

ASSISTED HOUSING MANAGEMENT

A Legal Compliance Guide for Owners & Managers of HUD-Assisted Housing Sites

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insider

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HUD Publishes Updated FAQ on HOTMA Implementation

Get up to speed before the compliance date.

HUD's Office of Multifamily Programs recently released a series of frequently asked questions (FAQ) concerning the implementation of provisions of the Housing Opportunity Through Modernization Act (HOTMA) of 2016. The FAQ includes information on the phased-in medical hardship relief provision as detailed in the HOTMA final rule, HOTMA-compliant Tenant Selections Plans at Management and Occupancy Reviews, and use of the

rent override function in TRACS 202D up until the updated certification system becomes operational.

HOTMA Background

With HUD Notice H 2024-09, the agency issued a six-month delay for compliance with HOTMA for Multifamily Housing (MFH) programs, moving the deadline from Jan. 1, 2025, to July 1, 2025. The extension was implemented to address delays in finalizing software, key

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NEW MODEL LEASES AND FORMS WILL BE RELEASED BEFORE THE MANDATORY COMPLIANCE DATE.

forms, and training materials necessary for implementing HOTMA's significant changes to income and asset calculations.

HOTMA introduces updated rules for programs such as Housing Choice Vouchers, Public Housing, and Section 8 Project-Based Rental Assistance, with specific asset limitations applicable only to certain MFH programs. According to the notice, prior to the new deadline, HUD will monitor compliance without penalizing tenant file errors, but post-deadline noncompliance may result in findings and corrective actions.

FAQ Highlights

The FAQ provides essential information covering both procedural and technical aspects of HOTMA implementation. The FAQ can be found at www.hud.gov/sites/dfiles/Housing/documents/HOTMA_FAQ_Final_12_5.pdf. Here are some of the most important topics:

TRACS 203A adoption. TRACS 203A is an updated version of HUD's Tenant Rental Assistance Certification System (TRACS). This version will incorporate the new requirements set by HOTMA, particularly with HOTMA's updated income and asset calculations.

According to the FAQ, TRACS 203A is anticipated to become operational by early 2025, ahead of the July 1, 2025, compliance deadline for HOTMA.

Owners are allowed to start applying HOTMA provisions ahead of schedule. This involves manually calculating tenant income and rents, and entering them into the system using the rent override feature in TRACS 202D.

If your site has started to apply HOTMA provisions ahead of schedule, and you manually calculate tenant income and rents, HUD says you will be able to make corrections to certifications completed under TRACS 202D rules when TRACS 203A has been adopted.

Management and Occupancy Reviews

(MORs). MORs will assess both pre-HOTMA and HOTMA-compliant Tenant Selection Plans (TSPs). And the contract administrators (CAs) will review HOTMA-compliant TSPs according to the guidance in Housing Notices H 2024-04 and H 2023-10.

HUD says before the July 1, 2025, compliance deadline, minor tenant file errors related to HOTMA compliance will be noted as observations, provided

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OWNERS DON'T HAVE DISCRETION IN IMPLEMENTING THE PHASED- IN MEDICAL HARDSHIP DATE.

the TSP complies with HUD Notices H 2023–10 and H 2024–04. However, if required updates to TSPs and Enterprise Income Verification (EIV) policies and procedures were not publicly available by May 31, 2024, findings may be issued during MORs.

Revised model leases and forms. The FAQ says new model leases and forms meeting HOTMA requirements will be released before the mandatory compliance date. And if owners have implemented HOTMA in any respect, they must use the model leases, once available, as prescribed by Notice H 2023–10:

- Owners must provide families with copies of the HUD-approved lease at least 60 days prior to the end of a family's lease term.
- Owners must include a letter clearly stating that the family can either accept the modification or move, but that a response is due from the family within 30 days.
- Families must either accept the modification by signing both copies of the modification and returning one to the owner or refuse the modification and give the owner a 30-day notice of intent to vacate.
- If, within 30 days, the family indicates that the modification is unacceptable or doesn't respond, the owner may begin the procedures for terminating tenancy.

