The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are 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. Note that this document may be updated periodically as additional questions are asked and addressed or existing questions are updated.

DETERMINATION:

Applicability

1. What are the Housing Opportunity Through Modernization Act of 2016 (HOTMA) Section 103 effective and implementation dates?

   With the issuance of the HOTMA Final Rule, all elements of Section 103 of HOTMA[1] became effective on March 16, 2023, which was 30 days after publication of the final rule. The HOTMA Final Rule also required all PHAs to fully implement the over-income (OI) requirements by June 14, 2023. Section 103's new notice requirements do not apply retroactively. For example if a PHA provided a family proper notice under Notice 2019-11, the PHA is not required to provide new notices per 24 CFR 960.507(c).

2. Does Section 103 of HOTMA apply to small Public Housing Agencies (PHAs) with fewer than 250 units?

   Yes, all PHAs, regardless of size, must implement Section 103 of HOTMA through their written admissions and continued occupancy policies. If implementing this provision requires a significant amendment or modification to the 5-Year Plan and/or Annual Plan, PHAs must complete all relevant changes to their PHA Plan before implementation. According to 24 CFR 960.507(d), all PHAs must adopt an over-income policy for formerly assisted families that become over-income for two consecutive years. The policy must require formerly assisted families to pay the alternative non-public housing rent (alternative rent) OR terminate their public housing tenancy within 6 months of the end of the over-income grace period. Refer to Notice PIH 2023-03 for detailed guidance.

   A PHA that owns or operates fewer than 250 public housing units may continue to lease units to families whose annual income exceeds the limit for a low income family at the time of initial occupancy, subject to the requirements under 24 CFR 960.503. These families are considered unassisted tenants and are not participants in the public housing program. The Section 103 over-income requirements do not apply to any unassisted family, who was unassisted at the time of initial occupancy.

[1] Section 103 of the Housing Opportunity through Modernization Act of 2016, Pub. L. No. 114-201, amended section 16 of the U.S. Housing Act of 1937, 42 U.S.C. 1427n(a), by adding a new paragraph (a)(5) limiting the tenancy of over-income public housing families.

3. Does Section 103 of HOTMA apply to Initial and Expansion MTW Agencies?

Generally, Section 103 of HOTMA applies to all MTW PHAs (initial and expansion), unless the MTW agency has adopted an activity (with HUD approval) that differs from HOTMA.

For Initial MTW PHAs, Attachment C is the "Statement of Authorizations" which lists each specific section of the 1937 Act and the implementing regulations that an MTW PHA can waive as part of its MTW flexibility. Attachment D is the "Legacy and Community-Specific Authorizations", and it is optional and unique to each agency. All activities/waivers need to be in the Agency's Annual MTW Plan, if it is not, then the MTW PHA must comply with the regulations found at 24 CFR 960.507.

For Expansion MTW PHAs, the MTW Operations Notice (85 FR 53444) provides an exhaustive list of "pre-approved" waivers for activities that may be implemented without further approval once it is included in the MTW Supplement of an approved PHA Plan. In this case, the relevant waiver is number 13: "Public Housing as an Incentive for Economic Progress." This waiver permits Expansion MTW Agencies to implement a 3-year grace period. Additionally, if an Expansion MTW Agency has requested any Agency Specific Waivers (ASW) that modify waiver number 13 that could impact the agency's compliance with Section 103 of HOTMA, this must be clearly stated in the agency's MTW Supplement. Therefore, if an MTW PHA has not implemented this activity or requested an ASW, then it must comply with Section 103 of HOTMA and 24 CFR 960.507.

4. Is Section 103 of HOTMA applicable to Project Based Voucher units, multifamily properties, or new construction projects?

No, the over-income requirements under Section 103 of HOTMA apply exclusively to the public housing program. Therefore, Section 103 pertains to all families residing in public housing units, including those in Public Housing, Choice Neighborhoods and mixed-finance properties.

