

Functioning In The Land of

"NOTMA" – Maintaining HUD

Compliance Amidst

Implementation Uncertainty

Trainer: Jenny DeSilva, President and CEO of DeSilva Housing Group

A Little About Me



Jenny DeSilva has 25 years of experience in affordable housing and is a recognized industry compliance expert, with extensive consulting and training knowledge in HUD's Multifamily Housing programs.

She began her career as a Director for Southwest Housing Compliance Corporation, HUD's Project-Based Section 8 Contract Administrator for Texas and Arkansas. She also served as Director of Training for PMCS, Inc as well as Director of Blueprint Housing Solutions, both of which provided consulting and training for HUD Multifamily properties.

She is an active member of multiple Peer Groups focused on TRACS and regulatory developments. Together, they work to shape industry practices that are compliant and foster consistency among various oversight agencies.

She currently serves as a HUD technical assistance subcontractor, providing nationwide TRACS and Secure Systems technical assistance to owners completing RAD PBRA conversions, as well to participating state level grantees and participating owners of HUD's PRA 811 Program.



This session will focus on key discretionary options owners must select when updating TSPs, House Rules, and EIV policies

HOTMA introduces the most significant and comprehensive set of changes to HUD's occupancy requirements for the multifamily housing industry in the last 30 years.

While identifying and learning how to implement these changes can be scary, in the end, most of these changes are good for the industry -- both for tenants and owners.

HOTMA encompasses regulatory changes that:

- Require you to learn new rules, modify your everyday procedures, update written policies and create new ones, and revise forms used in tenant files.
- Provide guidance on optional steps owners may, but are not required to, take when implementing.



Many of these changes have a direct impact on the fields of the HUD 50059 and 50059A Tenant Certifications and resulting renta calculations.

To facilitate these updates, HUD's new TRACS Version 2.0.3.A specifications include programming changes driven by HOTMA (along with other changes not related to HOTMA that won't be discussed today).

When originally published, the HOTMA Final Rule included provisions for HUD Multifamily Housing Programs that were to go into effect on January 1, 2024. HUD has since announced are extension of that deadline by two years.

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To correctly implement mandatory changes, stakeholders must:

- Learn and understand the regulatory changes
- Update existing written policies and procedures as well as create entirely new ones in response to HUD's guidance introduced in the HOTMA Final Rule.
- **Update forms** used in eligibility determinations and ongoing recertification activities to include new questions and changed processes.
- Notify tenants of the changes being implemented.
- **Update to a new software version** from your TRACS software vendor to signify and initiate implementation.

Learn it

Update P&P

Notify Tenants

Update Software

Orchestrating this in a clear and concise manner will be key. There are two groups impacted by these changes – property management staff and potential/current residents.

Recognize that these changes will be a lot for residents to adjust to as well. To keep them informed about the changes, DeSilva Housing Group recommends properties send out a series of short notifications, either as simple letters or newsletter articles, etc. Multiple tenant notifications on single topics may be better than a single tenant notice on multiple changes.

Highlight the positive changes HOTMA brings to the industry.

Consider Limited English Proficiency (LEP) and Reasonable Accommodations that may be necessary for these notices to reach diverse tenant populations.

Important Disclaimers



DHG continues to solicit HUD for clarification in instances where language is unclear or wording is inconsistent/incorrect. There are also errors in the examples in the guidance that do not align with the statutory guidance. These inconsistencies will lead to confusion and incorrect interpretation in the industry until technical corrections are published.



Sign up for our email list to learn when HUD releases new information that may have an impact on guidance provided to you in this workshop.

Visit <u>desilvahousinggroup.com</u> and click on "Email Sign Up" in the top right.



DHG training materials are subject to change at any time, as HUD responds to inquiries or provides additional guidance.



We recommend you **compile a list** of the policies and/or forms that will need to be updated or created as a result of these changes.

Staged Implementation

May 31, 2024
 Owners must update Tenant
 Selection Plans and EIV
 Policies to reflect HOTMA.

 Prior to their first reexaminations under HOTMA, Owners must inform families that their income determinations will be conducted in accordance with the HOTMA final rule. By Jan 1, 2026
 Owners fully
 implement revised
 policies and forms
 and submit HOTMA
 compliant data to
 TRACS.