Inflationary adjustments. HOTMA includes mandatory inflationary adjustments starting in 2025. Owners who choose to adopt HOTMA provisions early must use the updated inflationary rates for compliance. Owners who haven't implemented aspects of HOTMA affected by inflationary adjustments will continue to use the pre-HOTMA amounts until the mandatory compliance date of July 1, 2025, or a later date prescribed by HUD.

With regard to the passbook savings rate, owners who haven't implemented the HOTMA-required rate will continue to use the rate of 0.06 percent, which became effective on Feb. 1, 2015. However, if an owner has implemented the HOTMA-required passbook savings rate through the rent override function in TRACS 202D, the certification will follow the 2025 HOTMA rate of 0.45 percent.

Safe harbor provision. HOTMA's safe harbor provision allows owners to use alternative methods for determining a family's annual income and assets, simplifying the compliance process. Owners can determine a family's annual income, including income from assets, based on income determinations made within the previous 12-month period by another federal means-tested public assistance program. This includes programs such as Medicaid, Supplemental Nutrition Assistance Program (SNAP), and others. The FAQ says owners can adopt HOTMA's safe harbor provisions for income determinations before the July 1, 2025, compliance deadline.

Medical hardship relief. This provision is a special policy under HOTMA designed to assist families who face significant financial impacts due to changes in medical expense deductions under HOTMA's rules. Families who received medical expense deductions before Jan. 1, 2024, may qualify for phased-in hardship relief if the updated HOTMA rules significantly reduce or eliminate their medical deductions.

The FAQ makes clear that owners don't have discretion in implementing the phased-in medical hardship date set at Jan. 1, 2024. Medical hardship relief will be phased in for families receiving medical deductions based on reviews conducted before Jan. 1, 2024. General hardship relief remains available for other qualifying families.

IN THE NEWS

HUD Issues 2025 Section 8 Annual Adjustment Factors

The contract rent won't be increased unless the owner submits a timely written request.

AAFS ARE DISTINCT FROM, AND DON'T APPLY TO THE SAME PROPERTIES AS, OCAFS.

HUD recently announced the Annual Adjustment Factors (AAFs) for Fiscal Year 2025, effective Dec. 3, 2024. Under Section 8 of the U.S. Federal Housing Act of 1937, owners of assisted public housing sites are entitled to request rent adjustments to satisfy necessary costs of ownership and operation from HUD. These adjustments ensure rent levels reflect real-world changes in residential rents and utility costs.

HUD establishes the rent adjustment factors on the basis of Consumer Price Index (CPI) data relating to changes in residential rent and utility costs. AAFs are applied at the anniversary of certain Housing Assistance Payment (HAP) contracts. And the amount that an owner is required to deposit in the Reserve for Replacement account is also adjusted annually by the most recently published AAF, at the HAP contract anniversary. The 2025 AAFs can be found at <https://www.huduser.gov/portal/datasets/aaf.html>.

Section 8 Program Applicability

AAFs are used to adjust contract rents for units in certain Section 8 housing assistance payment programs during the initial or pre-renewal term of the HAP contract. There are two categories of Section 8 programs that use the AAFs:

- Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs. Here, AAFs are applied before rent reasonableness checks, ensuring rents don't exceed comparable market rates; and
- Category 2: The Section 8 Loan Management Set-Aside (LMSA) and

Property Disposition (PD) programs.

The AAFs also apply to owners subject to Reserve for Replacement deposits, which ensure adequate funds are available for property upkeep.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements. AAFs are not used in the following cases:

Renewal rents. AAFs aren't used to determine renewal rents after expiration of the original Section 8 HAP contract. In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based rents. AAFs aren't used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LMSA program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Housing Choice Voucher program. AAFs aren't used to adjust rents in the tenant-based or the project-based voucher programs. In

the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated, and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher program, which doesn't use AAFs to adjust rents.

AAFs Schedules

As a reminder, the AAFs are distinct from, and do not apply to the same properties as, Operating Cost Adjustment Factors (OCAFs), which are used by many Section 8 and Section 202/8 sites. HUD's OCAF notice is still forthcoming for 2025.