Income Calculations

5. What is the calculation to determine if a family is over-income (OI)?

To determine if a family is over-income (OI), first you will need to know the income limits that determine eligibility. The Department of Housing and Urban Development's (HUD's) income limits (IL) are determined annually by HUD's Office of Policy Development and Research (PD&R). Detailed information about HUD's income limits and the methodology for adjusting them can be found at: HUD Income Limits.

To determine the over-income (OI) status of a family follow these steps:

Step 1: Visit the link above and click 'Click Here for FY20XX IL Documentation'.

Step 2: Select a State – Scroll down and choose the relevant state. A list of counties will appear on the right.

Step 3: Select a County – Scroll and select the applicable county. Click 'View County Calculations'.

Step 4: Find the Very Low-Income (VLI) limit based on the number of persons in the family.

Step 5: Multiply the VLI for the family by 2.4 to determine the over-income Limit. Each income limit category has an explanation button that details any adjustments made.

Very Low Income (50%) x 2.4 = Over-Income Limit

Step 6: Compare the family's annual income (see 24 CFR 5.609) during their annual or interim income examination to the calculated over-income limit. If the family's income exceeds the over-income limit, they are considered over-income for the program and must be notified in accordance with 24 CFR 960.507(c). These families are referred to as over-income families (OI families) during the grace period (see 24 CFR 960.102).

PHAs can use this process to determine the over-income limit for various family sizes within their jurisdiction. An over-income calculation tool is available to create a one-page reference for PHA staff. See the [OI Calculator Tool] (excel file).

6. When determining if a family is over-income, should the PHA consider the number of household members or the number of family members?

As a reminder, the household includes everyone who lives in the unit. While household members are used to determine unit size, they are not all considered family members. Family members include all household members except live-in aides, foster children, and foster adults.[2]

The income of household members who are not family members is excluded from the calculation of annual income for the family.[3] Only the income, as calculated pursuant to 24 CFR 5.609 and 24 CFR 5.611, and number of family members are used to calculate subsidies and rent payments.[4] Therefore, when determining whether a family is over-income, the PHA must use the applicable very low-income (VLI) limit for the current number of family members, not including non-family household members. That amount should then be multiplied by 2.4. See Notice PIH 2023-03 for more information.

7. Are medical costs for elderly or disabled families deducted when determining whether the family is over-income?

No, deductions for unreimbursed medical costs for elderly or disabled families are made when calculating the family's adjusted income (24 CFR 5.611). The over-income limit is based on *annual* income (24 CFR 5.609) rather than *adjusted* income. Per 24 CFR 960.102(b), the over-income limit is determined by "by multiplying the applicable income limit for a very low-income family, as defined in § 5.603(b) … by a factor of 2.4." Once the VLI is calculated for the jurisdiction, the PHA must determine if the family exceeds the over-income limit. If the family's annual income (i.e., the family's income prior

[2] Public Housing Occupancy Guidebook, Income Determination Chapter, Pg.6 and 24 CFR 5.403
[3] 24 CFR 5.609(b)(8)
[4] 24 CFR 5.609

to any deductions) is greater than the OI limit (VLI x 2.4), then the family exceeds the OI limit for the program and must be notified in accordance with 24 CFR 960.507(c).

However, note there may be an applicable income exclusion, i.e., amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member (24 CFR 5.609(b)(6)) are excluded from the calculation of annual income.

8. The calculation of the over-income limit does not always equal the Very-low Income (VLI) limit times 2.4. Why is this?

Section 16(a)(5)(C) of the 1937 Act states that the over-income limit is set at 120 percent of the area median income (AMI). However, the HOTMA statute also permits HUD to adjust the over-income limit if necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. Because the Very-Low Income (VLI) limit is preliminarily calculated as 50 percent of the estimated AMI, this usually results in a figure matching 120 percent of the AMI (50% x 2.4 = 120%). However, in areas where the VLI has been adjusted by HUD to account for high or low housing costs or to prevent it from being lower than 50 percent of the state non-metro median family income, the final over-income amount would result in an adjusted over-income limit. For this reason, it is important to remember to *always* calculate the over-income limit by multiplying the VLI given by HUD by 2.4 instead of simply calculating 120% of the AMI. To learn more about HUD's methodology for adjusting income limits as part of the income limit calculation, visit: HUD Income Limits.

