

**RESOLUTION AUTHORIZING THE PRESIDENT AND CEO, OR DESIGNEE, TO APPROVE
CHANGES TO MPP 201:1 ADMISSION AND CONTINUED OCCUPANCY POLICY
REGARDING OVER-INCOME PUBLIC HOUSING RESIDENTS**



 Douglas Guthrie
 President & Chief Executive Officer



 Marisela Ocampo
 Director of Housing Services

Purpose: Changes to the Admission and Continued Occupancy Policy (MPP 201:1) regarding Over-Income (OI) Public Housing residents.

Issues: The Housing Opportunity Through Modernization Act of 2016 (HOTMA) (Public Law Pub. L. 114–201, 130 Stat. 782) made significant changes to the Public Housing, Housing Choice Voucher, and Multifamily programs. Although HOTMA was passed in 2016, it was not until February 14, 2023 that HUD published the 2023 Final Rule (Final Rule) codifying the regulations regarding Sections 102, 103, and 104 of the legislation. While Section 102 and 104 impact rent calculation and other aspects for Public Housing, Housing Choice Voucher and the Multifamily programs, Section 103 applies only to the Public Housing program, specifically as it relates to over-income (OI) families. A family is considered OI when their income exceeds 120 percent of the area median income (AMI).

HOTMA Sections 102 and 104 do not take effect until January 1, 2024, whereas Section 103 is effective as of March 16, 2023 and must be fully implemented by June 14, 2023 (120-days following the publication of the Final Rule). Changes to the ACOP as a result of Section 102 and 104 will occur as part of the 2024 Agency Plan process.

2018 Federal Register Notice

Prior to the release of the Final Rule, HUD had issued limited guidance to public housing authorities (PHAs) on how to address over-income families first introduced through HOTMA. On July 6, 2018 HUD released a Federal Register Notice (83 FR 34590) requiring PHAs to adopt policies regarding OI households along with a requirement to provide one (1) notice to families after being OI for 12-months. The policy options included either terminating the family's tenancy within six (6) months following the end of a 24 consecutive month period of being OI or charge the family an alternative rent. However, the 2018 FR Notice did not establish the alternative rents for PHAs to use for such families. In response to the 2018 FR Notice, HACLA did adopt the policy changes required by HUD to the ACOP as part of the 2019 Agency Plan process. HUD released subsequent PIH

Notices or Federal Register guidance and/or comment periods, but with little expansion to the previous guidance.

In 2018, HACLA adopted the option to allow an OI household to remain in the unit past the 24-month period and to pay an alternative rent (once established by HUD), due to the fluidity of household incomes recognizing that most OI families have multiple adult household members who are employed. For most of these households, if one of the employed members lost their job or moved out of the unit, the family would no longer be considered OI. Of the thirty (30) families that were determined to be OI as of the release of the Final Rule, three would no longer be considered OI for this reason as of the writing of this report. Additionally, while these families are OI in comparison to other public housing families, they would have a difficult time trying to find affordable and comparable size bedroom units in the private market.

2023 Final Rule

This Final Rule provides PHAs the final guidance on how to establish alternative rents and the final administrative processes for PHAs to fully implement OI policies. While HACLA did adopt the initial 2018 FR Notice ACOP provisions, the adoption of certain COVID waivers delayed the issuance of the one (1) initial notice to families after being OI for 12-months. HACLA began the issuance of the initial OI notice on June 1, 2021.

As part of the new guidance on the administrative process, the Final Rule now requires that an OI family receive three (3) notices pursuant to 24 CFR 960.507(c)(3) and provides specific language for such notices. An initial notice must be provided when a family is first determined OI. If the family is still OI twelve months following the initial determination, the family must receive a second notice and if still OI at the end of 24 consecutive months, a third and final written notice must be provided.

The final written notice after being OI for 24 consecutive months must state that:

1. The family has exceeded the OI limit during the grace period, and
2. HACLA will either terminate the family's tenancy within six (6) months following the end of the 24 consecutive month period or charge the family the "alternative non-public housing rent" that is the greater of: (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit, including amounts from the operating and capital fund, as determined by HUD.

If, during the 24-month period, the family's income reduces below 120% of the AMI, the 24-month clock stops. If the family's income subsequently returns to above 120% of the AMI, a new 24-month clock starts.

