The contents of this document, except when based on statutory or regulatory authority or law, does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Updated February 22, 2022

Occupancy Policies

HUD issued waivers for both the Public Housing and Housing Choice Voucher (HCV) program designed to afford PHAs an opportunity to allow families to remain in assisted units during the pandemic. Some of these waivers apply to the family and others apply to the unit. While HUD provided waivers to allow PHAs to limit some categories of terminations, PHAs were required to adopt any specific waiver they wished to use.

This section contains information applicable to the Public Housing and HCV programs.

Family Absence from the HCV Unit

HCV-5: Absence from the Unit

Period of Availability: April 10, 2020 to December 31, 2021

PHAs that adopted this waiver were provided discretion in allowing a family to be absent from a unit for more than 180 days and continue HAP payment.

PHAs that continued making HAP payments despite the family's absence of more than 180 consecutive days, must stop making HAP payments beyond December 31, 2021. PHAs must terminate the HAP contract on January 1, 2022, if the family is still absent from the unit.

Beginning January 1, 2022, PHAs must resume terminating housing assistance payments for families that are absent from the unit for a period of more than 180 consecutive calendar days for any reason. Families being terminated from the program for being absent from the unit for more than 180 days are entitled to an Informal Hearing.

WHAT PHAs CAN DO:

- PHAs can proactively reach out to participants that have been absent from the unit more than 180 days or will reach the 180-day milestone by December 31, 2021, to determine if the family intends on returning to the unit.

Automatic Termination of the HAP Contract for "Zero HAP"

HCV-6: Automatic Termination of the HAP Contract

Period of Availability: April10, 2020 to December 31, 2021

For PHAs that adopted this waiver, HUD allowed the PHAs to extend the period of time after the last HAP payment is made before the HAP contract automatically terminates.

No later than December 31, 2021, PHAs that adopted this waiver must revert to terminating HAP contracts 180 days after the last HAP payment is made. For HAP contracts covered by this waiver, the PHA must terminate the HAP contract when the extension granted by the PHA ends, which in no case may extend by December 31, 2021.

WHAT PHAs CAN DO

It is a good business practice to regularly review all program participants in a "zero HAP" status. These are participants where no subsidy is being paid to a landlord on their behalf.

For participants that will have been in a "zero HAP" status for more than 180 days, the PHA is strongly encouraged to send a reminder letter to the participant and owner that the HAP contract will automatically terminate at the end of the PHA extension under this waiver, which must be no later than December 31, 2021. It may be helpful for the letter to state that if the family had a decrease in income, they should report that decrease to the PHA as soon as possible, as this may remove the participant from zero-HAP status and avoid the termination of the participant from the HCV program.

Mandatory Removal of a Unit from a Project Based Voucher (PBV) HAP Contract

HCV-14: Mandatory Removal of a Unit from a PBV HAP Contract

Period of Availability: April10, 2020 to December 31, 2021

If a PHA adopted this waiver, the PHA was allowed to keep a zero-HAP unit[1] under the PBV HAP contract for more than 180 days after the last HAP payment, but no longer than December 31, 2021. The PHA could resume HAP payments on behalf of the family if the family's income changed at any point during the extended period.

No later than December 31, 2021, PHAs that adopted this waiver must revert to the program regulations, which require the zero-HAP unit be removed from the PBV HAP contract 180 days after the last HAP payment is made. No later than December 31, 2021, the PHA must revert to removing

[1] A unit for which no HAP payment is made to the landlord on behalf of the family because the family's total tenant payment exceeds the PBV contract rent.

any unit that has been in zero-HAP status for more than 180 days (or earlier, if the PHA terminates use of this waiver earlier) from the PBV HAP contract.

WHAT PHAs CAN DO

PHAs are strongly encouraged to send a reminder letter to the impacted participant and owner in advance of the deadline explaining when the unit will be removed from the HAP contract, which must be no later than December 31, 2021. The letter may further explain that if the family has had a decrease in income, they should report that decrease to the PHA as soon as possible, as this may take the unit out of zero-HAP status and avoid the removal of the unit from the HAP contract.