9. Does the Area Media Income (AMI), as well as the over-income (OI) limit, change for different states?

Yes, the Area Median Income (AMI) varies across the nation and is state dependent. The AMI is calculated at the metropolitan or nonmetropolitan area level and considers the income distribution of families within that specific geographic area. Since economic conditions, costs of living, and income levels differ significantly from state to state, the AMI will vary as well. Each PHA should ensure they calculate the OI limit for their own jurisdiction.

NOTIFICATION:

10. How many over-income notifications must PHAs give to over-income (OI) families, and when must they be informed?

In general, PHAs must provide three notifications to OI families in public housing when their income exceeds the over-income limit for more than 24 consecutive months. These notifications must be provided within 30 days of the following points: at the initial determination when the family's income first exceeds the limit, at 12 months after the family continues to exceed the limit, and at 24 months of continuously exceeding the limit (as required by 24 CFR 960.507(c)). However, some MTW Agencies may follow different procedures. Under the MTW Operations Notice (85 FR 53444), MTW PHAs can request a HUD-approved waiver to extend the grace period to 36 consecutive months, in which case a fourth notification would be required at the 36-month mark. For further details, refer to 24 CFR 960.507(c) and Notice PIH 2023-03.

11. When must the PHA start counting the 24 consecutive month grace period?

Once the determination has been made, the PHA must provide written notice to the family no later than 30 days after the PHA's initial over-income determination (see 24 CFR 960.507(c)). The 24 consecutive month grace period begins on the date the PHA notifies the family (for example, the post date of the notice). Once a family is determined to be over-income, the grace period allows the family to remain in the public housing program and continue to receive assistance for 24 consecutive months.

12. If no notification was provided to OI families, but records indicate they have been over-income for over 24 months, is the PHA required to continue to allow the family to remain in an assisted unit until proper notification is provided to the family?

Yes, the PHA is required to continue to allow this family to stay in the unit until all three notices have been given, subject to 24 CFR 960.507(c). Note that the PHA must provide written notice to the OI family no later than 30 days after the PHA's initial determination, stating that the family has exceeded the OI limit as determined pursuant to an annual reexamination or an interim reexamination. The notice must also inform the family that continuing to exceed the over-income limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for over-income families. If the PHA's over-income policy is to terminate, the PHA must start termination within six months of the final notice. If the PHA's over-income policy is to charge the alternative rent, at the next lease renewal or within no more than 60 days after the date of the final notice, whichever is sooner, the family must execute a new lease created for non-public housing over-income (NPHOI) families and begin to pay the alternative rent (24 CFR 960.507(c)(3)).

13. Does the 24-month grace period restart, if the notices to the family do not include information regarding the family's grievance rights also known as right to appeal?

No, Section 103 of HOTMA does not require the notices to include grievance rights. While it is ideal for over-income notifications to be as comprehensive as possible, the right to appeal is already incorporated in the public housing lease. Per 24 CFR 966.4(n), the public housing lease must include hearing and grievance procedures.

As a reminder, OI families within the 24 consecutive month grace period continue to be public housing program participants and therefore remain entitled to the grievance procedure described in their public housing lease. The PHA must afford the family an opportunity for a hearing if the family disputes the determination within a reasonable time. The grievance procedure must conform to HUD requirements found at 24 CFR Part 966 Subpart B.

14. What is a reasonable time to wait for a family to request a grievance hearing to dispute being over-income?

HUD does not prescribe a specific period for what constitutes a "reasonable time" for initiating the grievance procedure. Therefore, PHAs must establish and implement grievance procedures in their

Admissions and Continued Occupancy Policy (ACOP) and in the PHA lease agreement (24 CFR 966.4(e)(8)(ii)). HOTMA has not changed any grievance procedures or requirements.

