NAHRO Presents

HOTMA Updates

April 19, 2023

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TODAY'S PRESENTERS

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NAHRO

AGENDA

1. Background
2. Section 102: Income Reviews
3. Section 103: Income Limits in Public Housing
4. Section 104: Asset Limits
5. CPD Program Changes

Background

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT"

- The Housing Opportunity Through Modernization Act (HOTMA) of 2016
  - Signed into law by President Obama in July 2016
- HUD responsible for implementation of the law
- Includes HUD's Offices of Community Planning and Development (CPD) and Public and Indian Housing (PIH) among other offices

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT"

- Self-Implementing Provisions (*Federal Register* Notice)
  - Reasonable Accommodation Standards (up to 120% of payment standard)
  - Establishment of FMR – Posted on website, instead of Federal Register, reduction of payment standard not required
  - Family Unification Program (FUP) for Children Aging Out of Foster Care (expands eligibility and increases length)
  - Preference for U.S. Citizens or Nationals in Guam
  - Exception to PHA Resident Board Member Requirement

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT"

- Limited Operating Fund and Capital Fund Fungibility
  - Notice PIH 2018-03 (HA)
  - PHAs can use 20 percent of Operating Funds for Capital Fund Activities
  - Separate Annual Statement/Budget must be created for each Operating subsidy grant where the PHA uses Operating subsidy for capital activities
  - Funds are considered "expanded uses" and must be expended within seven years

“HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT”

- Certain Voucher Provisions and Technical Corrections Notices (*Federal Register* Notices) [Additional guidance provides additional detail]
  - Inspections of Dwelling Units – Notice PIH 2017-20 (HA)
    - Defines non-life-threatening and life-threatening conditions
    - Occupancy prior to meeting HQS and alternative inspections for NLT conditions
  - Units Owned by a PHA – Notice PIH 2017-21 (HA)
    - Defines how HUD determines if an agency owns a unit

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT"

- Project-Owned Voucher – Notice PIH 2017-21 (HA)
  - Changes PBV cap to 20% of unit allocation instead of 20% of funding allocation
  - Increases general cap by 10% for certain populations (homeless, veterans, supportive housing for persons with disabilities or the elderly, areas where vouchers are difficult to use)
  - Changes project mixing cap to greater of 25 units in a project or 25% of units in a project
  - Initial contract terms of up to 20 years – may extend contract for additional 20 years
  - Attaching PBVs to structures the PHA has an ownership interest in without following a competitive process

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT OF 2016: HCV AND PBV IMPLEMENTATION; ADDITIONAL STREAMLINING CHANGES"

- "Housing Opportunity Through Modernization Act of 2016 – Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes"
  - Changes regulatory code to implement Housing Opportunity Through Modernization Act of 2016 (HOTMA) provisions that were previously implemented via notice;
  - Proposes to implement additional provisions of HOTMA that have not yet been implemented;
  - Proposes several regulatory changes unrelated to HOTMA; and
  - Proposes removing "obsolete regulatory provisions."

“HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT OF 2016: HCV AND PBV IMPLEMENTATION; ADDITIONAL STREAMLINING CHANGES”

- Released October 8, 2020
- Proposed rule implements several HOTMA-related topics and non-HOTMA-related topics:
  - Enforcement of Housing Quality Standards
  - Manufactured home space rental
  - Entering into a PBV HAP contract without an agreement to enter a HAP contract
  - Providing rent adjustments using an operating cost adjustment factor (OCAF)
  - Owner-maintained site-based waiting lists
  - Environmental requirements for existing housing

“HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT OF 2016: HCV AND PBV IMPLEMENTATION; ADDITIONAL STREAMLINING CHANGES”

- Proposed rule would codify in regulation HOTMA provisions that were already implemented by notice

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT: IMPLEMENTATION OF SECTIONS 102, 103, AND 104 PROPOSED RULE"

- In September 2019, HUD released a proposed rule on implementing certain provisions of HOTMA
- The proposed rule focused specifically on 3 sections of HOTMA
  - Section 102 – Income Reviews
  - Section 103 – Over-Income Tenants of Public Housing
  - Section 104 – Asset Limitations

