theCredential

This Year's "HOT" Topic: HOTMA

Part 1: Introduction to HOTMA

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The Housing Opportunities Through Modernization Act (HOTMA) of 2016 required the largest revision of HUD regulations in many decades. The regulation was over seven years in development and is many pages.

In this series, we will explore several of the complex provisions embedded in the HOTMA final rule. In this article, we will focus on questions regarding when HOTMA takes effect and how HOTMA affects HOME, National Housing Trust Fund (NHTF) and LIHTC programs.

See the entire final rule and other HOTMA resources from HUD.

When will HOTMA be effective?

Some portions relating to over-income households in public housing were effective 30 days after the official release of the rule in the Federal Register in 2023. The remaining provisions, including all of those that apply to HOME, NHTF and LIHTC, will be effective starting Jan. 1, 2024.

As this is a very extensive adjustment to many HUD provisions, significant time to implement was provided. In fact, HUD released the final rule in January ahead of the official rollout in the Federal Register in February. HUD was giving as much time as possible to implement HOTMA provisions to owners/agents, software vendors and others.

Has HOTMA been delayed for a year?

Not for LIHTC, HOME or NHTF purposes. This question has arisen because the Public and Indian Housing (PIH) division of HUD has a procedural allowance for public housing authorities (PHAs) to come in full compliance with HOTMA as soon as possible, but no later than Jan. 1, 2025. This was announced in an email to PHA executive directors and later made available to the public on the HUD PIH HOTMA resources page.

This is because HUD PIH is implementing a significant new software system — Housing Information Portal (HIP) — at the same time that HOTMA becomes effective. HIP is not in place as of yet, and it is clear that this is almost surely going to cause delays.

How, if at all, will this affect HOME, NHTF, and LIHTC programs?

- **HOME and NHTF.** HUD Community Planning and Development (CPD) — the division that manages the HOME and NHTF programs — to date have not indicated that it will follow the lead of HUD PIH, and there is no reason to believe that it will.
- **LIHTC.** The IRS has indicated in the 8823 Guide to look to HUD Multifamily (MFH), not Public Housing, for LIHTC rules. This is why the 4350.3 HUD MFH Handbook is sited among legal authorities for the LIHTC program in the 8823 Guide.

  HUD MFH officials have indicated that they have no intention to delay implementation. Even if there was a procedural allowance similar to what HUD PIH is implementing, HOTMA will still legally apply on Jan. 1, 2024, as required by law. It would take an act of Congress to change that.

  There is no historical basis to believe that any procedural allowance implemented by HUD would apply to the LIHTC, once the rule is legally applicable. In the unlikely event that HUD MFH does implement some sort of compliance leeway, state HFAs will have to decide if the process makes sense for their compliance rules.

  The Credential readers will be informed if HUD MFH changes the direction that it is heading on this matter, but preparing to implement HOTMA Jan. 1, 2024, will best protect LIHTC interests.

Which parts of HOTMA apply to HOME, NHTF and LIHTC?

Some individual HOTMA provisions will apply to all programs, some may apply under certain circumstances, and some will not apply at all to specific programs. The following chart establishes HOTMA applicability for the three programs. We will explore some of these provisions in future articles in this series. Generally, it is the household income, asset, and exclusions to income and assets that apply across the board.

Note: HOME and NHTF applicability as listed below are established in the final rule. LIHTC applicability is based on the author's professional opinion and long-standing regulatory applicability of HUD rules to the LIHTC.