LIMITATION:

15. How must PHAs manage families that choose to pay the alternative rent?

If permitted by PHA policy to remain in a public housing unit, an OI family that agrees to pay the alternative rent will become a non-public housing over-income (NPHOI) family (24 CFR 960.102). Once given the final OI notification, at the next lease renewal or in no more than 60 days after the date of the final notice, whichever is sooner, the family must execute a new lease created for NPHOI families and begin to pay the alternative rent (24 CFR 960.507(c)(3)(ii)(B)). The family will no longer be public housing program participants and will become unassisted tenants once the new lease is signed.

If the PHA gives a family the option to pay the alternative rent and they decline, the PHA must terminate the tenancy of the family no more than 6 months after the end of the 24 consecutive month grace period. An OI family that declines to pay the alternative rent will continue to be a public housing program participant in the period before termination. As a result, PHAs that choose to permit OI families to remain in public housing units as NPHOI families must also have a termination policy in the event the family declines to execute a new lease under 24 CFR 960.509 (the NPHOI lease).

The PHA may permit, in accordance with its OI policies, an OI family to execute the new lease after the deadline, but before termination of the tenancy, if the OI family pays the PHA the total difference between the alternative rent and their public housing rent dating back to the date that is the earlier of 60 days after the date the final notice per 24 CFR 960.507(c)(3) or the date that would have been the next public housing lease renewal.

16. Do PHAs always have to adopt the alternative rent policy?

No, per 24 CFR 960.507(d), PHAs have the option to choose one of two over-income (OI) policies. The PHA may either choose to adopt a policy that: 1) upon the completion of the 24 consecutive month grace period, allows an OI family to remain in a public housing unit paying the alternative rent (as an NPHOI family), **OR** 2) terminates the tenancy of the family no more than 6 months after the final OI notification.

17. Are PHA's required to conduct annual income recertifications of Non-Public Housing Over-Income (NPHOI) tenants?

No, per 24 CFR 960.257(a)(5), the PHA may not conduct an annual income reexamination of family income for non-public housing over-income (NPHOI) families. Once a family is no longer assisted by HUD, income recertification is no longer required and cannot be conducted by the PHA. Instead, the PHA would only need to renew the NPHOI lease at the end of the term specified in the lease.

18. Will NPHOI families be required to comply with pets and no smoking policies?

Yes. Per 24 CFR 960.509(b)(6)(xii)(B), NPHOI families are required to abide by the smoke-free policies of the PHA. While the PHA pet policies aren't addressed in 24 CFR 960.509, PHAs may apply the same policies/rules applicable for the property or they may permit NPHOI families to have one or more pets in their units per the additional terms to be found in the NPHOI lease.

19. What are some examples of low-income programs in which OI families cannot participate in besides resident associations?

OI families continue to be public housing program participants during the 24 consecutive month grace period and in the period before termination, so they are generally permitted to take part in all public housing services and activities during that time.

However, if the PHA policy permits the OI family to remain in a public housing unit after the grace period, the family must sign the NPHOI lease agreement and becomes an NPHOI family. Therefore, the NPHOI families are no longer in the public housing program and become unassisted tenants. As unassisted tenants, NPHOI families are generally no longer eligible to take part in resources meant for program participants.

Additionally, NPHOI families are no longer eligible to be members of the PHA's resident council, may no longer receive a utility allowance (24 CFR 960.507(a)(1)(iv)), must not be given a choice of rent (24 CFR 960.253), or be subject to annual income reexaminations (24 CFR 960.257(a)(5)). Additionally, PHAs must not require NPHOI families to comply with the Community Service Activities or Self Sufficiency Work Activities requirements (CSSR) (24 CFR 960.603). Lastly, PHAs may or may not choose to offer hearing or grievance procedures to NPHOI families in the NPHOI lease per 24 CFR 960.509(b)(13).

CONSIDERATIONS:

ALTERNATIVE RENT or FLAT RENT

20. What is the alternative rent and why is it listed at 24 CFR 5.628?

The alternative non-public housing rent (alternative rent) is the monthly amount a PHA must charge non-public housing over-income (NPHOI) families, if allowed by PHA policy to remain in a public housing unit after they have exceeded the 24 consecutive month grace period. The alternative rent is defined at 24 CFR 960.102(b), as the higher of the Fair Market Rent (FMR) or the per unit monthly subsidy (the Per Unit Subsidy by AMP report will be published annually on hud.gov). Only NPHOI families will pay the alternative rent. The alternative rent is listed in 24 CFR 5.628(a)(5) as a possible

rent type for tenants in a public housing property. However, no family in the public housing program may be charged the alternative rent; only NPHOI families are charged an alternative rent.

