

HOTMA 102 (Income)/104 (Assets)

Appendix to the BHA Admissions and Continue Occupancy Policy (ACOP)

(PIH 2024-38 | Effective 7/1/2025)

Background:

HUD published a final rule on February 14, 2023, revising regulations related to income, assets, adjusted income, verification, and reexams (among others) to implement Sections 102 and 104 of HOTMA. While the new regulations were effective January 1, 2024, HUD has delayed the compliance date for HOTMA 102/104. Initially, HUD published a delayed compliance date of January 1, 2025, but HUD again delayed the compliance date for HOTMA 102/104 and no new date has been provided. *Compliance* with Sections 102 and 104 of HOTMA means not only applying HOTMA 102/104 regulations to affected programs but also reporting in HUD's new Housing Information Portal (HIP) system. Currently, PHAs remain unable to comply with HOTMA 102/104 because compliance depends on transitioning from HUD's IMS/PIC system (which is unable to accept HOTMA-compliant Form HUD-50058) to HUD's new HIP system (which will be the only system that accepts HOTMA-compliant Form HUD-50058). PHAs cannot transition to HOTMA until HIP is in place, HOTMA-compliant, and accessible. However, HUD has determined that a few HOTMA 102/104 policies are not dependent on transition systems and easily isolated from other HOTMA 102/104 policy changes.

Purpose of the Appendix:

BHA as per HUD Notice PIH-2024-38 with effective date of 7/1/2025, some policies listed below will be implemented prior to the migration to HIP.

HUD/BHA ENFORCEMENT: (PRIOR TO JULY 1, 2025)

- Earned Income Disregard (24 CFR 5.611)
 - EID will NOT apply to any family that was not eligible for and already participating in the disregard as of December 31, 2023
- Form HUD-9886-A (24 CFR 5.230 and 5.232)
 - HUD issued letter on February 23, 2024, that PHAs could begin using the new HUD-9886-A. Transition date by 2/1/2025
 - BHA transitioned using form HUD-9886-A as of 4/26/2024
 - BHA has also implemented polices related to the revocation of consent

HUD/BHA ENFORCEMENT: (BEGINNING JULY 1, 2025)

- Income Exclusions {24 CFR 5.609(b)}
 - MAY immediately implement income exclusions listed in above regulation on all income exams, including new admissions, annual, or interim reexams
 - MUST utilize the list of income exclusions for all income exams with an effective date on or after July 1, 2025

- Definitions {24 CFR 5.100, 5.403, 5.603}
 - MAY immediately begin to use the following definitions
 - MUST use the following definitions for all transactions with an effective date on or after July 1, 2025
 - Earned Income
 - Unearned Income
 - Family
 - Day Laborer
 - Independent Contractor
 - Seasonal Worker
 - Dependent
 - Foster Child
 - Foster Adult
 - Health and Medical Care Expenses
 - Minor

- De Minimis Errors {24 CFR 5.609(c)(4); 5.657(f); 960.257(f); 982.516(f); 882.515(f); 882.808(i)(5); 891.105; and 891.655}
 - BHA will not be considered out of compliance solely due to de minimis errors in calculating family income
 - De minimis errors occur when the determination of a family's income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (or \$360 in annual adjusted income)

HOTMA 102/104 Policies Implemented

Chapter 2

2.2. Definition of Family

The final rule revises the definition of family to also include a single person who:

- Is an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age;
- Has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)); and
- Is homeless or is at risk of becoming homeless at age 16 or older.

The definition of “family” in the final rule incorporates revisions made to the 1937 Act by the Fostering Stable Housing Opportunities provisions of the Consolidated Appropriations Act, 2021, which expands the definition of “single persons.” Due to the modification of the statute prior to this final rule, HUD is making a conforming change to 24 CFR § 5.403 to align with the new statutory language.

2.11. Definition of Foster child is defined as a member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

2.11. Definition of Foster adult A foster adult is a member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

2.7. Definition of a Minor 24 CFR 5.603 A minor is a member of the family, other than the head of family or spouse, who is under 18 years of age.

2.19. FAMILY CONSENT TO RELEASE OF INFORMATION is amended to comply with [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27], **Revocation of Consent** [24 CFR 5.232]

2.20. Definition of Dependent is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)]

Chapter 9

9.1. Definition of Unearned Income means any annual income, as calculated under 24 CFR § 5.609, that is not earned income. 24 CFR 5.100.

9.1.3. Definition of Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits 24 CFR 5.100.

9.1.3. Definition of Day Laborer is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

Income earned as a day laborer is not considered nonrecurring income under 24 CFR § 5.609(b)(24) (see Attachment G (paragraph G.1) (Nonrecurring Income) of PIH Notice 2023-27) and must be included, unless specifically excluded in 24 CFR § 5.609(b) (e.g., earnings of full-time students in excess of the dependent deduction (24 CFR 5.609(b)(3), (b)(14), etc.).

9.1.3. Definition of Independent contractor is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

9.1.3. Definition of Seasonal worker is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27].

9.1.3. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]. HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023.

9.3.3. Definition of Medical Expenses HUD regulations define health and medical care expenses at 24 CFR 5.603(b) to mean “any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.” Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Chapter 12

12.2.3. BHA-CAUSED ERRORS OR PROGRAM ABUSE is amended to comply with 24 CFR 5.609(c)(4), **De Minimis Errors**

De Minimis Errors [24 CFR 5.609(c)(4)]

The BHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the BHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

BHA must take corrective action to credit or repay a family if the family was overcharged rent, including when the BHA makes de minimis errors in the income determination. Families will not be required to repay the BHA in instances where the BHA miscalculated income resulting in a family being undercharged for rent. BHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the BHA's de minimis error in income determination.

BHA Policy

The BHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

Attachments

Exhibit 9-1: Annual Income Full Definition. INCOME EXCLUSIONS amended to comply with {24 CFR 5.609(b)}

2025 HUD Inflation-Adjusted Values:

BHA must use the HUD-published passbook rate when calculating imputed asset income for net family assets that exceed \$50,000 (a figure that is annually adjusted for inflation).

Implementation of the passbook savings rate {24 CFR 5.609(a)} is currently set at **0.45%** effective 7/1/2025.