

New HUD
Regulations/Strategies for
Navigating through HUD
Housing Programs

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First Tip: Know What
Type of Subsidized
Housing You Have
(Rules Get Messy)

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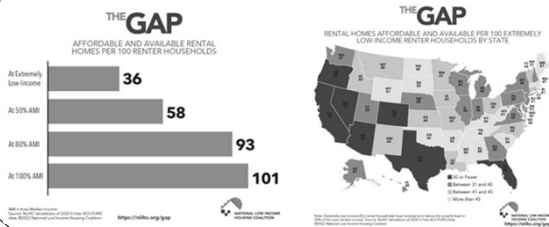
HUD's HOTMA Regulations will apply to:

- **Public Housing Authority (PHA)**
 - Public Housing – multifamily housing owned and operated by the PHA in its own name
 - Some single family homes or duplexes on occasion (scattered sites), but infrequent.
 - Housing Choice Vouchers (“Section 8 Vouchers”) – tenant-based vouchers that provide federal housing assistance to a private entity that owns and operates its own rental housing.
 - Participating tenants recertify with a PHA.
 - HUD-VASH Vouchers – tenant-based voucher for veterans supplied in conjunction with the VA.
 - Project-Based Vouchers – tenant-based voucher of a sort that is transferable to other project-based voucher properties.
 - These can be owned and operated by PHAs or private entities, but the assistance is administered through a PHA.
- **Project-based rental assistance (project-based Section 8)**
 - Owned and operated by private entities that have long-term affordability contracts with HUD that provides rental assistance to the subsidized units.
 - Not tenant-based, not transferable by tenant to other properties.

*Other types include USDA Rural Development, Low Income Housing Tax Credit, but they are not affected by the forthcoming HUD rule.

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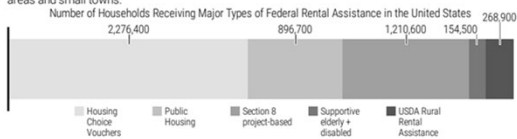
Affordable housing: 7 million unit shortage for ELI



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Rental Assistance Supports All Types of American Communities

Rental assistance helps 8.7 million people in cities and suburbs, as well as 1.5 million people in rural areas and small towns.



Federal rental assistance programs provided states with **\$48.5 billion** in 2020.

Source: Center on Budget & Policy Priorities

Also note that CBPP has state fact sheets here: <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#US>

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Federal rental assistance helps struggling seniors, people with disabilities, veterans, and working families keep a roof over their heads, often by helping them afford rental units they find in the private market. Ten million people in over 5 million low-income households receive federal rental assistance.

10.2 million people in 5.2 million American households use federal rental assistance to afford modest housing.

69% are seniors, children, or people with disabilities.

...but 4 in 10 low-income* people in the United States are homeless* or pay over half their income for rent. Most don't receive federal rental assistance due to limited funding.

20% of assisted people are seniors
Rental assistance helps **2 million** of the United States' seniors age in place.

25% of assisted people have a disability
Rental assistance helps **2.5 million** people with disabilities to live independently in the United States.

58% of assisted people are in families with children
Rental assistance helps **6 million** people in families with children in the United States avoid homelessness.

Source: Center on Budget & Policy Priorities

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Eligibility for HUD Housing

- Generally, applicants must be "very low-income" (VLI), which describes households that do not earn more than 50% of area median income (AMI).
- Owners must target some units to "extremely low-income" (ELI) households (income does not exceed 30% of AMI, or federal poverty level).
- Some rental assistance is designated specifically for families, seniors, people experiencing disabilities
- Note other requirements like social security numbers.

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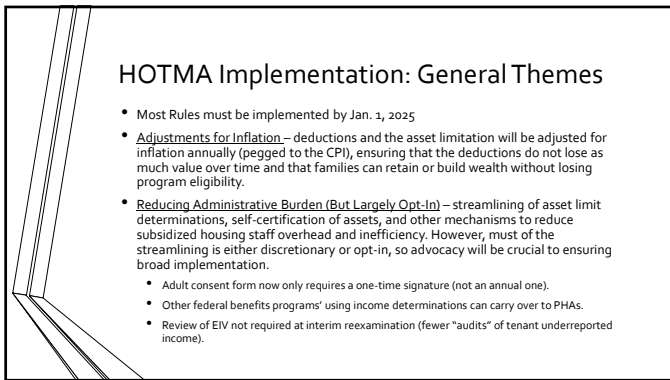
Recertification of Income

- PHA/Owner recertifies tenant income annually, except those tenants on fixed incomes.
 - For fixed-income tenants (e.g., SSI) owner recertifies every three years.
- A tenant can request an **interim recertification if income decreases or family size increases.**
- PHA/Owner can require interim recertification in certain cases.