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT: IMPLEMENTATION OF SECTIONS 102, 103, AND 104 PROPOSED RULE"

- The proposed rule also included certain provisions related to program changes in HUD's Office of Community Planning and Development (CPD)
  - Housing Opportunities for Persons with AIDS (HOPWA)
  - The HOME Investment Partnerships Program (HOME)
  - Housing Trust Fund (HTF)

"HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT: IMPLEMENTATION OF SECTIONS 102, 103, AND 104 PROPOSED RULE"

- NAHRO submitted comments on the proposed rule in November 2019
- HUD publicly previewed the final rule on January 31, 2023

“HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT”

- HUD Published final rule implementing Sections 102, 103, and 104 of HOTMA
- Overincome Households in Public Housing – Section 103
- Income Reviews – Section 102
- Asset Limits – Section 104
- Most provisions effective **Jan. 1, 2024** (except 103)

SECTION 102: INCOME REVIEWS

INCOME REEXAMINATIONS

- Changes how PHAs are required to review incomes
  - Families may request interim income reviews when it is estimated that a change in income or a deduction will result in a decrease of 10 percent or more in annual adjusted income
  - PHAs may still process a family request for a smaller decrease, if the PHA has established a more generous standard (a decrease of less than 10 percent of annual adjusted income
    - PHAs may not establish a less generous standard (a decrease in more than 10 percent of annual adjusted income)

INCOME REEXAMINATIONS

- Changes how PHAs are required to review incomes
  - PHAs **must** conduct an interim review when the family's adjusted income is estimated to have increased by 10 percent or more **(excludes earned income)**
  - Reasonable reexamination processing time should be based on the time it takes to verify information, but generally should not be longer than 30 days

INCOME REEXAMINATIONS

- PHAs cannot consider earned income when estimating whether annual adjusted income has increased
  - Unless increases correspond to a reexam that occurred during the cert. period
  - Earned income: wages, tips, salaries, other employee compensation, and net income from self-employment
  - Earned income does not include any pension or annuity, transfer payment, or any cash and in-kind payment
    - Transfer payments mean payments made or income received in which no goods or services are being paid for, such as welfare, social security, and government subsidies for certain benefits

- Not required if change occurs 3 months before annual review

INCOME REEXAMINATIONS

- The Final Rule adds language regarding the effective date of any changes in rent due to an interim reexamination
  - If the tenant complies with interim reporting requirements, the tenant is provided 30 days advance notice of rent increase
    - Rent will be effective the first of the month commencing after the end of the 30-day period
  - If the tenant complies and the rent decreases, the change in rent is effective the first day of the month after the interim certification

INCOME REEXAMINATIONS

- If the tenant does not comply with interim reporting requirements and the PHA has failed to report changes as required:
  - If rent increases – retroactively to the first of the month following when the interim should have occurred
  - If rent decreases – no later than the effective date of the first rent period following the completion of the reexam
    - PHAs have some flexibilities in their policies to change this
- PHAs are required to clearly articulate and communicate any impact caused by retroactive payments

CALCULATION OF FAMILY INCOME

Income Reviews

- Current year income at initial eligibility
- Current year at interim reexamination
- Prior year income after initial eligibility
  - PHAs may adjust income as needed
    - Either due to reexam, or changes in income not accounted for in reexam
- PHAs can use TANF, Medicaid, SNAP, LIHTC, WIC, SSI, Earned Income Tax Credit data
  - Possibly additional data sources through a *Federal Register* Notice
  - Families may dispute the determination and agency would need to provide normal income review

ANNUALIZATION OF INCOME

- Removes a provision on the annualization of income
  - Previously PHAs could annualize anticipated income for a shorter period of time than a year to determine income, subject to a redetermination at the end of the shortened period
  - As HOTMA uses prior year income to determine annual adjusted income, this provision is no longer required

DE MINIMIS ERRORS

- PHAs will remain in compliance with income review procedures and calculations if errors made by the agency are within $30 or less per month
  - $360 in annual adjusted income per family
  - Final rule changes proposed rule threshold of 5%
  - Allows PHAs to determine de minimis errors on a family-by-family basis more easily
  - Makes errors easier to calculate
- Families not held liable for underpayment
- PHA must reimburse families for overpayment

