

HOTMA

Housing Opportunity Through Modernization Act of 2016

Implementation of Section 103: Over-Income Limits for Public Housing Families



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Section 103: Over-Income Public Housing Families

Sections 102 & 104:
Income and Assets Part 1

Sections 102 & 104:
Income and Assets Part 2

Agenda

- Overview of over-income (OI) rules
- Related definitions
- Process for calculating if a family is over-income
- Notification process for over-income families
- Termination of tenancy
- Alternative non-public housing rent
- Non-public housing over-income leases
- PHA policies and reporting
- FAQs
- Q and A



Section 103

Section 103 creates new limitations on tenancy and program participation for formerly income-eligible families residing in public housing with incomes over the newly created over-income (OI) limit.

PHAs must implement Section 103 through their written policies and, if implementation of this provision requires a significant amendment, PHAs are required to complete all relevant PHA Plan changes before implementation.

Goal: assist PHAs in implementing the prospective rule changes in a timely and effective manner and provide clarity on exactly how a PHA is to determine that a family is OI.



Regulations

HUD has implemented the OI provisions by creating two new sections in the public housing regulations:

- [24 CFR 960.507](#) — Families exceeding the income limit.
- [24 CFR 960.509](#) — Lease requirements for non-public housing over-income families.



Definitions

Over-income (OI) limit: this limit is set by multiplying the very low-income level for the applicable area by a factor of 2.4 (i.e., 120% of AMI).

Over-income (OI) family: A family whose income exceeds the OI limit.

Non-public housing over-income (NPHOI) family: A family whose income exceeds the over-income limit for 24 consecutive months and is paying the alternative non-public housing rent.



24 CFR 960.102 and 24 CFR 960.507(b)

Income Limitation

Section 103 creates a limitation on tenancy for assisted families in the public housing program who become over-income for 24 consecutive months.

The 'over-income' (OI) limit is determined by multiplying the very-low-income income limit for the correct family size by a factor of 2.4.

Once a family is identified as OI in a recertification, they must recertify annually.

After the 24-month grace period:

- PHA policies may allow OI families to continue to live in a public housing unit paying an alternative rent.
- Otherwise, the PHA must terminate tenancy of the OI family within six months of the final notification.

24 CFR 960.507(b) and 24 CFR 960.507(d)

Non-Public Housing Over Income Families

Families who remain in their unit under a new lease are no longer public housing program participants.

Non-Public Housing Over Income (NPHOI) family members may not:

- Participate in resident councils.
- Participate in programs for low-income or PH participants.
- Receive assistance such as utility allowances from the PHA.

24 CFR 960.509 and 24 CFR 960.507(a)(1)

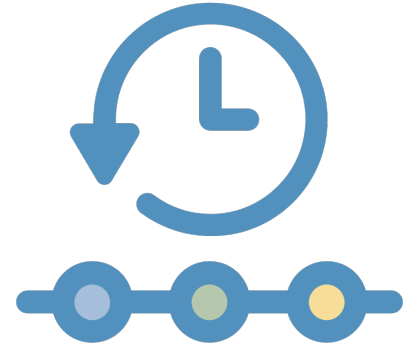
Further, NPHOI families are not required to comply with Community Service and Self-Sufficiency Requirements.

24 CFR 960.600 and 24 CFR 960.601

Process: Calculating If A Family is OI

OI procedures are triggered by annual or interim reexaminations. During the reexamination, if the family is determined to be OI, the OI notification process begins.

See the [Appendix of the Supplemental Guidance for Implementation of Section 103 Notice](#) for directions on determining if a family is OI.



24 CFR 960.507(b)

Calculating the OI Limit

HUD USER OFFICE OF POLICY DEVELOPMENT AND RESEARCH (PD&R) **U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

ABOUT PD&R RESEARCH & PUBLICATIONS DATASETS

INCOME LIMITS

DATASET / INCOME LIMITS Other Datasets ▾

HUD's Office of Policy Development and Research (PD&R) is pleased to announce that Fair Market Rents and Income Limits data are now available via an application programming interface (API). With this API, developers can easily access and customize Fair Market Rents and Income Limits data for use in existing applications or to create new applications. To create an account and get an access token, please visit the API page here: <https://www.huduser.gov/portal/dataset/fmr-api.html>.