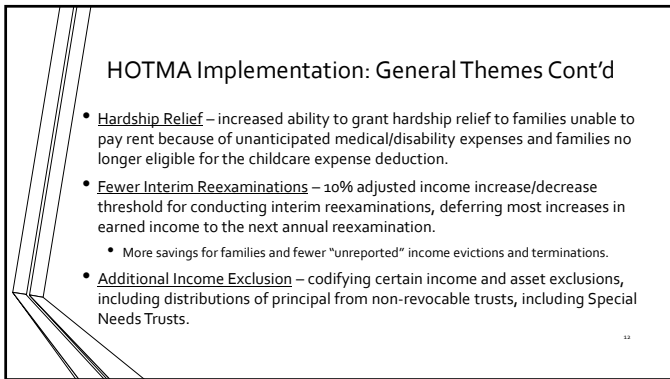
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HOTMA Implementation Select Issues: Certain Trusts Exempt from Asset Limit and Trust Distributions Exempt from Annual Income

- 24 C.F.R. § 5.603(b) – *Net family assets* (4):
 - (4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

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HOTMA Implementation Select Issues: Certain Trusts Exempt from Asset Limit and Trust Distributions Exempt from Annual Income

- 24 C.F.R. § 5.609(b)(2)
 - (2) The following types of trust distributions:
 - (i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):
 - (A) Distributions of the principal or corpus of the trust; and
 - (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.
 - (ii) For a revocable trust under the control of the family or household, any distributions from the trust, except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.
 - Special Needs Trusts – distributions of income from an irrevocable trust or one not under family control (i.e. earned interest) still counts as income to the family, but can be exempted if it is used to pay for medical or health¹⁴ care expenses of a minor.

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HOTMA Implementation Select Issues: New Asset Limit

24 C.F.R. § 5.618

Creates new asset limits for most HUD housing programs:

- (1) if the family's net assets exceed \$100,000 (adjusted annually for inflation), and/or
- (2) if the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell real property that is suitable for occupancy by the family as a residence.
- PHAs must deny admission of any applicant family that exceeds these asset limitations.
- PHAs may terminate participating families if assets exceed the limitation (under HOTMA statute, PHAs and owners have discretion to enforce).

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HOTMA Implementation Select Issues: New Asset Limit Policies and Exceptions

- PHAs have some discretion to tailor their policies around the asset limit.
- Option: Generally Applicable All Families Policy – Non-Enforcement and Cure Period
 - PHAs may establish a written policy refraining from enforcing the asset limitation for all families, for up to 6 months after the effective date of a family's annual or interim reexamination. (If they enforce at all).
 - Families are given the chance to cure the over-asset condition during whatever period the PHA opts to choose.
 - Must be paired together – cannot have written policy on time limit before eviction but fail to offer co-extensive cure period.

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HOTMA Implementation Select Issues: New Asset Limit Policies and Exceptions

- Option: More Limited Asset Limit Exceptions Policy – Non-Enforcement and Cure Period
 - Instead of applying a general policy, PHAs can create a more targeted exceptions policy.
 - PHAs may establish exceptions to the asset limitation based on: (1) family type; (2) age; (3) disability; (4) income; (5) ability of the family to find suitable alternative housing; and/or (6) whether supportive services are being provided.
 - Families meeting the exception are given the opportunity to cure the noncompliance, must be co-extensive with the non-enforcement period.
 - Exceptions policy must conform to fair housing statutes and regulations (arguably including local protections).
- Option: Mix and Match
 - PHAs can create a more limited general policy (3 months of non-enforcement and cure) and broader exceptions (6 months for families with minor children).