For sites in which AAFs apply, HUD's published AAFs are shown in two schedules. One schedule is for adjusting the rent of units where the highest-cost utility (usually heating) is included in the contract rent (termed "Highest Utility Included" in the tables) and the other is for units where the tenant pays for the highest-cost utility ("Highest Utility Excluded"). The separate AAF schedules are published for a total of about 600 separate metropolitan areas, and about 2,000 non-metropolitan counties that aren't covered by the local consumer price index surveys. The schedules can be found at www.huduser.gov/portal/datasets/aaf/FY2025_Table1.pdf and www.huduser.gov/portal/datasets/aaf/FY2025_Table2.pdf. Or you can look up this information through HUD's AAF Metro Lookup Tool at www.huduser.gov/portal/datasets/aaf.html.

Submission Requirements for AAF Rent Increases

An AAF rent increase is effective for contracts commencing on the later of the annual contract anniversary date for which the adjustment is requested, or at least two months after the owner has submitted all required materials to the contract administrator (but no later than two months before the next annual contract anniversary date).

HUD Notice H-2002-10 covers the forms and procedures for annual adjustment of pre-renewal contract rent for Section 8 projects where rent is adjusted using the HUD-published Annual Adjustment Factor. According to HUD, the contract rent won't be increased unless the owner has submitted a timely written request for an AAF rent adjustment to the contract administrator or public housing agency.

For AAF increases, owners would submit the following forms that are included in the notice:

- Appendix 1 if Pre-Adjustment gross rent exceeds the existing Fair Market Rent or Appendix 2 if Pre-Adjustment gross rent does not exceed the existing Fair Market Rents (also for all LMSA & PD Section 8 contract types);
- Owner's Certification Form – Appendix 3;
- Unit Turnover Report – Appendix 4;
- AAF RCS Adjustment Worksheet – Appendix 5 (if pre-adjustment gross rent exceeds the existing Fair Market Rent);
- Rent Comparability Study (RCS) – (if applicable); and
- Utility Allowance Analysis (if applicable).

THREE OTHER TYPES OF RENTAL ADJUSTMENTS FOR HAP CONTRACTS

Your site's HAP contract will determine the rent adjustment method you should use. The Housing Assistance Payments (HAP) contract is a written agreement between a public housing agency (PHA) and the owner of a Section 8 unit. The HAP contract must be in the form prescribed by HUD. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of a specific family leasing a specific unit.

The following are the other three methods used to adjust rents beside annual adjustment factor (AAF) rent adjustments.

Operating Cost Adjustment Factor (OCAF) Rent Adjustments

The OCAF is a factor that's established by HUD, and is applied to the existing contract rent (less the portion of the rent that is paid for debt service). OCAF values are determined by HUD annually and are published in the Federal Register.

HUD determines OCAFs based on nine categories of operating expenses at FHA-insured projects: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer service. Although an OCAF rent increase doesn't affect the resident's portion of the rent, it increases the amount of assistance HUD will pay the site. To calculate the rent increase, HUD subtracts the per-unit debt service cost from the contract rent, then applies the OCAF for the state where the site is located.

Some HAP contracts are eligible for an Auto OCAF. The Auto OCAF Rent Increase process eliminates the requirement for the owner to calculate its own OCAF rent increase and submit an OCAF Worksheet in amend-rent years to obtain an OCAF rent increase.

Budget Based Rent Increase (BBRI) Rent Adjustments

The BBRI is a way for sites to increase their rent levels to support property expenses. A BBRI request should be prepared in accordance with the requirements of HUD Handbook 4350.1, Chapter 7. At a minimum, a request for a BBRI must contain the following items:

- A cover letter summarizing the reasons for the increase, proposing an effective date, and describing the physical condition and any improvements budgeted for. It needs to identify any proposed changes in services, equipment, or charges, and reasons for those changes.
- A budget worksheet (Form HUD-92547-A) completed in accordance with Handbook 4350.1.
- A Justification Statement for changes in budgeted line item amounts that exceed last year's audited figures by \$500 or 5 percent and miscellaneous line items.
- A copy of notice to tenants, annotated to show where and how the notice was distributed (if applicable).
- An executed copy of the Owner's Certification Regarding Purchasing Practices and Reasonableness of Expenses (Appendix 3 of 4350.1).
- An Energy Conservation Plan status report (if applicable), described in Chapter 12 of Handbook 4350.1.
- A signed request to increase reserve deposits or a statement that reserves are adequate (Appendix 6 of 4350.1).
- A utility allowance recommendation, if tenants receive a utility allowance.