Provisions in the Final Rule also include establishing that an OI family remaining in the units after the 24-month period, would now be considered a *Non-Public*

Housing Over-Income (NPHOI) family and if remaining in the unit would not be able to participate in the Resident Advisory Councils or other public housing programs. Additionally, HUD provides suggested non-public housing lease language. An OI family who elects to remain in the public housing unit following the end of the 24-month period would be required to enter into a new Non-Public Housing Rental Agreement (Lease) within 60-days of the final OI determination. If the family elects not to sign the lease, HACLA would have to initiate eviction actions within the six-month window following the end of the 24-month period.

Following the signing of the Lease, if the NPHOI family's income reduces below 80% of the AMI, the family may apply for readmission into the public housing program (the provision to adjust the local admission preferences to provide for this will be included in the 2024 Agency Plan process).

Vision Plan: This action is purely administrative.

Funding: No funding required for this action.

Environmental Review: Not Applicable

Section 3: Not Applicable

Attachments:

1. Resolution
2. MPP 201:1 Section VI B

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PRESIDENT AND CEO, OR DESIGNEE, TO APPROVE CHANGES TO MPP 201:1 ADMISSION AND CONTINUED OCCUPANCY POLICY REGARDING OVER-INCOME PUBLIC HOUSING RESIDENTS

WHEREAS, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) (Public Law Pub. L. 114–201, 130 Stat. 782) made significant changes to the Public Housing, Choice Voucher and Multifamily programs;

WHEREAS, pursuant to Section 103 of HOTMA (“Section 103”), families residing in public housing units would be deemed over-income (“OI”) if the household’s total annual income exceeded 120% of the area medium income for a 24 consecutive month period;

WHEREAS, following the end of the 24 consecutive months, if the family is still OI, HACLA must provide a final written notice and either terminate the family’s tenancy within six (6) months following the end of the 24-month period or charge the family an alternative non-public housing rent;

WHEREAS, the alternative non-public housing rent would be set at the greater of: (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit, including amounts from the operating and capital fund, as determined by HUD;

WHEREAS, HACLA adopted initial policies and procedures regarding OI families in accordance to previous published HUD notices, and on February 14, 2023, HUD published the Final Rule codifying the regulations regarding Section 103 and required full implementation of the Final Rule by June 14, 2023, which is 120-days following its publication; and

WHEREAS, the Final Rule revises aspects of previous guidance as well as adding new requirements to implement the revised OI policies as set forth in Section 103.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners hereby authorizes the President and CEO, or designee, to approve changes to MPP 201:1 Admission and Continued Occupancy Policy.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

APPROVED AS TO FORM

HOUSING AUTHORITY OF THE
CITY OF LOS ANGELES

By: _____
James Johnson, General Counsel

By: _____
Cielo Castro, Chairperson

DATE ADOPTED: _____

ADMISSION AND CONTINUED OCCUPANCY POLICY – MPP 201:1

HOTMA OVER-INCOME MANDATORY PROVISIONS

III. RENT DETERMINATIONS

A. Initial Occupancy

B. Income-Based Formula shall be the highest of:

1. 10% of the total monthly income;
2. 30% of the adjusted monthly income; ~~or~~
3. Minimum rent of \$50 (see Section IV regarding Minimum Rent provisions),
or
4. ***The alternative non-public housing rent for Over-Income households.***

D. Rent Choice

Once a year, families will be offered a choice in the type of rent method their monthly tenant rent will be determined. The choices are between the Income Based method or the Flat Rent. Choice of rent is not applicable to families with members who do not have eligible immigration status (“Mixed Families”) and whose rent may or may not be prorated. ***Non-public housing over-income families shall not be offered a choice of rent; however, they must pay the alternative non-public housing rent.***

E. Other Rental Amounts

1. Prorated rents are applicable for families where some family members are citizens or have eligible immigration status and some do not. The prorated rents are *more* than 30% of adjusted family income.
2. ***Over-income families will pay the alternative non-public housing rent, which shall be the higher of:***
 - a. ***The applicable Fair Market Rent (FMR) as established by HUD for the Section 8 program for the bedroom size for the City of Los Angeles, or***
 - b. ***The amount (as established by HUD) received by HACLA in the form of subsidy and capital funds per unit for the development where the household resides.***

