Summary of Some of the Major Provisions of HUD's Proposed Rule Implementing Several HOTMA Provisions

National Low Income Housing Coalition

September 19, 2019

HUD published on September 17, proposed changes to the regulations for the Public Housing, Housing Choice Voucher, and Section 8 Project-Based Rental Assistance programs to implement income calculation and income reviews changes required by the "Housing Opportunity Through Modernization Act of 2016" (HOTMA). Comments are due November 18.

(To provide consistency among HUD programs, the proposed rule would also make a few changes to the national Housing Trust Fund, HOME Investment Partnerships, and Housing Opportunities for Persons with AIDS programs.)

Background

The proposed changes would implement HOTMA Sections 102, 103, and 104.

- Section 102 changes requirements regarding income reviews for public housing and HUD's Section 8 programs (the Housing Choice Voucher program and the Project-Based Rental Assistance (PBRA) program that assists privately owned multifamily properties).
- Section 103 modifies the continued occupancy standards of public housing residents whose income has grown above the threshold for initial occupancy.
- Section 104 sets maximum limits on the assets of households living in public housing and Section 8 housing.

Various provisions of HOTMA were implemented by other HUD actions:

- A *Federal Register* notice published on October 24, 2016 announced provisions that were effective immediately.
- A *Federal Register* notice published on January 18, 2017 implemented multiple voucher program provisions unrelated to Sections 102, 103, and 104.
    - NLIHC *Memo to Members* article "HUD Issues HOTMA Implementation Provisions for HCV and PBV" (January 23, 2017)
- A *Federal Register* notice published on July 14, 2017 provided technical corrections to the January 18, 2017 notice.
    - NLIHC *Memo to Members* article "HUD Publishes Technical Corrections to HOTMA Implementation Notice" (July 24, 2017)
- Housing Quality Standards (HQS) Implementation Guidance (Notice PIH 2017-20)
    - NLIHC *Memo to Members* article "PIH Notice Provides Guidance on HOTMA Voucher Initial Inspection Options (November 11, 2017)
- Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) Implementation Guidance (Notice PIH 2017-21)
    - NLIHC *Memo to Members* article "PIH Notice Provides Guidance on Implementing HOTMA PBV Provisions" (November 13, 2017)

- Housing Choice Voucher Program – Guidance on Manufactured Home Space Rentals (Notice PIH 2017-18)
  - NLIHC *Memo to Members* article "PIH Notice Implements HOTMA Voucher Changes for Manufactured Housing" (October 2, 2017)
- Implementation of Minimum Heating Standards in Public Housing Properties (Notice PIH 2018-19)
  - NLIHC *Memo to Members* article "HUD Guidance Implements HOTMA Minimum Heating Standards in Public Housing" (November 19, 2018)

The following is a summary of some of the major provisions of the proposed rule

Section 102 Provisions

Section 102 of HOTMA establishes various provisions regarding income.

Income Reexaminations

Currently, the public housing, voucher, and PBRA programs allow households to request an interim reexamination of household income because of any changes since the last examination. The PHA or owner must decide within a reasonable amount of time.

The proposed rule follows HOTMA by:

- Requiring reviews of household income when requested by a household any time there are changes to their income or deductions that result in a **decrease** of 10% or more.
- Allowing a PHA or owner to establish a threshold lower than 10%.
- Prohibiting a PHA or owner to have a threshold greater than 10%.

The proposed rule also follows HOTMA by:

- Requiring PHAs and owners to reexamine a household's income any time their income is estimated to **increase** by 10% or more.
- Prohibiting consideration of an increase in income if the household previously received an interim reduction during the year.

Comment and Questions

?? Although HOTMA requires an income reexamination any time a household's income is estimated to have increase by 10% or more, this can be especially harmful to households with very little income – a 10% increase for a household with income at 15% of the area median income (AMI) means much more to them than those with income at 60% of AMI, for example.

Currently, in HUD's Multifamily programs an interim reexamination is not required until a household's income increases by more than $200 per month (Handbook 4350.3 REV-1, Chapter 7).

Because HOTMA allows HUD to establish a different threshold, should we recommend the proposed rule use the $200 per month increased income threshold (adjusted for inflation)?

?? What is a "reasonable" period of time for a PHA to act on a request for an income reexamination?

