

Both state and federal public housing have rules stating that certain income should be ignored, or excluded, when determining your rent. These are called *exclusions*. *Exclusions* are not counted when calculating your *gross* or *annual income*.

Both state and federal public housing

If you live in either state or federal public housing, the following income is **not counted** when calculating rent:²⁰

Regular payments from <ul style="list-style-type: none">▪ Food stamps,▪ Fuel assistance,²¹▪ Payments under the SSI PASS (Plan for Achieving Self-Support) Program,▪ Payments under the Domestic Volunteer Services Act of 1973.
Certain one-time (or <i>lump sum</i>) payments <ul style="list-style-type: none">▪ Irregular gifts, inheritances, life insurance proceeds▪ Payments from insurance, worker’s compensation, or court judgments or settlements that compensate for loss or personal injury
Earnings of the following people <ul style="list-style-type: none">▪ Minors,▪ Live-in attendants for person with a disability,▪ Members of armed forces in a war zone.
Earned income tax credit refunds
Payments received to compensate for medical care and expenses²²
Return of capital: A return of all or some of your original investment from sale or transfer of that investment.
Payments from the government later reimbursed to the government: For example, if you receive SSDI benefits of \$800/month, but the Social Security Administration deducts \$50/month to for an earlier overpayment, then your rent is based on \$750/month SSDI.

State public housing only

If you live in state public housing, the following income is **not counted**:

<p>Compensation for income lost when tenant was not living in public housing (including <i>lump sum</i> payments).</p>
<p>Relocation payments from state or federal relocation funds.</p>
<p>Education-related payments: Scholarships or stipends for housing paid by a non-household member (for full-time or part-time students).</p>
<p>Training: Payments associated with training for employment programs to cover costs such as transportation, fees, books, or child care during training. (This does not apply to wages from on-the-job training.)</p>
<p>Earnings of the following people:</p> <ul style="list-style-type: none">▪ Full-time student 18-25 years old (who is not head of household or spouse).▪ A senior (over 62) working over 20 hours per week at minimum wage.²³▪ People who started working who received government cash assistance for 12 months before working. See Question 12.
<p>Veterans:</p> <ul style="list-style-type: none">▪ Amounts paid to a veteran for tuition or other costs.▪ All but \$1,800 received from federal government by unemployable disabled veteran (<i>discretionary</i>).

Federal public housing only

If you live in federal public housing, the following income is **not counted**:

<p>Deferred Social Security and Veteran’s Affairs (VA) disability: Deferred payments from SSI and SSDI and VA disability that are either <i>lump sum</i> payments or in prospective monthly amounts. (While this amount is not counted as income, it becomes an <i>asset</i>. See Questions 8 & 9.)</p>
<p>Property tax rebates and capital gains</p>
<p>Regular payments:</p> <ul style="list-style-type: none">▪ Foster care for children or adults;▪ Adoption assistance payments over \$480;▪ First \$200/month of a resident stipend (includes resident commissioners);▪ Payments to crime victims;▪ Certain payments from federal programs: AmeriCorps, Job Training Partnership Act, Workforce Investment Act, the Child Care & Development Block Grant Act, the Older Americans Act of 1965 (senior aide program);▪ Reparations for persecution during Nazi era;▪ Certain repayments to Native Americans.
<p>Education-related payments:</p> <ul style="list-style-type: none">▪ Certain assistance or work-study paid to student or the institution▪ HUD-funded training programs▪ Incremental earnings when participating in an employment training program.
<p>Welfare-related payments: Reimbursements of out-of-pocket expenses (clothing, special equipment, transportation, child care) in order to participate in specific training programs.</p>
<p>Medical-related payments: Payments by a state agency to a family member with developmental disability for costs of services or equipment to keep family member at home.</p>
<p>Medicare: Any subsidy received to assist low-income people in paying for Medicare prescription drug plan costs.²⁴</p>
<p>Earnings of the following people:</p> <ul style="list-style-type: none">▪ Full-time student earning more than \$480 who is over 18 (and not head of household or spouse),

- People who start working who meet certain requirements. See **Question 12.**

Veterans: Deferred disability benefits from the Department of Veterans Affairs (generally received as a lump sum).²⁵

5. What household expenses must be deducted before setting rent?

Before a housing authority sets your rent, it is required to subtract from your household's *gross* or *annual income* certain *deductions*.

In general, state public housing has more *deductions* than federal public housing. While housing authorities can adopt additional *deductions* for federal public housing, they cannot add to the *deductions* listed below for state public housing.²⁶

For example, Boston Housing Authority allows a *deduction* of extraordinary medical expenses for all families in federal public housing—not just for elderly or disabled families living in federal public housing. Somerville Housing Authority has deductions for certain part time students and for young working adults.

To see if your housing authority has adopted additional deductions for federal public housing, ask your manager or check your housing authority's Admissions and Continued Occupancy Policy document.²⁷

Federal public housing

If you live in federal public housing, you are entitled to the following *deductions* before your rent is set (be aware that Congress authorized some significant changes in deductions in 2016, but those changes have not yet been implemented, and won't be until HUD issues new regulations).²⁸

Elderly and Disabled Family Deduction
\$400 per year for a family where the head of the household or spouse is 62 years of age or older or is a person with a disability.
Dependent Deduction
\$480 per year for each dependent. This includes anyone who is: <ul style="list-style-type: none">▪ Under the age of 18,▪ A full-time student, or▪ A person with a disability.
Medical or Disability Deduction
The amount over 3% of your <i>annual income</i> which you are likely to spend on unreimbursed medical expenses only for a family member who is 62 or over or who has a disability. Includes unreimbursed out-of-pocket costs for prescription drugs and medical insurance premiums. ²⁹

The amount over 3% of your *annual income* which you likely to spend on unreimbursed expenses for disability assistance for any family member with a disability which are necessary for that person's employment. This includes attendant care and auxiliary apparatus.³⁰

For more information about medical bills see **Question 6**.

Child Care Deduction

Child care payments for children under age 13, if a family member is employed, looking for employment, or in school.³¹

State public housing

If you live in state public housing, you are entitled to the following *deductions* before your rent is set:³²

Elderly and Disabled Family Deduction

\$400 per year for a household living in **family public housing** where the person who signed the lease is either 60 years or older or has a disability (unless the household is *overhoused*).

Family Deductions

- \$300 per year for each child under 18.
- \$300 per year for each adult who has income (other than head of household), if that adult's *gross income* exceeds all his or her other deductions

Heat Deduction

A yearly heat deduction where tenant pays heat. The amount of the deduction is determined by the Department of Housing and Community Development (*DHCD*).³³

Medical Deduction

Actual payments for necessary medical expenses not covered by insurance for any family member (including co-payments and insurance premiums) in excess of 3% of gross household income.³⁴

Child and Family Care Deduction

Payments for care of children or sick or incapacitated household members if necessary for employment of another household member.

Support If Separated or Divorced

Child support or separate support, or alimony paid as a result of a court order to someone not living in the household.

Education Deduction

Non-reimbursable payments for tuition and fees for post-secondary education for household member who is not a full-time student.

Deductions for People with Disabilities

- Non-reimbursable payments for reasonable and necessary housekeeping and personal care.
- Certain travel expenses in connection with necessary activities which cannot be performed by another household member.³⁵

Special Issues

6. What if I have high medical costs?

If you have high medical expenses, you may be entitled to *deduct* these expenses from your income before your rent is determined. To do this you will need to keep very good records about your medical expenses—what you have paid and what you anticipate paying.

If an unanticipated major medical expense comes up during the course of the year, let the housing authority know as soon as possible so that a rent adjustment can be made. See **Question 20**.

Deductible medical expenses include:

- 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 and costs of non-prescription medicines which are doctor recommended;³⁶
- Costs for dental care/work, eyeglasses, hearing aids (including batteries), special footwear which is medically required;
- Transportation to medical treatment (including parking and IRS mileage to and from the medical appointment);³⁷
- Live-in or periodic medical assistance at home;
- Monthly payments on accumulated medical bills;
- Payments for auxiliary apparatus such as wheelchairs, walkers, ramps, lifts, scooters, reading devices for people with visual disabilities, equipment to add to cars and vans for people with disabilities, or expenses associated with service or assistance animals.³⁸

Bills which are paid or reimbursed by third parties (such as Medicaid or Medicare) are **not deductible**.

Federal public housing

If you live in federal public housing, you are allowed to deduct the amount of medical expenses that are over 3% of your *annual income* which you are likely to have, **but only for a family member who is 62 or over or a family member who has a disability**.³⁹ The best way to show the housing authority what your medical expenses may be in the coming year is to bring in your

medical bills from the past year. Make sure that you do not submit the same medical bill twice.

Note: The housing authority in Boston has established a deduction for extraordinary medical expenses for all families in federal public housing, not just for elderly or disabled families.

In addition, if you live in federal public housing, you are allowed to deduct unreimbursed expenses related to the care of a disabled family member necessary to allow another family member to work. This can include the cost of attendant care or auxiliary apparatus. Only the portion which exceeds 3% of *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. If this amount by itself does not exceed 3% of your *annual income*, it can be combined with the medical expense deduction listed in the previous paragraph.⁴⁰

State public housing

If you live in state public housing, you are allowed to deduct the amount you have actually spent on unreimbursed medical expenses **for any family member** in an amount that is over 3% of your *gross income*.⁴¹

In addition, households living in family housing in which a tenant is elderly or has a disability are permitted a yearly household deduction of \$400.⁴² This does not apply if you live in elderly/disabled housing. It also does not apply if you are *overhoused* in family housing.

Finally, if a household member has a disability, payments for reasonable and necessary housekeeping or personal care services may be deducted. This applies to both family and elderly/disabled housing.

7. If I get child support, will it be counted towards my rent?

Yes. In general, all child support that you receive, whether through a court order or by informal arrangement, will be counted as income for purposes of calculating your rent.

If you stop getting child support, ask the housing authority to lower your rent as soon as you stop receiving the support. See **Question 20**. For example, if part or all of the child support you received is going directly to the Department of Transitional Assistance (DTA) because you receive TAFDC, let the housing authority know so that your child support is not counted twice. If you stop receiving TAFDC and start getting child support you should also let the housing authority know right away.

Often, there is a problem as to how to verify the loss of the child support. The best way to show the loss of child support for your family is through the Massachusetts Department of Revenue's Child Support Enforcement (CSE) Division. The CSE tracks almost every child support payment made in the state, whether through income assignment or otherwise.

You can get information regarding your payment history at the following website: <https://ecse.cse.state.ma.us/ECSE/Login/login.asp>.

You will need a security code, or a PIN (Personal Identification Number), to get into your account. Once you gain access to your account, you will be able to see the payment history, which you should print out and bring to the housing authority. If you do not have access to the Internet, you can request payment history by calling CSE's Voice System at 800-332-2733. More information about CSE is available at www.cse.state.ma.us.

Sometimes families get informal child support, either instead of a court order or in addition to a court order. Typically these payments will be considered income if they can be considered regular gifts coming into the household. For example, if the non-custodial parent is regularly giving you \$100 in cash to help with the kids, the housing authority can count that as income. But if the other parent only occasionally buys your children clothes, that is likely to be seen as a sporadic gift and will not be counted.