Utility Allowance (UA) Adjustments

HUD provides utility allowances to sites receiving subsidy assistance where all or some utilities are paid directly by the residents. Utility allowances represent the owner's best estimate of the average monthly utility cost of an energy-conscious

resident based on an analysis. To determine the UA for the property, owners are required to perform a yearly analysis of their site's utilities, at the time of the annual or special adjustments of contract rents. This applies to OCAF, AAF, and BBRI rent adjustments. The UA adjustment may result in an increase, decrease, or no change from the current UA and must be supported by an analysis. The annual rent adjustment will be withheld if the owner doesn't submit the utility analysis with the rent adjustment submission. The regulations, at 24 CFR 245.405(a) and 245.410, require the owner to serve a 30-day notice to the tenants of a proposed decrease in the utility allowance.

Scott Turner Nominated to Lead HUD for Trump's Second Presidency

The next HUD Secretary will enter the role when housing affordability is a growing concern.

**TRUMP'S FOCUS
ON BUDGET
AUSTERITY
COULD SPELL
DEEP CUTS FOR
HUD FUNDING.**

On Nov. 22, President-Elect Donald Trump named Scott Turner as his choice to lead HUD. The announcement sets Turner up to take the reins of an agency charged with enforcing federal fair housing laws and overseeing housing for the poorest Americans. HUD shelters more than 4.3 million low-income families through public housing, rental subsidy, and voucher programs.

Scott Turner's post-NFL football player's career includes years as an elected official and civil servant. He represented the 33rd District in the Texas House of Representatives and served two terms from 2012 to 2017. In this office, at the Texas House of Representatives, Turner served on the government transparency and operation committee, the government efficiency and reform committee, the human services committee, the select committee on federalism and fiscal responsibility, and the international trade and intergovernmental affairs committee.

In addition, he previously led the White House Opportunity and Revitalization Council during President-elect Trump's first administration. In this capacity, he worked closely with former HUD Secretary Ben Carson on reinvestment in distressed communities through the Opportunity Zone program.

Turner currently serves as Chair for Education Opportunity at the America First Policy Institute, a think tank aligned with the incoming president.

Opportunity Zone Leadership

According to HUD, Opportunity Zones are economically distressed communities, defined by individual census tract, nominated by governors and certified by the U.S. Secretary of the Treasury.

Opportunity Zones provide tax incentives for investments in new businesses and commercial projects in low-income and undercapitalized communities.

The Opportunity Zone program was established under the 2017 Tax Cuts and Jobs Act and promoted investments in distressed communities by allowing taxpayers specialized tax treatment. This included deferred capital gains, for investments in Qualified Opportunity Funds (QOF), which, in turn, must invest at least 90 percent of their assets in businesses located in qualified Opportunity Zones. The equity from Opportunity Zones can be used as a source of capital for affordable housing. Scott Turner's familiarity with the program and Former Secretary Carson's mentorship may prompt an updated version of Opportunity Zones under Turner's helm.

HUD's Prospects Under a Second Trump Presidency

If confirmed, Scott Turner will enter the role of HUD Secretary at a time when housing affordability is a growing concern. Trump's campaign talked about addressing high housing costs, though much of his rhetoric was based on the premise of a clampdown on illegal immigration and inflation rather than affordable housing policies. One theme that has been evident throughout Trump's first presidency and campaign is budget austerity, which could spell deep cuts for HUD funding.

In his first presidency, cuts to HUD's budget met resistance in Congress, which, for example, has kept core programs like Section 8 housing vouchers and Public Housing intact. But a second term is expected to bring even more fiscal con-

HUD POLICY MAY BE INFLUENCED BY PROJECT 2025.

servatism. Any budget cuts will grow wait lists and further squeeze the tightening affordable housing market.

HUD policy in the second presidency may experience potential influence by Project 2025. This is a published policy blueprint from the Heritage Foundation, a conservative think tank, working in concert with more than 100 organizations. It lays out a roadmap for a future conservative U.S. president to take the lead in restructuring many facets of federal agencies and policies and reforming the federal government while solidifying executive power. It includes a chapter on housing policy by former HUD Secretary Ben Carson, who led the agency from 2017 to 2021. This section may lay the groundwork for projects that Turner might build on, such as nurturing public-private partnerships and revisiting various regulations.