Calculating Household Income

The proposed rule follows HOTMA by requiring PHAs and owners to estimate household income:

- For the **upcoming** year for initial occupancy, initial provision of housing assistance, or for an interim reexamination.
- From the **preceding** year for annual income reviews.

The proposed rule follows HOTMA by allowing PHAs and owners to determine household income before applying deductions by using income determinations made for other programs such as Temporary Assistance for Needy Families (TANF), Medicaid, Supplemental Nutrition Assistance Program (SNAP), and the Earned Income Tax Credit programs (EITC).

?? What do you think about these "safe harbors"?
Some legal services attorneys think using:

- *EITC is bad because it would give PHAs and owners access to residents' tax returns.*
- *TANF is bad because the TANF formula is not good.*

Definition of Income

HOTMA provided a new definition of "income." The proposed rule uses HOTMA's broader definition and removes the current rule's long list of examples of income sources.

- The proposed rule would define income to be amounts received from all sources (with 23 exceptions, see below) by each household member who is:
    - 18 years of age or older or
    - The head of household or spouse of the head of household
- *Plus* unearned income by on or behalf of each dependent who is less than 18 years of age.

The proposed rule has a list of 23 items that ***will not be counted*** as income, for example income earned through employment by children under the age of 18. The proposed rule adds exclusions, such as amounts in or from ABLE accounts (tax-advantaged saving accounts for people with disabilities). The proposed rule removes current exclusions such as inheritances, gifts, capital gains, and other sporadic income.

Adjusted Income

Dependent Deduction

Currently, the rule has a mandatory deduction of $480 for each dependent.
The proposed rule adds that the amount must be adjusted each year for inflation.

Elderly or Disabled Deduction

The proposed rule follows HOTMA by increasing from $400 to $525, the deduction for any elderly or disabled household member, and requires annual adjustment for inflation.

Adjusted Income, *continues*

Child-Care Deduction

The current rule is unchanged, allowing a deduction for child-care expenses necessary to enable a household member to be employed or further their education.

Hardship Exemption, Child-Care Deduction

HOTMA requires HUD to propose rules providing for a hardship exemption for the child-care expense deduction. The proposed rule would allow the deduction to continue for a household that no longer has a member who is employed or seeking to further their education.

To qualify, the household must demonstrate:
- That it cannot pay the increased rent due to the loss of the child care deduction, and
- That the child-care expense deduction is still needed even though no family member is employed, seeking employment, or furthering their education.

The hardship exemptions would expire at a household's next regular income reexamination, or when the household is able to pay rent using the regular income calculation.

Health and Medical Care Deduction

The proposed rule follows HOTMA by increasing the threshold for obtaining a deduction for health and medical care expenses from 3% of household income to 10%.

There are two categories:

1. Unreimbursed medical expenses of any elderly or disabled family.
2. Unreimbursed attendant care and auxiliary equipment expenses for each household member who has a disability, to the extent necessary to enable any household member to be employed.

Hardship Exemption, Health and Medical Care Deductions

HOTMA requires HUD to propose rules requiring a hardship exemptions if a household can demonstrate that they would not be able to pay the rent due to the higher 10% threshold to benefit from the health and medical deduction.

The proposed rule's hardship provision would require a PHA or owner to recalculate household income by deducting the amount of health and medical expenses that exceed 6.5% of household income. (That 6.5% hardship threshold is the midpoint between 3% and 10%.)

The hardship exemptions would expire at a household's next regular income reexamination, or when the household is able to pay rent using the regular income calculation.

Additional Deductions

The current rule allows PHAs to adopt additional deductions for residents of public housing. The proposed rule follows HOTMA by allowing PHAs to also adopt additional deductions for voucher participants.

Section 103 Provisions

Section 103 of HOTMA establishes an over-income limit for public housing residents.

Over-Income Limit

HOTMA established an "over-income" limit of 120% of the area median income (AMI) for public housing residents. It also allows HUD to adjust the over-income limit where there are high construction costs, or unusually high or low household incomes, vacancy rates, or rental costs.