The Department of Housing and Urban Development (HUD) sets income limits that determine eligibility for assisted housing programs including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 housing for the elderly, and Section 811 housing for persons with disabilities programs. HUD develops income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county.

[Statement on FY 2023 Income Limits](#)

2022 2021 2020 2019 2018 Earlier Years ▾

Query Tool Documents Data FAQs Puerto Rico FAQs

Effective April 18, 2022.

Access Individual Income Limits Areas

This system provides complete documentation of the development of the FY 2022 Income Limits (ILs) for any area of the country selected by the user. Official ILs, available in pdf and excel formats at this link, may differ slightly from those calculated in the documentation system, and should be used for ALL official purposes.

[Click Here for FY 2022 IL Documentation](#)

<https://www.huduser.gov/portal/datasets/il.html>

Example: Calculating OI Limit



FY 2022 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](#) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

FY 2022 Income Limits Summary

Selecting any of the buttons labeled "Click for More Detail" will display detailed calculation steps for each of the various parameters.

FY 2022 Income Limit Area	Median Family Income Click for More Detail	FY 2022 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area	\$91,100	Very Low (50%) Income Limits (\$) Click for More Detail	41,700	47,650	53,600	59,550	64,350	69,100	73,850	78,650
		Extremely Low Income Limits (\$)* Click for More Detail	25,050	28,600	32,200	35,750	38,650	41,500	44,350	47,200
		Low (80%) Income Limits (\$) Click for More Detail	66,750	76,250	85,800	95,300	102,950	110,550	118,200	125,800

NOTE: Los Angeles County is part of the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**, so all information presented here applies to all of the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**. HUD generally uses the Office of Management and Budget (OMB) area definitions in the calculation of income limit program parameters. However, to ensure that program parameters do not vary significantly due to area definition changes, HUD has used custom geographic definitions for the **Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area**.

Los Angeles area

Family of 4:

$\$59,550 \times 2.4 =$
\$142,920 is the OI limit

Over-Income Families

During the 24 consecutive month grace period, and in the period before tenancy termination or signing an NPHOI lease, the family will continue to be a public housing program participant.

The family will continue to:

- Pay their current rent choice amount — income-based or flat rent, or the prorated rent for mixed families.
- Follow all program requirements including the Community Service Activities and Self-Sufficiency Requirements.
- Maintain all rights of a public housing program participant.

24 CFR 960.507(e)

Process: Falling Below OI limit

If a family falls below the OI limit at any time during the 24 consecutive month grace period:

- The family's status as a public housing program participant remains unchanged.
- The PHA can return to regular income reexamination periods for the family.

If the family becomes OI again, they would be entitled to a new 24 consecutive month grace period.



24 CFR 960.507(c)(4)

Notices

PHAs must give OI families adequate notice of their change in status.

- 3 notices, each following an income reexamination are required, following:
 - » The initial determination of OI status.
 - » The conclusion of the first 12-months of the grace period.
 - » The conclusion of the 24-month grace period.
- All notices must be provided in writing and state the actions that will be taken as required under the PHA's OI Policy in their ACOP and, if applicable, the notice must include the alternative rent amount.

[See the Sample OI Notices](#)

24 CFR 960.507

Accessibility

All notices and communications must be provided in a manner that is effective for people with hearing, visual, and other disabilities.

The following may be provided, free, upon request:

- Accommodations for vision impairments: brailled materials, large print, or audio materials.
- Accommodations for hearing impairments: sign language or other interpretation, auxiliary aids, transcription services, and accessible electronic communications.



Section 504 and ADA requirements (24 CFR § 8.6 and § 8.28; 28 CFR part 35, Subpart E).

Process: Initial Notification

When a PHA determines that a family is OI through an income examination:

- The PHA must notify the family in writing of their OI status within 30 days of the examination.
- The notice must state that the family has exceeded the OI limit and that continuing to exceed this limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy for OI families:
 - » Tenancy termination, or
 - » Alternative rent as an NPHOI family.
- The PHA must afford the family an opportunity for a grievance hearing if they dispute the PHA determination.