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HOTMA OVER-INCOME MANDATORY PROVISIONS

[Subsequent Renumbering Through the Rest of Section III 3]

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4-5. Rent Calculation for Over-Income Households

- 1) **a)** Effective January 1, 2019, **June 14, 2023** households whose adjusted **total** annual income as determined by an annual or interim reexamination exceeds the 120% AMI income limit published annually by HUD – will be considered “over-income” households.
- 2). ~~Twelve (12) months after the initial over income determination, an annual or interim reexamination must be conducted. If the family’s income continues to exceed the over-income limits, the family will be provided written notification of their over income status and an estimate as to what their rent would be at their next annual reexamination.~~
- b).** ***Following 24 consecutive months of exceeding the income limit, over-income families will be required to pay the alternative non-public housing rent.***
- 3). ~~Following two (2) consecutive years of exceeding the income limit, over-income households shall pay the higher of the following for rent:~~
 - a) ~~The applicable Fair Market Rent (FMR) as established by HUD for the Section 8 program for the bedroom size for the City of Los Angeles, or~~
 - b) ~~The amount received by the Housing Authority in the form of subsidy and capital funds per bedroom for the development where the household resides.~~
- 4). ~~If at any time during the two-year period the over-income household’s income falls below the over-income threshold, the household will no longer be characterized as an over-income household subject to this provision. Should the household’s income once again exceed the over-income threshold, a new two (2) consecutive year period shall commence.~~

~~Rent for such over-income households may be subject to additional changes pending HUD regulatory changes.~~

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VI. PERIODIC REEXAMINATIONS

ADMISSION AND CONTINUED OCCUPANCY POLICY – MPP 201:1

HOTMA OVER-INCOME MANDATORY PROVISIONS

A. Annual Reexaminations

Non-public housing over-income families will not be subject to annual reviews of the household's income.

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XV. OVER-INCOME FAMILIES

A. ***Effective June 14, 2023, households whose total annual income as determined by an annual or interim reexamination exceeds the 120% AMI income limit published annually by HUD – will be considered “Over-Income” households.***

B. ***Within 30-days following the determination of a family's over-income status, the household shall receive a notice informing them of their over-income status, that if they remain over-income for 24 consecutive months they may remain in their unit but will have to enter into a non-public housing lease, and that they will be required to pay the alternate non-public housing rent as defined in Section III E.2.***

C. ***Twelve (12) months after the initial over-income determination, an annual or interim reexamination must be conducted. If the family's income continues to exceed the over-income limits, the family will be provided written notification of their over-income status and an estimate as to what their rent would be at their next annual reexamination. Such notice shall be provided to the family within 30-days from the determination that the family continues to be over-income.***

D. ***Twenty-four (24) months following the initial determination of over-income status, HACLA shall conduct a reexamination of the family's income. If the family remains over-income, they shall receive the 3rd and final notice stating:***

1. ***They have exceeded the over-income limits for 24-months;***
2. ***They will be terminated from the public housing program and required to sign the Non-Public Housing Lease no later than 60 days after the date of this notice;***
3. ***They will be charged the alternative non-public housing rent no later than 60 days after the notice or at the next lease renewal, whichever***

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HOTMA OVER-INCOME MANDATORY PROVISIONS

is sooner;

4. *They will no longer receive a utility allowance as part of the rent calculation;*
 5. *They will no longer be considered “public housing” residents and therefore shall not be able to participate in the site’s resident leadership council (RAC) or programs that are specifically limited to public housing residents;*
 6. *They will no longer be subject to the Community Service and Self-Sufficiency Requirement (CSSR), if applicable;*
 7. *If the family fails to execute a Non-Public Housing Lease within 60 days of this notice, the family’s tenancy will be terminated within six (6) months. If the family signs the lease after 60 days and before termination, the family will pay the total difference between the alternative rent and their public housing rent dating back to the date of this notice; and*
 8. *If following the signing of the Non-Public Housing Lease and still residing in the unit, the family’s income decreases to below 80% AMI, the family may apply for readmission to the public housing program and will be subject to the existing admission requirements.*
- E. *If at any time during the 24-month period the Over-Income household’s income falls below the over-income threshold, the household will no longer be characterized as an over-income household and subject to this provision. Should the household’s income once again exceed the over-income threshold, a new 24-month period shall commence.*