8. When are lump sum amounts not counted towards rent?

A *lump sum* is a one-time payment. When a housing authority calculates your rent, some lump sum amounts are not counted as income. Lump sum amounts that are not counted as income are still considered *assets* and the interest earned on them in future years will be counted as income. For more about assets, see **Question 9**.

If you live in federal or state public housing, the following lump sum payments are **not counted** as income in the year received when determining rent:

- Irregular gifts, inheritances, life insurance proceeds
- Payments from insurance, worker's compensation, or court judgments or settlements that compensate for loss or personal injury
- Returns on investments (*return of capital*).

Federal public housing

If you live in federal public housing, the following types of lump sum payments are also **not counted** as income when determining rent:

- Deferred periodic payments from SSI and SSDI, or deferred periodic Veterans Affairs (VA) disability payments.⁴³

9. Are assets counted as income?

In general, if something is considered an *asset*, its value is **not** added to your yearly income when determining your rent. But, if you have access to the income that is produced by the asset, that income that is earned from the asset will be counted when determining rent.

Under federal public housing rules, the following should be treated as assets:⁴⁴

- Bank accounts (savings or checking);
- Stocks, bonds, treasury bills, certificates of deposit;
- Real property, including real estate;
- Other capital investments;
- Trust funds;⁴⁵
- One-time payments such as inheritances, life insurance proceeds, capital gains, and payments for injury or damages under workers compensation, insurance, or court awards. (If, however, the one-time payment is to replace earnings in some way, it will generally be counted as income.⁴⁶)

Assets do not include necessary personal property, such as clothing, furniture, and cars.

Under federal and state rules, if the total value of your assets is \$5,000 or less, the housing authority will count the actual income earned. If the value is more than \$5,000, the housing authority will count either the actual interest earned or the HUD-established interest or the DHCD-established interest—whichever is higher. For example, if you have a bank account with more than \$5,000, the housing authority is required to act as if you have earned interest, even if you haven't. State and federal agencies tell housing authorities what rate of interest to use.⁴⁷

If you sell an asset or make a withdrawal, some or all of the proceeds may be treated as income in the year you sell the asset. This will likely depend on whether the payment is considered a capital gain for tax purposes.⁴⁸

Asset issues in public housing are sometimes quite complicated. You may want to seek the help of a legal services or community advocate if the issue is not a simple one.

10. If I pay for any utilities, does that affect my rent?

If you pay for some or all of your utilities, your rent will be affected. Utilities generally include electricity, gas, and oil but not telephone or cable TV. There are different rules for state and federal public housing.

State public housing

If you live in **elderly/disabled** public housing, your rent will be the following:

- If all utilities are included in rent, your rent = 30% of *net income*
- If you pay some or all utilities, your rent = 25% of *net income*

If you live in **family** public housing, your rent will be the following:

- If all utilities are included in rent, your rent = 32% of *net income*
- If you pay some, but not all utilities, your rent = 30% of *net income*
- If you pay all utilities, your rent = 27% of *net income*.⁴⁹

Federal public housing

If you live in any kind of public housing (family or elderly/disabled), your rent is 30% of your *adjusted income* minus a *utility allowance* for any utilities you pay.⁵⁰

Each housing authority establishes its own utility allowance, based on a reasonable approximation of utility consumption. The housing authority must review these allowances every year.⁵¹

If there is a utility rate change (including fuel) which results in a change of 10% or more from when utility allowances were last determined, your housing authority is required to update the utility allowance.⁵²

In some cases, tenants' apartments are not individually metered for utilities (and the tenant is not billed by the utility company), but housing authorities have what are called *checkmeters*. Checkmeters tell the housing authority what your utility use is. If your utility use is higher than the utility allowance, your housing authority can impose a surcharge (extra charge) for any utility consumption which is in excess of the utility allowance.

Even if you are not billed for utilities and there are no checkmeters for your apartment, a housing authority can impose a surcharge for utility use associated with tenant-owned major appliances, such as freezers and air conditioners.⁵³

If you think that your utility allowance is too low or the housing authority's utility surcharge too high, you can request that the housing authority make the appropriate adjustment. Your request must be based on reasonable grounds, such as a special need for people who are elderly, ill, or have a disability or special factors affecting utility usage that are not within your control.

Use your most recent utility bills to establish your need for an adjustment. Ask your housing authority for information about the process by which an adjustment may be requested. When you first move in and when your housing authority gives you notice of utility allowances, it is required to give you notice of these procedures.⁵⁴

11. If I have no income, can I be charged rent?

Yes. Both federal and state public housing programs can charge *minimum rents* to households even if they have no income. For federal programs, the minimum rent can range from \$0 to \$50 a month.⁵⁵ For state housing programs, the minimum rent is \$5 a month.⁵⁶

If you do not have any income as defined in **Question 3**, a housing authority may conduct a more detailed survey into how you maintain your household. Failing to report income can get you into trouble. All reported income, however, is not used in the determination of your rent level. See **Question 4**.

For both federal and state public housing, if you are facing a *hardship*, you can ask the housing authority to *suspend* (temporarily stop) or *waive* (not charge) the minimum rent.⁵⁷ You do this by applying for what is called a *hardship exemption* or *waiver*. You can apply for a *hardship exemption* if you lose your income because your situation changed, such as loss of a job or death of a family member. You can also apply if paying the minimum rent would be a hardship for you. However, depending on your situation, you may later have to repay the amount that had been suspended.

There are two types of *hardship*: short-term and long-term. If the hardship is expected to last less than 90 days, you qualify for short-term hardship, and charges are *suspended* for the time being. You do not have to pay the minimum rent for the period of time that the suspension covers. When the short-term hardship expires, you can work out a payment plan to repay the amount you owe. If the hardship lasts more than 90 days, you qualify for a long-term hardship. The rent charges for the prior 90-day suspension period are waived, and the waiver continues until you have income. If you are granted a long-term hardship, you do not have to pay the minimum rent at all.

All housing authorities must give tenants notice about how to apply for the *hardship exemption*.⁵⁸ If you need to apply, contact your housing authority. If you apply for a hardship exemption, the housing authority cannot evict you for not paying the minimum rent.

12. If I work and my rent increased a lot, what can I do?

If you or a member of your household begin to work while you are living in public housing and you were previously not working, you may be eligible for a program that “freezes” your rent. If you are eligible, your rent will be frozen for a certain period of time at the amount it was when you were not working. In other words, any new income you earn from working will not be counted when calculating your rent. This benefit applies to both part-time and full-time work. If you think you qualify, use the sample rent freeze letters at the end of this booklet to request a rent freeze.

In federal public housing, this benefit is called the *self-sufficiency incentive* (it is also sometimes called the earned income disregard).⁵⁹ The self-sufficiency incentive was substantially cut back by HUD in 2016.⁶⁰ While it is still currently available, it will ultimately be phased out under legislation adopted by Congress in 2016. However, as with other rent changes made by that legislation, HUD will first need to issue proposed regulations and get public comment.⁶¹ In state public housing, it is called the *earned income exclusion*.⁶²

Federal public housing

If you or any adult household member live in federal public housing, you or that person can get the rent freeze or *self-sufficiency incentive* if:

- Unemployed for one or more years before getting the job; **or**
- Earned less than \$6,000 over the 12 months prior to getting the job (for example, if you worked for \$12.00 per hour, which is minimum wage in Massachusetts in 2019, for 10 hours per week, 50 weeks per year, you would qualify); **or**
- Received welfare benefits or participated in a welfare-to-work program within 6 months before getting the job, **or**
- Got the job while in a job training or self-sufficiency program.⁶³

The above information is true for the head of household, as well as any member of the household. While the incentive is “lifetime” for each household member, it is possible over time for different household members to each claim an earned income exclusion if each qualifies.

To qualify for a rent freeze, it is acceptable to show that a person meets only one of the criteria listed above; it is not necessary to show that you meet all of them. When you get a rent freeze, for the first 12 months after you start

working, all income related the increase in income from your job cannot be counted towards your rent, so your rent stays the same. In the second 12 months, your housing authority can count towards rent only half of your total work earnings.⁶⁴ This means a total of 24 months of a full or partial rent freeze.

For those first seeking the rent freeze after May 9, 2016, you must use your exclusion within 24 months of becoming employed. If at some point you become unemployed, the clock stops. Once you start work again, the clock restarts and you get whatever time was left of the 24-month period. Those who qualified for and sought the benefit prior to May 9, 2016 may use the 24 months within 48 months of becoming unemployed.

Example: If you worked for 12 months starting in September 2016, then got laid off for 6 months, and then worked for 12 months, all of the increased employment income for the first 12 months would not be counted when setting your rent; 50% of the increased employment income would not be counted for 6 months of the second 12-month period, but the exclusion would be over by September 2018 and the last 6 months of your employment, full income would be counted. Keep in mind, if you receive any unemployment income while you are not working, this will be counted when calculating your rent.

State public housing

If you live in state public housing, you can get a rent freeze or *earned income exclusion* if:

- Before you got your job you received either TAFDC (Transitional Aid to Families with Dependent Children), EAEDC (Emergency Aid to Elders, Disabled and Children), SSI (Supplemental Security Income), or SSDI (Social Security Disability Insurance) for 12 months in a row immediately prior to beginning your job; **and**
- Once you started working, your government cash benefit assistance decreased.

With this exclusion, for 12 months, all income related to your job cannot be counted towards your rent. In other words, your rent will stay the same. You can qualify for this benefit only once while living in state public housing.⁶⁵

If you or another household member are 62 years or older, working and living in state public housing, the housing authority must exclude a portion of your income when determining your rent. The portion that is excluded cannot exceed an amount that equals 20 hours per week at minimum wage (approximately \$160 per week).⁶⁶

Trouble Paying Rent

13. If I cannot afford my rent this month, what can I do?

Do not ignore the problem. Some approaches to consider include:

- **Talk to staff at the housing authority.** Sometimes housing authorities will let you work out a payment plan to get back on track. Let your housing authority know that you are having a hard time, but that you take your rent seriously and are working hard to fix the problem.
- **Figure out whether your rent was calculated correctly.** Figure out with housing authority staff whether your rent was calculated correctly. For example, you may be able to get a *hardship waiver* and not have to pay the *minimum rent* for a certain period of time. See **Question 11**. Or you may be eligible for a rent freeze. See **Question 12**. Or the housing authority may not have lowered your rent after you reported a decrease in income. See **Question 21**.
- **Look to your community.** If you are having a hard time paying your rent for a particular month, you should try to contact local and community agencies that might be able to help you. Charitable, religious, and community organizations sometimes have funds that help people who are having financial difficulties. Also check your city or town's human services department because it may have funds to help residents in the community. Resources are often one-time-only or on a first-come-first-served basis, so these sources should not be depended upon. Calling these organizations, even if you are not a member or affiliated with their group, can sometimes get you the help you need or a referral to an agency that can help.
- **Check your eligibility for government resources.** If you or a member of your household is a veteran, you may qualify for government assistance. You should contact your local veterans association for more details and eligibility requirements. Also, the state sometimes has money in a program called *RAFT (Residential Assistance for Families in Transition)*. RAFT is designed to help

tenants pay back rent and utility bills. You should check with your local nonprofit housing agency to see if there is any money in the RAFT account. To find the RAFT agency near you, go to: www.masshousinginfo.org.