24 CFR 960.507(c)(1)

Process: After 12 Months / 2nd Notice

- The PHA must conduct an income examination 12 months after the initial OI determination unless it was already determined that the family's income fell below the OI limit.
- If a family continues to be OI, the PHA must provide a 2nd notice within 30 days of the examination.
- This notice informs the family that they have been OI for 12 consecutive months and, if they continue to be OI for another 12 consecutive months, the policy that will be followed:
 - » Tenancy termination, or
 - » Alternative rent as an NPHOI family.



24 CFR 960.507(c)(2)

Process: After 12 Months / 2nd Notice Provisions

- Notice must include the estimated alternative rent (i.e., based on current data), if the PHA's OI policy permits NPHOI families to remain in a public housing unit paying the alternative rent.
- The PHA must afford the family an opportunity for a grievance hearing if the family disputes the PHA's determination within a reasonable time.



24 CFR 960.507(c)(2)

Process: After 24 Months / 3rd Notice

- The PHA must conduct an income examination 24 months after the initial OI determination, unless the PHA already determined the family's income fell below the OI limit.
- If the PHA determines the family has exceeded the OI limit for 24 consecutive months, then the PHA must provide written notification of this determination within 30 days of the examination.



24 CFR 960.507(c)(3)

Process: After 24 Months / 3rd Notice Provisions

- The Notice must inform the family of the OI determination and explain the PHA's continued occupancy policy for OI families.
 - » Tenancy termination: the period of time before tenancy termination, not to exceed 6 months.
 - » Alternative rent: to remain in a public housing unit, the family must pay the alternative non-public housing rent, the amount of the alternative rent, and the family must receive a new NPHOI lease to be signed within 60 days.
- The Notice must include the right to a grievance hearing.

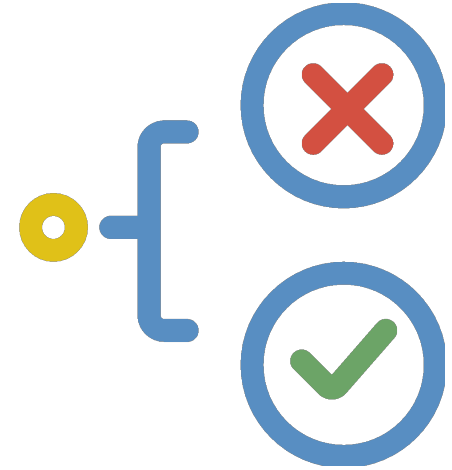


24 CFR 960.507(c)(3)

Termination of Tenancy

If the PHA policy requires termination:

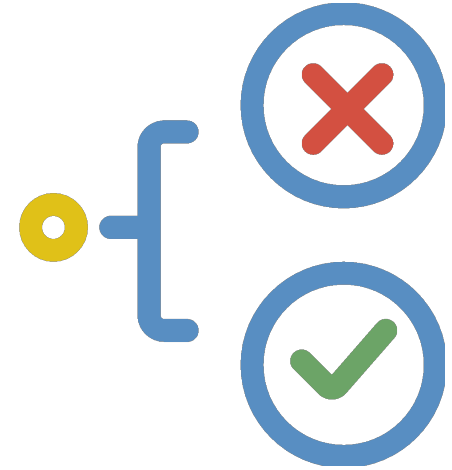
- Termination must occur no more than 6 months after the 3rd notice per the PHA's policy.
- The PHA must give appropriate notice of lease tenancy termination, or notice to vacate, per state and local laws.
- Families are public housing program participants until tenancy is terminated by the PHA.
- The PHA must continue to charge the family their public housing rent during the period prior to termination.



24 CFR 960.507(d)(2)-(e)

Termination of Tenancy continued

- During that time, the family may request an interim reexamination which the PHA must conduct as otherwise required per policies.
- Reexamination can reduce rent burden.
- Reexamination after the 3rd notice cannot allow the family to remain in the public housing program beyond the period before termination.



24 CFR 960.257 (b)(4)

Remaining as an NPHOI Family

If the PHA policy allows for continued occupancy for an NPHOI family:

- An NPHOI lease must be executed within 60 days of the notice or at the next lease renewal, whichever is sooner.
- If the NPHOI lease is not executed on time, the PHA must terminate tenancy within 6 months of the 3rd notice.
 - » PHA policy may permit an OI family to execute the lease after the deadline, but before termination of tenancy, if the OI family pays the PHA the total difference between the alternative rent and their public housing rent dating back to the deadline.