 HUD must finalize and publish the new TRACS 203A Specification and new HUD Forms (like HUD Form 50059 and 50059A, HUD 9887/HUD 9887A, VAWA Lease Addendum, etc.).

TBD

Owners must update to TRACS 203A software and provide tenants with 60 days notice of new model leases. Timing this may be tricky.

Owners must fully implement their revised Tenant Selection Plans, EIV policies, use of new forms, House Rules, and other modified leasing procedures.

Sample High-Level General Tenant Notice About HOTMA

Date:

Dear Residents,

We are writing to inform you of some upcoming changes to the property rules, procedures, and recertification forms we use at our community that will impact your household. Our goal with this letter is to broadly introduce these changes and extend the opportunity for you to ask us questions throughout the process. We know change can be scary, but it can also be a good thing.

You might be asking, "Why are you making these changes to rules?" Here is why: In 2016, the government passed a new set of regulations called Housing Opportunities Through Modernization Act (HOTMA). HUD took several years to learn about these new regulations and decide how they, as a federal agency, would begin following them at subsidized properties like ours. By 2023, HUD was ready to start the process of following these new regulations.

Throughout 2023, HUD released a series of documents to the industry, explaining how these new rules must be fully implemented by January 1, 2026. To meet that deadline, owners need to begin making changes now. These new rules are designed to make sure the right families are receiving the appropriate amount of assistance from the government. They are also designed to make the recertification process easier to complete for both owners and residents, by decreasing the amount of paperwork necessary to process recertifications to adjust your portion of the rent.

Below, we summarize the highlights of these changes for you. After you read this, please ask questions. Open communication is key to this being a smooth process for both our staff and your family. We will navigate this change together!

Property-wide Policies are Being Changed or Created

HOTMA required us to make some changes to our Tenant Selection Plan we follow to screen and determine eligibility for potential new residents. It also required us to make changes to the lease and House Rules that you must follow as current residents. You will receive subsequent notifications from us that will include copies of those changes. These policies will be publicly available for review upon request.

New Procedures for Annual and Interim Recertifications

As you know, your household is required to participate in an Annual Recertification to evaluate your income, assets, and expenses to adjust your monthly rent accordingly. If your household experiences composition changes or changes to these financial elements, you are required to report those changes to us so that we can, using these new rules, determine if an Interim Recertification needs to be processed to adjust your rent before your next Annual Reexaminations. These are the changes that will impact you the most. Here are some examples:

1. There are several changes for Elderly/Disabled households and households with dependents. HOTMA increases the standard deductions for families with a head, co-head, or spouse who is elderly or a person with a disability from \$400 to \$550 per household. That is great news. However, there is a higher threshold that must be met before a family will receive a medical and/or disability deduction for their out-of-pocket expenses. The current threshold of 3% of your annual income will increase to 10%. If this affects you, we can discuss new options to gradually incorporate these changes into your rental calculations over time, instead of all at once.

HOTMA also increases the standard deduction for dependents from \$480 to \$500.

- 2. HOTMA allows owners to use new methods to verify your income and assets that call for less paperwork to be gathered. These administrative changes can make the process quicker and easier for owners and households. As a result, new applicant households might move in faster and recertifications can be accomplished with less paperwork from you. That's a win-win for everyone.
- 3. HOTMA includes expanded lists of what owners must count or not count as income and assets, when determining eligibility and rent amounts for a household. The vast majority of these changes were beneficial to current residents. For example, income, like child support, will be calculated based on what was actually received versus what the court ordered. Some assets that we had to verify last year will no longer be considered assets for you!
- 4. HOTMA establishes some new rules regarding limitations for the amount of assets a Section 8 household can maintain and still be eligible for subsidy. It is very important to understand that, as an existing resident, these new limits on assets will not result in in-place Section 8 households being evicted. If this rule change impacts your family, we will be having a more indepth conversation with you to explain the change and how it might adversely affect your rent portion. Some households might lose their rental assistance. However, no household would be evicted based on the limitations.
- As a nation, we are all affected by inflation. With HOTMA, HUD is now obligated to adjust standard deductions (like the dependent and elderly deduction) annually to account for inflation. When HUD releases more information about these adjustments in coming years, we will notify you as well.