14. What if I pay my rent late?

State public housing

If you live in state public housing and your rent is more than 30 days late, a housing authority must charge a late fee of \$25.⁶⁷ (**Note:** If you pay only the next month's rent and not the late fee, the housing authority will apply it to the prior month and you will be charged another \$25 late fee. Late fees may accumulate quickly.) You may request that the housing authority *wave* (not charge) the fee if there is a good reason that you were late.

Federal public housing

If you live in federal public housing, the housing authority may charge a late fee, but it must be listed in your lease. Massachusetts law, however, prohibits the imposition of a late fee unless your rent is more than 30 days late.⁶⁸

Late fees in federal public housing, like other extra charges, cannot be charged until 2 weeks after the housing authority gives you written notice.⁶⁹ Typically there will be a process to *wave* (not charge) the fee, especially if the reason is something out of your control, like you are not receiving a benefit check in time.

Income Changes

15. When must I report changes in my household's income?

Required yearly reporting

If you live in federal or state public housing, you are required to report your household's income and composition at least once a year. Some housing authorities calculate the annual reporting date based on the anniversary of your move-in date. Others check incomes for all tenants in a particular development at the same time. The information you give the housing authority must be accurate.

Recent changes in federal law give housing authorities the flexibility to conduct federal public housing recertification every three years where the household is on a fixed income. However, the family must provide verification that 90% or more of its income is from fixed sources (like pensions, Social Security, or the like), and the housing authority may apply set adjustments, such as cost of living adjustments (COLAs) reflecting how such fixed income has changed from prior years.⁷⁰

There are also recent changes that give housing authorities flexibility to conduct state public housing recertifications every 2 years for those in elderly/disabled housing.⁷¹

For state public housing, this is called the annual *redetermination* of rent;⁷² for federal public housing this is called *reexamination*.⁷³ Both state and federal public housing also refer to this as *recertification*.

Additional or interim reporting

In both federal and state public housing, there are rules about reporting income increases between yearly rent recertifications. This is referred to as *interim reporting*.

In federal public housing, each housing authority can set its own *interim reporting* policy for when you must report changes in your family's income and household composition. This policy must be spelled out in your lease.⁷⁴ Read your lease carefully. It will tell you of any deadlines for reporting income changes. If your income goes down, it is a good idea to report this immediately. See **Question 20**.

Some housing authorities do not require reporting, while others do if the household income goes up by a certain amount.

In **state public housing**, you are required to report when there is any increase in your household's monthly *gross income* by 10% or more from what you last reported. Generally, you must report this by the 7th day of the month following the month in which the increase occurred.⁷⁵ Check your lease for the exact reporting requirements. (If the increase was anticipated in the prior calculation of your rent, you do not have to report it.)

Example: If in January you reported at the yearly rent *redetermination* that your household's gross income was \$15,000, and in May your household's income increased by \$1,500, you are required to report this to the housing authority by June 7th.

In addition, if you live in state public housing and you receive any *lump sum* payment of income later than it normally would have been paid (such as payment of past-due workers' compensation benefits, SSI or SSDI lump sums, or retroactive salary increases) and this income was not previously counted in determining your rent, you must report this within 7 days. The housing authority may impose a one-time *retroactive* rent charge on this amount and the tenant must pay that charge within 30 days.⁷⁶ Some housing authorities have obtained permission from the state housing agency to have different rules on *interim reporting*, so check your lease.⁷⁷

Flat rents

If you live in federal public housing and have chosen a *flat rent*, required *reexamination* of your family's income occurs once every 3 years, not once a year.⁷⁸ You may, however, ask the housing authority to tell you what the *income-based rent* would be to see if you would do better with a flat rent or an income-based rent.⁷⁹ The housing authority can ask you to give income information so they can make this calculation.⁸⁰

In addition, as noted in **Question 2**, flat rents are required to change as Section 8 FMRs change. So it's possible that a tenant on a flat rent may face a rent increase even though income was unchanged. If this happens, check to see if the income-based rent would be better for you.

16. If my income goes up and I do not report this right away, can I get in trouble?

Maybe. It depends on what your lease says. Even though you have a yearly income check (*recertification*), you may have to report increases in your income throughout the year when they happen. See **Question 15** about *interim reporting*.

If you do not report the change in income as required by your lease, two things could happen (depending on what's in your lease):

- The housing authority could try to charge you for the back rent that could have been charged if there had been proper reporting.⁸¹ This is sometimes called a *retroactive* rent increase. See **Question 18**. The housing authority may also try to charge you interest or a late payment penalty on the unpaid amount.⁸²
- The housing authority could try to evict you for failure to properly report your income. You may be able to prevent your eviction in court if the failure to properly report an income increase was for *good cause* or the amount of the unpaid rent is relatively small in comparison to the rent that normally would have been paid.⁸³

If you had a good reason for not reporting certain income, make sure you let the housing authority know this. For example, if you did not think that certain income counted, or you misunderstood your lease, or a family member did not tell you about a change in income, tell the housing authority this. If the failure was related to a disability or hospitalization, bring information showing this. Housing authorities have a duty to reasonably accommodate persons with disabilities. While it is likely you will have to pay back what is owed, the housing authority may agree to not charge a penalty or may agree to stop the eviction and instead give you a reasonable payment plan.

For federal public housing, many housing authorities use a computer program operated by U.S. Housing and Urban Development's (HUD's) called the Enterprise Income Verification (EIV) system. Housing authorities use this computer matching system to identify families who have unreported income. Housing authorities can get the following information: new hire information, quarterly wage, employer information, quarterly unemployment compensation, monthly Social Security and Supplemental Security Income (SSI) benefits, and Medicare deductions.⁸⁴ HUD has issued guidance to housing authorities that they should generally offer tenants reasonable

repayment terms if the failure to report income wasn't knowing or intentional, and to modify repayment terms so that they are affordable; in most instances, the tenant would not be paying more than 10% of income toward the repayment amount, so that the overall burden for ongoing rent and repayment is capped at 40% of income.⁸⁵

State public housing also has a computerized system called Wage Match that allows housing authorities to verify income information for adult household members against the state Department of Revenue records.⁸⁶

17. What should I do if my income changes a lot during the year?

The housing authority sets your rent based on anticipated income.⁸⁷ That means that it must make its best guess about what your income is going to be for the next 12 months.

Usually the housing authority will rely on information from your employer about what you have earned to date and are likely to earn over the next 12 months. Sometimes it will calculate based on an average of recent paystubs, including overtime.

If you think the housing authority has incomplete information, or does not accurately show what your income is likely to be for the next year, you should try to give the housing authority better information. If you provide updated information to the housing authority and it still sets your rent higher than you think it should be based on the information you have submitted, you have the right to request a *grievance hearing*. For more about filing a grievance, see **Using Your Public Housing Grievance Procedure**, a guidebook available at www.MassLegalHelp.org/housing/grievances.

If you work only a certain number of months each year (a common situation with those who work in schools, for example), you have two options for rent:

- You can ask that your 10-month income be stretched over the 12-month period. This would result in a lower rent than would otherwise be the case in the months that you work, but a higher rent in the months you are not working; or
- You can ask to have your rent calculated for the 10-month period that you are employed, and then request a rent decrease for the months that you are not employed.

The same applies to changes in overtime or in hours of employment. If your rent was set initially based on certain assumptions about overtime or hours and you end up doing substantially less overtime or have your hours reduced, you should request a change in your rent. If, on the other hand, fluctuations in your hours or overtime were built into the initial rent calculation (the housing authority averaged out the information, and that average hasn't really changed), there would be no basis for an adjustment.

18. Can the housing authority retroactively increase my rent?

State public housing

If you live in state public housing, a housing authority can increase your rent *retroactively* (going back in time), but in only two circumstances:

- If you did not properly report your income, *deductions*, *exclusions*, or household composition as required by the lease, and the housing authority later discovers the mistake.⁸⁸
- If you did not complete your *recertification* in a timely manner, the housing authority can make a rent increase back to the time that the recertification would have taken effect. This applies to both the yearly recertification and any *interim* recertification required by the lease.⁸⁹

If, on the other hand, you gave the housing authority the proper information in a timely manner, but the housing authority failed to process it, the rent increase can be effective only for a future date.

Federal public housing

If you live in federal public housing, there are no specific rules about whether rents can be increased *retroactively*. That policy is left up to each housing authority.⁹⁰ The policy must be stated in your lease.

19. What kind of notice am I supposed to get about a rent increase?

State public housing

If you live in state public housing, the housing authority must give you at least 14 days written notice of a rent increase prior to the increase, and the rent increase must be effective on the first day of a month.⁹¹ This rule applies unless the housing authority has received permission from the Department of Housing and Community Development (*DHCD*) to adopt a different rule.

Advance notice is not required, however, if you did not properly or timely report any income or income changes in the past, and the housing authority later discovers this error and corrects it. See **Question 18**.

Federal public housing

The federal rules leave this policy to each housing authority to set, and the policy must be in your lease.⁹²

20. When can I ask for a decrease in rent?

As soon as you know of a change in your circumstances—like a loss of income, loss of child support, a change in deductible expenses listed in **Question 5**, or a change in your family or immigration status that would reduce your pro-rated rent—you should let the housing authority know and ask to have your rent recalculated.⁹³

To protect yourself, put your request in **writing** and include:

- Information about the change in your circumstances; for example, that your work time went down from 20 to 10 hours per week; and
- The month in which the income change happened.

Write on your request the date you are notifying the housing authority. This date is very important in terms of establishing when the decrease should happen.

Make a copy of your letter for your records. Then go to the housing authority office and give them your written request. Ask them to stamp or write the date that you are giving them the letter right on the letter. Then ask them to put it in your tenant file. Because you have put your request in writing and dated this letter (and kept a copy), it can be determined later when you first notified the housing authority of the change in your circumstances, even if you cannot provide third-party *verification* at the time.

If you live in federal public housing and are on a *flat rent*, the flat rent cannot be adjusted based on changes in your income. You can, however, ask to be switched to an *income-based rent* because of economic hardship. See **Question 2**.

If you are paying a *minimum rent*, you can ask for a *hardship waiver* if you are without income. See **Question 11**.

21. When should a rent decrease take effect?

If you did not report the income loss right away, the housing authority will usually have no obligation to make a rent adjustment for the time period before you informed them of the income loss. In some cases, however, where a disability is involved, the housing authority may be able to make what is called a *reasonable accommodation* and decrease the rent for the time before you told them about your income change.

If you reported your income loss immediately, the effective date of a rent decrease depends on whether you live in state or federal public housing.

State public housing

If you informed the housing authority immediately about a decrease in income, a rent decrease must become effective—at the latest—on the first day of the month following receipt of information verifying your change in income.⁹⁴ The housing authority may wait until it obtains adequate *verification* of your change in circumstances and what your likely new income will be before making the rent change.

Adequate verification could be, for instance, a layoff letter from your employer or a notice from the welfare office about a decrease in your cash assistance. However, once the housing authority obtains adequate verification, it must make the rent change, and may make the rent decrease effective for an earlier date (the first day of the month following the decrease) if this is warranted by the circumstances that delayed receipt of verified information.⁹⁵

Federal public housing

While each housing authority can set its own policy about when a rent decrease should become effective, federal regulations require that a housing authority act on a request within a reasonable time.⁹⁶

After your notification to the housing authority, you should receive from the housing authority, at a minimum, a written notice stating the new rent, the effective date, and your right to request an explanation about how the rent was calculated. If you request an explanation, the housing authority should explain to you how the calculation was done, what was counted as income, and what *deductions* or *exclusions* were used. Some housing authorities include this information in the rent increase notice.

