

# HOTMA

Housing Opportunity Through Modernization Act of 2016

## Sections 102 & 104 Income & Assets: Part 2



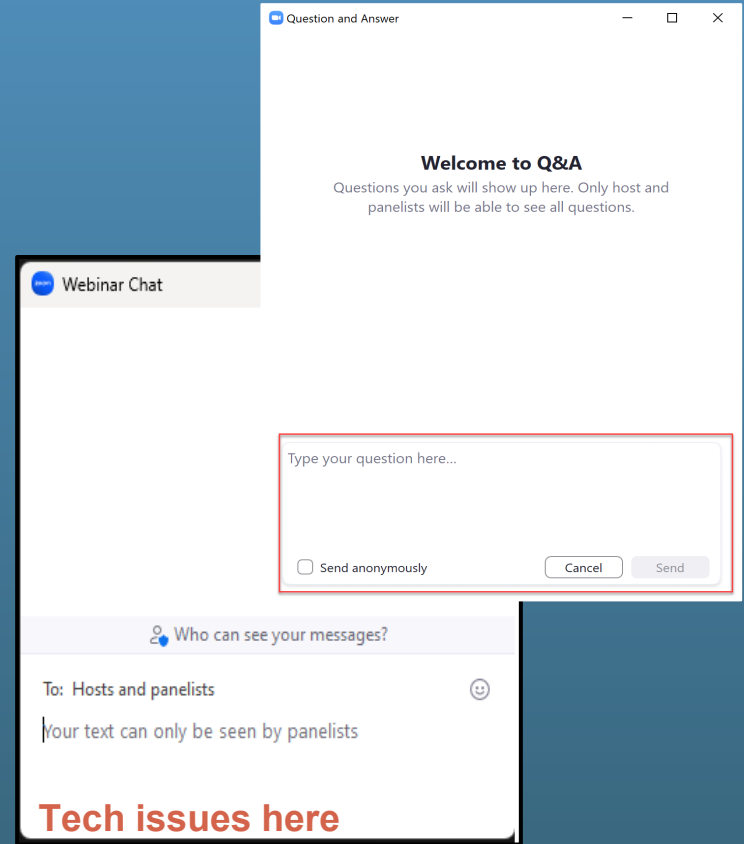
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# Webinar Series: HOTMA Implementation for Public Housing and HCV Programs

Section 103: Over-Income Tenants: March 2, 2023

Section 102 & 104:  
Income and Assets Part 1: May 9<sup>th</sup>

**Section 102 & 104:  
Income and Assets Part 2: May 16<sup>th</sup>**

# Agenda

- Net Family Assets Inclusions and Exclusions
- Asset Limitation
- Calculation of Income
- Authorization to Release Information
- Safe Harbor Income Verifications
- De Minimis Errors
- Interim Reexaminations



# Key Points

- Definition of “assets” has changed, now defined as all family assets with certain exclusions.
- HOTMA introduces a new asset limitation. Families cannot receive benefits if they have over \$100,000 in total assets or ownership in real property where the family could live.
- Self-certification of assets under \$50,000.
- New rules govern how income is calculated.
- PHAs may use other means-tested federal public assistance programs' income determinations.
- The HUD-9886 form (new) will only need to be signed one time.
- PHAs are not considered out of compliance when they make minor “de minimis” errors.
- HOTMA places restrictions on when an interim reexamination may be completed.



# NET FAMILY ASSETS

24 CFR 5.603(b)(1)

# Net Family Assets Definition

“Net family assets” includes the cash value of all assets, except those specifically excluded. HOTMA adds new asset exclusions.

Reasonable costs in disposing some assets may be deducted.

See the resource [Asset Resource Sheet](#) for the full list of exclusions.



# Net Family Assets Exclusions

- The value of necessary items of personal property
  - » For example, medical devices, cars used for commuting
  - » Determining what is a “necessary item” for personal property is a highly fact-specific determination, and therefore creating a list in the regulation would be inappropriate.
  - » Additional guidance forthcoming from HUD.
- The value of non-necessary items of personal property are excluded when they have a combined total value that does not exceed \$50,000 (as adjusted).
  - » 5.618 (b)(1) allows families to self-certify net family assets below \$50,000.