HUD previously proposed and subsequently issued a final notice on July 26, 2018 establishing an adjusted over-income limit by multiplying the very low-income level (50% of AMI) by 2.4

HOTMA exempts PHAs with fewer than 250 public housing units from the over-income rule if the PHA is renting to over-income households because there are no income-eligible households on the waiting list or apply for housing assistance.

Impact on Over-Income Households

The proposed rule follows HOTMA by requiring a PHA to record whether a household's income level during an annual or interim income reexamination is greater than the over-income limit.

If the household's income continues to be greater than the over-income limit at the following year's annual income reexamination, the PHA must notify the household in writing that:

- The household has exceeded the over-income limit for one year, and
- That if the household's income continues to be greater than the over-income limit for the next 12-month period the household will either:
    - Pay more rent or
    - Have to leave public housing.

If the household's income is again greater than the over-income limit at the second-year mark, the household will:

- Either have to pay the Fair Market Rent (FMR) or the amount of the monthly subsidy (operating and capital fund) for their unit, or
- Be terminated from the public housing program after six months.

If a previously over-income household has a lower income at an annual or interim reexamination, the household:

- Is no longer subject to the over-income provisions and
- Has a two-year grace period if the household's income again exceeds the over-income limit.

Annual Report

The proposed rule follows HOTMA by requiring PHAs to submit an annual report to HUD indicating the number of over-income public housing households and the number of households on the public housing waiting list. The report must be available to the public.

Section 104 Provisions

Section 104 of HOTMA establishes limits on the amount and type of assets a household can have and still be assisted by public housing or the Section 8 programs.

HUD proposes that a household be ineligible for public housing, voucher, or project-based rental assistance if:

a) Net household assets are greater than $100,000, adjusted each year for inflation, or
b) The household owns (and has the legal authority to sell) “real property” that is “suitable for occupancy” by the household.
    - There are four exceptions to (b), including if anyone in the household is a domestic violence survivor.
    - A property will be considered “suitable for occupancy” unless:
        - It does not meet the disability-related needs of all household members,
        - It is not big enough for the household,
        - Its location provides a hardship for the household, or
        - Its physical condition makes it unsafe to live in.

The proposed rule follows HOTMA by allowing a PHA or owner to determine the net assets of a household based on a certification by the household that:

- Their net family assets are less than $50,000, after annual adjustment for inflation, or
- They do not have an ownership interest in real property.

The proposed rule revises the current rule’s definition of “net family assets” in order to align with HOTMA by excluding from the definition of “net family assets” a number of items, including:

- Family Self-Sufficiency Accounts
- The value of any accounts specifically dedicated to retirement
- The value of necessary “personal property”
- The value of personal property with a total valued of $50,000 or less
- ABLE accounts (tax-advantaged saving accounts for people with disabilities)

?? HUD requests suggestions for what items could be considered “necessary”.?

The proposed rule follows HOTMA by allowing a PHA or owner to choose to not enforce asset limit.

- Alternatively, PHAs and owners may establish exceptions
- Exceptions may provide different treatment based on age, disability, income, ability of a household to find suitable alternative housing, and whether supportive services are being provided.

For PHAs and owners that do enforce the asset limit, they may delay eviction or termination for up to six months.

Other HUD Programs

The preamble to the proposed rule notes that some of HUD's other programs like the national Housing Trust Fund (HTF) and HOME require the use of the basic HUD "part 5" regulation definition of annual income and adjusted income for the purposes of determining income eligibility and/or tenant payments. The proposed rule would make a few changes to the HTF, HOME, and HOPWA (Housing Opportunities for Persons with AIDS) programs to better align regulations regarding income and assets among HUD programs,

The proposed rule would change the HTF and HOME rules by incorporating the proposed definition of annual income for the other programs, namely:

- Amounts received from all sources by each household member who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by on or behalf of each dependent who is less than 18 years of age.
- It would also include all of the items in the HOTMA definition that will not be counted as income, for example income earned through employment by children under the age of 18.
- The proposed rule would also add to the HTF and HOME income provisions, all of the HOTMA provisions regarding required deductions, such as the $480 deduction for each dependent and the $525 deduction for any elderly or disabled family.

Read the Proposed Regulation

An easy-to-read version of the proposed rule is at: https://bit.ly/2lXFvJ6

The formal *Federal Register* version of the proposed rule is at: https://bit.ly/2lWuV59