

# Now & Next

## Affordable Housing Alert

May 8, 2024

### **HOTMA rules take effect on May 31, 2024**

By Rebecca Simon and David Hornstein

New HOTMA requirements take effect for owners of HUD Multifamily Housing, particularly rules related to tenant selection plans and EIV requirements.



#### **What's the impact?**

- Changes to Tenant Selection Plans and EIV requirements must be completed by May 31, 2025
- All HOTMA requirements will be scored on Management and Occupancy Reviews as of January 1, 2025
- The HOTMA complaint update to TRACS is expected this summer

**June 3, 2025, Update:** HUD has announced another extension of the implementation deadline for the HOTMA (Housing Opportunity Through Modernization Act) final rule as it applies to multifamily housing programs. Originally set to take effect in May 2024 and later extended to 2025, the new deadline is now **January 1, 2026**. This delay provides additional time for owners and agents of HUD-assisted multifamily properties to prepare for compliance with the new income calculation and asset limitation rules.

The compliance deadline for properties with low-income housing tax credits (LIHTC) may differ. Some state housing finance agencies have already established firm HOTMA implementation deadlines, while others have opted to extend their compliance deadlines in line with HUD's extended compliance deadline. Stakeholders should **contact their local tax credit agency** to confirm whether a separate deadline applies to LIHTC properties in their jurisdiction.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law eight years ago. Since that time, owners and managers awaited the implementing rules and guidance from the US Department of Housing and Urban Development (HUD). On May 31, 2024, the first major wave of requirements become effective for owners of multifamily housing.

## **HOTMA history**

Following the signing of HOTMA in 2016, which amended the US Housing Act of 1936, HUD released a proposed rule in September 2019 and a final rule in February 2023 that addressed Section 102 and Section 104 of HOTMA, which specifically impacted owners of HUD Multifamily Housing. The implementation notice for the final rule was [published in September 2023](#) and [amended in February 2024](#) (the Notice).

HUD's stated purpose in implementing HOTMA is to create consistency across its programs, including Multifamily programs and Public and Indian Housing (PIH) program. The Notice provided clarification and guidance on several program-related changes requiring the attention of HUD Multifamily Housing owners and managers. Some of those changes are highlighted below; however, HUD has afforded owners significant discretion in implementing these new requirements. Owners and managers must be aware of what changes are required and when those requirements must be incorporated into their compliance and management policies and procedures.

## **New HOTMA requirements**

Starting on May 31, 2024, owners are required to have HOTMA compliant tenant selection plans (TSPs) and enterprise income verification (EIV) policies in place. HOTMA requirements will be noted during Management and Occupancy Review (MORs) as of May 31, 2024. However, those items will not be scored until January 1, 2025.

HUD is encouraging owners and managers to update their software to be HOTMA compliant as soon as possible. The HOTMA compliant version of HUD's electronic vouchering system, TRACS,

will be released sometime in summer 2024. Owners are instructed to continue using their existing policies and procedures until the HUD and owner software are compatible with HOTMA.

## **TENANT SELECTION PLANS**

TSPs must be updated by May 31, 2024, and made publicly available. Some of the changes that will impact TSPs are listed below:

- / TSPs must reflect how owners will repay or credit a tenant an amount they were overcharged because of a de minimis error in income determination.
- / TSPs must address the owner's policy for determining eligibility for general hardship relief for health and medical expense deductions and for child care expense hardship exemptions.
- / TSPs must address the owner's policy for self-certification of net family assets. Owner may allow for self-certification for assets equal to or below \$50,000.
- / TSPs must address the owner's policy for allowing interim determinations of family income for any changes since the last determination. The Notice sets forth specific requirements for allowing or disallowing interim reexaminations depending on the estimated change in income.
- / TSPs must address the owner's policy for when and under what conditions a family is required to report changes in family income or composition.
- / TSPs must address the owner's policy for whether revocation of the tenant's consent will result in termination or assistance or denial of admission.

## **TENANT LEASES**

The five HUD program model leases are being updated to fully conform with the HOTMA final rule. Owners must provide families with notice sixty (60) days in advance of the end of their lease term that the new HOTMA compliant model lease is required for the new lease term. Tenants should be given thirty (30) days to respond. Tenants must accept the modified lease. If they do not, owners can terminate the tenancy.

As with other HOTMA requirements, owners have discretion in implementing many of the HOTMA requirements, and should refer to [HUD's List of Discretionary Policies](#) for clarification on which requirements must be implemented and which requirements they have discretion to implement as they choose.

## **IMPLEMENTATION REQUIREMENTS**

Once a property has HOTMA compliant software, owners are required to:

- / Provide tenants at least 60 days' notice that their lease will be modified at the end of the

term;

- / Implement their revised TSP and EIV policies; and
- / Utilize updated Tenant Consent Forms and Fact Sheets.

## Impact for Rural Development properties

On February 29, 2024, the United States Department of Agriculture (USDA) issued a memorandum in which it exercised certain statutory authority to waive and exempt Rural Development (RD) properties from adopting the following HOTMA provisions:

- / **Interim Tenant Income Reexaminations:** RD will not implement the HOTMA rule regarding interim tenant income reexaminations where adjusted income is estimated to increase or decrease by 10% or more;
- / **Other Program Income Determination:** RD will not implement the HOTMA rule allowing other programs' determination of income for income verification purposes; and
- / **De Minimis Errors:** RD will not implement the HOTMA rule allowing owners with de minimis errors resulting in \$30 or less per month to remain in compliance. Instead, RD owners must continue following the provisions found in Subpart O of 7 C.F.R. 3560.

Additional guidance and handbook updates are expected from USDA on the implementation of the remaining HOTMA requirements. RD's Management Interactive Network Connection (MINC) system will also be updated to be HOTMA compliant. RD owners will not be penalized for HOTMA non-compliance during tenant file reviews prior to January 1, 2025.

## The future of HOTMA

The implementation of HOTMA rules into management and compliance policies and procedures will take significant time and resources. Tenants are likely to have questions and concerns as they are made aware of the new policies and receive notice of their new lease. Owners and managers must be ready for these changes and the related questions. In particular, owners and managers must be ready for MORs that are scored based on HOTMA compliance by January 1, 2025.

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