24 CFR 960.509(a)

NPHOI Status

- OI family members will continue to be public housing program participants until their tenancy is terminated or they execute the NPHOI lease.
- After the NPHOI lease is signed, the family is charged the alternative non-public housing rent and family members are no longer public housing program participants.



24 CFR 960.509(a)

Alternative Non-Public Housing Rent

A remaining NPHOI family must be charged monthly rent equal to the higher of:

- The applicable fair market rent, or
- The amount of the monthly subsidy provided for the unit.
 - » HUD will publish the specific amounts annually.

The PHA will no longer receive subsidy for a unit with an NPHOI family paying alternative rent.

The PHA must not conduct an annual income reexamination for an NPHOI family.



24 CFR 960.102

NPHOI Leases: Requirements

NPHOI leases must follow regulations at 24 CFR 960.509. These are adapted from existing regulations at 24 CFR 966.4, with adjustments for the families no longer being public housing program participants.

- PHAs must still comply with federal nondiscrimination requirements, including the Fair Housing Act, Title VI of the Civil Rights Act, Section 504, and Title II of the Americans with Disabilities Act (ADA).
- PHAs still have a legal obligation to provide reasonable accommodations for individuals with disabilities, including related to unit transfers.

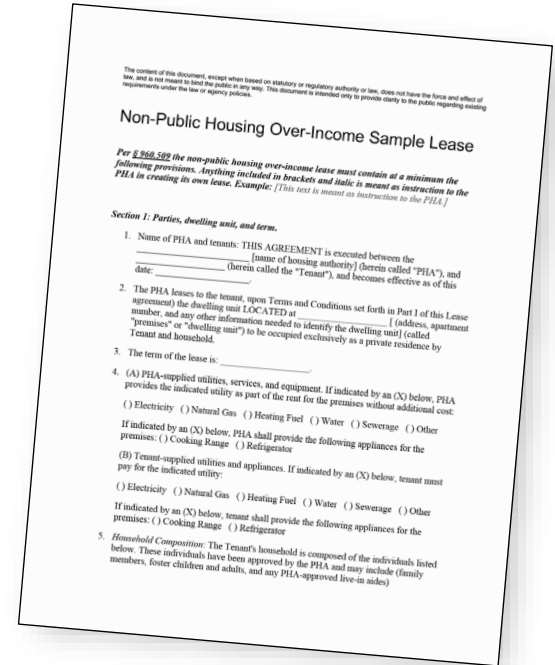


NPHOI Leases: Provisions

Leases must include, at a minimum, the provisions found in 24 CFR 960.509(b) such as:

- Lease term and renewal — may be month to month.
- Costs covered by the lease.
- Procedures around lease termination and grievances.
- Procedures for lease renewal and modification.

See the [NPHOI Sample Lease](#).



24 CFR 960.509(b)

Waitlist Preference for NPHOI Families

PHAs may choose to adopt a waitlist preference for NPHOI families who become an income-eligible (24 CFR 5.603(b)) and are eligible for readmission to the public housing program.

OI families who have vacated public housing are not eligible for the waitlist preference. However, such families can re-apply if they become income-eligible, like any other family.



24 CFR 960.206(6)

Effective Date: Section 103

The provisions implementing section 103 will be effective on March 16, 2023, 30 days after the publication of the final rule.

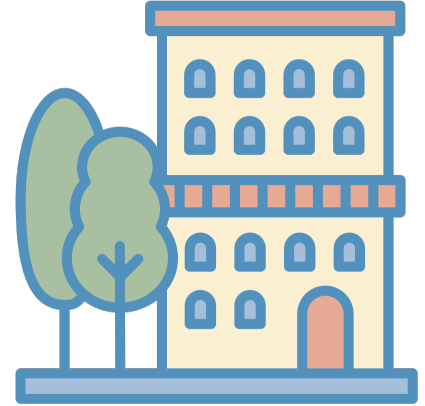
- Once the rule is effective, PHAs should begin to implement their OI policy after revising their ACOP per 24 CFR part 903.
- If implementation requires a significant amendment to the PHA Plan, the PHA should take immediate steps to complete this by June 14, 2023.
- **All PHAs must fully implement over-income policies, consistent with §960.507, by June 14, 2023.**
- HUD provided prior notice of the requirement to establish OI policies in FR Notices beginning in 2018.