EARNED INCOME DISALLOWANCE

- Removes the Earned Income Disallowance (EID)
  - Earned Income Disallowance prohibited rent increases of certain public housing residents or recipients of Section 8 assistance as a result of increased income due to employment during a12-month period beginning on the date which the employment started
  - HOTMA removes EID
  - The rule would allow families who currently receive the EID benefit as of the effective date of a final rule to continue receiving the benefits until the allowed time frame expires
    - Within 2 year of a final rule, no families would receive EID

DEFINITION OF "ANNUAL INCOME"

- Provides a broader definition of income from HOTMA
  - All amounts received from all sources that are earned by each member of the family who is 18 years or older or is the head of household or spouse of the head of households, plus unearned income by or on behalf of each dependent who is less than 18 years old
  - When the net family assets exceed $50,000 and the actual income on assets cannot be calculated, imputed return on assets over $50,000 based on the current passbook savings rate
    - Assets adjusted annually for inflation

INCOME EXCLUSIONS

- Updates the list of income exclusions to mirror HOTMA and eliminates certain non-statutory discretionary exclusions.
  - Removes:
    - Inheritances
    - Capital gains
      - Realized capital gains count as annual income
      - Unrealized capital gains count toward net family assets
    - Gifts

INCOME EXCLUSIONS

- All other exclusions remain
  - All other exclusions continue to remain
    - HUD has revised some of the language associated with existing exclusions for clarity
    - Final rule includes nonrecurring income and gifts, which proposed rule removed
      - Adds clarity to what **does not** count as nonrecurring income: day laborer, independent contractor, seasonal work

INCOME EXCLUSIONS

- Adds certain new exclusions
  - Income from foster adults
  - Tribal kinship/guardianship care payments
  - Loan payments (student loans, car loans, etc)
  - Payments received by Native American individuals relating to claims of mismanagement of assets held by the U.S. government
  - Annual income replacement "gap" payments that offset rent and utility costs to families that are displaced from one federally subsidized unit to another

INCOME EXCLUSIONS

- Adds certain new exclusions
  - Any income received from a retirement account recognized by the IRS
    - Except for periodic payments before the age of 59 ½
  - Grant-in-aid or scholarship money used by full time students for the cost of tuition, books, room and board, supplies and other fees
    - Does not include "excess" student loans
- Incorporates other exclusions existing prior to HOTMA in different regulations and statutes

ADJUSTED INCOME

Deductions

- $525 for elderly and disabled families, adjusted annually for inflation
- $480 deduction for families per dependent, adjusted annually for inflation
- Reasonable childcare expenses
- These two expenses can be combined and the amount that exceeds 10 percent is deducted
  - Unreimbursed medical and health expenses for elderly/disabled households for amounts over 10 percent of annual income
  - Unreimbursed attended care or auxiliary apparatuses needed by disabled families for purposes of employment for amounts over 10 percent of annual income
- Reasonable child-care expenses needed to enable a family member to be employed or further education

ADJUSTED INCOME

- Provides hardships for families who are affected due to the increased threshold of health and medical/attendant care and auxiliary apparatus expense deductions
  - Family must be made aware of changes to health and medical expense deductions before implementation
  - Proposed rule would require PHA to phase in increase to 10 percent
    - Year 1 – deduct expenses exceeding 5 percent
    - Year 2 – deduct expenses exceeding 7.5 percent
    - Year 3 – deduct expenses exceeding 10 percent

ADJUSTED INCOME

- A family may also qualify for hardship exemptions for health and medical care expenses/attendant care and auxiliary apparatus expenses if family's costs increased or financial hardship results from changed circumstances
  - Eligible expenses in excess of 5 percent deducted for 90-days
  - May extend exemptions for additional 90-day periods at PHA discretion
- Families that received relief via phased-in approach may request hardship under this section

ADJUSTED INCOME

- Provides hardships for families to maintain childcare deduction if the family no longer has a member that is employed or furthering their education
  - Family would have to demonstrate they are unable to pay their rent because of the loss of the child care expense deduction
  - Hardship provision would expire after 90-days
    - PHA could extend for additional 90-day periods at its discretion