21. What is the difference between alternative rent and flat rent?

The alternative rent is for NPHOI families and is defined at 24 CFR 960.102(b), as the higher of the Fair Market Rent (FMR) or per unit monthly subsidy. Once the higher amount is determined, the PHA must use that amount for the term of the NPHOI lease. If the FMR is used as the alternative rent, the PHA must charge 100% of the FMR and offer it as the only rent option for an NPHOI family.

Both the FMR and the per unit monthly subsidy are adjusted annually. The HUD subsidy report will be published annually on hud.gov and the FMR is published annually on huduser.gov. PHAs must adjust the alternative rent to the higher of the current FMR or the current per unit monthly subsidy at the time notification is given to OI families.

The Flat rent is for families in the public housing program. It is established annually by the PHA and can be between 80% - 100% of the FMR, the applicable small area FMR (SAFMR) or the unadjusted rent (24 CFR 960.253(b)). The PHA may request, and HUD may approve, on a case-by-case basis, a flat rent that is lower than 80%. The PHA must allow families in the public housing program their choice or rent once a year and the family may choose to pay either the flat rent established by the PHA or an income-based rent. Families who choose to pay the flat rent may switch from flat rent to income-based rent because of hardship (24 CFR 960.253(g)) and must have their family income reexamination at least once every three years (24 CFR 960.257(a)(2)) except for families a PHA determines has exceed the over-income limit described in 24 CFR 960.507(b). Lastly, for units where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance (this cannot be done for the alternative rent).

22. Could the alternative rent be restricted due to it being over a State's or locality's cap on rent increases? (e.g. State A has a law prohibiting landlords from increasing rent more than 5% for a 12-month lease, but the NPHOI's alternative rent will increase the family's rent by 14%.)

No, the alternative rent is strictly defined by the federal statute in Section 103 of HOTMA, and is implemented by HUD at 24 CFR 960.102(b), as the higher of the Fair Market Rent (FMR) or per unit monthly subsidy. Because this is federal law, the amount cannot be modified regardless of state or local laws to the contrary.

23. If a PHA has a project with both Section 8 and Public Housing (ex: HOPE VI) can the NPHOI rent (alternative rent), be set to match the Contract Rent for Section 8 units?

No, PHAs that permit OI families to remain in the projects like HOPE VI after the grace period, must charge NPHOI families the alternative rent. The alternative rent is strictly defined at 24 CFR 960.102(b) as the higher of the Fair Market Rent (FMR) or the per unit monthly subsidy.

IMS/PIC and HIP Reporting

24. Will the form HUD-50058 be changed to track OI families or are OI families not reported to in the Inventory Management System/PIH Information Center (IMS/PIC) or the Housing Information Portal (HIP)?

Yes, changes have been made to the form HUD-50058 to accommodate over-income (OI) families. OI families remain participants in the public housing program during the 24 consecutive month grace period and in the period before termination. Therefore, OI families will continue to be reported in HUD systems like any other family in public housing. PHAs are not required to submit form HUD-50058 for NPHOI families; however, PHAs must track units occupied by NPHOI families and classify them as 'Non-Assisted Tenant Over-Income' in IMS/PIC. A new sub-category will be created in the Housing Information Portal (HIP) for units occupied by NPHOI families. When this system is implemented, PHAs will classify these units as 'Non-Public Housing Over-Income (NPHOI) Tenant'.

25. Is there a limit to the percentage of units that can be NPHOI vs OI?

Under HOTMA, there is no specific limit mentioned regarding the percentage of units that can be occupied by families with incomes exceeding the program's income limits. However, all units occupied by NPHOI families will not be included in the public housing subsidy formulas while an NPHOI family resides in the unit.