Over-Income Public Housing Families

PH-7: Over-Income Families

Period of Availability: April10, 2020 to December 31, 2021

PHAs that adopted waiver PH and HCV-2, Delayed Annual Reexaminations, were permitted to adopt this waiver for over-income families. This waived the requirement to terminate or charge an alternative rent to families whose income exceeded the program maximum income level for two consecutive years and permitted families to remain in their units and continue paying the same rental amount until the PHA could conduct the next annual income recertification that would impact the family.

For annual reexaminations that were delayed during the period of availability, PHAs can continue allowing over-income families to remain in their units and pay the same rental amount until the PHA is able to conduct the family's next annual recertification. In other words, the PHA does not have to take any action until the next reexam and the family will continue to pay the same rental amount in the current lease.

Beginning January 1, 2022, annual reexaminations are to be conducted at the next regular interval. However, HUD has not issued rulemaking implementing section 16(a)(5)(A)(i) of the U.S. Housing Act of 1937, as amended by HOTMA, regarding the "alternative rent" a PHA may charge an over-income family who has been over income for two consecutive years as of January 1, 2022. Therefore, if a PHA has adopted a policy where over-income families who have been over-income for two consecutive years may remain in their unit paying the "alternative rent," then an over-income family that has exceeded the two-year grace period may be permitted to remain in its unit as a public housing family until the HOTMA income rule is effective. These families will be offered an option of a flat rent or an income-based rent at their next annual reexamination. Until HUD has completed rulemaking establishing the "alternative rent," PHAs cannot charge these over-income families Fair Market Rent (FMR) or an "alternative rent."

Upon the HOTMA income rule becoming effective, over-income families who have already exceeded the two-year grace period will, pursuant to section 16(a)(5)(A), be terminated within six months or charged an "alternative rent," depending on PHA policy.

Over-Income Public Housing Families Termination Requirement

PH-13: Over-Income Limit: Termination Requirement

Period of Availability: May 4, 2021 to December 31, 2021

HUD waived the requirement that a family whose income had exceeded the over-income limit for the locality for two consecutive years be terminated (if required by PHA policy) within 6 months of the third over income determination. As an alternative requirement, a family whose income had exceeded the over-income limit for the locality for two consecutive years would remain a public housing household instead of being terminated and will be charged the applicable Fair Market Rent (FMR) as the family's monthly rental amount.

The authority to charge over-income families the Fair Market Rent (FMR) instead of terminating their tenancy ended with the CARES Act waiver on December 31, 2021. Typically, this would require PHAs to revert to their established termination policy. However, pursuant to an email sent on January 28, 2022, to PHAs with the subject, "Implementation of HOTMA Public Housing Income Limit," until the HOTMA income rule is effective, HUD will not enforce any requirement to terminate over-income families who exceed the over-income limit for two consecutive years.

Therefore, PHAs may elect to terminate over-income families who exceed the income limit for two consecutive years, but they are not required to do so. If the PHA chooses to enforce an established termination policy, and if the over-income family exceeded the over-income limit for two consecutive years prior to the PHA adopting this waiver, then the PHA must terminate the family within six months of January 1, 2022 (rather than within six months of when a family exceeded the limit for two consecutive years).

If a PHA chooses not to enforce an established termination policy for over-income families exceeding the income limit for two consecutive years, then PHAs must continue to treat such families as public housing families. These families continue to pay FMT until their next annual reexamination, at which point they will be offered an option of a flat rent or an income-based rent. At the annual reexamination, PHAs may not continue charging the over-income families FMR (or an "alternative rent") until HUD has completed rulemaking establishing the "alternative rent."

Upon the HOTMA income rule becoming effective, over-income families who have already exceeded the two-year grace period will, pursuant to section 16(a)(5)(A), be terminated within six months or charged an "alternative rent," depending on PHA policy.