ADJUSTED INCOME

- PHAs can continue to adopt additional deductions from annual income
  - Those deductions cannot materially increase Federal expenditures
  - PHAs that adopt permissive deductions would not be eligible to receive any program funding to cover the increased cost to the impacted program
  - The PHA would have to identify the additional cost of the deduction to HUD and cover the cost
  - Only PHAs, not owners that happen to be PHAs, may adopt additional deductions

SECTION 103: INCOME LIMITS IN PUBLIC HOUSING

OVER-INCOME FAMILIES

- Implements HOTMA's provisions on over-income families in public housing
  - Income limitation on public housing tenancies for families that earn 120 percent of the area median income (AMI) for twenty-four consecutive months
  - HOTMA provides two options for PHAs for over-income families

OVER-INCOME FAMILIES

- PIH Notice 2023-03 (Published March 13, 2023)
  - Provides guidance on how to implement the new income limit
- Over-income provisions became effective **March 16, 2023**
- PHAs must update their ACOP to implement changes and must update the over-income limits in their ACOP no later than **June 14, 2023**

STATUTORY DEFINITION OF OVER-INCOME FAMILIES

If a tenant has an income of 120 percent of AMI for 2 consecutive years

↓

Charge either FMR or monthly subsidy, whichever is greater

-or-

Terminate tenancy within 6 months

Secretary provided discretion to establish different income limitations

HUD'S CALCULATION OF OVER-INCOME FAMILIES

- Uses calculation of very low-income (VLI) to determine income limits
  - VLIs are 50% of area median family income
  - Includes adjustments:
    - High housing costs
    - Low housing costs
    - State and non-metro median family income adjustments
    - Ceilings and floors for changes

HUD'S DEFINITION OF OVER-INCOME FAMILIES

If a tenant has an income of 240 percent of the VLI threshold for 2 consecutive years

↓

Charge either FMR or monthly subsidy, whichever is greater

-or-

Terminate tenancy within 6 months

CALCULATING MONTHLY SUBSIDY

- Monthly Subsidy provided for the unit:
  - Capital Fund: per unit Capital Fund assistance provided to the PHA for the development in which the family resides for the most recent year Capital Funds were allocated
  - Operating Fund: per unit Operating Funds provided to the public housing development in which the resident resides for the most recent year Operating Funds were allocated
- HUD will publish such funding amounts no later than 12/31 each year in Per Unit Subsidy Report (for 2023, the report will be published "soon.")

DETERMINATION OF OVER-INCOME LIMIT

- Over-income (OI) Limit must be compared to the family's annual income (**not adjusted income**)
- PHAs must update income limits no later than 60 days each year after HUD publishes new income limits

OVER-INCOME FAMILIES – FIRST NOTICE

- PHA must document over-income households if the PHA discovers the household is over-income at annual or interim reexamination
- PHA must provide notice to household not more than 30 days after this income determination
- Notice must state:
  - Household has exceeded OI limit
  - Continuing to exceed OI limit for 24 consecutive months will result in the PHA following its OI policy

OVER-INCOME FAMILIES – SECOND NOTICE

- PHA must conduct second examination 12 months after interim reexamination if over-income (or 12 months after annual reexam)
- PHA must notify household within 30 days if the household is over-income one year after the initial over-income finding by the PHA
- Must note
  - Household's income has exceed the OI threshold for 12 consecutive months; and
  - Continuing to exceed the OI threshold for the next 12 consecutive months will result in the family paying the higher alternative rent (with rent estimate) or termination of tenancy depending on the PHA's ACOP.

OVER-INCOME FAMILIES – THIRD NOTICE

- 12 months after second consecutive over-income finding, if still over-income, then PHA must provide written notice no later than 30 days after the PHA's income examination
- Notice must state
  - How long the household has exceeded OI limit for (12 or 24 consecutive months); and
  - The PHA will either terminate the family's tenancy or charge the family the alternative non-public housing rent

OVER-INCOME FAMILIES - DOCUMENTATION

- Over-income families that remain in public housing **must sign a new lease with the PHA**
  - Provisions that must be included in the lease are in 24 CFR 960.509
- Families not permitted to stay must have their tenancy terminated no later than six months after the second over-income finding
- Before termination, family will still be able to pay income-based, flat rent, or prorated rent for mixed families