26. How will NPHOI families affect occupancy in the IMS/PIC system?

Units occupied by NPHOI families will not impact the Management Assessment (MASS) occupancy rate because the units will be accounted for in both the numerator and denominator of the MASS formula. To get the most accurate data, PHAs should be sure to correctly categorize units occupied by NPHOI families. PHAs will categorize units occupied by NPHOI families as 'Non-Assisted Tenant Over-Income' in IMS/PIC or 'Non-Public Housing Over-Income (NPHOI) Tenant' in HIP. Both categories are tracked as occupied.

27. If an agency allows NPHOI families to pay the alternative rent, will this also affect Capital Funding monies?

Yes, PHAs should be aware that no public housing subsidy may support units occupied by NPHOI families. The PHA's Capital Fund amount will be adjusted based on the data provided in IMS/PIC and/or its successor system HIP. PHAs must categorize units occupied by NPHOI families as 'Non-Assisted Tenant Over-Income' in IMS/PIC or as 'Non-Public Housing Over-Income (NPHOI) Tenant' in HIP (or whichever successor HUD systems are applicable) for accurate Capital Funding awards. Any funds found to be awarded improperly because of inaccurate information provided by the PHA will be recouped by HUD.

28. Are units housing NHPOI families still required to be inspected by PHA or National Standards for the Physical Inspection of Real Estate (NSPIRE) or any other reporting that the PHA must provide on all PHA units?

Yes, units occupied by Non-Public Housing Over-Income (NPHOI) families continue to be part of the public housing inventory and are required to be inspected in the same way as units occupied by families in the public housing program. The national standards for the condition of HUD housing seek to ensure that all residents live in safe, habitable dwellings, by requiring items and components located inside the building, outside the building, and within the units of HUD housing to be functionally adequate, operable, and free of health and safety hazards. The standards apply to all HUD housing can be found at 24 CFR 5.703.

29. What IMS/PIC action types are relevant to over-income and NPHOI families?

Determination:
Once a PHA determines through an annual reexamination or an interim reexamination that a family's income exceeds the applicable OI limit, the PHA must select action 2, 'Annual Reexamination', or 3, 'Interim Reexamination', and notify the family according to the requirements 24 CFR 960.507(c).

Notification:
The PHA would continue to select action 2, 'Annual Reexamination', or 3 'Interim Reexamination' and notify the family if the family remains over-income at the 12- month reexamination and then at the 24 months reexamination after the initial OI determination.

Limitation:
At the end of the 24 consecutive month grace period, the PHA must indicate in IMS/PIC or HIP (or whichever successor HUD systems are applicable) the end of the family's participation in the public housing program. For PHAs that terminate OI families after the grace period, the PHA must select action 6, 'End of Participation' when the family moves out of the public housing unit. For PHAs that

permit OI families to remain in a public housing unit and the family agrees to pay the alternative rent, the PHA must select action 6, 'End of Participation' upon the execution of the new NPHOI lease.

Subsidy

30. Will PHAs lose funding for a unit occupied by an OI family?

It depends on where the OI family is in the timeline from being an OI family in the public housing program or an OI family who is no longer in the program. A unit occupied by OI families, will continue to be funded like any other unit in the public housing program. As a reminder, OI families continue to be public housing program participants during the 24 consecutive month grace period and in the period before termination.

However, PHAs should be aware that no public housing subsidy may support units occupied by NPHOI families. The PHA's subsidy amount will be adjusted based on the data provided in IMS/PIC and/or its successor system HIP (or whichever successor HUD systems are applicable). PHAs must categorize units occupied by NPHOI families as 'Non-Assisted Tenant Over-Income' in IMS/PIC or as 'Non-Public Housing Over-Income (NPHOI) Tenant' in HIP to indicate that these units should not be included in the subsidy calculation. While units occupied by NPHOI families will no longer receive HUD subsidy, HUD anticipates that the missing funding will be replaced by the alternative rent. As defined in 24 CFR 960.102, the alternative rent can never be lower than the subsidy that would otherwise have been provided for the units.

31. If an OI family voluntarily or involuntarily leaves public housing and owes debts to the PHA, is the PHA required to report those debts to HUD?

