



## **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 considers public comment received on the proposed rule and was published on February 14, 2023. Read the final rule here:

<https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104>.

### **Final Rule Effective Date**

- The final rule will become effective on January 1, 2024.

### **Implementation Resources**

#### **Current:**

- HOTMA webpage on HUD's MFH webpage: [https://www.hud.gov/program\\_offices/housing/mfh/hotma](https://www.hud.gov/program_offices/housing/mfh/hotma). The webpage will be updated with new resources, including training, as they become available.

#### **Forthcoming:**

- Joint notice authored by MFH and PIH will provide additional implementation guidance to owners and PHAs.
- HUD will announce pre-recorded HOTMA topic webinars and live Q&As.

- 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 – 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. Incomes of “day laborers”, “independent contractors”, and “seasonal workers” (defined in regulation) are all specifically included in family income.
- Gifts 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 has 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 who are ineligible to continue to receive the child-care expense deduction. Families may be eligible to receive the hardship exemption if they are unable to pay rent due to the loss of the child care expense 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 1<sup>st</sup> 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.

### **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](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.

## **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.

### **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 on January 1, 2024.

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

HUD recommends that owners review the rule carefully, take advantage of the training opportunities that HUD will offer, and submit questions to [MFH\\_HOTMA@hud.gov](mailto:MFH_HOTMA@hud.gov).