Advocacy tip: If you and other tenants are involved in reviewing or commenting on housing authority policies, you may want to press for a policy where the rent decrease takes effect the first month after the change in circumstances is reported to the housing authority.⁹⁷

22. What if I told the housing authority that my income went down, but they did not lower my rent?

First go to the housing authority office and ask them why they did not lower your rent. They could be waiting for *verification* of your income.

If the housing authority does not lower your rent after you speak with them, you can file a *grievance* in writing with the housing authority, stating that you want a *hearing* on their failure to lower your rent. To do this, write a short letter asking for a grievance hearing and submit it to the housing authority's main office or the development's management office. The housing authority should grant you a hearing after they get your letter. You will get a letter telling you when and where the hearing is.

When you go to the hearing, bring proof of your income. Be prepared to show when your income dropped and, if possible, bring evidence of when you told the housing authority about the change in your income. Tell the grievance panel or hearing officer that the law requires the housing authority to lower your rent when your income drops.

For more about filing a grievance, see **Using Your Public Housing Grievance Procedure**, a guidebook available at www.MassLegalHelp.org/housing/grievances.

23. What papers do I need to prove my income?

The process of proving what your income is or what *deductions* you may be entitled to is called *verification*.⁹⁸

As a tenant in public housing, you are required to provide **reasonable** and **necessary** documentation of your income and expenses. For example, for wages, interest, dividends, annuities, pensions, or other income, you may be asked to submit copies of your prior year's tax forms (including W-2 forms, W-2G forms, and 1099 forms.)

Both state and federal public housing programs may also require verification of income, assets, and expenses directly from others—"third parties"—such as employers.

Be prepared—the verification process can be slow.

Family Changes

24. When do I report changes in my family?

Reporting changes in your family is just like reporting income. You will go through a *recertification* check at least once a year, and you will likely have to report any changes throughout the year. Read your lease to find out what is required. If someone leaves your household and your rent is based in part on their income, you should report that right away so your rent can be decreased.

25. How can I add someone to my household?

You have the responsibility to inform your housing authority of any person you wish to add to your lease,⁹⁹ and should make a request for the addition to the manager. It is always best to put your request in writing and keep a copy. Some housing authorities have a required application form. You must obtain approval from the housing authority for the addition of a person to your household.

Children

In general, if the person being added to the household is just born to a household member, or where a household member has adopted or obtained court-awarded custody of a young child, you will not need advance permission from the housing authority to have a minor live with you in the interim before official approval. The housing authority is likely to want the birth certificate, adoption order, or copy of the court order. If the child is young, there will probably not be any *screening*. If the child is a teenager, however, the housing authority may wish to do a criminal record check to be sure that the teenager has not been adjudicated as an adult for any crimes.

Adults

If the person you want to add to your lease is an adult, the housing authority will probably require that the person be *screened*, which could include a screening of criminal history. The housing authority may also apply other rules it uses when admitting households with noncitizens to federal public

housing. If the person you want to add to your lease is not approved, you should have the right to challenge this using the *grievance* procedure. For more information about screening and criminal history records and admissions rules related to noncitizens, see **Legal Tactics: Finding Public and Subsidized Housing**, Booklets 6 and 9, available at www.MassLegalHelp.org/housing.

Under housing authority leases, you have the right to have a guest stay with you for limited periods of time without advance approval of the housing authority. In **state** public housing, state regulations usually limit this period to 21 days during any 12-month period, unless the housing authority has received approval for a different time period.¹⁰⁰ In **federal** public housing, each housing authority can set its own policy, as long as it is reasonable.¹⁰¹

You can ask the housing authority to let your proposed new household member stay with you during the guest period while you make the written request for an addition. The housing authority might agree to extend the period if the request is still going through *screening*.

If your request to add the person to your lease has been denied, you can file a *grievance*.¹⁰² You can also ask the housing authority to extend the time period for the person to stay while your grievance is pending.

If you lose the grievance, the housing authority will require that the proposed household member vacate the unit. Keep in mind that even if someone is related to you by marriage or blood, if that person has a criminal record, the housing authority may be able to refuse to allow them onto your lease. If you let the proposed new household member continue to live in the unit after your grievance has been deemed unsuccessful, the housing authority can terminate your tenancy because the person would be an unauthorized household member.

26. How do I remove someone from my lease?

In general, the head of household controls who lives in the public housing apartment and must submit a request to remove a household member from the lease. Often, the housing authority will ask for proof that a family member lives elsewhere before removing that person from your lease. This kind of proof can be a copy of a new lease, a utility bill, or a rent receipt in the person's name.¹⁰³

Domestic violence, separation or divorce

There may be cases where the head of household has engaged in domestic abuse toward other household members, or where there is a divorce or separation. If the family members cannot otherwise reach an agreement about who stays and who leaves, a court may determine who gets to stay in the apartment.

A federal law called the Violence Against Women Act of 2005 provides that a public housing authority may bifurcate (divide) a lease in federal public housing in order to evict or remove an abuser, while allowing the person being victimized to stay.¹⁰⁴ A housing authority may ask an individual to document or certify that he or she is or has been a victim of domestic violence, dating violence, or stalking. Such certification may include: police or court records documenting incidents of violence; or a statement, under oath, from a victim service provider, attorney or medical professional that there have been one or more incidents of abuse.¹⁰⁵ The certification must be provided within 14 days of the housing authority's request, although this deadline may be extended by the housing authority.

A housing authority also has a duty to provide reasonable and appropriate assistance to household members in federal public housing who are victims of domestic violence, including changing locks for those who have obtained abuse prevention orders and *waiving* (not charging) the cost to change the locks.¹⁰⁶

27. If my housing authority says I am overhoused, what can happen to my rent?

If you are living in an apartment with more bedrooms than is determined to be appropriate for your household size, your housing authority can classify your household as *overhoused* and ask you to move to a smaller apartment. In **state** public housing, if you refuse to transfer to a smaller apartment of appropriate size offered by the housing authority, your rent can be increased to 150% of your usual rent.¹⁰⁷ (See also **Question 2.**)

In addition, in either **state** or **federal** public housing, if your household has been classified as *overhoused* and refuses to transfer to a smaller apartment, this could be grounds for eviction. If you think you have *good cause* (good reason) not to move to the smaller apartment, you should file a *grievance*. Some reasons to challenge the transfer include:

- You are a veteran, surviving spouse of a veteran, or Gold Star Mother and allowed by state law to stay in your state public housing unit;¹⁰⁸
- You need to remain in your current apartment due to a disability or you require additional space because of medically required equipment;
- The apartment you are offered is dangerous or not up to building or health codes;
- You cannot climb the stairs or the apartment does not otherwise meet your needs for accessibility (for example, you have a wheelchair and the apartment is not wheelchair accessible); or
- The apartment is otherwise not appropriate.

For more information about how to file a grievance, see **Using Your Public Housing Grievance Procedure**, a guidebook available at www.MassLegalHelp.org/housing/grievances.

28. Are there rules about being over-income for continued occupancy in public housing?

State public housing

Yes. For **state public housing**, if a family's income is such that 30% (for elderly/disabled public housing) or 32% (for family public housing) of income is greater than the Section 8 FMR for the area for a comparably sized unit, the family is considered over-income for public housing. The family may be given a hardship exemption for up to 6 months to find other unsubsidized housing.¹⁰⁹

For example, in Boston the Section 8 FMR for a 1-bedroom in 2019 is \$1,801/month. If 30% of an elderly tenant's income is greater than \$1,801/month, they would be over-income if they are living in a 1-bedroom state public housing elderly/disabled apartment. If the tenant lived in a 3-bedroom state public housing family apartment, the Section 8 FMR for a 3-bedroom is \$2,749. If 32% of the family's income was greater than \$2,749, they would be over-income if they were living in a 3-bedroom in state public housing.

Federal public housing

For **federal public housing**, HUD recently implemented an over-income rule which was part of legislation adopted by Congress in 2016. Under this rule, if a family's income is greater than 120% of the Area Median Income (AMI) for 2 years in a row the family will be over-income and no longer have full rent and eviction protections. For Boston in 2019, 120% of the AMI for a family of three would be \$116,400/year.

While it is up to each housing authority to determine what its policy will be, a housing authority could proceed with eviction of an over-income family after 6 months. Or a housing authority could charge the family rent whichever is greater - either the Section 8 Fair Market Rent (FMR) or the amount of monthly subsidy for the unit (based on the operating and capital funds – a figure that HUD has not determined how to calculate).

If a family is only over-income for the first recertification but not the second, there is no negative action. Action only occurs where there are 2 consecutive findings of being over-income. In the cases where a housing authority does not choose to evict the family, and the family then drops below the over-income limit, the family can ask to be restored to regular rent protections. The family will only be subject to negative action again if there are 2 consecutive over-income findings.¹¹⁰

Mixed Finance Housing

29. What is Mixed Finance housing?

A housing authority may choose to redevelop/rehabilitate a public housing site through a number of different programs. These programs are collectively referred to as “Mixed Finance” housing because they mean bringing in different forms of financing. Mixed financing can be in addition to or in replacement of traditional public housing operating and capital subsidies.

The earliest examples of mixed financing redevelopment were in the 1990’s and early 2000’s through the federal HOPE VI program, the Choice Neighborhoods program, and demolition or disposition efforts under federal law. Since 2012, the Rental Assistance Demonstration (RAD) program authorized by Congress, has become a program where public housing is getting redeveloped.¹¹¹ Many of these programs rely on the use of federal or state Low Income Housing Tax Credits that brings in private investors and the use of project-based Section 8 subsidies. These programs also result in public-private partnerships in which the property may be operated in the future by an entity other than the housing authority although in many cases the housing authority still controls the land.

Mixed Finance housing, done properly, can provide badly needed capital funding for the long-term preservation of the housing. Mixed Finance housing also has use restrictions that keep apartment affordable for low-income people for a certain period of time (in some cases forever) and tenant protections regarding rent, grievances, evictions, and tenant participation.

Residents and resident organizations should get involved in any redevelopment as early as possible to make sure that it will work for them. Residents should negotiate with developers and the housing authority that they receive the technical assistance they need to review and understand proposals and complicated legal documents and financing. Residents should ask tough questions about options and relocation. They should get guarantees in writing BEFORE the redevelopment and get guarantees about their rights and how the development will be operated AFTER the redevelopment.

30. How are rent rules different for Rental Assistance Demonstration (RAD) than for Public Housing?

The Rental Assistance Demonstration (RAD) was authorized by Congress in 2012 to preserve affordable and public housing. Nationwide public housing needs tens of billions in repairs.¹¹² RAD provides funding to stabilize, rehabilitate and replace properties. It has expanded significantly nationwide—it has reached over 100,000 public housing units so far and is expected to reach 600,000 units in the next few years.

Under RAD, housing authorities can shift public housing operating and capital funds for a development into long-term Section 8 contracts through either the Project-Based Voucher (PBV) program or a Project-Based Rental Assistance (PBRA) contract.¹¹³

All RAD proposals must go through several stages of resident review and comment and HUD assessment. Housing authorities are required by HUD to guarantee certain public housing rights, such as one-for-one replacement, the right to return, no rescreening of existing tenants, grievance rights, good cause eviction protections, tenant participation rights, and most rent rules.