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HOTMA Income exclusions: awards and settlements

24 CFR § 609(b)(6)(7)

- Under HOTMA rules annual income will not include:
- Insurance payments and settlements for personal and property losses
 - Awards in civil actions or settlements for an injury that resulted in a member of the family becoming disabled

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HOTMA Income Exclusions:
(continued)

<p>24 CFR § 609(b) (6)</p> <p>(12)</p> <p>(16)</p> <p>(20)</p>	<p>HOTMA's 28 income exclusions include (among others):</p> <ul style="list-style-type: none"> • Payments/reimbursements for health/medical expenses • Payments covered by a PASS plan (or similar) • Social Security/SSI back-payments. • Loans
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HOTMA Income exclusions:
nonrecurring income

<p>24 CFR § 609(b)(24)</p>	<p>Under HOTMA rules annual income will not include nonrecurring payments "that will not be repeated in the coming year" by report of the family, including:</p> <ul style="list-style-type: none"> • Lump sum additions to assets such as lottery winnings. (An inheritance should fit under this exception.) • Gifts for special occasions. • In-kind donations from a food bank (or similar); • Tax refunds & credits. • Civil rights settlements
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SNT Distributions Income VS Principal

- **Special Needs Trusts** – distributions of income from an irrevocable trust or one not under family control (i.e. earned interest) still counts as income to the family, but can be exempted if it is used to pay for medical or health care expenses of a minor.
- **Additional Income Exclusion** – codifying certain income and asset exclusions, including distributions of principal from non-revocable trusts, including Special Needs Trusts.

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HOTMA Implementation Special Issues: Trust Distributions – Advocacy Opportunities

- Most PHAs and multifamily housing providers are completely unfamiliar with trusts, especially Special Needs Trusts.
 - Most reexaminations and case work are performed by property managers and caseworkers who have minimal training or experience interacting with complex financial transactions or trusts.
- Tenant/voucher participants likewise have limited knowledge and often lack immediate access to the trust documents or accounting of distribution to provide to property managers directly.
- Even after implementation, it is highly likely that PHAs and multifamily owners put the burden on residents to provide income documentation and trust distribution documentation – advocacy may include outreach to resident’s PHA or multifamily owner to establish contacts for providing documents annually (if required).

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HOTMA Implementation Select Issues: Additional Permissive Deductions

- 24 C.F.R. § 5.611(b)(1) – PHAs will be able to craft new tailored deductions via written policy in public housing, HCV, and moderate rehabilitation/SRO.
 - Huge potential for advocacy if there are notable or unique local expenses, or for certain areas where a PHA wishes to increase affordability for certain households.
 - Or, for special needs trusts, could exempt any income received by a family from one so that reporting is streamlined and simplified.
 - However, a PHA that adopts permissive deductions cannot get a corresponding increase in Capital Fund and Operating Funds formula grants based on the application of such deductions.

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HOTMA Implementation Select Issues: Advocacy Opportunities

- So how do you get a PHA to adopt the broadest policies? Where do you find out what the PHA has adopted as its policy?
- PHAs maintain two sets of publicly-available policies - Admissions and Continued Occupancy Policy (ACOP) for public housing, and their Administrative Plan (Admin. Plan) for all voucher programs.
 - Many PHAs publish online, but some require a public records request for access.
- PHAs are required to have public meetings regarding changes or comments on their ACOP and Admin Plan.
 - Local legal aid/service organizations – active participants in many PHA ACOP and Admin Plan revisions
 - Local tenant organizations may also be active in many cities and communities across the country.
 - Individual tenants themselves are critical to ensuring PHA hears community impact.
 - Even if a PHA adopts a more restrictive policy, it must be clear why it did so – discretionary functions with arbitrary adoption are still subject to court or administrative challenge.

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Working with Tenants in HUD-Subsidized Housing

- It is likely that at least some distributions from an -SNT will be counted in computing counted income
- \$1 in counted income typically means a 30 cent decrease in rental subsidy (like a 30% tax on the distribution)
- A lot of income can mean loss of eligibility (rare) for HUD-subsidized housing.
- You cannot predict how income will be treated in every case, or solve every problem

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Working with Tenants in Subsidized Housing

- **Warnings**
 - What you know from Medicaid and SSI does not apply.
 - Subsidized housing is not an entitlement. Supply does not meet demand—waiting lists are common, and may be closed.
 - Project managers may or may not know rules and guidelines (or follow them).
 - There is no formal appeal process beyond the PHA or private sponsor (except court).
 - You can request administrative review by HUD. (Find the right office. Follow up. There is no process or timeline.)

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Working with Tenants in Subsidized Housing

- **Ask** every client/beneficiary about whether they receive (or may receive) a rent subsidy
- **Warn them of a trade-off:** assets in an SF-SNT protect Medicaid/SSI but may result in a reduction in a HUD housing subsidy or affect eligibility
- **People don't like unpleasant surprises**
- **People may have options** (other housing plans, or use of ABLE accounts)

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