FEDERAL HOUSING ADMINISTRATION

Office of Multifamily Housing Programs

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOTMA Talking Points and Q&A for Multifamily Programs

Updated February 2024

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. The final rule became effective on January 1, 2024.

Implementation Resources

Current

- MFH HOTMA Webpage: https://www.hud.gov/program_offices/housing/mfh/hotma. The webpage will be updated with new resources, including trainings and written materials, as they become available.
- Joint PIH/MFH HOTMA Implementation Notice published on 9/29/2023 and revised on 2/5/2024: https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-10hsgn.pdf.
- Owner Tenant Selection Plan (TSP) and Enterprise Income Verification (EIV) Discretionary Policies guide published on 10/2/2023 and revised on 2/5/2024: https://www.hud.gov/sites/dfiles/Housing/documents/MFH_List_Discretionary_Policies_Implement_HOTMA.pdf.
- HUD has updated the list of federally mandated exclusions via *Federal Register* here: https://www.govinfo.gov/content/pkg/FR-2024-01-31/pdf/2024-01873.pdf.

Forthcoming

- HUD will announce pre-recorded HOTMA webinars and live Q&As for owners and tenants. HUD will also publish written HOTMA resources directed toward owners and tenants.

- HUD will publish a *Federal Register* notice describing the methodology for calculating 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 is working to update systems and forms to reflect HOTMA changes.

Implementation Message to Stakeholders

On February 6, 2024, Multifamily Housing published a message to stakeholders that contains guidance for Owners who elect to implement HOTMA prior to the rollout of TRACS version 203A.

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.
- Implementation of the final rule and Notice 2023-10 will supersede portions of sub regulatory guidance, including notices and the HUD Occupancy Requirements of Subsidized Multifamily Housing Programs Handbook (4350.3, REV-1, CHG-4). MFH will update and replace all updated sections and chapters and will inform stakeholders where to locate the revised materials.

Key Changes: Asset Limitation

1. Owners have discretion with respect to application of the asset limitation at annual and interim reexamination.
2. A family is out of compliance with the asset limitation if they have either of the following:
   - Net family assets that exceed $100,000, as adjusted annually for inflation;
   - Real property that is suitable for occupancy.
   - At Annual and Interim Reexamination (but not at admission), Owners have the following four policy options:
     1. **Total Non-Enforcement:** Owners may choose to establish a written policy to not enforce the asset limitation for all families at annual and interim reexamination.
     2. **Total Enforcement:** Owners may choose to fully enforce the asset limitation exactly as written in the statute (i.e., the real property requirement and the $100,000 net family assets requirement). Nothing in paragraphs (4), (5), or (6) of Section 104 of HOTMA compels Owners to exercise the discretion provided by the statute.
     3. **Limited Enforcemen**t: MFH Owners may choose to establish a written policy to not enforce the asset limitation for all families, for up to six months after the

effective date of a family's annual or interim reexamination. Families are given the opportunity to cure noncompliance with the asset limitation during this period**.**

4. **Exception Policies:** MFH Owners may establish in written policy exceptions to the asset limitation based on family type and may take into consideration such factors as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. Exception policies must conform with applicable fair housing statues and regulations.

- Owners are encouraged to set policies for the initiation of eviction or termination of assistance proceedings that provide families adequate opportunity to find new housing.
- Whether an Owner chooses to adopt a total non-enforcement, enforcement, limited enforcement, and/or exception policy for reexaminations, that policy and accompanying details must be set forth in the Owner's Tenant Selection Plan.

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), non-monetary in-kind donations from a food bank or similar organization, 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, federal tax refunds and refundable tax credits (for a period of 12 months after receipt by the family), 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.
- When verification of assets is required, Owners are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts. Owners are no longer required to obtain a six-month balance for checking accounts.