	HOME	NHTF	LIHTC
Net Family Assets Definition (§ 5.603)	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Definition (§ 5.609(a))	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Exclusions (§ 5.609(b))	**Yes,** unless the participating jurisdiction chooses to calculate income using the IRS income definition.	**Yes,** unless the HTF grantee chooses to calculate income using the IRS income definition.	**Yes**
Annual Income Calculation & Reexaminations (§ 5.609(c))	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or the participating jurisdiction accepts income determination under a Federal ***tenant-based*** rental assistance program assisting a household.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Mandatory Deductions (§ 5.611(a))	**Yes,** if a household is over-income and rent is based on adjusted income or when adjusted-income-based rents apply to Low HOME units where the household is receiving project-based Federal rental subsidy.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Additional Deductions (§ 5.611(b))	**Yes,** if a household is over-income and rent is based on adjusted income at HOME properties without LIHTC funding.	**No,** unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Adjusted Income Financial Hardship Exemptions (§ 5.611(c))	**Yes,** if the participating jurisdiction elects to do so, if the household in the unit is receiving Federal or State ***project-based*** rental subsidy, or the participating jurisdiction accepts income determination under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**, unless household in unit is receiving Federal or State ***project-based*** rental subsidy or under a Federal ***tenant-based*** rental assistance program assisting a household.	**No**
Restrictions on Eligibility of Households with Assets Over $100,000 or who Own a Home (§ 5.618)	**No**	**No**	**No**

NOTE: As LIHTC funding exists at many HUD projects, the following questions relate to HUD projects only.

What are the new restrictions on assets owned by HUD-assisted households under HOTMA?

In general, public housing units may not be rented, and assistance under Section 8 (tenant-based and project-based) programs may not be provided to persons if they have the assets listed below. This applies only to public housing programs and project-based Section 8.

PHAs and owners are allowed some discretion on how, or if, to apply these limitations. They must have explicit policies explaining how their policy on asset limitations diverges from HOTMA.

1. **The household's net assets exceed $100,000.** This amount will be adjusted annually by HUD for inflation (in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers0). OR
2. **The household has a present ownership interest in real property.** The property must be suitable for occupancy by the family as a residence. They must have a legal right to reside in, and the legal authority to sell based on State or local laws where the property is located.

Are there any exceptions to the rule on homeownership?

Yes, the exceptions are:

1. Any property for which the family is receiving assistance **under HUD's manufactured homes provisions of public housing rules** (24 CFR 982.620) or under the **Homeownership Option in the Housing Choice Voucher program** (24 CFR 982.237).
2. Any property that is **jointly owned** by a member of the family and at least **one non-household member** who does not live with the family, **if the non-household member resides at the jointly owned property.**
3. Any person who is a **victim of domestic violence, dating violence, sexual assault, or stalking.**
4. Any family that is **offering such property for sale.**

I have a household that owns a one-bedroom home that is not big enough for its six household members. When might a property not be "suitable for occupancy" under this rule?

A property is considered “suitable for occupancy” under this rule unless the family demonstrates that it:

1. **Does not meet the disability-related needs** for all members of the family (for example, physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.).
2. Is **not sufficient for the size of the family.**
3. Is **geographically located so as to be a hardship for the family.** 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 or owner.
4. Is **not safe to reside in because of the physical condition of the property.** This applies if the property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied).
5. Is **not a property that a family may reside in under state or local laws** where the property is located. An office building zoned for business use that a member of the household owns may be an example.

I have several households that own homes that do not meet any exceptions at my Section 8 Project-Based Rental Assistance (PBRA) property. Will this affect them?

This is an ongoing requirement, so it applies initially and upon re-examination of family income for certifications effective starting Jan. 1, 2024. If they do not meet an exception, it appears that they will no longer qualify for assistance and, likely, tenancy.

This assumes that an owner does not develop a policy to the contrary. We assume that part of the reason we have a year to ramp up to HOTMA in 2024 is to prepare for these aspects of the rule and to provide fair warning to households affected or to develop policies to allow exceptions provided for in HOTMA.

Does this apply to non-public housing or non-Section 8 properties, such as HOME, NHTF or LIHTC?

No, unless the property also has HUD funding. See the first question in this article for more details and the applicability chart.

Return to the December 2023 *The Credential* for more HOTMA FAQs.

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