For RAD, there are a few federal public housing rent rules which are lost:

- There is no ability to have “flat rents.” Under RAD rent is calculated at 30% of income. If you paid a flat rent in public housing and your rent goes up because of RAD, there is a 5-year phase in period.
- The housing authority no longer has the authority to establish discretionary rent deductions as it could with federal public housing.
- The self-sufficiency incentive in public housing is replaced by the more limited incentive limited to persons with disabilities for the Section 8 program.¹¹⁴
- For any tenants with pro-rated rent because of mixed citizen status, Section 8 pro-ration rent is significantly higher than for federal public housing.
- As with federal public housing, if tenants pay utilities, there are utility allowances for RAD, and they should be adjusted to reflect changes in rates. The PBV program, like the regular Section 8 voucher program,

provides that a higher utility allowance can be sought as a reasonable accommodation for a person with disabilities.¹¹⁵

- If a PBV or PBRA tenant is in the wrong-sized unit, as with public housing, the family is not required to move until the owner identified an appropriately sized unit with the right features at the development available for transfer.

For a discussion of how the different programs affect continued eligibility for over-income families, see **Question 34**, below.

31. How are rent rules different for the regular Section 8 Housing Choice Voucher Program (HCVP) than for Public Housing?

If you have a regular mobile Section 8 voucher (Housing Choice Voucher Program or HCVP Tenant) that you can take with you or you are living with a HCVP Voucher in a Mixed Finance development, there are some unique rent rules. Just like in **Question 30**, you do not have a “flat rent”, there different rules on pro-ration and the self-sufficiency disregard, and the housing authority does not have any discretionary to set additional deductions. Also:

- At the point of first leasing up, HCVP tenants can pay up to 40% of income for rent (as opposed to 30% in public housing) and tenant-paid utilities (if the rent and utilities for the apartment exceeds the maximum subsidy that the housing authority will pay).¹¹⁶ After the first year of the lease, the owner can also request a rent increase, and the rent increase may result in a rent greater than 40% of income. While the housing authority must determine that the rent is “reasonable”, that’s only in comparison to market rents, and not in comparison to the subsidy that can be paid.
- HCVP tenants who stay in the Mixed Finance development are generally protected against “no fault” eviction by tax credit rules and standard leases. The same is not true for HCVP tenants who find housing with a voucher in the private market. In the private market, after the first year of the lease, the owner may evict for “other good cause”, which may include a personal or business reason, such as wanting to sell a property or move a relative in.¹¹⁷
- If a HCVP tenant moves out with a voucher, she must find a new apartment within the voucher search period, or she can permanently lose the voucher.

- HCVP tenants have their subsidies reduced automatically at their annual recertifications if their family size is reduced.¹¹⁸ Families either need to find a smaller apartment which is more affordable or will have to make up the difference in the rent until they can move.

This doesn't mean that there aren't some good reasons to get a mobile voucher—they allow tenants to relocate to other communities and other states as may be needed for employment or family reasons. But tenants need to think about these factors in deciding what options to pursue.

32. How are rent rules different for the Mass. Rental Voucher Program (MRVP) than for Public Housing?

The Massachusetts Rental Voucher Program (MRVP) was established in the early 1990's. It is one of the few state rental assistance programs in the country, and operates in a number of ways like the Section 8 voucher program, but has some unique features.¹¹⁹

Many of the rent rules for the MRVP program are similar to state public housing, but there are a number of different deductions and exclusions and interim reporting requirements. This booklet will not go into the details on the different deductions and exclusions.

Most importantly, MRVP tenants often have to pay a certain minimum percentage of income which may be greater than state public housing rent minimum. Rents are not an exact percentage of income but are within a certain range. However, overall tenant contributions are capped at no more than 40% of income. But unlike Section 8 there is a limited allowance for tenant-paid utilities.

Because the contract rents for the MRVP program are generally much lower than the Section 8 program, it may be difficult to find or hold onto a tenancy other than one in an affordable housing development where a certain number of tenant-based or project-based MRVP subsidies are based.

As with state public housing, there is no current restriction on eligibility for families with mixed immigration status. An immigrant family's rent would also be the same as other MRVP tenants and not higher (and pro-rated) as would be in federal public housing or with a Section 8 rental assistance. It is common for MRVP subsidies to be used to help with Mixed Finance redevelopment of state public housing where households would otherwise

face significant barriers to retaining affordable housing because of their immigration status.

33. Does recertification work differently for Mixed Finance than for Public Housing?

Yes, but how it works depends on the nature of the subsidies and what other subsidies may be used for the Mixed Finance site.

- For the Section 8 Project-Based Voucher (PBV) program, recertification is done by the local housing authority in the same way that it's done for regular Section 8 voucher participants. Normally this would be done at the central office. However, residents could talk with the housing authority to see if any special arrangements may be appropriate. For example, the housing authority may be continuing to operate an elderly/disabled site through a closely affiliated agency and would be willing to have its Section 8 staff periodically go to the site to do recertifications to avoid hardship.
- For the Section 8 Project-Based Rental Assistance (PBRA), recertification is done by the owner usually on site.

The owner may have gotten other funding, such as through the Low-Income Housing Tax Credit program, HOME, or other sources, which requires that it also conduct regular reviews of household income and composition.¹²⁰ So residents may have to go to two locations to recertify.

There may also be different verification requirements (the housing authority may require a certain number of pay stubs, while the owner requires something else for HOME).

If the tenant is only reporting an interim change, she should check if this needs to be reported to both locations or to only one. If a resident has a disability which would make it difficult to meet these requirements, she can request a reasonable accommodation (such as whether a family member can accompany here to the appointment, or documents can be accepted remotely, or if a home visit can be arranged).

34. Are the over-income rules different for RAD, Section 8, and MRVP than for Public Housing?

Yes. The rules are quite different depending on the program and depending on whether you're talking about tenants who were already living at a public housing site when it was converted to Mixed Finance housing versus new tenants who move in after conversion. Here's a summary of the rules, from most restrictive to least restrictive:

Most restrictive—State public housing. As noted in **Question 28**, if a state public housing family has an income where 30-32% of income is greater than the Section 8 FMR, the household is over-income. The housing authority may, but is not required to, give the tenant up to 6 months to relocate.

Next most restrictive—Section 8 regular voucher (HCVP). If the tenant's income is such that the housing authority is no longer paying any subsidy for the HCVP tenant (zero subsidy), then the family is notified that it has 6 months to remain in this status. If something happens during the 6 months—family income drops, or rent/utility expenses increase (including relocation) that would result in the need for some subsidy payment—then the family remains on the program. If not, the family loses the voucher permanently. If there is a later change after the family loses the voucher, the family would have to go back through the process of applying for Section 8.¹²¹

Less restrictive but different treatment of existing public housing tenants who are converted to PBVs and new tenants admitted to the site--Section 8 Project-Based Voucher (PBV): If a public housing tenant becomes a PBV tenant, she can remain in the development even if she would be on zero subsidy. She would just pay the contract rent. If at any point in the future her income decreases, she can return to her previous subsidy status. However, if a person moves in as a new PBV tenant to the Mixed Finance complex, the normal Section 8 HCVP rules would apply—if on zero subsidy for 6 months, the subsidy is lost. The tenant may be able to stay paying full market, but would have no fallback for subsequent income loss.

Next least restrictive—federal public housing: As explained in Question 28, if the tenant is above 120% of area median for 2 consecutive years, the housing authority may either evict her after 6 months or let her remain and pay the higher of the Section 8 FMR or the combined subsidy cost for the unit. If the family is not evicted, however, it can again qualify for assistance if it drops below the over-income limit.

Least restrictive—Section 8 PBRA: Currently Section 8 PBRA rules allow tenants to remain at zero subsidy indefinitely (and pay the market or tax credit rent) and to then obtain subsidy again if warranted by income.

35. Is there a different way to dispute rent or eligibility for Mixed Finance than for Public Housing?

Yes. It depends on who does the recertification of income for the housing subsidy. If the recertification is done by Section 8 or MRVP staff at a housing authority, then you would use the *informal hearing process* (for Section 8) or the *grievance procedure* (for MRVP) with that housing authority.¹²²

If, on the other hand, recertification is done for the subsidy by the owner at the development, such as through PBRA, then you've have to use the PBRA dispute process. Often there have been real problems in the past with multifamily owners' misuse of the PBRA process. Since, under RAD, public housing grievance rights are to be retained, there is a good argument to ask that before the site is redeveloped, that there be a good Mixed Finance Grievance Procedure set up that will work for residents and which preserves some role for housing authority oversight and involvement and judicial review.

Where the site will continue to have some public housing units, it may be easy to establish a blended procedure that works the same for all units (or at least for all units that have some kind of deep subsidy and income-based rents).

36. Are there some “affordable units” in Mixed Finance housing that may not get the benefit of public housing or Section 8/MRVP rent rules?

Yes. While state or federal *Low-Income Housing Tax Credit (LIHTC)* funding may be coupled with public housing subsidies, Section 8 PBV or PBRA or MRVP assistance, it may also be used for “affordable units” at a redeveloped site. If the “affordable unit” does not have any other subsidy, it may often not be affordable to those of extremely low income (30% of area median income or below).

For example, while tax credit units are set aside for those with incomes at or below 50-60% of area median income, the tax credit rent for the unit may not be affordable to the tenant if she later loses income, since the rent does not adjust based on income. Tenants with lower incomes may be able to afford these units if they obtain a regular HCVP Section 8 voucher from a local housing authority. Remember, however, their situation may be different than other tenants with Section 8 PBV or PBRA assistance, particularly if the family size changes. See discussion under **Question 31**, above.

Tenants in mixed finance developments may try to get similar policies from the housing authority and owner that would benefit LIHTC tenants and tenants in other affordable units. This could include:

- Having a local tenant organization or resident council open to all tenants including all “affordable units;”
- Getting tenant participation funding based on the full count of “affordable units,” or the pre-existing public housing inventory, rather than just the post-conversion public housing units;¹²³
- Having a grievance/dispute resolution policy available to all “affordable unit” residents;
- Setting up transfer policies so that LIHTC tenants who need subsidy could apply for a transfer within the property.

Sample Letters

37. **Sample Rent Freeze Letter:** **Federal Public Housing**

Use this letter as a guide. Check all boxes that apply to you and keep a copy for your records.

Date:

Dear Housing Authority Director/Manager:

I am writing to request a rent redetermination. I believe that I may be eligible for the “self-sufficiency incentive” because I recently started working and my income increased.

I live in federal public housing and (*check one*):

- I was unemployed for a year or more before I began my job;
- My total income in the past year before I began my job was less than \$6,000 (based on minimum wage in MA);
- I received welfare assistance or participated in a Welfare-to-Work program within the past 6 months before I began my job; or
- I am currently getting services from a job training or self-sufficiency program.

I believe that my entire increase in income should not be counted towards rent for 12 months after I began working, and then only half the increase should count towards rent for another 12 months, according to the HUD regulation at 24 C.F.R. § 960.255.

I would appreciate the Housing Authority’s determining my correct rent and refunding any amount of rent I have overpaid. Please let me know what additional information or documentation you need from me to process this request. Please let me know in writing within 10 days of the date of this letter what you plan to do to address my request.