# Net Family Assets Exclusions

- The value of real property that the family does not have the effective legal authority to sell
- Interest in Indian trust lands
- Any account under an IRS-recognized retirement plan
  - » including IRAs, employer retirement plans, and retirement plans for self-employed individuals
- Certain education savings accounts
  - » Coverdell, 529, ABLE, or “baby bond” accounts
- Family Self-Sufficiency Accounts

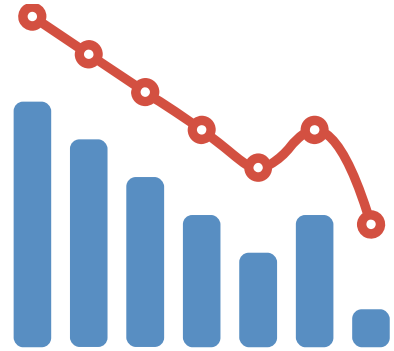
# Net Family Assets Exclusions

- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member, for an incident resulting in a disability
- A trust fund that is not revocable by, or under the control of, any member of the family or household, is not a family asset.



# Negative Equity

- Negative equity alone would not justify excluding the property or other investments from family assets.
- Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments.



# Net Family Assets: Sales for Less than Fair Market Value

**Include** the value *in excess of what was received in compensation* for business or family assets disposed of for less than fair market value during the two years preceding the application or reexamination.

- Including a disposition in trust, but not foreclosure or bankruptcy sales
- For disposition through a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the family member receives consideration not measurable in dollar terms.



# Net Family Assets: Self-Certification

- For net family assets under \$50,000 (as adjusted), the PHA may accept self-certification from the family.
  - » Certification must include any expected income from the assets (actual returns).
  - » This amount must be included in the family's income.
  - » No further documentation is required by the PHA for the net family asset restriction.
- For property ownership, the PHA may accept self-certification that the “family does not have any present ownership interest in any real property.”
  - » The statutory self-certification only asks about ownership, and does not address the other elements of the restriction (legal right to reside in, effective legal authority to sell).
  - » PHAs can use a form with the statutory self-certification question and follow-up questions related to other elements.

24 CFR 5.618(b)



# ASSET LIMITATIONS

24 CFR 5.618

# Asset Limitation

HOTMA introduces new restrictions on families receiving benefits for public housing or the Housing Choice Voucher program based on the family's assets.

Families cannot receive benefits if they have:

- Over \$100,000 in total net family assets, or
- Ownership in real property where the family could live.

Both limitations have many exceptions.

The asset limitation will be adjusted by CPI-W starting in 2025.



24 CFR 5.618(a)

# Delayed Enforcement of Asset Restriction

The PHA cannot waive the asset requirements but can delay starting eviction/ termination of assistance proceedings for up to 6 months and may allow the family to come into compliance during that time:

- Based on a **written PHA policy**.
- Only for families going through reexamination (no flexibility for new applicants).
- Based on eligibility criteria for any reason *without violating fair housing laws*.
  - » **Examples:** Exceptions based on age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided.

24 CFR 5.618(c)



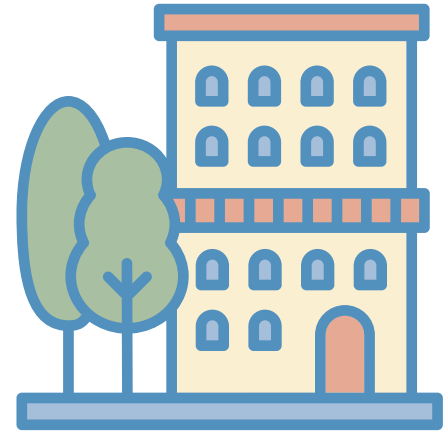
# Restriction Based on Ownership of Real Property

A family cannot receive benefits if they own real property that is suitable for occupancy by the family as a residence and for which they have:

- A present ownership interest in
- A legal right to reside in, and
- The effective legal authority to sell, based on local laws where the property is located.

There are exceptions!

The PHA may accept self-certification that the “family does not have any present ownership interest in any real property.



24 CFR 5.618(a)(1)(ii)

# Excepted Real Property

The following exceptions apply:

- A family that receives assistance for the property from the Housing Choice Voucher Program.
  - » Manufactured home
  - » Homeownership Option
- Property jointly owned with someone else, and occupied by the other owner who is not a member of the household receiving benefits.
- A victim of domestic violence, dating violence, sexual assault, or stalking.
- A family that is offering the property for sale.