Yes, PHAs are required to report debts owed by a public housing tenant who voluntarily or involuntarily leaves the PHA's program to HUD utilizing Form HUD-52675 and maintain this information in the Enterprise Income Verification (EIV) system. This includes debts resulting from unpaid rent, damages, or other financial obligations incurred by the tenant during their tenancy.

By reporting these debts to HUD, PHAs contribute to a central database that helps monitor and track outstanding debts owed by former public housing tenants. This information is used by HUD to determine if the tenant may be ineligible for future housing assistance or to pursue collection actions against the debts. The PHA must report such information in EIV no later than 60 days after the action.

32. How would the PHA pay for maintenance work done on units occupied by NPHOI families?

If the maintenance work is not specific to an NPHOI family and the maintenance will benefit the entire building (e.g., roof maintenance), then public housing funds may be used because the maintenance will benefit the entire building which is occupied predominantly by public housing residents.

However, if the maintenance involves repairs specific to the NPHOI family, then no public housing funds can be used to make the repairs. For example, if an NPHOI family's unit requires repairs (e.g.,

replacing a broken appliance), then no public housing funds (e.g., capital funds and operating funds) may be used to make the repairs. Additionally, section 18 disposition proceeds and section 9(k) non-rental income cannot be used for repairs within the NPHOI family's unit. Instead, these repairs must be paid for with non-public housing funds such as the alternative rent funds.

To the extent a PHA makes bulk repairs or upgrades (e.g., replaces locks or refrigerators in all building units), a PHA is not required to execute separate contracts or to make separate orders for public housing units and unassisted units occupied by NPHOI families. However, the PHA must allocate the costs between public housing units and unassisted units occupied by NPHOI families based on a prorated basis. So, if the PHA orders 100 new stoves for a 100-unit public housing building where 3 of those units occupied by NPHOI families, 97% of the cost of the new stoves may be paid for with public housing funds, but 3% of the cost of the new stoves must be paid for with non-public housing funds such as the alternative rent funds.

33. Will the PHA still receive $25.00 for tenant participation under section 9(e)(1)(E), per occupied unit in the subsidy for units occupied by OI families?

PHAs are reminded that over-income (OI) families continue to be public housing program participants during the 24 consecutive month grace period until their official termination. Therefore, OI families and the units in which they reside continue to receive all subsidy they are eligible for during the 24 consecutive month grace period. Per 24 CFR 990.190(e), and Notice PIH 2013-21 each PHA's operating subsidy calculation shall include $25 per occupied unit per year for resident participation activities.

PHAs should be aware that no public housing subsidy may support units occupied by NPHOI families and any delay in updating the unit category in IMS/PIC or HIP may result in the PHA owing HUD any improperly calculated subsidy amounts. PHAs will not be eligible to receive $25 for any unit occupied by a NPHOI family.

Policy Implications

34. Do the requirements of Section 103 of HOTMA apply to MTW, Cohort 2 Rent Reform PHAs?

Cohort 2 Rent Reform MTW PHAs exist under the MTW Expansion and have specific waivers and alternative requirements granted under the MTW demonstration program, which may already provide flexibility and streamlining measures like those outlined in HOTMA Section 103. These PHAs must review the MTW Operations Notice (85 FR 53444), the MTW Supplement to the PHA's Annual Plan to determine if the requirements of HOTMA Section 103 apply. All MTW agencies including Cohort 2 Rent Reform PHAs, are advised to consult the specific documents governing the agency's participation in the MTW demonstration to determine if Section 103 of HOTMA applies to their program.

35. How will this affect an OI family in the middle of their Family Self-Sufficiency (FSS) contract?

Again, OI families remain public housing families until they're terminated or charged the alternate rent (as an NPHOI family). Therefore, OI families who haven't been terminated or who are not NPHOI families can continue to participate in the FSS program.

However, FSS regulations state that once a family exceeds 80% of AMI, they cease to accumulate escrow deposits (42 USC 1437u(e)(2)). The OI family may remain in the FSS program if they have a current FSS Contract of Participation, remain a recipient of rental assistance in an eligible program, and regardless of their escrow status. An OI family would not be automatically eligible for graduation simply due to becoming over- income; instead, the contract of participation shall remain in effect until the participating family exits the Family Self-Sufficiency program upon successful graduation or expiration of the contract of participation, or for other good cause (42 USC 1437u(d)).

