Special Attention of:

Public Housing Agencies:
Public Housing Hub Office Directors;
Public Housing Program Center Directors;
Regional Directors;
Field Office Directors; and
Resident Management Corporations

NOTICE: PIH-2019-11(HA)

Issued: May 3, 2019
Expires: Effective until amended, superseded, or rescinded

Cross References: 83 FR 35490

Subject: Final Implementation of Public Housing Over-Income Limit under the Housing Opportunity Through Modernization Act of 2016 (HOTMA)

1. Purpose

What this Guidance Does. The purpose of this notice is to provide supplemental information on the implementation process for public housing income limits brought about by HOTMA and detailed in Federal Register Notice (83 F.R. 35490) published July 26, 2018 (2018 FR Notice). The supplemental information provided includes:

1. Background on the methodology used to calculate the over-income limit.
2. Guidance for Public Housing Agencies (PHAs) on how to implement the new statutory income limit for continued occupancy in public housing including the new documentation, notification, and tracking requirements.

What this Guidance Doesn’t Do. This notice does not address how a PHA is to set rents for over-income families that the PHA has allowed to remain in public housing.

Future Guidance. Section 103 of HOTMA requires HUD to issue a proposed rule, which will include guidelines for how PHAs are to set their rent policies for over-income families after the two-year grace period for being over-income has ended. Additionally, the requirement to submit an annual report on the number of over-income families and the number of families on the public housing waiting lists will be made effective through a separate PIH notice.

2. Background

HOTMA was signed into law on July 29, 2016 (Public Law 114-201, 130 Stat. 782); section 103 of HOTMA amends section 16(a) of the United States Housing Act of 1937 (42 U.S.C. 1437n(a)) (1937 Act) and establishes an income limitation for continued occupancy in public housing. The law requires that after a family’s income has exceeded 120 percent of the area median income (AMI) (or a different limitation as may be established by the Secretary) for two consecutive years (the “grace period”), a PHA must terminate the family’s tenancy within 6 months of the second income determination or charge the family a monthly rent equal to the
greater of: (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for
the unit, including amounts from the operating and capital fund, as determined by regulations.
For purposes of this document, the income limit established by HOTMA will be referred to as
the “over-income limit.”

PHAs are required to establish policies for continued occupancy in public housing. Through the
development of those policies, a PHA is able to consider specific circumstances in which they
would provide for flexibility in the administration of over-income requirements, provided such
policies are in compliance with the 1937 Act and all applicable fair housing requirements. PHAs
are subject to, among other fair housing and civil rights authorities, Section 504 of the
Rehabilitation Act (Section 504), the Fair Housing Act, and Title II of the Americans with
Disabilities Act (ADA), which include, among other requirements, the obligation to grant
reasonable accommodations that may be necessary for persons with disabilities.

On November 29, 2016 at 81 FR 85996 (2016 FR Notice), HUD published a notice soliciting
public input on the methodology used to determine the over-income limit by using the very low-
income (VLI) level as the basis for the applicable area as the baseline and multiplying it by 2.4.
Specifically, comments were requested on whether the practice adequately considered local
housing costs and made appropriate adjustments for higher housing costs. This is discussed
further in section four of this notice.

In response to the 2016 FR Notice, HUD received public comments on 11 related issues which
HUD responded to in the aforementioned 2018 FR Notice. The 2018 FR Notice also announced
the official applicable effective date of the provisions of section 103 of HOTMA as
September 24, 2018 and finalized the method of determining the over-income limit as described
in the 2016 FR Notice. The timing of required PHA compliance is discussed further in section
five of this notice.

3. Applicability

Section 103 of HOTMA applies to all PHAs operating a public housing program, including
Moving to Work (MTW) Agencies, with one exception. Pursuant to section 3(a)(5) of the 1937
Act and 24 CFR 960.503, the over-income limit does not apply to families with income
exceeding the over-income limit if they are housed by PHAs operating fewer than 250 public
housing units who are renting to over-income families because there are no income-eligible
families on the PHA’s waiting list or applying for public housing.

