

**HOTMA**  
**102, 103, 104**  
**And**  
**NSPIRE**  
**For**  
**Public**  
**Housing**



## TODAY'S PRESENTERS

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# NAHRO'S 2023 NATIONAL CONFERENCE



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# AGENDA

1. NSPIRE
2. Section 102: Income Reviews
3. Section 104: Asset Limits
4. Section 103: Income Limits in Public Housing



NSPIRE

NSPIRE – WHAT DOES THAT MEAN?

# National Standards for the Physical Inspection of Real Estate

# NSPIRE - IMPLEMENTATION

- NSPIRE-V will be implemented via a series of notices
  - NSPIRE Final Rule
  - NSPIRE Standards Notice
  - NSPIRE Administrative Procedures notice (PIH Notice 2023-07)
  - Notice for Small, Rural PHAs for SEMAP
  - Notice on Tenant Damages

# ADMINISTRATIVE PROCEDURES NOTICE

- Published June 30, 2023
- Covers the following:
  - Inspectable areas
  - Procedures for inspections
  - Submitting evidence for deficiency correction
  - Submitting technical reviews
  - Administrative reviews
  - Other implementation details



# ADMINISTRATIVE PROCEDURES: INSPECTABLE AREAS

- Generally, inspectors will not inspect areas that are not housing and will inspect the three inspectable areas included in the final rule—units, inside, and outside
- Inspectors will inspect for affirmative requirements
- Will only inspect tenant personal property under specific circumstances, such as certain appliances

# ADMINISTRATIVE PROCEDURES: PREPARING FOR INSPECTION

- Property information must still be correct in IMS/PIC
- Information collection 30-90 days before inspections, 120 days for reinspection
- Agencies will submit data via NSPIRE link
  - Elevator, fire sprinkler certificates
  - Current water safety alerts, name of public water system
  - Property construction date verification, scan of lead-based paint inspection (if built before 1978)
- Agencies to receive notice 28 days before
- Agencies should notify residents 7 days prior
  - Tenant involvement: tenant groups to request units to be inspected up to 30 days before via NSPIRE system
  - Only randomly selected units count toward score

# ADMINISTRATIVE PROCEDURES: DURING INSPECTION

- Neither PHA staff nor contractors should interfere with inspection

# ADMINISTRATIVE PROCEDURES: AFTER INSPECTION

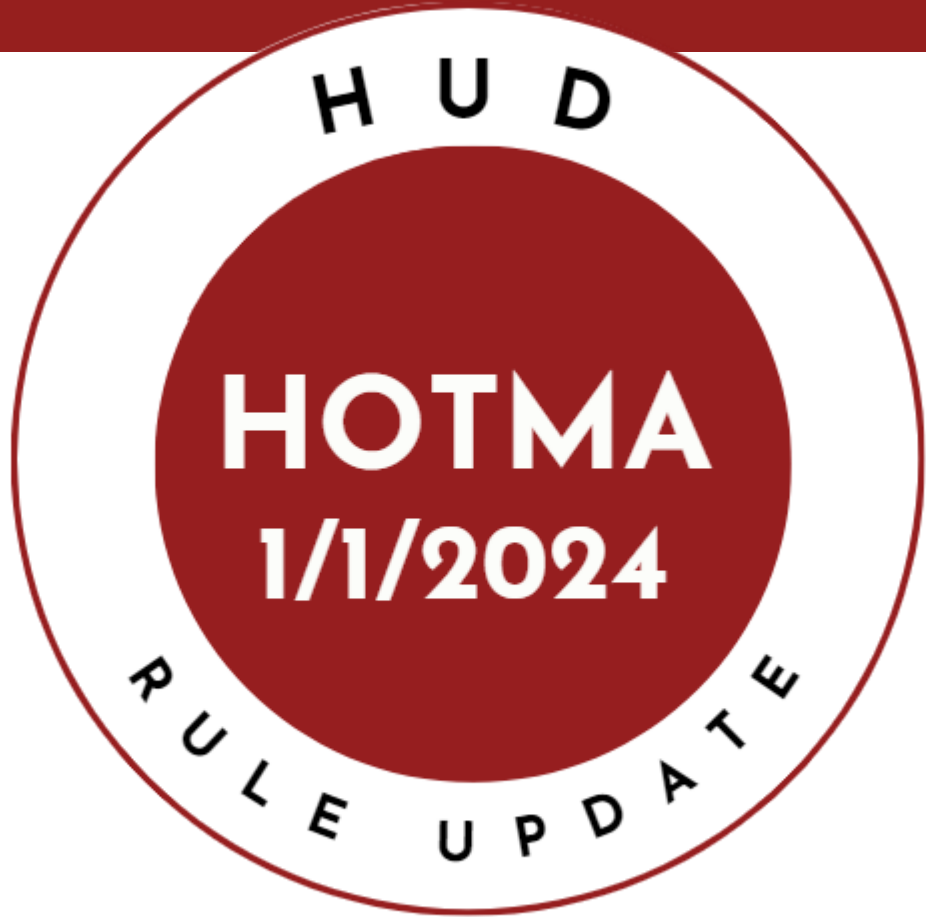
- Agencies will receive list of LT and severe deficiencies at the end of each inspection day
  - Correct in 24 hours, 48 hours to submit (72 hours total)
- Submitting evidence of repair: wide range of options
- If unable to complete permanent repair within 24 hours for acceptable reason:
  - Interim or temporary repair
  - Submit time estimate to HUD for approval
- Moderate deficiencies: 30 days
- Low deficiencies: 60 days

