FEDERAL HOUSING ADMINISTRATION

Office of Multifamily Housing Programs

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOTMA Talking Points and Q&A for Multifamily Programs

Background

On July 29, 2016, the Housing Opportunity through Modernization Act (HOTMA) was signed into law. HOTMA makes numerous changes to statutes governing HUD's rental assistance programs, including sections 3, 8, and 16 of the United States Housing Act of 1937. Many of the statutory provisions in HOTMA are intended to streamline administrative processes and reduce burdens on public housing agencies (PHAs) and private owners. On September 17, 2019, HUD issued a proposed rule to implement Sections 102, 103 (applies to public housing only), and 104 of HOTMA. The final rule was published on February 14, 2023.

Final Rule Effective Date

- The final rule will become effective on January 1, 2024.
- Owners must implement the revised regulations for all tenant certifications of income effective January 1, 2024, and after.

Implementation Resources

Current:

- HOTMA webpage on HUD's MFH webpage: https://www.hud.gov/program_offices/housing/mfh/hotma. The webpage will be updated with new resources, including training, as they become available.
- Introduction to HOTMA Webinar is currently available on HUD's MFH webpage.

Expected Spring/Summer 2023:

- Supplemental notice authored by MFH and PIH will provide additional implementation guidance to owners and PHAs.
- Pre-recorded HOTMA topic webinars will be available via the HOTMA webpage.
- HUD will publish a Federal Register notice on inflationary adjustments (for items that are adjusted annually for inflation, such as the dependent deduction and the elderly/disabled family deduction) and will solicit comment on the proposed methodology.

- HUD plans to update the list of federally mandated exclusions via Federal Register notice.

Key Changes - General

- The final rule aligns interpretations of applicable regulations and statutes between the Office of Multifamily and Office of Public and Indian Housing's programs. For example, the final rule aligns the treatment of foster adults and foster children as household members across HUD programs. Since approximately 2008, MFH has treated foster adults/children as family members and counted some of their income toward family income.

Key Changes – Asset Limitation & Program Eligibility

- Families who own $100,000 (annually adjusted by inflation) or more in net family assets or who own real property suitable for occupancy are ineligible for admission to or continued occupancy in the Section 8 project-based rental assistance (PBRA) program. Families will be evaluated for compliance with the asset limitation requirement at their next reexamination (AR or IR) after 1/1/2024.
- The statute does not permit families to be grandfathered in under this provision.
- The asset limitation requirement applies to Section 8 PBRA programs only; the provision does not apply to 202/8, 202/162 PAC, 202/811 PRAC, 811 PRA, or SPRAC programs.
- Owners may delay initiation of termination of assistance/eviction for no more than 6 months for families who exceed the asset limit or own disqualifying real property.
- Owners may establish nonenforcement and/or exception policies to allow families to cure their asset ineligibility, not to exceed a six-month timeframe.
- The final rule lists exceptions to the real property limitation, which include circumstances when the real property is for sale or is not suitable for occupancy by the family. The limitation does not apply to a person who is a victim of domestic violence, dating violence, sexual assault, or stalking. See the final rule for the full list of exceptions and related asset limitation discussion.
- Owners may accept a certification from the family stating that they do not have any present ownership interest in any real property at the time of the reexamination.

Key Changes – Income

- HOTMA establishes new income exclusions, including payments related to civil rights settlements or judgments, veterans aid and attendance income, loan proceeds (such from student loans, car loans, etc.), distributions of principal from irrevocable trusts (including special needs trusts), and State or Tribal kinship or guardianship care payments. See the final rule for the full list of income exclusions.
- The "temporary, nonrecurring, or sporadic income (including gifts)" exclusion is replaced with an exclusion for "nonrecurring income, which is income that will not

be repeated in the coming year based on information provided by the family." The "coming year" is defined as the 12 months following the income certification. Incomes of "day laborers", "independent contractors", and "seasonal workers" (defined in regulation) are all specifically included in family income.

- Gifts now have their own exclusion. Gifts excluded from income are defined as "gifts from holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries)."
- Income/assets of foster adults/children do not count toward annual income. Foster adults/children may still be counted for unit size.

Key Changes – Net Family Assets

- HOTMA establishes new exclusions from net family assets, including retirement accounts, educational savings accounts, "baby bonds" accounts, irrevocable trusts, and non-necessary personal property with a combined value of $50,000 or less (adjusted annually by inflation)
- HOTMA raises the imputed asset threshold from $5,000 to $50,000 (adjusted annually by inflation). Asset income is imputed only for those assets where the actual asset income cannot be computed.
- Total asset income is calculated as the sum of all actual income from assets plus imputed income (where applicable). Owners no longer use the greater of actual income from assets or imputed asset income to determine total income from assets.
- Owners may accept self-certification of net family assets equal to or less than $50,000 (adjusted annually by inflation). Owners must verify all assets every three years.

Key Changes – Annual / Interim Reexaminations

- Family income determinations will be made using anticipated income for new admissions and interim reexaminations, and prior-year income for annual reexaminations.
- HOTMA creates a 10% adjusted income increase/decrease threshold for conducting Interim Reexaminations (IR). Owners may select a lower threshold for conducting IR decreases.
- Owners may not consider a family's increases in earned income for the purposes of an IR unless the family had previously undergone an IR during the year for any decrease in income.
- Owners may decline to conduct IRs due to increases in income during the last 3 months of the certification period.
- Owners are required by regulation to conduct an IR within a reasonable time period, generally not to exceed 30 days from the date a family reports income changes to an owner.

