



NATIONAL LOW INCOME HOUSING COALITION

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Founded in 1974 by
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November 13, 2019

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6057-P-01: Housing Opportunity Through Modernization
Act of 2016:
Implementation of Sections 102, 103, and 104

Submitted via regulations.gov

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

NLIHC signed on to the comment letter submitted by the National Housing Law Project/Housing Justice Network and supports the comments submitted by the Consortium for Citizens with Disabilities. NLIHC's letter highlights a number of the comments in those other letters.

Income Reexaminations

RAD Consideration

HUD asks what administrative burdens or other considerations, particularly related to RAD, it should be aware of.

NLIHC has followed RAD implementation since its inception and wishes it to succeed for residents.

Public housing residents occupying a unit when a CHAP is issued for a property proposed for RAD conversion have a right to return, regardless of their income. However, some residents whose public housing RAD conversion entailed use of the Low Income Housing Tax Credit (LIHTC) have been required to go through the LIHTC income determination process. This is an obstacle to achieving the streamlining goal Congress intended through HOTMA, burdening residents as well as PHAs with an extra administrative exercise.

Because the Internal Revenue Service is the federal agency administering the LIHTC program, NLIHC urges HUD to work with the IRS to adjust the LIHTC income and rent rules for RAD tenants both at return and as they continue to live in the converted property.

Income Reexaminations When Income Decreases

When a household's income decreases by 10% or more, HOTMA requires a PHA or Owner to carry out an income review if a household requests. HOTMA also allows a PHA or Owner to establish a threshold lower than 10%. For households with income far below 30% AMI, a 10% threshold is too high; 10% of a meager income can cause extreme hardship, affecting a household's ability to meet other critical daily needs.

NLIHC suggests lowering the threshold to 5% for households with income less than 20% AMI, roughly the average SSI income level.

Income Reexaminations When Income Increases

When a household's income increases by 10% or more, HOTMA requires a PHA or Owner to carry out an income review. However, this 10% threshold can be especially burdensome for households with income far below 30% AMI. For example, a rent increase due to a 10% increase in income for a household with income at 15% AMI can be a much greater financial hardship than for a household with income at 60% AMI. HOTMA allows HUD to establish a different threshold.

HUD's Multifamily programs do not require an interim income reexamination until a household's income increases more than \$200 per month (Handbook 4350.3 REV-1, Chapter 7, Section 2, Subsection 7-10).

Therefore, NLIHC urges HUD to use the existing Multifamily threshold of an increased income of \$200 per month, adjusted annually for inflation. Such a threshold will not only ease the rent increase pinch for extremely low-income households, it will lessen the frequency and details associated with a full rent recalculation.

Reasonable Period of Time for Conducting a Requested Income Reexamination

HUD asks what is a “reasonable” period of time for a PHA or Owner to conduct an interim reexamination when a household requests one due to a decrease in income?

HUD already has a reasonable guideline in the Multifamily program that should be adopted for all of the programs under HOTMA. Handbook 4350.3 REV-1, Chapter 7, Subsection 7-11 simply defines a reasonable period of time as “only the amount of time needed to verify the information provided by the tenant. Generally, this should not exceed four weeks.”

Should HUD Require EIV to Be Used for Interim Income Reexaminations?

Handbook 4350.3 REV-1, Chapter 7, Subsection 7-12 notes that due to reporting delays, EIV does not always have the most up-to-date information needed to verify employment or income for an interim reexamination.

Therefore, NLIHC recommends that PHAs or Owners only use EIV for initial income determinations and annual income reexaminations.

Calculating Income

Using Other Federal Programs as Safe Harbors

HUD proposes using TANF, SNAP, EITC, and Medicaid as safe harbor substitutes for determining income in order to streamline the process for residents, PHAs, and Owners.

NLIHC accepts SNAP and Medicaid as suitable safe harbors.

SSI and SSDI warrant study to determine their potential use as safe harbors.

However, NLIHC opposes EITC as a safe harbor because it would unduly infringe on household privacy, given other personal information contained in a tax return.

NLIHC also doubts that TANF ought to be used as a safe harbor because of uncertainties regarding the formula used to determine income in this program.

Income Exclusions

NLIHC reinforces the comments offered by the Consortium for Citizens with Disabilities (CCD) regarding exclusions from income.

HUD should not include sporadic, nonrecurring gifts as income. As CCD points out, the statute includes as income, “recurring” gifts, thereby excluding “sporadic” gifts that are not likely to be substantial. Requiring residents to report and PHAs or Owners to monitor receipt of sporadic gifts would be an administrative burden contrary to the goal of streamlining.

HUD should exclude EITC refunds; including such refunds runs counter to the purpose of the EITC tax provisions.

Hardship Exemptions

HUD’s proposed rule regarding the medical expense deduction would limit the hardship reduced deduction amount of 6.5% until “the family’s next regular examination or such time that the responsible entity determines the family can now pay the rent without the hardship exemption, whichever comes first.”

NLIHC strongly recommends that there be no time limit. The hardship provision should remain in effect until such time as a household can pay the rent without the hardship exemption. HOTMA does not require such a short, time-limited period.

Necessary Personal Assets

NLIHC reiterates a comment made by CCD regarding personal property valued at more than \$50,000.

HUD should not include as assets, disability-related durable medical equipment (such as electronic wheelchairs, lifts, and disability-adapted vehicles).

NLIHC urges HUD to give serious consideration to our comments in order protect residents from hardship and fully benefit from the streamlining intent of HOTMA.

If there are any questions about these comments, please contact Ed Gramlich at ed@nlihc.org or 202.662.1530 x 314.

Sincerely,



Diane Yentel
President and CEO