# ADMINISTRATIVE PROCEDURES: REVIEWS

- Process for technical reviews
  - Request, include evidence
  - Correction of deficiencies is not grounds for a review
- Administrative referrals process for failing scores
  - Under 30 or two consecutive under 60 scores

## ADMINISTRATIVE NOTICE: SUMMARY

- Will cover information PHAs will submit prior to an inspection – potentially including:
  - Process for technical reviews
  - Post inspection report process, how to report correction of deficiencies
  - Communication with residents, making final inspections available for review
  - Self inspection process
  - Administrative referrals process for failing scores



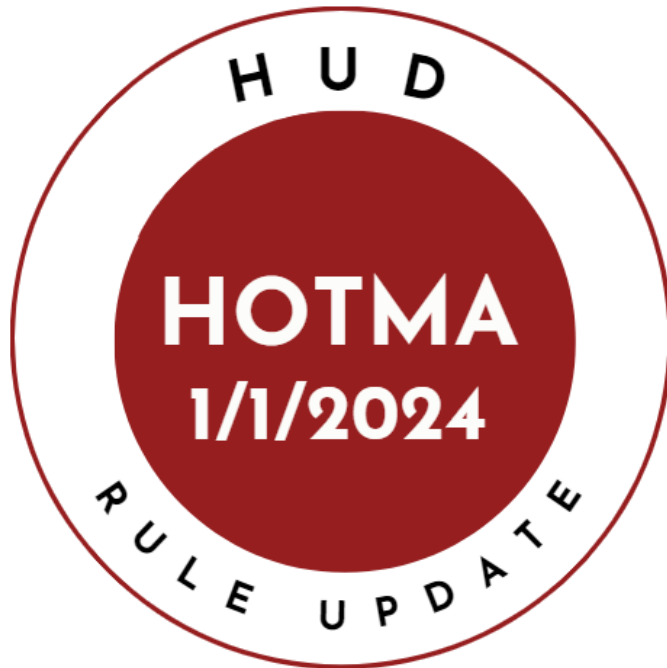
# Background

# “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



# FINAL RULE: HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT 2016 (HOTMA)



Section 102: Income Reviews

Section 103: Income limits in Public Housing

Section 104: Asset Limits

Effective: 1/1/2024 (except Section 103)

Must be in Compliance by: 1/1/25



# MODULE I

## SECTION 102: INCOME REVIEWS



## CALCULATION OF FAMILY INCOME

### Income Reviews

Current year income

- Initial eligibility & 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

# CALCULATION OF FAMILY INCOME

## Income Definition

- All amounts, not specifically excluded, received from all sources by each household member who is:
  - 18 years of age or older
  - The head of household or spouse of the head of household (any age)
  - Unearned income by or on behalf of each minor dependent
  - Actual income from assets
  - Imputed return on assets over \$50,000