The Project 2025 housing proposals include:

- A ban on families with undocumented members from living in federally assisted housing. Undocumented immigrants are already barred from receiving subsidies.
- Repealing again the Affirmatively Furthering Fair Housing rule, which mandates that local governments address segregation and promote fair housing.
- Ending Housing First policies, which places people in subsidized housing without preconditions. The focus would instead be on programs that encourage self-sufficiency and having sobriety be the first requirement.

- Implementing time limits and work requirements for people who receive federal housing subsidies.

Senate Confirmation Process

The Senate confirmation hearings of Scott Turner are expected in January 2025. Senator Tim Scott of South Carolina, the current ranking member of the Senate Committee on Banking, Housing and Urban Affairs, and who is likely to become its next chair, said, in a statement, “Federal housing policy has failed hard-working Americans for decades, and they deserve a different approach. The Senate Banking Committee will work quickly to consider his nomination.”

Senate Democrats will give Turner’s arrangement with Project 2025 the most scrutiny. Elizabeth Warren, a Democratic Senator and committee member, said in a social media post, “A good HUD Secretary must be serious about building more housing, taking on predatory corporations, and lowering costs for families.

. . . If Turner implements Trump’s Project 2025 plans, it’ll be a disaster for first-time home buyers and working people struggling to afford rent.”

Through the confirmation hearing, Senators are expecting to learn more of Turner’s views of specific housing issues. Warren said she aims to keep an open mind as Turner moves through the confirmation process. “I look forward to learning more about Turner’s views on how to address the housing crisis and will review his record with an objective and open mind ahead of his confirmation hearing,” she added to her social media post.

HUD PIH Sends Letters on Voucher Funding, Forecasting for 2025

Given the uncertainty about final funding levels, PHAs must plan cautiously.

HUD's Office of Public and Indian Housing (PIH) recently sent two letters addressed to executive directors and Public Housing Agency (PHA) board chairs on the funding and operational planning for the Housing Choice Voucher (HCV) program in 2025. The letters cover funding projections, budget management tools, and guidance for PHAs to mitigate potential financial shortfalls.

HUD reiterated that managing within budget is a fundamental principle of the HCV program. The letters remind PHAs that HUD has limited funds to address HCV funding shortfalls and additional funding is not guaranteed in any given year. In other words, PHAs should not rely on additional funds from HUD beyond what is provided in renewal funding when planning their HCV leasing and funding utilization for calendar year 2025.

PHAs are urged to prioritize stable assistance for current families and avoid overextending resources. Here are some highlights from the letters:

January Payments Under Continuing Resolution

HUD announced that HCV Housing Assistance Payments (HAP) for January 2025 will be prorated at 99.5 percent of 2024 eligibility levels under the Continuing Appropriations and Extensions Act of 2025, which extends funding until Dec. 20, 2024. Administrative fees for January will be prorated at 91 percent. Full eligibility is maintained for mainstream vouchers, with HAP at 100 percent and administrative fees at 91 percent.

2025 Funding Projections

HUD's projections based on current

House and Senate draft appropriations bills indicate the following potential proration levels for HAP:

- Senate bill: 97.5 percent HAP proration and 93.3 percent administrative fee proration.
- House bill: 88.59 percent HAP proration and 100 percent administrative fee proration.

HUD says the proration levels apply to all PHAs and were calculated by estimating the full HCV program renewal need for calendar year 2025 and comparing the program renewal need to the available funding proposed in the Senate and House draft bills. These levels reflect a tighter fiscal environment, with the Senate scenario offering slightly higher funding but both signaling a need for cautious planning by PHAs.

Budget Planning, Management

The letters encourage PHAs to use HUD's Two-Year Tool (TYT) and Payment Standard Tool (PST) to assess funding scenarios and make informed decisions about voucher issuance, payment standards, and other policies. The tools provide insights into how leasing decisions and local rent trends impact budgets and participant rent burdens. Given the uncertainty about final funding levels, PHAs may need to limit voucher issuance or adjust payment standards to prevent financial strain.

The letters emphasized the importance of proactive measures, such as reviewing reserves and leveraging the Shortfall Prevention Team (SPT) for agencies facing funding challenges.

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