# Suitable for Occupancy

A family that owns a property may show it is not “suitable for occupancy” if it:

- Does not meet the disability-related needs for all members of the family.
  - » **Examples:** Physical needs, proximity to transit, need for additional bedrooms or space, etc.
- Is not sufficient for the size of the family.
- Is located so as to be a hardship for the family.
  - » **Example:** The location would be a hardship for the family’s commute to work or school
- Is unsafe because of physical condition.
  - » Unless issues can be “easily remedied”
- Is not a property that a family may reside in per local or state laws.
  - » **Example:** A storefront zoned for commercial use only

# Requirements for Documentation of Domestic Violence

If family declares a property and asks for an exemption based on status VAWA protections:

- The PHA must accept self-certification.
- 24 CFR 5.2007 applies.
  - » Confidentiality rules
  - » Restrictions on document requests

HUD will update VAWA-related forms:

- » Forms 5380 and 5382



24 CFR 5.618(b)(3)

# Knowledge Check: Property Ownership



A family is going through a reexamination and reveals that one family member recently inherited a house.

Which of the following, if true, could allow the family to continue to receive assistance? (multiple answers possible)

- a. The inheritance is shared with a cousin, who is not in the assisted family, and currently lives in the house.
- b. The house is valued under \$100,000.
- c. The house is in another state, and moving would cause the family to lose their jobs.
- d. The house is ugly and requires some minor repairs.

# Answer: Property Ownership



Answer: **a & c**

- a.** The inheritance is shared with a cousin, who is not in the assisted family, and currently lives in the house.
- c.** The house is in another state, and moving would cause the family to lose their jobs.



# CALCULATION OF INCOME

# Calculation of Family Income

## New Admissions and Interim Reexaminations

- The PHA must estimate the family income for the upcoming 12-month period.

## Annual Reexaminations

The PHA must:

- Determine the family income for the previous 12-months except when using a streamlined income determination.
- Take into account any redetermination from an interim reexamination during that period.
- Make adjustments to reflect current income if there was a change during that period.

24 CFR 5.609 (c)(1)-(c)(2)



# Safe Harbor: Income Determinations from Other Programs

## Use of other programs' determination of income

- PHA may determine a family's pre-deduction income based on income determinations made by other means-tested federal public assistance programs within the previous 12-months:
  - » TANF, Medicaid, SNAP, EITC, LIHTC, WIC, SSI, other programs administered by the HUD Secretary, or where HUD has an MOU, or other federal means-tested benefits announced through a Federal Register notice.
  - » PHAs may identify additional data-sharing opportunities at the state and local level.
- PHAs are allowed, but not required, to use this “safe harbor.”

24 CFR 5.609(c)(3)

# Safe Harbor Verifications

PHA must obtain the determination using the appropriate third-party verification.

- Verification must indicate: family size, composition, and annual income, and be within the appropriate time frame.
- May come from established data sharing agreements, directly from program administrators, or third-party documentation of a determination provided by the family.
- If the PHA cannot obtain the verification or if the family disputes the determination, the PHA must use another method.

24 CFR 5.609(c)(3)(ii)



# AUTHORIZATION FOR RELEASE OF INFORMATION

# Form HUD-9886 – Authorization for the Release of Information

- HUD will issue a new version of Form HUD-9886 to be used for reexaminations effective on or after 1/1/24.
- After implementation, once an applicant or participant has signed and submitted the form, they will not need to sign and submit subsequent consent forms except when:
  - » Anyone 18 years or older becomes a member of the family,
  - » When a member of the family turns 18 years old, or
  - » As required by HUD or the PHA in administrative instructions.

24 CFR 5.230

# Access to Financial Records

PHAs have the discretion to determine whether applicants or recipients are ineligible for benefits if they, or their family members, revoke the authorization to obtain financial records.

Families are still required to provide consent to obtain financial records at the next reexamination.

The PHA may establish an admission and occupancy policy that revocation of consent to access financial records will result in denial or termination of assistance or admission.



24 CFR 5.232(c)



# DE MINIMIS ERRORS

# De Minimis Errors

**De minimis error:** The PHA's determination of family income varies from the correct income determination by no more than \$30 in monthly adjusted income.

- The PHA will not be considered out of compliance due solely to de minimis errors in calculating family income.
- The PHA must correct errors once becoming aware of them.
  - » If the family has been overcharged the PHA must credit or repay a family regardless of the dollar amount.
  - » Families are not required to repay the PHA in instances where they were undercharged for rent or family share.

24 CFR 5.609(c)(4)



# INTERIM REEXAMINATIONS



# Income Reexaminations

A family may request an interim reexamination because of family income or composition changes since the last examination.