# CALCULATION OF FAMILY INCOME

## **Earned Income Definition**

- Wages, tips, salaries, other employee compensation, and net income from self-employment
- This includes independent contractors, day laborers, and seasonal workers

# CALCULATION OF FAMILY INCOME

## Income from Assets

- Income from assets is generally considered income
- If possible, to calculate actual returns from an asset, PHAs must use that amount
- If not possible to calculate an actual return on an asset and:
  - The net family assets are \$50,000 or less (adjusted for inflation), the imputed income from the asset is excluded
  - The net family assets are over \$50,000 (adjusted for inflation), the PHA must impute income for the asset (based on current passbook savings rate)

# CALCULATION OF FAMILY INCOME

## Income from Assets

- Certain exclusions apply
- Households may self-certify if assets under \$50,000 (adjusted for inflation)



### IMPACT:

- PHA's may accept self certification at new admission effective 1/1/2024
- At reexamination required to fully verify net family assets every three years
- Must include in ACOP's

# CALCULATION OF FAMILY INCOME

## The following are not considered earned income

- Any pension or annuity
- Transfer payments – payments or income received where no goods or services were offered
  - Welfare
  - Social Security
  - Government subsidies for certain benefits
- Any cash or in-kind benefits



# CALCULATION OF FAMILY INCOME

## Income Reviews

- 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
- PHAs may identify additional data-sharing opportunities at the state and local level

# INCOME EXCLUSIONS



# INCOME EXCLUSIONS

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

# INCOME EXCLUSIONS

- All other exclusions 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

- “Non-recurring” income that is excluded:
  - Payments from the U.S. Census Bureau for employment lasting no longer than 180 days
  - Direct federal or state payments for economic stimulus or recovery
  - State or federal refundable tax credits or tax refunds
  - Gifts for holidays, birthdays, or other significant life event or milestones
  - Non-monetary, in-kind donations, such as food, clothing, or toiletries
  - Lump-sum additions to net family assets, including but not limited to lottery winnings

# 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
- Incorporates other exclusions existing prior to HOTMA in different regulations and statutes



# EID

## EARNED INCOME DISALLOWANCE



# 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 a 12-month period beginning on the date which the employment started
  - 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



# ADJUSTED INCOME

# ADJUSTED INCOME: ALLOWANCES

## Deductions

\$525

- For elderly and disabled families, adjusted annually for inflation
- HUD will update annually

\$480

- For families per dependent, (not HOH, Spouse or Co-head) adjusted annually for inflation (HUD will update annually)
- Under 18 years of age
- Over 18, while attending school or vocational training full-time
- 18 years of age or older and is a person with disabilities

Reasonable childcare expenses

- Reasonable child-care expenses needed to enable a family member to be employed or further education, or look for work

24 CFR 5.611(A)(3).

ADJUSTED INCOME: MEDICAL & DISABILITY ASSISTANCE

## Deductions for amounts over 10 percent of annual income

- Unreimbursed medical and health expenses for elderly/disabled households
- Unreimbursed attended care or auxiliary apparatuses needed by disabled families for purposes of employment\*

\*Income cannot exceed the combined earned income of the adults allowed to work by this allowance.



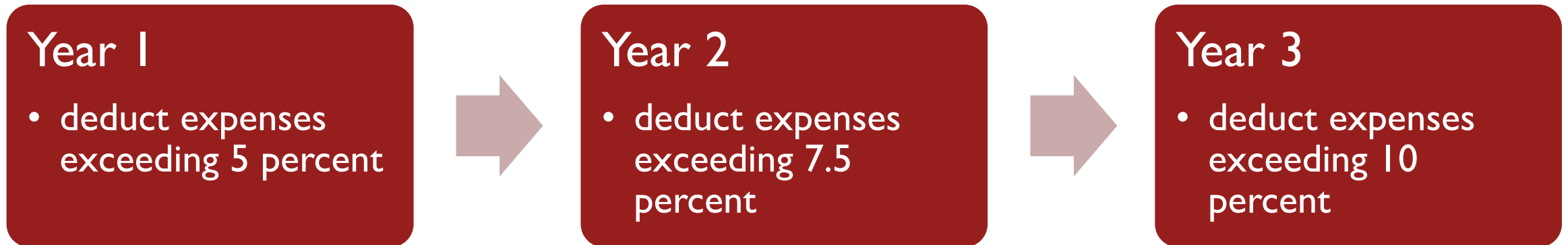
## ADJUSTED INCOME - HARDSHIP

- Provides hardships for families who are affected due to the increased threshold of health and medical/attendant care and auxiliary apparatus expense deductions