Key Changes – Mandatory Deductions

- HUD revised the definition of “medical expenses” to “health and medical care expenses”. The revised definition reflects the IRS definition of the term. The revised definition specifically includes long-term care premiums as deductible expenses, aligning with longstanding MFH policy.
- HOTMA increases the elderly/disabled family deduction to $525 (adjusted annually for inflation) from $400.
- The $480 dependent deduction will be adjusted annually for inflation.
- HOTMA establishes a new hardship exemption for families ineligible for the child-care expense deduction. Families will continue to receive this deduction if they are unable to pay rent due to the loss of the deduction. This hardship exemption will be reevaluated after 90 days and may be extended for additional 90-day periods.
- HOTMA increases the threshold to receive health and medical expenses and auxiliary and attendant care expenses deduction from 3% of annual income to 10% of annual income. The new threshold will be phased in over 24-months for families receiving the medical/disability expense deduction as of 1/1/2024. The threshold will increase to 5% for the first year and to 7.5% in the second year. The 10% threshold will phase in during the third year.
- HOTMA establishes hardship relief for families with increased medical/disability expenses or families who experience a financial hardship due to a change in circumstances, as defined in the owner’s policies, that would not otherwise trigger an interim reexamination. Eligible families will receive a deduction for eligible expenses that exceed 5% of annual income. Hardship relief ends at the sooner of 90 days or when the hardship circumstance no longer applies. Owners may extend relief for additional 90-day periods while the hardship continues.

Key Changes – Other

- Owners will not be considered out of compliance for de minimis errors in tenant rent calculation, defined as an error of no more than $30 per month in monthly adjusted income (or $360 in annual adjusted income).
- HUD will annually recalculate inflationary-adjusted values to become effective on January 1st of each year, including: the value cap on net family assets for imputing returns, the mandatory deduction for elderly and disabled families, the restriction on the net family assets, the amount of net assets the owner may determine based on a certification by the family, and the mandatory deduction for a dependent which is also used to calculate the income exclusion for earned income of dependent students and adoption assistance payments. HUD will publish all recalculated values to the HUDUser website.
- HUD will annually publish a passbook rate based on the Federal Deposit Insurance Corporation (FDIC) National Deposit Rate for savings accounts.
- Each family member over the age of 18 need sign the consent form only one time during tenancy instead of annually (form HUD–9887).
- Owners are not required to use EIV during IRs.

- Owners may use income calculation information from other federal means-tested benefits programs and tax credits to determine a family's income prior to applying deductions, including a family's Tenant Income Calculation (TIC) from the LIHTC program. This is known as the "Safe Harbor" provision. See the final rule for a full list of Safe Harbor programs and tax credits.

Forms and Systems Changes

- HUD is updating forms HUD–50059, HUD–50059A, HUD–9887, HUD–9834, and the HUD Model Leases. Updated forms will be published to HUDCLIPS: https://www.hud.gov/guidance
- TRACS specifications are being finalized and will be published to the MFH TRACS webpage: https://www.hud.gov/program_offices/housing/mfh/trx/trxsum
- MFH plans to update HUD's Occupancy Handbook (HUD Handbook 4350.3) to reflect changes required due to HOTMA.
- Additional guidance will be forthcoming about the timing of submitting January 1, 2024, certifications to TRACS.

Q&A

Why is HUD doing this now when HOTMA was signed into law nearly seven years ago?

Since HOTMA's enactment in 2016, HUD has been working to best assess the complex and far-reaching impacts of implementing Sections 102, 103, and 104 of the law. HUD thoughtfully considered the substantive public comments solicited from its 2019 proposed rule into the February 2023 final rule to allow for the most efficient implementation possible given that the changes will affect nearly every participant in federally assisted housing programs.

In the description in the final rule of comments received, there were several provisions that commenters described as reducing eligibility. Why did HUD proceed with implementing these changes?

The asset limitation provision of HOTMA created a restriction on the eligibility of a family to receive assistance if the family owns real property that is suitable for occupancy by the family as a residence or has assets that exceed $100,000 (adjusted annually for inflation); HUD is required by law to implement this provision.

The asset limitation provision is the sole HOTMA eligibility restriction that applies to Multifamily Section 8 project-based assistance programs. The law does not require HUD to apply the asset eligibility restriction to other MFH-administered rental assistance programs. HUD therefore exercised its discretion in declining to apply this provision to the Section 202/8, Section 202/162 Project Assistance Contract (PAC), Section 202/811

Project Rental Assistance Contract (PRAC), Section 811 Project Rental Assistance (811 PRA), and Senior Preservation Rental Assistance Contract (SPRAC) programs.

Why is HUD providing a 12-month implementation timeframe? Can owners adopt the changes sooner if they are able?

HOTMA states that Section 102 of the law may only take effect upon the commencement of a calendar year. HUD, for consistency, is making most provisions of the HOTMA final rule effective January 1, 2024. This means that all provisions that affect Multifamily Housing programs will be effective January 1, 2024. MFH owners may not adopt the changes for any certifications effective prior to January 1, 2024.

What can I as a MFH owner do *right now?*

Most of the provisions implemented in the final rule have an effective date of January 1, 2024, as stated above. HUD recommends that owners review the rule carefully, take advantage of the training opportunities that HUD will offer prior to January 1, 2024, and submit questions as directed in HUD's forthcoming implementation notice and via the *Multifamily* HOTMA web page.