The PHA must conduct any interim reexamination within a reasonable time after the family request or when the PHA becomes aware of a change.

**Reasonable Processing** time may vary based on the amount of time it takes to verify information, but generally no more than 30 days after the family reports changes in income to the PHA.



24 CFR 960.257(b) — public housing, and 24 CFR 982.516(c) — HCV

# Threshold for Reexaminations — Decrease in Income

The PHA must conduct a full interim reexamination if the family's adjusted income is estimated to have **decreased by 10% or more** (standard threshold).

HUD or PHAs may establish a lower threshold for interim reexaminations that is more generous to the family (e.g., estimated 5% decrease).

- Taking on the additional administrative burden of processing more requests is at the PHA's discretion.
- The PHA may not establish an alternative threshold that is less generous to the family than the standard.



# Income Reexaminations — Decrease in Income

**Step 1:** Family requests

**Step 2:** Estimate if family's adjusted income has decreased by 10% or more in annual adjusted income due to a change in income or family composition.

**Step 3:**

- If yes, conduct the reexamination
- If the PHA estimates that the adjusted income would decrease by less than 10%, they must:
  - » decline the request, or
  - » process the reexamination if the PHA has established a lower standard for interim reexaminations.



# Threshold for Reexaminations — Increase in Income

PHAs must conduct a full interim reexamination of family income any time the family's adjusted income is estimated to have **increased by 10% or more**.

## **Except:**

- PHAs may not consider **earned income** in estimating whether the adjusted income has increased.
  - » Unless, based on the PHA's written policy, the family received an interim reduction during the same certification period.
- The PHA may choose not to conduct an interim reexamination for an increase in the last three months of a certification period.

# Income Estimation Tool

- PHAs can download a simple Income Estimation Tool (IET) as a PDF from HUD Exchange.
- Use the IET to quickly help families determine if a full interim reexamination is required.

The image shows a PDF form titled "Income Estimation Tool". At the top left is a circular icon with a dollar sign, a calculator, and a document. The title "Income Estimation Tool" is in a large, bold font. Below the title is a sub-header: "Keep this page for your records. Use the estimates below to determine if you may qualify for an interim recertification (reexamination) to adjust your monthly payment." The form contains several input fields and text boxes. The first row has "Recertification date:" followed by a box for month/year and "Family's annual income:" followed by a box. Below this are two paragraphs of text explaining income deductions for health and medical expenses. The second paragraph includes a box for the amount of expenses. Below these paragraphs is a box for "Family's adjusted annual income:". Further down, there are two green boxes, each containing a "\$ 0.00" estimate. At the bottom left, there is a "Note: This is only an estimate." section with a small disclaimer. At the bottom right, there is a blue box labeled "For more information, contact:" with a blank space for contact details.

**Income Estimation Tool**  
Keep this page for your records. Use the estimates below to determine if you may qualify for an interim recertification (reexamination) to adjust your monthly payment.

Recertification date:  (month/year) Family's annual income:

If your family qualifies as an elderly or disabled family and has unreimbursed health, medical, or disability assistance expenses of more than \$ 0.00 a year (10% of your annual income) you may qualify for an income deduction. This deduction may reduce your monthly payment.

If your family qualifies for a hardship exemption and has unreimbursed health, medical, or disability assistance expenses of more than \$ 0.00 a year (5% of your annual income) you may qualify for an income deduction. This deduction may reduce your monthly payment.

Family's adjusted annual income:

If your family's adjusted annual income is anticipated to **increase** by this amount or more, for the 12 months following your recertification you may be required to report the change to your rental office. Your monthly payment may then be adjusted. **\$ 0.00**

If your family's adjusted annual income is anticipated to **decrease** by at least this amount for the 12 months following your annual examination, you may report this to the rental office and an interim recertification may lower your monthly payments. (This amount is based on a calculation of **10%** of your adjusted annual income.) **\$ 0.00**

**Note: This is only an estimate.**  
Call or visit the office if you think your rent may need to be adjusted.

**For more information, contact:**

The content of this document, except where noted, is voluntary or regulatory in nature. HUD does not have the force and effect of law, and HUD cannot be held responsible for any error. This document is intended only to provide clarity to the public regarding existing requirements under the basic program policies.



## Income Estimation Tool

Keep this page for your records. Use the estimates below to determine if you may qualify for an interim recertification (reexamination) to adjust your monthly payment.