Thank you for your prompt attention to this matter.

Sincerely,

Name: _____

Address: _____

Phone (Day): _____

Phone (Evening): _____

38. **Sample Rent Freeze Letter:** **State Public Housing**

Use this letter as a guide. Check all boxes that apply to you and keep a copy for your records.

Date:

Dear Housing Authority Director/Manager:

I am writing to request a rent redetermination. I believe that I may be eligible for the “earned income exclusion” because I recently started working and my income increased.

I live in state public housing, have an MRVP or AHVP, and before I began my job I received for 12 consecutive months:

- TAFDC
- EAEDC
- SSI, or
- SSDI.

After my job began, my cash assistance benefits decreased.

I believe that my entire increase in income should not be counted towards rent for 12 months after I began working, according to the DHCD regulation at 760 C.M.R. § 6.05(3)(i) (for public housing) at 760 C.M.R. § 49.05(c)(10) (for MRVP).

I would appreciate the Housing Authority’s determining my correct rent and refunding any amount of rent I have overpaid. Please let me know what additional information or documentation you need from me to process this request. Please let me know in writing within 10 days of the date of this letter what you plan to do to address my request.

Thank you for your prompt attention to this matter.

Sincerely,

Name: _____

Address: _____

Phone (Day): _____

Phone (Evening): _____

Glossary

Adjusted income: The amount of income that is used to determine rent for federal housing programs, if the rent is *income-based*. The housing program figures adjusted income by first looking at the total anticipated income for a household, and then subtracting certain *deductions* and expenses. What is left is adjusted income, and rent will be 30% of that amount.

Annual income: The term used in federal housing programs to describe the total amount of anticipated income coming into a household. Once a federal program determines the annual income, it will subtract certain *deductions* and expenses and come up with an *adjusted income* amount.

Area Median Income (AMI): Figures set by U.S. Department of Housing and Urban Development each year for different communities across the country, showing what the median household income is in that area. Certain percentages of the AMI are used to establish eligibility for initial and continued occupancy of public and assisted housing. The figures are generally published by the federal government in the spring of each year.

Asset: Property (such as bank accounts, stocks, and capital investments) to which a value can be assigned. Federal rules have a specific definition of “net family assets.” See HUD rule 24 C.F.R. § 5.603.

Capital Gain: The difference between what you paid for an investment and what received when you sold it. If you sold an investment for more than what you paid for it, then you have a capital gain. If you sold it for less than what you paid, then you have a capital loss.

Checkmeter: A device owned and installed by the housing authority that measures the electricity or gas consumed by a dwelling unit. Checkmeters are installed in addition to the master meter, which is owned by the utility and measures total building consumption. The housing authority is responsible for paying the bill to the utility. Tenants may have to pay the housing authority a surcharge if the checkmeter for their unit shows utility use higher than the *utility allowance*.

Deduction: An amount of money that is subtracted from a household’s total anticipated income before calculating rent. Deductions can be fixed amounts (for example, \$480 per dependent) or fluctuating depending on particular household expenses (for example, unreimbursed medical expenses).

DHCD: Massachusetts Department of Housing and Community Development, the state agency that oversees housing authorities and state public housing.

Discretionary: Something that is not required, but that is optional.

Earned income exclusion: A type of *exclusion* for state public housing residents who had previously received public benefits or were previously unemployed and then began working.

Eligible noncitizen: A person who is not a U.S. citizen but is an immigrant who belongs to a group which is allowed, under federal law, to apply to all federal housing programs. Allowable groups include permanent residents, asylees and refugees.

Exclusion: Family income which a housing authority must ignore for purposes of calculating rent. For example, the value of food stamps or a tax refund cannot be counted towards your rent.

Fair Market Rent (FMR): A figure set by the U.S. Department of Housing and Urban Development and revised each year for communities around the country, setting rent levels on which HUD and housing authorities will base Section 8 subsidies. The published FMR may also affect eligibility rules for other programs.

Flat rent: The standard maximum rent amount set by a housing authority for an apartment, based on bedroom size, condition, and location, that federal public housing programs must offer to tenants as an alternative to *income-based rents*.

Good cause: A legally sufficient reason. For example, a housing authority must have good cause to evict someone; or, a tenant may have good cause to transfer to another apartment if a household member has a compelling and documented physical impairment.

Grievance: A grievance is a complaint filed to ask for a *hearing* about an injury, injustice, or wrong.

Grievance hearing: A process following filing of a complaint in which a hearing officer or grievance panel listens to parties, considers evidence, and makes a decision or ruling. Before going to the hearing stage, the grievance process begins with an informal conference or informal hearing, which is a meeting that allows parties to try and convince the housing authority that a decision or proposed action is incorrect. Tenants have a right to have an advocate or other person with them during both an informal conference and a grievance hearing.

Gross income: The term used in state housing programs to describe the total amount of anticipated income coming into the household. Once a state

program determines the gross income, it will account for certain *deductions* and expenses and come up with the *net income* amount on which rent is based.

Hardship: A difficult or adverse situation for a tenant household (for example, loss of a family member).

Hardship exemption: If a family qualifies for a hardship exemption it will not have to pay a *minimum rent*, but can pay less than the minimum down to \$0.

Hearing: See *grievance hearing*.

Household: People listed on your lease and authorized by the housing authority to live in your apartment.

Housing Choice Voucher Program (HCVP): The regular Section 8 voucher program. Under this program, tenants are given a voucher to find an apartment in the private market, and have a limited time to secure such a unit. Private owners may charge a rent which is more than 30% of income (initially units can't be approved if the tenant rent (rent plus allowance for tenant-paid utilities) would exceed 40% of income, but there is no limit on lease renewal). Owners may evict for "no fault" other good cause reasons after the first year of the lease. The owner may ask for a security deposit which is equal to the whole contract rent, and not just the tenant's share. If the family size changes, the housing authority may have to reduce the subsidy at the annual review.

HUD: U.S. Department of Housing and Urban Development.

Imputed welfare income: Welfare income not received, but still counted by the housing authority where a tenant's welfare grant was sanctioned and reduced for certain reasons.

Income-based rent: Rent figured as a percentage of a household's anticipated yearly income. In public housing programs, the rent for each unit is almost always determined as a percentage of the income of the family who lives there. Therefore, rents for similar units in a development could be different, depending on who lives in each unit.

Informal hearing process: For the Section 8 voucher and PBV program, the process for resolving disputes with program participants, as outlined in 24 C.F.R. § 982.555. While this often focuses on termination of Section 8 assistance, it is also the process to dispute rent/income decisions associated with a Section 8 subsidy. Usually hearings are conducted by a hearing officer, rather than by a hearing panel.

Interim reporting: In public housing programs, the rules concerning when a household must report a change in family or income between the yearly *recertifications*.

Low Income Housing Tax Credits (LIHTC): Tax breaks provided by either the state or federal government to assist with the preservation or production of affordable housing. LIHTC is often a component of mixed finance redevelopment of public housing, and brings with it another set of rules on eligibility and verification requirements. Tenants may have to certify eligibility with both the housing authority and the owner if there are tax credits. In a few instances, tax credit rules may affect the eligibility of a tenant. Some of the “affordable units” at a site may only have tax credit funding. Very low income tenants may not be able to afford tax credit units without a Section 8 or MRVP voucher.

Lump sum: One-time payment.

Massachusetts Rental Voucher Program (MRVP): A Massachusetts state rental assistance program which is similar to Section 8 in some ways, and which can be either a project-based and tenant-based subsidy. Usually tenants’ rents are higher than with Section 8, and the amount of subsidy that is paid to the owner is less. MRVP subsidies can only be used within Massachusetts.

Minimum rent: In public housing, the amount of rent a public housing authority is allowed to charge a household even if there is no income. The range is between \$0 and \$50 a month, depending on the housing authority and the program. A household can, in many circumstances, avoid the minimum rent by applying for a *hardship exemption*.

Mixed finance: Where public housing is being redeveloped or rehabilitated through a variety of financing sources, including the use of state or federal Low Income Housing Tax Credits, Section 8 or Mass. Rental Voucher Program subsidies, the Rental Assistance Demonstration (RAD), HOPE VI, Choice Neighborhoods, or the like.

Net income: The amount of income that is used to determine rent for state housing programs if the rent is *income-based*. The housing program figures net income by first looking at the total anticipated income for a household, and then subtracting certain *deductions* and expenses. What is left is net income, and rent will be a percentage of that amount.

Overhoused: Where a family is living in a unit designed for a larger family.

Over-income: Affordable housing programs have a number of different rules about when a family may be considered over-income for subsidy or regular

rent protections, as well as whether, when family circumstances change, an over-income family can again be given assistance.

Project Based Rental Assistance (PBRA): A Section 8 program under which subsidy assistance is provided to a building. The subsidy is administered by the owner and the owner does recertification. PBRA tenants can only be evicted for program or lease violations and have rent limited to 30% of income. For the RAD program, after 2 years, RAD PBRA tenants in good standing may request relocation vouchers if they wish.

Project Based Vouchers (PBV): A Section 8 program under which subsidy assistance is provided to a building. The subsidy is administered through a housing authority and recertification is done there. PBV tenants can only be evicted for program or lease violations and have rents limited to 30% of income. After one year, tenants in good standing may request relocation vouchers if they wish.

Pro-rated rent: The rent amount determined according to specified calculations by a federal public housing program for a household with some undocumented immigrants. The undocumented immigrants can reside in the program's housing, but the federal housing program will adjust the subsidy to cover only the citizens or *eligible noncitizens*. Generally, the calculation of the benefit amount is based on the proportion of eligible individuals to ineligible individuals. As a result, these "mixed" households will pay more than the standard 30% of income for rent.

RAFT or Residential Assistance for Families in Transition: A state-funded program to help low-income families avoid homelessness. RAFT helps pay for security deposits, back rent, or utility arrearages.

Reasonable Accommodation: In the context of housing, a reasonable accommodation is a change or modification that a housing authority or landlord makes in a rule, policy, practice, service, or physical space so that a person with a disability may make full use of his or her home or take full advantage of the housing program. The change is considered reasonable if it does not create an unnecessary burden for the housing authority and when it does not require the housing authority to change its program.

Recertification: The general term used by all housing authorities to describe the yearly procedure by which a housing authority checks a household's composition and income in order to determine whether the household's portion of the rent needs to be recalculated.

Redetermination: The term used in state public housing to describe the *recertification* process.

Reexamination: The term used in federal public housing to describe the *recertification* process.

Rental Assistance Demonstration (RAD): A mixed finance public housing redevelopment program authorized by Congress starting in 2012 where public housing operating and capital funds are replaced by a form of Section 8 assistance as approved by HUD. Public housing which is redeveloped through RAD may have Project-Based Vouchers (PBVs) or Project-Based Rental Assistance (PBRA). Many public housing protections carry over to RAD, including most rent rules, eviction protections, long-term use restrictions, grievance rights, and tenant participation requirements.

Retroactive: Referring to action applied to a past time. For example, a housing authority is allowed in certain circumstances to go back and charge you additional rent for months that have already passed. Retroactive rents are usually imposed only if the tenant tries to hide income or does not cooperate with the *recertification* process.

Sanctioned: Penalized. For example, if someone receiving welfare fails to meet work requirements or violates other parts of a state's welfare policy, penalties are imposed.