Key Changes: Annual / Interim Reexaminations

- Family income determinations will be made using anticipated income for new admissions and interim reexaminations (IRs), and prior-year income for annual reexaminations. Owners may accept income reported in EIV + a self-certification to verify a family’s prior-year income. Income from assets is always anticipated, irrespective of the income examination type.
- EIV may be used as the sole verification of Social Security income.
- Owners are required to obtain a minimum of two current and consecutive pay stubs for determining annual income from wages when they do not elect to use EIV + Self-Certification or the income type is not reported in EIV. Owners were previously required to collect the most recent four to six weeks of pay stubs to verify employment income.
- For fixed income sources, a statement dated within the appropriate benefit year is acceptable documentation.
- HOTMA creates a 10% adjusted income increase/decrease threshold for conducting IRs. Owners may select a lower threshold for conducting IR decreases. However, Owners must process IRs for decreases in adjusted income that occur when a family member permanently moves out of the unit.
- 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 IRs within a reasonable time period, generally not to exceed 30 days from the date a family reports income changes to an owner.
- HOTMA’s IR requirements may impact families participating in the MFH Family Self Sufficiency (FSS) program. Owners should review subtopic I.9 of Notice 2023-10 for more information.

- Owners may choose to adopt a policy that would make the effective date of an IR decrease retroactive to the first of the month following the date of the actual decrease in income.
- Owners that do not require families to undergo IRs for income increases after an IR decrease do not need to review the EIV New Hires Report between a family's annual reexamination. If the Owner's policy is to require an IR for increases in income after an IR decrease, then the Owner must review the New Hires report quarterly after the family's IR decrease.
- Owners should review subtopic I.4 of Notice 2023-10 for guidance on when a non-interim transaction should be processed for changes to a family's circumstances that do not trigger an IR.
- Effective the day after the Social Security Administration (SSA) has announced the COLA, Owners are required to factor in the COLA when determining SS and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year.

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. Owners may not defer to IRS Publication 502 to determine whether an expense is eligible for the health and medical care expenses deduction; certain expenses deemed ineligible in IRS Publication 502 may be considered eligible expenses in HUD programs.
- 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, pursuant to an Owner's written policies. Owners are not limited by HUD to a maximum number of 90-day extensions.
- 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 IR. 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.

- Unreimbursed expenses for the care of foster children under 13 years of age may be eligible for the child care expenses deduction and child care expenses hardship exemption.

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 1st 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 around August of each year.
- HUD will annually publish a passbook rate based on the Federal Deposit Insurance Corporation (FDIC) National Deposit Rate for savings accounts. The passbook rate effective 1/1/2024 is 0.40%.
- Each family member over the age of 18 are required to sign the consent form only one time during tenancy instead of annually (form HUD–9887).
- Owners may accept self-certification of Social Security Number (along with a document stating the applicant's full name) if no other acceptable documentation of SSN is available.

Key Changes: Safe Harbor

- Owners may use income calculation information from other federal means-tested programs to determine a family's income (include income from assets) 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.
- The Safe Harbor verification will be considered acceptable if the documentation meets the criteria that the income determination was made within the 12 months prior to the receipt of the verification by the Owner. This satisfies all verification date requirements for Safe Harbor income determinations.
- Owners are not required to use the EIV Income Report, New Hires Report, or Income Discrepancy Report at annual reexamination if the Owner uses Safe Harbor documentation to verify a family's annual income.

- Owners who choose to accept Safe Harbor income determinations must create policies that outline the course of action when families present multiple verifications from the same or different acceptable 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.
- 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.

When are Owners required to be compliant with HOTMA?

Owners must update their TSP and EIV policies and procedures not later than March 31, 2024. Full compliance with the HOTMA final rule is mandatory effective January 1, 2025.

As an Owner, will HUD regulate which aspect of HOTMA I choose to implement before my site software is ready?

No, but PBCAs must issue a finding if the owner's Tenant Selection Plan (TSP) and EIV policies and procedures were not appropriately updated or made publicly available by March 31, 2024.

What can I as an Owner do right now to get ready for HOTMA?

HUD recommends that Owners review the final rule and Notice H 2023-10 carefully, take advantage of the resources on MFH's HOTMA webpage and the training opportunities that HUD will offer, and submit questions to MFH_HOTMA@hud.gov.