Section 103 requires PHAs to implement the over-income limit. The statutory changes in section
103 of HOTMA do not address the treatment of families whose income exceeds the local low-
income limit (80% of AMI), but is below the applicable over-income limit established in
HOTMA (50% of AMI multiplied by 2.4). As such, the requirements and flexibilities to be
provided through new regulations at 24 CFR 960.261 will be addressed through future
rulemaking to establish a uniformed definition of over-income.
4. Definition of Over-Income

The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120 percent of the AMI. However, HUD can adjust the over-income limit if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. HUD exercised this discretion as described in the 2016 and 2018 FR Notices respectively.

HUD currently calculates three declining ranges of income eligibility for the public housing program: low-, very low-, and extremely low-income limits. The VLI limit was selected because it is calculated for every FMR area and, in certain areas, factors in several adjustments to better align income limits with program requirements. Since VLI is preliminarily calculated as 50 percent of the estimated AMI for the family, in most cases, multiplying it by 2.4, would result in a figure matching 120 percent. For those areas without an adjustment, the result is an over-income limit of exactly 120 percent of AMI. For areas where HUD has made an adjustment to the VLI limit, the result of the multiplier will be higher or lower than 120 percent of AMI, depending on the adjustments made. (See appendix for examples)

The final over-income limit should then be compared to the family’s adjusted income and as with the existing ranges of income eligibility, the new over-income limits will also be tiered by family size. HUD’s income limits were developed by HUD’s Office of Policy Development and Research and are updated annually. Information about HUD’s income limits and HUD’s methodology for adjusting income limits as part of the income limit calculation can be found at https://www.huduser.gov/portal/datasets/il.html.

5. Effective Date of Over-Income Limits and Integration into the Admissions and Continued Occupancy Policies (ACOP)

ACOP. PHAs must update their Admissions and Continued Occupancy Policies (ACOP) to implement these changes no later than 6 months after the applicable date of the 2018 FR Notice. Such policies must include the imposition of an over-income limit in the program, clear descriptions of all instances of when the two-year timeframe begins, and the notification requirements put forth by section 103 of HOTMA.

PHA Plans and Significant Amendments. If the implementation of this provision requires a significant amendment to a PHA’s annual plan, as determined by the PHAs definition of a significant amendment, the PHA must immediately take steps to complete the significant amendment process to effectuate the policy change. PHAs must complete all relevant PHA plan changes no later than 6 months after the applicable date of the 2018 FR Notice.

Updates. Going forward, PHAs must also update the over-income limits in their ACOPs no later than 60 days after HUD publishes new income limits each year.

Timing. It should be noted that PHAs must first complete the process for amending their ACOP within six months after the applicable date of the 2018 FR Notice (Sept. 24, 2018) before implementing the over-income policy. Interim and annual reexaminations that take place after
completion of the policy amendment must apply the over-income limit. Therefore, any family that is deemed over-income because of an interim and/or annual reexamination that takes place on the earlier of the date the ACOP and/or PHA Plan is amended or March 24, 2019 will be subject to the appropriate over-income limit.

6. Documentation, Notification, and Tracking

Documentation. Once a PHA has completed updates to its ACOP and, if necessary, its PHA plan, and the PHA discovers through an annual reexamination or an interim reexamination that a family’s income exceeds the applicable over-income limit, the PHA must document that the family exceeds the threshold and make a note in the tenant file to compare it with the family’s income a year later. The form HUD-50058 actions that would trigger the two-year grace period are: ‘2 = Annual Reexamination’ and ‘3 = Interim Reexamination.’ PHAs are required to begin tracking these actions once a family’s income exceeds the applicable over-income limit.