Screening: The process of reviewing records and references to determine if someone will be a good tenant.

Self-sufficiency incentive: A type of *exclusion* for federal public housing residents who had received public benefits or were previously unemployed and began working.

Suspend: To temporarily place on hold. In the case of hardship exemptions requested from minimum rent, a request made during the first 90 days of hardship is one to *suspend* the minimum rent, and to not proceed with adverse action like a non-payment eviction. However, if the hardship ends in 90 days or less, the minimum rent charges remain, but must be paid back on reasonable terms. If, on the other hand, the hardship lasts more than 90 days, this would qualify for a waiver (cancellation) of all of the minimum rent charges, retroactively and until the hardship ends.

Utility allowance: The amount of money that a housing authority will deduct from rent where a federal public housing tenant pays for all or some utilities (but not telephone or cable TV). The allowance is an amount that is not based on the tenant's actual utility consumption, but a figure that the housing authority thinks is reasonable consumption level for an energy-conservative household.

Verification: Proof. In public housing, the process where the housing authority checks the information given by the tenant about income and family composition. This includes asking the tenants to provide certain paperwork and seeking information from outside sources (such as employers). The papers themselves are referred to as verifications.

Waive: To not apply a rule because of a special circumstance.

Waiver: Permission, usually from an agency, not to follow certain rules.

Endnotes

- 1 G.L. c. 121B, § 32; Elderly/handicapped: G.L. c. 121B, § 40(e); 760 C.M.R. § 6.04(1)(a); Family housing: 760 C.M.R. § 6.04(1)(b).
- 2 42 U.S.C. § 1437a(a)(1).
- 3 42 U.S.C. § 1437a(a)(1); 24 C.F.R. § 5.628(a). Also see General Rent and Frequently Asked Questions on HUD's website at: www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm.
- 4 Another useful source of information is Chapter 5 in the HUD Handbook 4350.3: Occupancy Requirements of Multifamily Subsidized Housing Program. Although this applies to HUD privately-owned multifamily housing and not to public housing, it does interpret the similar regulations. Find the handbook at: <http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/index.cfm>.
- 5 Cambridge Housing Authority and the Holyoke Housing Authority have different rent formula for their federal housing programs under a demonstration program called "Moving to Work."
- 6 42 U.S.C. § 1437a(a)(2)(B)(i); 24 C.F.R. § 960.253(b).
- 7 42 U.S.C. § 1437a(a)(2)(C); 24 C.F.R. § 960.253(f). The housing authority must adopt written policies for determining when payment of flat rent is a financial hardship. Such policies must provide that financial hardship include the following situations: (1) the family has experienced a decrease in income because of change in circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance; (2) the family has experienced an increase in expenses because of changed circumstances for medical costs, child care, transportation, education, or similar items; and (3) such other situations as determined by the housing authority.
- 8 See HUD Public & Indian Housing (PIH) Notice 2017-23, issued Nov. 30, 2017. The requirement that the flat rent generally had to be at least 80% of the HUD FMR was first Included in the 2014 HUD Appropriations Act. The 2015 HUD Appropriations Act revised this slightly to permit use of the Small Area FMR instead and to permit PHAs to seek a lower level with appropriate documentation of market conditions.
- 9 Pro-rated rent is based on the percentage of household income attributable to citizens or *eligible noncitizens*. See 24 C.F.R. § 5.520. For definition of eligible noncitizen, see 42 U.S.C. § 1436a.
- 10 This pro-rated rent is based on the percentage of the subsidy assistance provided for household members who are citizens or eligible noncitizens. See 24 C.F.R. § 5.520.
- 11 42 U.S.C. 1437j(d-g); 24 C.F.R. § 5.615. Find more information about welfare sanctions from HUD at: www.hud.gov/offices/pih/phr/about/ao_faq2.cfm.
- 12 G.L. c. 121B, § 32; 760 C.M.R. § 6.04(1)(e).
- 13 G.L. c. 121B, § 32; 760 C.M.R. § 6.04(1)(c). Per 760 C.M.R. § 6.03, overhoused means a tenant household that the housing authority has determined, based upon the composition of the household, to be occupying a unit consisting of more bedrooms than is appropriate for the household size.
- 14 G.L. c. 121B, § 32; 760 C.M.R. § 6.04(1)(c).
- 15 760 C.M.R. § 6.05(2).
- 16 24 C.F.R. § 5.609; see generally HUD's Public Housing Occupancy Guidebook, Chapter 10. The Guidebook also includes worksheets and forms that housing authorities can use to calculate rent and verify income. You can find this Guidebook on HUD's website at: www.hud.gov/offices/pih/programs/ph/rhiip/phguidebook.cfm.
- 17 **State:** 760 C.M.R. § 6.05(2)(b); **Federal:** 24 C.F.R. § 5.609(b)(2). If you own your own business it is very important to set up good financial records. Your housing authority may be able to refer you to free services that can help you do this.
- 18 **State:** 760 C.M.R. § 6.05(2)(e); **Federal:** 24 C.F.R. § 5.609(b)(4), (c)(14).

- 19 **Note:** Federal and state public housing programs have different definitions of “regular gifts” and “contributions.” **State:** 760 C.M.R. § 6.05(2)(f) (regularly recurring contributions or gifts must occur at least twice a year for 2 or more years or must exceed \$2,000 once a year for 2 or more years in a row); **Federal:** 24 C.F.R. § 5.609(b)(7) (contributions and gifts can be received from organizations as well as from persons). For example, in federal public housing, if someone who is not part of the household pays the telephone bill every month, that would be considered a regular contribution.)
- 20 **State gross income exclusions:** 760 C.M.R. § 6.05(3); **Federal annual income exclusions:** 42 U.S.C. § 1437a(b)(5); 24 C.F.R. § 5.609(c); 79 Fed. Reg. 28938 (May 20, 2014).
- 21 42 U.S.C. § 8624(f)(1) which states home energy assistance payments or allowances shall not be considered income for any purposes under federal or state law. Also see, Federally Mandated Exclusions from Income at 79 Federal Register 28938 et seq., May 20, 2014.
- 22 **State:** 760 C.M.R. § 6.05(3)(b). **Federal:** 42 U.S.C. § 1437a(b)(5)(A)(ii); 24 C.F.R. § 5.609(c)(4).
- 23 You can find the current minimum wage in Massachusetts at: www.mass.gov by typing into the search box “minimum wage.”
- 24 HUD PIH Notice 05-37.
- 25 73 Federal Register 71037, November 24, 2008.
- 26 42 U.S.C. § 1437a(b)(5)(B)(iii); 24 C.F.R. § 5.611(b).
- 27 To find out whether a housing authority has adopted additional federal rent deductions, you can also review the housing authority’s agency plan or its Admissions and Continued Occupancy Policy.
- 28 42 U.S.C. § 1437a(b)(5); 24 C.F.R. § 5.611. In July 2016, Congress passed the Housing Opportunities through Modernization Act (HOTMA), Public Law 114-201, which authorized a number of changes to HUD rent and eligibility rules for federally assisted public housing and Section 8 vouchers. For a good summary of major changes made by HOTMA see memo from the National Housing Law Project at <https://www.nhlp.org/wp-content/uploads/2018/02/NHLP-Overview-and-Analysis-of-HOTMA.pdf>. Some provisions of HOTMA have already been implemented by HUD through regulations or notices. Others, such as changes to deductions, have not yet happened as of the updating of this booklet and will require HUD to go through a public notice and comment period before changes are made. See 81 Fed. Reg. 73030 (Oct. 24, 2016).
- 29 HUD PIH Notice 05-37. A good guide to the types of expenses that can be deducted can be found through a publication from the Internal Revenue Service, found at: <http://www.irs.gov/pub/irs-pdf/p502.pdf>.
- 30 Attendant care includes: In-home care, nursing, housekeeping, errand service, interpreters for people who are hearing impaired, a reader for a person with a visual disability, or costs associated with the keeping and caring of service or companion animals. Auxiliary apparatus includes: wheelchairs, walkers, scooters, reading devices for people with visual disabilities, equipment to add to cars and vans to permit their use by family members with a disability, or service or assistance animals. See *Public Housing Occupancy Guidebook*, page 124. See also HUD Fair Housing & Equal Opportunity (FHEO) Notice 2013-01 (April 25, 2013) for more about service or assistance animals.
- 31 In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in *annual income*. 24 C.F.R. § 5.603(b). See also 42 U.S.C. § 1437a(b)(5)(A)(iii).
- 32 760 C.M.R. § 6.05(4).
- 33 In March 1, 1993, Carole Collins, Director of Housing Management at DHCD, issued a Schedule of Heat Deductions which is still in effect. The following is the schedule of annual deductions for those who separately pay for heat:

Bedroom Size:	0	1	2
	3	4	5
	6		
Amount:		\$300	\$400
	\$500	\$600	\$700
	\$800	\$900	

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- 34 760 C.M.R. § 6.05(4)(e). See also DHCD Public Housing Notice 2007-10 at:
http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/07_10.pdf.
- 35 760 C.M.R. § 6.05(4)(j).
- 36 HUD PIH Notice 05-37.
- 37 The standard mileage rate allowed by the IRS for operating expenses for a car when you use it for medical reasons is 18 cents a mile.
See IRS Publication 502 at <https://www.irs.gov/pub/irs-pdf/p502.pdf>.
- 38 See *Public Housing Occupancy Guidebook*, page 124. See also endnote 30.
- 39 42 U.S.C. § 1437a(b)(5)(A)(ii); 24 C.F.R. § 5.611(a)(3). As defined in 24 C.F.R. § 5.100, “elderly person” means an individual who is at
least 62 years of age.
- 40 Attendant care includes: In-home care, nursing, housekeeping, errand service, interpreters for people who are hearing impaired, or a
reader for a person with a visual disability. Auxiliary apparatus includes: wheelchairs, walkers, scooters, reading devices for people with
visual disabilities, equipment to add to cars and vans to permit their use by family members with a disability, or service animals. See
Public Housing Occupancy Guidebook, page 124.
- 41 760 C.M.R. § 6.05(4)(e). See also DHCD Public Housing Notice 2007-10 at:
http://www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/07_10.pdf.
- 42 760 C.M.R. § 6.05(4)(a).
- 43 24 C.F.R. § 5.609(c)(14).
- 44 See 24 C.F.R. § 5.603 for the definition of *net family assets*.
- 45 In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or
household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust per definition of *net*
family assets, 24 C.F.R. § 5.603. See also *HUD Multifamily Occupancy Handbook*, 4350.3 for more about how trusts can be structured
in the context of multifamily housing.
- 46 For state public housing, such one-time payments are treated as income and used in the computation of rent only if received during a
period of time when you lived in public housing. 760 C.M.R. § 6.05(3)(b). The same argument can be made in federal public housing,
but the rules are less clear.
- 47 **State:** 760 C.M.R. § 6.05(2)(c) states that the rate shall be the current passbook saving rate as determined by HUD for federally assisted
housing or as otherwise determined by DHCD ; **Federal:** 24 C.F.R. § 5.609(b)(3). Each housing authority has to set its own passbook
saving rate based on plus or minus .75% of the FDIC Savings National Rate. For example, if the published FDIC Savings National Rate
at the time the PHA establishes its passbook rate is .92%, an acceptable passbook rate would fall in the range between 0.17% and 1.67%.
See PIH Notice 2012-29 at <https://www.hud.gov/sites/documents/PIH2012-29.PDF>.
- 48 In federal multifamily housing, it is clear that withdrawals from IRAs are not considered income. *HUD Multifamily Occupancy*
Handbook, 4350.3 CHG-1 (Aug. 2004), Chapter 5. Although this handbook is for residents in federal multifamily housing, one could
advocate that IRAs in public housing be treated similarly.
- 49 G.L. c. 121B, §§ 32, 40(b); **Elderly/handicapped:** G.L. c. 121B, § 40(b); 760 C.M.R. § 6.04(1)(a); **Family housing:** 760 C.M.R. §
6.04(1)(b).
- 50 42 U.S.C. § 1437a(a)(3)(A); 24 C.F.R. § 960.253(c)(3).
- 51 24 C.F.R. §§ 965.505, 965.507(a).
- 52 24 C.F.R. § 965.507(b).
- 53 Any schedule of charges must be based on estimated utility consumption and must be subject to notice and comment by tenants before it
is adopted or reviewed. 24 C.F.R. § 965.506.

