PIH Alert

February 2, 2022

CORRECTION

Yesterday in our *What Happened in January* email, we published a PBV question related to excepted units under HOTMA. HUD recently added a new category of excepted units for the PBV program. We apologize for any confusion as the *Federal Register* notice announcing this change was released after we finalized our newsletter's FAQs. The information we provided in our *What Happened in January* email about excepted units implemented as part of the Housing Opportunity Through Modernization Act (HOTMA) is still correct. However, the Fostering Stable Housing Opportunities (FSHO) amendments added an additional exception category for FUPY/FYI assistance if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. Note, FYI TPVs that were awarded under Notice PIH 2019–20 are not part of this exception since PHAs are prohibited from project-basing FYI TPVs.

GENERAL NEWS

HUD Updates Guidance on CARES Act Waivers Expiration

Yesterday on the Public and Indian Housing COVID-19 Resources webpage, the Department of Housing and Urban Development (HUD) announced that it has updated the Guidance on CARES Act Waiver Expiration. HUD made changes to the occupancy policies document, specifically to the over-income CARES Act waivers.

PH-7: Over-Income Families:

> Beginning January 1, 2022, annual reexaminations are to be conducted at the next regular interval. However, HUD has not issued rulemaking implementing section 16(a)(5)(A)(i) of the U.S. Housing Act of 1937, as amended by HOTMA, regarding the "alternative rent" a PHA may charge an over-income family who has been over income for two consecutive years as of January 1, 2022. Therefore, if a PHA has adopted a policy where over-income families who have been over-income for two consecutive years may remain in their unit paying the "alternative rent," then an over-income family that has exceeded the two-year grace period may be permitted to remain in its unit as a public housing family until the HOTMA income rule is effective. These families will be offered an option of a flat rent or an income-based rent at their next annual reexamination. Until HUD has completed rulemaking establishing the "alternative rent," PHAs cannot charge these over-income families Fair Market Rent (FMR) or an "alternative rent."
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> Upon the HOTMA income rule becoming effective, over-income families who have already exceeded the two-year grace period will, pursuant to section 16(a)(5)(A), be terminated within six months or charged an "alternative rent," depending on PHA policy.

PH-13: Over-Income Limit: Termination Requirement:

> The authority to charge over-income families the Fair Market Rent (FMR) instead of terminating their tenancy ended with the CARES Act waiver on December 31, 2021. Typically, this would require PHAs to revert to their established termination policy. However, pursuant to an email sent on January 28, 2022, to PHAs with the subject, "Implementation of HOTMA Public Housing Income Limit," until the HOTMA income rule is effective, HUD will not enforce any requirement to terminate over-income families who exceed the over-income limit for two consecutive years.
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> Therefore, PHAs may elect to terminate over-income families who exceed the income limit for two consecutive years, but they are not required to do so. If the PHA chooses to enforce an established termination policy, and if the over-income family exceeded the over-income limit for two consecutive years prior to the PHA adopting this waiver, then the PHA must terminate the family within six months of January 1, 2022 (rather than within six months of when a family exceeded the limit for two consecutive years).
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> If a PHA chooses to not enforce an established termination policy for over-income families exceeding the income limit for two consecutive years, then PHAs must continue to treat such families as public housing families. They must be offered the option of paying an income-based rent or a flat rent at their next annual reexamination. PHAs who elect not to terminate over-income families cannot charge the families the FMR or "alternative rent."
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> Upon the HOTMA income rule becoming effective, over-income families who have already exceeded the two-year grace period will, pursuant to section 16(a)(5)(A), be terminated within six months or charged an "alternative rent," depending on PHA policy.

You can access the updated occupancy policies document from a link on the Guidance on CARES Act Waivers Expiration webpage, or directly by clicking here.

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