Written Notifications/Tracking 2-Year Grace Periods. If one year after the initial over-income finding by the PHA, the family’s income continues to exceed the over-income limit, the PHA must provide written notification to the family. This notification must inform the family that their income has exceeded the over-income limit for one year, and if the family’s income continues to exceed the over-income limit for the next 12 consecutive months, the family will be subject to either a higher rent or termination based on the PHA’s policies. If the initial over-income determination was made during an interim reexamination, the PHA must conduct a second interim income reexamination on that date one year later. However, if a PHA discovers through an annual or interim reexamination that a previously over-income family has income that is now below the over-income limit, the family is no longer subject to these provisions. A previously over-income family would be entitled to a new two-year grace period if the family’s income once again exceeds the over-income limit.

PHAs must ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other disabilities. The PHA must ensure effective communication using appropriate auxiliary aids and services, such as interpreters, transcription services, brailed materials, large print, and accessible electronic communications, in accordance with Section 504 and ADA requirements. 24 C.F.R. § 8.6 and § 8.28; 28 CFR part 35, Subpart E. This includes the availability, free of charge, of sign language or other types of interpretation. For persons with vision impairments, upon request, this may include materials in braille or on tape.

Terminations and Higher Rent Payments. Twelve months after the second consecutive over-income finding, if the family is still over-income, the family is subject to termination or higher rental payments. As previously stated, HUD will provide additional information and guidelines for PHAs to set alternative rents for over-income families that the PHA has allowed to remain in public housing, and any other guidance regarding this provision in a forthcoming notice.

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1 See section 16(a)(5) of the U.S. Housing Act of 1937
2 See section 16(a)(5) of the U.S. Housing Act of 1937
Families not permitted to stay by the PHA must have their tenancy terminated no later than six months after the second over-income finding by the PHA.

7. Technical Assistance

Additional questions should be directed to the local Public Housing Field Office Director. Contact information and locations of these offices are available on HUD’s website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/about/focontacts.

8. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0230. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/
R. Hunter Kurtz, Principal Deputy
Assistant Secretary for Public and Indian Housing
Appendix

Calculating the Over-Income Limit

In this appendix, instructions are provided on how to look up the very low-income (VLI) limit and compute the over-income limit while also providing illustrative examples related to adjustments. HUD’s income limits were developed by HUD’s Office of Policy Development and Research and are updated annually. Information about HUD’s income limits and HUD’s methodology for adjusting income limits as part of the income limit calculation can be found at: https://www.huduser.gov/portal/datasets/il.html.

**Step 1: Landing Page** – By clicking the link above, the landing page pictured below will populate. Then select the button titled ‘Income Limits (IL) Documentation’.

![Landing Page Screenshot](image-url)
Step 2: Select a State – Scroll down the list on the left and select the applicable state. Once a state is selected, a list of counties will appear on the right. (See step 3)

Step 3: Select a County – Scroll down the list on the right and select the applicable county. Select the ‘View County Calculations’ button.
Step 4: View appropriate VLI Limit based on the applicable number of persons in a family.

Step 5: Multiply VLI by 2.4. Three examples will be provided below. Please note that there is an 'explanation' button for each income limit category that will explain what, if any, adjustments were made.

Ex #1: No Housing Cost Adjustment (Summit County, Akron, OH)

For a family of 4, calculate the Over-Income Limit as follows:

\[ \text{VLI} \times 2.4 = \text{Over-Income Limit} \]

\[ \text{VLI} = 36,600 \times 2.4 = 87,840 \]
Ex #2: High Housing Cost Adjustment (Los Angeles County, Los Angeles, CA)

For a family of 4, calculate the Over-Income Limit as follows:

\[ \$48,450 \times 2.4 = \$116,280 \]

Ex #3: Ceiling Adjustment (Jefferson County, Birmingham, AL)

For a family of 4, calculate the Over-Income Limit as follows:

\[ \$35,150 \times 2.4 = \$84,360 \]