54 The housing authority's criteria and procedure for granting relief from insufficient utility allowances or utility surcharges must be adopted at the time utility allowances are adopted and all tenants must be given notice of this. 24 C.F.R. §§ 965.502(c), 965.508.

55 42 U.S.C. § 1437a(a)(3)(A); 24 C.F.R. § 5.630.

56 G.L. c. 121B, § 32. 760 C.M.R. § 6.04(1)(e).

57 **State:** G.L. c. 121B, § 32, 760 C.M.R. § 6.04(1)(e); **Federal:** 42 U.S.C. § 1437a(a)(3)(B); 24 C.F.R. § 5.630(b). The state statute is modeled on the federal statute.

58 Fed. Reg., Vol. 64, No. 32, February 18, 1999, pp. 8192 and 8198; Fed. Reg., Vol. 64, No. 83, April 30, 1999, p. 23344.

59 24 C.F.R. § 960.255. Find more information about the mandatory earned income disregard from HUD at: www.hud.gov/offices/pih/phr/about/ao_faq2.cfm.

60 Prior to the spring of 2016, persons who qualified for the self-sufficiency incentive could have a maximum of 48 months to utilize the exclusion from the initial qualifying event. This could happen because people would temporarily leave and return to employment. In 2016, HUD revised its regulations so that once a person claimed qualification, the exclusion period would run for a continuous 24-month period, even if the individual might not have qualifying employment in all of those months and might not get the full benefit. If a family was eligible and participating in the longer disregard prior to May 9, 2016, however, it would continue to get the benefit of the 48-month maximum. See 81 Fed. Reg. 12373 (March 8, 2016).

61 See 81 Fed. Reg. 73030 (Oct. 24, 2016) (HOTMA implementation notice).

62 760 C.M.R. § 6.05(3)(i).

63 24 C.F.R. § 960.255(a).

64 24 C.F.R. § 960.255(b).

65 760 C.M.R. § 6.05(3)(i).

66 G.L. c. 121B, § 32; 760 C.M.R. § 6.05(3)(p). You can find the current minimum wage in Massachusetts at: www.mass.gov by typing into the search box "minimum wage."

67 G.L. c. 121B, § 32; 760 C.M.R. § 6.04(3)(b); DHCD Public Housing Notice 2003-06.

68 G.L. c. 186, § 15B(1)(c).

69 24 C.F.R. § 966.4(b)(3), (4).

70 See 24 C.F.R. § 960.257, 82 Fed. Reg. 58340-58341 (Dec. 12, 2017), implementing as an interim final rule provisions first contained in the Fixing America's Surface Transportation (FAST) Act in December, 2015.

71 Public Housing Notice 2019-06, at <https://www.mass.gov/files/documents/2019/03/28/2019-06.pdf>

72 760 C.M.R. § 6.04(4).

73 24 C.F.R. § 960.257(a); 42 U.S.C. § 1437a(a)(1), (a)(2)(E).

74 24 C.F.R. § 960.257(b), (c); 24 C.F.R. § 966.4(c)(1). Also check the housing authority's Public Housing Agency Plan and its Admissions and Continued Occupancy Plan. Residents have a right to review and comment on housing authority policy changes that affect federal public housing residents through the Public Housing Authority Planning Process.

75 760 C.M.R. § 6.04(5)(a).

76 760 C.M.R. § 6.04(9).

77 760 C.M.R. § 6.10.

78 24 C.F.R. § 960.257(a)(2); 24 C.F.R. § 960.253(e)(2); 42 U.S.C. § 1437a(a)(2)(E).

79 24 C.F.R. § 960.253(e)(2), (f). Note that the housing authority is **obligated** to provide sufficient information for families to make informed choices about rent options. If the family chooses a flat rent, the housing authority must provide the amount of income-based rent if an income reexamination is conducted or if the family makes a specific request and submits updated income information. See also 42 U.S.C. § 1437a(a)(2)(A)(i), stating that a public housing agency may not at any time fail to provide both flat and income-based rent options for any housing unit owned, assisted, or operated by the agency.

80 24 C.F.R. § 960.253(e)(2).

81 760 C.M.R. § 6.04(4)(d), (5)(a).

82 760 C.M.R. §§ 6.04(5)(a), (8), (9).

83 760 C.M.R. § 6.04(8).

84 Find more information about HUD's Enterprise Income Verification system at:
www.hud.gov/offices/pih/programs/ph/rhiip/uivsystem.cfm.

85 See PIH Notice 2017-12 (Aug. 4, 2017); see also Executive Order 13520, 74 Fed. Reg. 62201 (Nov. 20, 2009), making clear that one goal of recouping funds owed to the federal government is to insure that families in need of certain programs can continue to utilize them.

86 DHCD Public Notice 2008-12 at: www.mass.gov/Ehed/docs/dhcd/ph/publicnotices/08-12.pdf.

87 **State:** 760 C.M.R. § 6.04(4)(d); **Federal:** 24 C.F.R. § 5.609(a)(2).

88 760 C.M.R. § 6.04(4)(e), (5)(a).

89 760 C.M.R. § 6.04(4)(d).

90 24 C.F.R. § 966.4(b)(1)(i).

91 760 C.M.R. § 6.04(4)(d).

92 24 C.F.R. § 966.4(b)(1)(ii).

93 **State:** 760 C.M.R. § 6.04(5)(b); **Federal:** 24 C.F.R. § 960.257(b).

94 760 C.M.R. § 6.04(5)(b).

95 760 C.M.R. § 6.04(5)(b).

96 24 C.F.R. § 960.257(b).

97 This policy has been adopted by HUD for its multifamily privately owned subsidized housing. *HUD Multifamily Occupancy Handbook*, 4350.3 CHG-1 (Aug. 2004), Chapter 7 at 7-13.

98 **State:** 760 C.M.R. § 6.04(6); **Federal:** 24 C.F.R. § 960.259; 24 C.F.R. § 5.240.

99 **State:** 760 C.M.R. § 6.06(3)(h); **Federal:** 24 C.F.R. § 966.4(c)(2).

100 760 C.M.R. § 6.06(3)(c).

101 24 C.F.R. § 966.4(d)(1).

102 See *Saxton v. Housing Authority of the City of Tacoma*, 1 F.3d 881 (9th Cir. 1993) which held that a public housing tenant whose request to add a returning family member to a lease was denied has a right to a grievance hearing pursuant to 24 C.F.R. § 966.50.

103 760 C.M.R. § 6.06(3)(g).

104 42 U.S.C. § 1437d(l)(6)(B) 72 Federal Register 12697 at 12697, March 16, 2007. HUD has not yet issued any final regulations.

105 42 U.S.C. § 1437d(u)(1)(C), 72 Federal Register 12696 at 12698, March 16, 2007. HUD has not yet issued any final regulations..

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- 106 **State:** 760 C.M.R. § 6.06(3)(f), 4(q)-(r).
- 107 **State:** G.L. c. 121B, § 32; 760 C.M.R. § 6.04(1)(c). Per 760 C.M.R. § 6.03, *overhoused* means a tenant household that the housing authority has determined, based upon the composition of the household, to be occupying a unit consisting of more bedrooms than is appropriate for the household size.
- 108 G.L. c. 121B, § 32, 9th paragraph (applies to apartments consisting of 2 bedrooms or fewer, provided that the tenant has lived in the apartment for at least the last eight consecutive years and that the rent is not more than three months in arrears).
- 109 See 760 C.M.R. § 5.06(2, 3) and 760 C.M.R. § 6.06(6)(f).
- 110 See 42 U.S.C. § 1437n(a)(5), 83 Fed. Reg. 35490 (July 26, 2018).
- 111 See PIH Notice 2012-32, REV-3 (July 2017), as updated by PIH Notice 2018-11 (July 2018, Supplement 3A and December, 2018, Supplement 3B) (RAD Notice), for detailed information about the RAD program.
- 112 HUD fact sheet states public housing nationwide needs more than \$26 billion. <https://www.hud.gov/RAD/program-details-residents>. Other estimates from Shelterforce in March 2019 are higher at \$49 billion. <https://shelterforce.org>.
- 113 The Project-Based Voucher (PBV) is where a housing authority uses its Section 8 mobile to vouchers fund units that stay with a particular development. The Project-Based Voucher (PBV) program is described at 42 U.S.C. § 1437f(o)(13) and at 24 C.F.R. Part 983. Many but not all of the provisions that apply to the regular Section 8 voucher program also apply to the PBV program—for a description of this, see 24 C.F.R. § 983.2.
- The Project-Based Rental Assistance (PBRA) program provides rental assistance through contracts between the Department and owners of multifamily rental housing. If a tenant moves, the assistance stays with the housing development. For Section 8 Project-Based Rental Assistance (PBRA), see 42 U.S.C. § 1437f(b-c). There are no specific regulations for the type of Section 8 PBRA in RAD, beyond what's in the RAD Notice, but there are a number of HUD Section 8 PBRA programs found in HUD regulations.
- 114 See 24 C.F.R. § 5.617.
- 115 See 24 C.F.R. § 982.517(e). There's nothing explicitly like this for the Section 8 PBRA program, but tenants with disabilities could certainly try to get this. For example, if a tenant's medical needs required a home dialysis unit, this is likely to increase utility usage and would justify a higher allowance.
- 116 See 24 C.F.R. § 982.305(a)(5).
- 117 See 24 C.F.R. § 982.310(d).
- 118 See 24 C.F.R. § 982.505(c)(5).
- 119 Regulations for the MRVP program are found at 760 C.M.R. § 49.00. In addition, there is an MRVP Administrative Plan on the website of the Department of Housing and Community Development (DHCD) which is very helpful in answering MRVP questions.
- 120 The HOME Program is a federally funded program that provides funding to non-profit or for-profit developers for affordable rental housing production and rehabilitation.
- 121 See 24 C.F.R. § 982.455 (HAP contract terminates 180 days after last subsidy payment to owner).
- 122 For the Section 8 informal hearing process, see 24 C.F.R. § 982.555; for grievance rights, see 42 U.S.C. § 1437d(k), 24 C.F.R. Part 966, Subpart B (**federal**) and 760 C.M.R. § 6.08 (**state**).
- 123 The Mixed Finance Residents Group at Boston Housing Authority has been successful in establishing such mixed finance tenant participation and funding policies.