Family's **adjusted annual** income:

**\$ 21,300.00**

If your family's adjusted annual income is anticipated to **increase** by this amount or more, for the 12 months following your recertification you may be required to report the change to your rental office. Your monthly payment may then be adjusted. ➔

**\$ 2,130.00**

If your family's adjusted annual income is anticipated to **decrease** by at least this amount for the 12 months following your annual examination, you may report this to the rental office and an interim recertification may lower your monthly payments. (This amount is based on a calculation of **10%** of your adjusted annual income.) ➔

**\$ 2,130.00**

# Applying Interim Rent Decrease — Timely Reporting

Family reports income/composition change in a timely manner according to the PHA's policies, the rent decrease will be effective:

- 1st day of the month after the event

**Example:** Family member loses their job October 12th and reports the income loss immediately. Their rent decrease will be effective on November 1st.



# Applying Interim Rent Decrease — Delayed Reporting

Family does not make a timely report / PHA finds out, the rent decrease will be effective:

- 1st rent period following the completion of the reexamination

Exceptions:

- PHA may have a policy that allows a retroactive decrease to the 1st of the month following the event.
- Decrease may not be retroactive to a date before the last exam.
- Policy may be conditional upon certain circumstances.  
**Example:** could not report due to extenuating circumstances such as natural disaster.



# Applying Interim Rent Increases

## Effective date of rent increase due to an interim reexamination:

- If the family complies with the reporting requirements:
  - » PHA must provide 30 days' notice of any rent increase, and the increase will be effective the first of the month following this period.
- If the family does not comply with the interim reporting requirements:
  - » PHA must initiate an interim reexamination and implement any rent increase retroactive to the first of the month following the date of the action.



# Knowledge Check: Interim Reexamination



A family member reports that they received a raise at work. The PHA estimates that their income has increased by over 10%. The PHA learns that there have not been any changes to family composition or possible deductions. The resident has not had any interim reexaminations that year. The PHA should:

- a. Conduct a full interim reexamination
- b. Explain to the resident that an interim reexamination is not required
- c. Begin the process of notifying the resident that their rent will increase
- d. None of the above

# Answer: Interim Reexamination



**b. Explain to the resident that an interim reexamination is not required.**

**PHAs may not consider earned income in estimating whether the adjusted income has increased except when the family has previously received an interim reduction during the same certification period and the PHA has established such a written policy.**

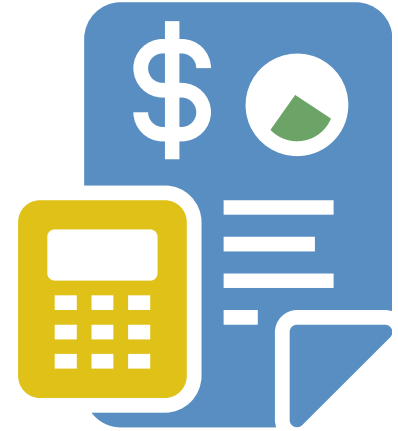
**In this case, there had not been any previous interim reexaminations that year, so the earned income increase would not be considered.**

# Income Reexamination Policies

**Policies:** The PHA must adopt policies consistent with the rule detailing when and under what conditions the family must report a change in family income or composition.

## Retroactive Reexaminations

- Any interim reexamination conducted under this final rule may not be applied retroactively to before the effective date of the final rule.
- HUD plans to issue additional guidance on retroactively applying interim reexaminations.





# Questions and Answers

Questions: [HOTMAquestions@hud.gov](mailto:HOTMAquestions@hud.gov)

# Related Resources

## Resources on the HUD Exchange:

### Section 103: Over-Income Tenants

- [Section 103: Over-Income Limits for Public Housing Families Fact Sheet](#)
- [Sample Over-income Notices](#)
- [Sample Non-Public Housing Over Income Lease](#)



# Related Resources

## Resources on the HUD Exchange:

### Section 102 & 104: Income and Assets Part 1

- [Income and Assets Fact Sheet](#)
- [Income and Exclusions Resource Sheet](#)
- [Student Financial Assistance Resource Sheet](#)
- [Hardship Exemptions Resource Sheet](#)



# Related Resources

## Resources on the HUD Exchange:

### Section 102 & 104 Income and Assets Part 2

- [Interim Income Reexaminations Resource Sheet](#)
- [Assets, Asset Exclusions, and Limitation on Assets Resource Sheet](#)
- [Income Estimation Tool](#)





# End of HOTMA Income and Assets Training Series

Questions: [HOTMAquestions@hud.gov](mailto:HOTMAquestions@hud.gov)