



PIH

OFFICE OF PUBLIC & INDIAN HOUSING

Frequently Asked Questions: Implementing the Housing Opportunity Through Modernization Act's (HOTMA) Public Housing Income Limit

January 28, 2022

Overview

These Frequently Asked Questions (FAQs) are related to the implementation of the Housing Opportunity Through Modernization Act's (HOTMA) public housing income limit requirements. HUD is continuing work to complete a final rule for implementation of several HOTMA provisions and expects to publish a final rule in the latter half of 2022. In the absence of the final rule, PHAs have inquired about how to administer the over-income requirements made effective through the 2018 *Federal Register* Notice that implemented section 103 of HOTMA.

The FAQs address the questions HUD has received about the potential for PHAs, on or after January 1, 2022, to terminate over-income public housing families who have been over income for two consecutive years, as required by section 103 of HOTMA. HUD will not enforce the termination requirement until such time that HUD publishes the final rule, and it takes legal effect, so that PHAs and families can make an informed choice related to alternative rent options.

The primary takeaways from the FAQs are as follows:

- 1) HUD will not enforce the 2018 HOTMA Public Housing Income Limit Notice ("2018 Notice") that may under some circumstances require PHAs to terminate families who have been over income for two consecutive years.
- 2) PHAs *may* terminate such families under the Admission and Continued Occupancy Policy (ACOP) formulated in accordance with the 2018 Notice but currently *may not* charge such families an alternative rent while they remain in

the public housing unit. Instead, the families will continue to be considered public housing families and must be offered the option of paying an income-based rent or a flat rent at their next annual reexamination.

- 3) Future implementation of the HOTMA rule will require PHAs to either terminate families who have been over-income for two consecutive years or charge such families an alternative rent, in accordance with a PHA's ACOP.
- 4) HUD will issue separate guidance on the over-income CARES Act waivers.

Please see the below FAQs for more detailed information about the over-income provisions.

Frequently Asked Questions (FAQs)

Q1. Where is the over-income provision in law and what does it provide?

Response: Section 16(a)(5) of the United States Housing Act of 1937 (1937 Act), as amended by section 103 of HOTMA, requires PHAs to terminate or charge an alternative rent to families whose income exceeds the program maximum income limit for two consecutive years. HUD partially implemented section 16(a)(5) through a 2018 *Federal Register* Notice, Housing Opportunity Through Modernization Act of 2016: Final Implementation of Public Housing Income Limit, [83 Fed. Reg. 35,490](#) (July 26, 2018)). The Notice requires PHAs to update their over-income policies (through the ACOP) and to begin enforcement of the section 16(a)(5) over-income limit requirements. However, pursuant to section 16(a)(5)(A)(i)(II), HUD must publish regulations in order for PHAs to charge over-income families who exceed the two consecutive year "grace period" an alternative rent.

HUD published a proposed rule implementing section 16(a)(5), including the alternative rent options in section 16(a)(5)(A)(i), on September 17, 2019, but HUD has not yet published a final rule. Thus, PHAs have not been provided the statutorily mandated choice to offer families the opportunity to remain in their public housing unit and pay the alternative rent. Without the ability to charge over-income families alternative rent, PHAs arguably must, per the 2018 Notice and section 16(a)(5)(A)(ii), terminate all over-income families who exceed the over-income limit for two consecutive years. As a result of this dilemma, HUD is choosing to utilize its inherent administrative authority and discretion to not take any action to enforce termination compliance with the 2018 Notice on PHAs.

Q2. What options does my PHA have as it relates to over-income families?

Response: PHAs may elect to terminate over-income families who exceed the over-income limit for two consecutive years, but they are not required to do so. If a PHA elects not to terminate such over-income families who exceed the over-income limit for two consecutive years, then PHAs must continue to treat such families as public housing families and offer the families the

option of paying an income-based rent or a flat rent at their next annual reexamination. PHAs that elect not to terminate over-income families cannot charge the family Fair Market Rent (FMR) or any other alternative rent.

Once the final HOTMA rule implementing section 16(a)(5)(A)(i) alternative rent options takes legal effect, all over-income families who have exceeded the over-income limit for at least two consecutive years must be either terminated or charged an alternative rent in accordance with the PHA's ACOP.

HUD will issue separate guidance on Navigating the Expiration of the CARES Act Waivers in the area of over-income families.

Q3. Since there is no final alternative rent option, what will HUD do if I choose not to terminate families?

Response: Because HUD has not yet published a final rule effectuating the alternative rent options of section 16(a)(5)(A)(i), HUD is exercising its discretion to not enforce against any PHA any 2018 Notice and section 16(a)(5)(A)(ii) requirement to terminate over-income families who exceed the over-income limit for two consecutive years. HUD will not enforce the termination requirement until such time that HUD publishes the final rule, and it takes legal effect, so that PHAs and families can make an informed choice related to alternative rent options.