**PHA Action:**  
Notify Families of the changes in  
health and medical expense  
deductions

## ADJUSTED INCOME – PHASE IN PERIOD

- PHAs are Required to phase in increase to 10 percent



- 24-month phase in period starts at the next annual or interim, whichever occurs first
- Not available for families that enter the program after Jan. 1, 2024

## ADJUSTED INCOME HARDSHIP- MEDICAL AND DISABILITY EXPENSES

- 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
  - Relief ends when the circumstances that made the family eligible for relief are no longer applicable OR after 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 HARDSHIP: CHILD CARE EXPENSES

Provides hardships for families to maintain childcare deduction if the family no longer has a member that is employed or furthering their education

### **PHA Action:**

PHAs must establish policy for determining a family's inability to pay the rent if they request a childcare hardship



# ADJUSTED INCOME HARDSHIP: CHILDCARE EXPENSES

- Family would have to demonstrate they are unable to pay their rent because of the loss of the childcare expense deduction
- Childcare is still necessary even though the family member is no longer employed furthering education
- Hardship provision would expire after 90-days
  - PHA could extend for additional 90-day periods at its discretion
- The family must receive prompt notification in writing of the change in adjusted income and the rent due to the childcare exemption, and date for when the hardship exemption will begin and end

## ADJUSTED INCOME: ADDITIONAL DEDUCTIONS

- PHAs 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

# INTERIM REEXAMINATIONS



# 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
  - PHAs must develop policies that describe when and under what conditions families must report changes in household composition and adjusted income

# 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
    - PHAs may choose whether or not to enforce this policy
  - PHAs must describe these policies in the ACOPs

## ENTERPRISE INCOME VERIFICATION

- PHAs must continue using EIV system in its entirety
  - PHAs **are not** required to use EIV during interim reexaminations
- If a PHA counts earned income when the family previously had an interim:
  - Review EIV New Hires report at least quarterly for the remainder of the reexamination period **after** the interim reexamination to decrease rent occurs
- If a PHA does not count earned income when the family had an interim, it is **not** required to use the EIV New Hires Report between annual reexaminations

# INCOME REEXAMINATIONS

## WHEN TO DO AN INCOME REEXAMINATION

- Family requests reexamination
- Income decreases by 10% (or lower established by PHA)
- Unearned income increases by 10% (unless within last three months of certification period)
- Earned income increases by 10% AND family had an interim reduction during the certification period (unless within last three months of certification period) at the PHA's discretion

# INCOME REEXAMINATIONS

## WHEN NOT TO DO AN INCOME REEXAMINATION

- Income decreases by less than 10% (or lower established by PHA)
- Earned income increases by 10%
- Unless family had interim reduction during the certification and annual examination is more than 3 months away (PHA discretion)



X



# INTERIMS: EFFECTIVE DATES



Interim	Reported on time	Reported Late
Increase in rent	30 day notice, 1 <sup>st</sup> of the next month	Retroactively to the first of the month following when the interim should have occurred
Decrease in rent	1 <sup>st</sup> of the month after the interim certification	1 <sup>st</sup> of the month after the interim certification*

\*PHAs may adopt a policy to apply rent decreases retroactively

\*Policy may be conditional upon certain circumstances such as not reporting due to a natural disaster



# MODULE 2

## SECTION 104: ASSET LIMITS

## ASSETS RESTRICTIONS: CASH VALUE OF ASSETS



Families are ineligible for public housing or Section 8 assistance if they have net assets over \$100,000