36. Are the Violence Against Women Act (VAWA) protections applicable to OI families?

The Violence Against Women Act (VAWA)[5] is a federal law that, in part, provides housing protections for people applying for or living in covered housing programs[6] and protects individuals who are survivors of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, sexual orientation, or gender identity to help keep them safe and reduce their likelihood of experiencing homelessness. An OI family is defined in 24 CFR 960.102(b) as a family whose income exceeds the OI limit which includes families during the 24 consecutive month grace period or those that are in the period before termination. These families are still public housing program participants and so continue to be entitled to VAWA protection.

For NPHOI families, who are not within the 24 consecutive month grace period, and subsequently are no longer public housing program participants, those families are not entitled to VAWA protections as prescribed in HUD regulations. However, they may be entitled to some housing protections for victims of interpersonal violence based on state and local law.

37. If an NPHOI family paying the alternative rent later becomes a low-income family, is it possible to lower their rent?

No, the alternative rent is strictly defined as the higher of the Fair Market Rent (FMR) or per unit monthly subsidy. The alternative rent amount cannot be lowered. If the family becomes income eligible for public housing, they can reapply for public housing but must still pay the alternative rent until they are readmitted.

[5] See the Violence Against Women Act of 1994, as amended (34 U.S.C. 12291 et seq.).
[6] A list of HUD programs that are covered under VAWA can be found at 34 U.S.C. 12491(a)(3).

38. How can a PHA establish a waiting list for NPHOI families, if the family must be within the income limits to be eligible to be placed on the waiting list?

The PHA may choose to adopt the new local preference provided at 24 CFR 960.206(b)(6) for NPHOI families who are paying the alternative non-public housing rent and are on a NPHOI lease. Adopting this preference may reduce the possibility of the family having to move out before being readmitted to the program. However, the adoption of this preference is at the discretion of the PHA. Note that a PHA may only establish a system of local preferences for the selection of families admitted to the Public Housing program - which may target NPHOI families - if the preference targeting NPHOI families is based on local housing needs and priorities, as determined by the PHA. In determining such needs and priorities, the PHA must use generally accepted data sources and consider public comment on the proposed PHA Annual Plan and the Consolidated Plan. See 24 CFR 960.206 for the applicable requirements.

As mentioned above in the response to question 37, an NPHOI family can only reapply for public housing if the family again becomes income eligible for public housing. Therefore, the family would be on the same waiting list maintained by the PHA for normal applicants taking into consideration any preferences they may qualify for. While waiting to be readmitted to the public housing program, the family will have to pay the alternative rent and may have to move out depending on the length of the waiting list. In the event an NPHOI family can no longer afford the alternative rent, PHAs must provide these families with proper notice in accordance with any federal, state, and local laws. Note that the NPHOI family moving out of the unit will result in a loss of any NPHOI preference that might have applied to them.

39. What are differences between a normal Public Housing Lease and a NPHOI Lease?

The requirements for the public housing lease can be found at 24 CR 966.4 and the minimum requirements for the lease requirements for non-public housing over-income (NPHOI) families can be found at 24 CFR 960.509. Per notice PIH 2023-03, a PHA may add additional terms to the lease for NPHOI families, so long as it is consistent with HUD regulations, state, and local laws.

40. If a tenant lives in a development where the PHA is responsible for utilities, will the tenant be responsible for the utilities if they choose to stay after becoming a NPHOI resident?

Yes, per 24 CFR 960.507(a)(1)(iv), "PHAs cannot provide any federal assistance, including a utility allowance, to non-public housing over-income (NPHOI) families." Since the tenant is responsible for their utilities where units are individually metered, the tenant will receive and pay utility invoices either from the utility company or from the PHA based on what is metered and who owns the meter. Where the unit is not individually metered, the tenant would be charged an allocation of the total energy plus any surcharges with no utility allowance.