24 CFR 960.507(a)(2)

Exceptions

There are no exceptions to the income limitation on public housing tenancy.

However, a PHA that owns or operates fewer than 250 public housing units may continue to lease public housing units to non-assisted over-income families in accordance with 24 CFR 960.503. The over-income limit does not apply to these unassisted families.



PHA Reporting on OI Families

PHA must submit a report annually that specifies:

- The number of OI families residing in a PHA's public housing as of the end of the calendar year.
- The number of families on the waiting lists for admission to public housing projects of the agency.
 - » Type of wait list and whether it is open or closed
 - » Waitlist count by development if site-based

PHAs with site based waiting lists should be careful not to duplicate families in the total number reported to HUD.

HUD will make this data publicly available.



24 CFR 960.507(f)

Category for Units Occupied by NPHOI Families

Inventory Management System/PIH Information Center (IMS-PIC):

- Categorize as “Non-Assisted Tenant Over Income.”

Housing Information Portal (new system)

- Categorized as “Non-Public Housing Over-Income (NPHOI) Tenant.”



Preexisting OI Families

Families who have already exceeded the 24 consecutive month grace period, per the continued occupancy policy established from the 2018 FR Notice, are not entitled to another 24-month grace period when the rule is published.

However, until the rule is effective, HUD will not enforce any requirement to terminate OI families who exceed the OI limit for 24 consecutive months.

PHAs that adopted over-income related waivers under HUD's CARES Act notice (Notice PIH 2021-14), must charge the alternative rent as of the effective date of the final rule or terminate the tenancy of these families in accordance with their OI policy and federal and local laws.





Frequently Asked Questions



Why can't OI families remaining in the unit paying alternative rent remain public housing program participants?



- HOTMA does not allow the unit of an OI family to be subsidized. Therefore, the family can no longer be public housing program participants.
- Current requirements related to eligibility remain in place (24 CFR 960.201) and units continue to be subject to the Declaration of Trust (42 U.S.C. 1437g(d)(3), 24 CFR 905.108, 905.304), Annual Contributions Contract (42 U.S.C. 1437d(a)) and the PHA's Faircloth limit (42 U.S.C. 1437g(g)(3)).



What happens to OI and NPHOI families during a RAD conversion?



- This final rule does not address how PHAs should deal with NPHOI families in RAD conversions.
- PHAs converting public housing projects under RAD must follow the RAD statute, notices, and guidance.
- See the [PBV Repositioning FAQs](#) for information related to over-income families and project-basing Tenant Protection Vouchers.



Does HOTMA's over-income rule go against income mixing goals of various HUD statutes?



- No — the final rule balances the need for local flexibility with meeting these new requirements. Public housing residents will have incomes ranging from 0-120% of AMI and PHAs may elect to permit over-income residents to remain at the property. In addition, income-mixing goals for the PHA are based upon the families entering the program, not exiting.



May an OI family enrolled in the Family Self-Sufficiency (FSS) program be allowed to finish their program if they are an NPHOI family?



- Families participating in the FSS program who become over-income are also entitled to the 24 consecutive month grace period, after which they are subject to their respective PHA's over-income policy.
- There are no exceptions to the OI limits for families participating in the FSS program.

24 CFR 960.570(a)(1)



Questions and Answers

Questions: HOTMAquestions@hud.gov

Related Resources

Resources related to Over-Income Limits for Public Housing Families:

- [Section 103: Over-Income Limits for Public Housing Families Fact Sheet](#)
- [Sample NPHOI lease](#)
- [OI Notices](#)
- [Training recording and slides](#)

[Recordings of the live trainings and resources related to implementation of HOTMA Sections 102 and 104: Income and Assets.](#)



HUD Exchange: HOTMA Income and Assets Training Series

Next training

Section 102 & 104 Income and Assets Part 1:

- Income Inclusions and Exclusions
- Earned Income Disregard
- Income from Assets
- Deductions
 - » Student Financial Assistance
- Hardship Exemptions for Certain Expenses

Questions: HOTMAquestions@hud.gov