- Adjusted each year for inflation based on the Consumer Price Index- For Urban Wage Earners And Clerical Workers (CPI-W) starting in 2025

# 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

- 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: EXCLUSIONS

- Exclusions:
  - 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: NON-RESIDENTIAL

- 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



# NON-ENFORCEMENT POLICY & CURE PERIOD

## **Non-enforcement policy & cure period:**

- PHAs may choose to establish a written policy to not enforce the asset limitation for all families, for up to six months after the effective date of a family's annual or interim reexamination. Families are given the opportunity to cure noncompliance with the asset limitation during this period.
- Non-enforcement policies must address the timeframe for curing non-compliance (e.g., PHA may choose to adopt local policies to allow any number of months, up to six months, to cure).

# ASSET LIMITATION EXCEPTION POLICY

## **Asset limitation exception policy & cure period (interim/annual reexamination only):**

- PHAs may also establish in written policy exceptions to the asset limitation based on family type and may take into consideration such factors as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided.
- Excepted families are given the opportunity to cure noncompliance with the asset limitation during this period (e.g., PHA may choose to adopt local policies to allow any number of months, up to six months, to cure).

# ASSETS



## NET FAMILY ASSETS

- Net family assets includes:
  - The case value of all assets, except those specifically excluded in HOTMA
  - Reasonable costs in disposing some assets may be deducted

# NET FAMILY ASSETS

- Revises the definition of “net family assets” to include certain exclusions:

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”
  - 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.

# PHA POLICY OPTION: SELF CERTIFICATION OF ASSETS



## 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



## ASSETS: SELF-CERTIFICATION

PHAs may accept a family's self-certification of net family assets equal to or less than \$50,000 (adjusted annually for inflation) and anticipated income earned from assets without taking additional steps to verify accuracy, at admission and at reexamination.

- Accepting a family's self-certification at admission may reduce the initial burden on applicants and speed up the lease-up process.
- PHAs are encouraged to consider the local needs and priorities in their communities along with the potential risks of accepting self-certification of net family assets
  - **PHAs must repay funds for participants/tenants who are later found to be ineligible for assistance**

## ASSETS: SELF-CERTIFICATION

- PHAs who choose to accept self-certification must still fully verify net family assets every three years
- PHAs who choose not to accept a family's self-certification must verify a family's net assets.
- PHAs must include in their ACOPs whether they will accept a family's self-certification of net family assets equal to or less than \$50,000 at admission (only for new admissions effective on or after 1/1/2024) and at reexamination.



# MODULE 3

## 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**

## HUD'S DEFINITION OF OVER-INCOME FAMILIES

If a tenant has an income of 120 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**)
- Includes all families in public housing, including FSS families and families receiving EID (before phase-out)
- PHAs must update income limits no later than 60 days each year after HUD publishes new income limits (published around April 1<sup>st</sup>)



## 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 & THIRD NOTICE

- PHA must conduct second examination 12 months after interim reexamination if over-income (or 12 months after annual reexam)
- 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

## OVER-INCOME FAMILIES - DOCUMENTATION

- 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
  - PHA will need to do reexam during this six-month period (will not impact eligibility)

## 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

## WAITLIST PREFERENCE

- PHAs may adopt a preference for admission of NPHOI families paying the alternative rent and are on a NPHOI lease who become eligible for public housing
  - This allows households to remain in their unit and go back to a PH lease

# 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 31<sup>st</sup> 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

## INTERACTION WITH 960.503

- 24 CFR 960.503 – Occupancy by Overincome Families:
  - Applies to PHAs with fewer than 250 units
  - May lease a PH unit to an overincome family if
    - No eligible families waiting
    - PHA has publicized open units
    - Rent is month-to-month for not less than cost of operating unit
    - In lease, family agrees to leave if an eligible family needs the unit
    - PHA gives the overincome family 30 days to leave, if necessary
  - Applies to **initial occupancy, while previous issue is families that meet overincome afterwards (also overincome is higher afterwards)**

THANK YOU!

- Visit [www.nahro.org/professionaldevelopment](http://www.nahro.org/professionaldevelopment) for upcoming professional development opportunities – including our new in-depth HOTMA training (coming soon!)



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