COMPLIANCE

- PHAs must now report:
  - Total number of OI families residing in PH (through IMS/PIC and soon HIP); and
  - Total number of families on waiting lists for admission to PH (**reporting requirement begins Jan. 1, 2024**) (through Operating Fund Web Portal)
  - Submissions will be due March 31st of each year and should be current as of Dec. 31 of the previous year
  - HUD will publish a report with both data points every April 30th

SECTION 104: ASSET LIMITS

ASSETS RESTRICTIONS

- Families with net assets over $100,000 would be barred from public housing or Section 8 assistance
  - Adjusted each year for inflation

REAL PROPERTY

- Families would be ineligible for assistance if they have real property suitable for occupancy that the family has ownership interest, legal right to reside in, and authority to sell
  - If family has property, they must demonstrate that they do not have a present ownership interest in, legal right to reside in, or the legal authority to sell the property
    - Ability to sell is based on the State and local laws of the property's jurisdiction

REAL PROPERTY

- Real property does not include property jointly owned by a member of the family and another individual who would not reside with the family but lives in the jointly owned property
  - Can also apply to instances where a family members owns a fraction of the property among others

REAL PROPERTY

- Final rule provides that a property is not suitable for occupancy if the property:
  - Does not meet the disability-related needs of the family
    - Disability-need for additional bathrooms, physical accessibility requirements, etc.
  - Is not sufficient for the size of the family
  - Provides a geographic hardship for the family
    - e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA
  - That it is not safe to reside in because of its physical condition

REAL PROPERTY

- Final rule includes certain exclusion:
  - A manufactured home for which the family is receiving Section 8 assistance
  - Families that receive homeownership assistance from the PHA
  - Persons who are victims of domestic violence
    - As defined by VAWA
  - Families that are offering the property for sale

REAL PROPERTY

- If the family owns property that cannot be legally occupied as a residence, such as a commercial establishment (e.g., convenience store or retail establishment):
  - Considered unsuitable for occupancy
  - However – the real property's value under HOTMA is the net cash value of the real property after deducting reasonable costs that would be incurred in disposing of the family's real property:
    - Repayment of mortgage debt or other monetary liens on the real property
    - This amount would be considered annual income and in determining if the family has assets over $100,000

SELF-CERTIFICATION OF ASSETS

- Self-certification for assets less than $50,000 (adjusted for inflation)
- Families can also self-certify that they do not have any present ownership interest in any real property

DISCRETION ON ENFORCING THE ASSET LIMITATION

- PHAs may adopt plans to either not enforce limitations on eligibility or establish exceptions
  - PHAs can apply exceptions based on family type and different factors, including age, disability, provision of supportive services, ability of family to find suitable alternative housing, etc
  - Exceptions cannot violate fair housing statutes or regulations
- PHAs who enforce asset limitations may delay the eviction or termination of families that do not meet the restrictions for six months

NET FAMILY ASSETS

- Revises the definition of "net family assets" to include certain exclusions

NET FAMILY ASSETS

- Exemptions:
  - Property receiving assistance under the homeownership option of the assistance for rental of manufactured housing provided under Section 8
  - Victims of domestic violence
  - Persons selling their house
  - Inaccessible trust funds
  - Retirement accounts
  - Real property that has no legal authority to be sold
  - Educational savings accounts
  - Amounts received from civil action of negligence, malpractice, or other breach of duty that results in a disability

NET FAMILY ASSETS

- Net family assets do not include the value of personal property, except for items of "significant value"
  - Final rule considers items over $50,000 (excluding "significant items") to be those of "significant value"
  - Examples of "significant items" include: a car the family relies on for transportation, medical equipment, etc.

AUTHORIZATION FOR FINANCIAL DISCLOSURES

- Amends regulations to allow PHAs to obtain financial records from financial institutions and states that a consent form must contain a statement that the authorization to release the information remain effective until the earliest of
  - The rendering of a final adverse decision for an assistance applicant;
  - The cessation of a participant's eligibility for assistance from HUD and the PHA; or
  - The express written revocation by the assistance applicant or recipient of the authorization.

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