We understand this was a lot of new information. It is for us too! Please know, we are here to help you understand these changes and the impact they may have on your household. Stay tuned for additional information. We hope you are excited about the positive changes HOTMA brings to industry and the residents, like you, we are honored to serve.

Sincerely,

Property Management

Sample 60 Day Notice to Tenants Regarding New Lease

If you have difficulty reading, writing, or speaking English, please request our assistance and we will ensure that you are provided with meaningful access based on your individual needs.

Date	Response due							
Dear Household Members:								
using a new version of the HI the lease) at this community We are only allowed to imple	tions outlined in the HOTMA Final Rule, we are required to begin UD Model Lease (to include attachments and required addendums to a copy of the new lease and attachments are included. The sement the new lease version at the end of your current lease term expires on	Your response to this notice does not preclude you from exercising other avenues available if you believe that you are being discriminated against on the basis of race, color, religion, sex, gender identify, sexual origination, national origin, familial status, or handicap. We are dedicated to ensuring continued enjoyment of your home in our community.						
how long they have lived at to others are on leases that run	different end dates for their lease terms than yours, depending on the property. Some households are on month-to-month leases whi of for an initial one-year period. Iance with HUD requirements, we are providing all current resident	I have reviewed the new HUD Model Lease and required attachments that include new provisions. I have been given the opportunity to ask questions.						
	ur lease will change at the end of your lease term.							
	ou 30 days to review these changes and accept them. At the end of you do not wish to accept the changes, you must indicate that	THE RESERVE OF THE PROPERTY OF						
	management with a 30-day Notice to Vacate.	I do not agree with these changes. Please accept this response as my 30-day notice to						
	t reasonable accommodation to assist in facilitating a meeting with r/agent will consider extenuating circumstances.	vacate my unit on						
for persons affiliated with th	victims of VAWA crimes. This is true for women and men and is tr ne victims who experience imminent threat. Victims are still requirements set forth in the lease (including lease attachments).	Resident Signature Unit # Date						
	information about the property VAWA policy, please reference you property staff. If you would like to exercise your VAWA protections							

Owners will be able to use any of the following methods of verifying and calculating annual income.





Not New

• This **optional** verification method has been available since 2016. Streamlined income verifications are reserved for fixed income sources wherein the income is traditionally verified in Year 1 and adjusted for interest and/COLA (Cost of living Adjustment) increases in Years 2 and 3 before being traditionally verified again in Year 4.



- Newly introduced **optional means-tested income verifications** to arrive at income categorized as "safe harbor" income on the 50059.
- This allows the owner to use a determination from another federal agency that has already verified a household's gross annual income and use that amount on their HUD Form 50059 in a "held harmless" manner.



Not New but Changed

- If owners are <u>not</u> using streamlined fixed income verifications or means-tested verifications, they **must** follow HUD's verification hierarchy of written, oral and tenant self-certification of income verifications to calculate annual income.
- However, changes within that hierarchy of attempts wer introduced in the Notice.

Themes of Verification Methods

Pros and Cons to techniques used

Weighing risks
associated with
discretionary options

Adapting to more relaxed approaches to verification



VERY HOT TOPIC IN THE INDUSTRY



WELLS FARGO HOTMA'S IMPACT ON ASSETS

WHY SUCH AN OVERHAUL?

- Alleviate the verification burden for owners that must verify the value of complex assets with earning potential that is not predictable and is dependent on market conditions.
- Help ensure the limited inventory of assisted units and funding goes to individuals that have the greatest need for affordable housing- those without expendable assets.

OPTIONAL VERIFICATION - SELF CERTIFICATION OF ASSETS

HOTMA permits owners to accept self-certification of an itemized list of net assets cash value and asset income if the total estimated cash value of all assets for the household will be equal to \$52,787 (adjusted for inflation on an annual basis) or less.

Each asset must be listed individually on the 50059 and if the income is known, the resident must provide the income from each asset.

OPTIONAL VERIFICATION - SELF CERTIFICATION OF ASSETS

Owners must specify in their TSP whether and when (at move in or at recertification or at both) they will accept a self-certification of assets for assets equal to or less than \$52,787.



ASSET LIMITATIONS (DISQUALIFIERS) AT ADMISSION

HOTMA introduced two new mandatory restrictions on assistance (HUD calls these asset disqualifiers) for applicants at admission or for nonsubsidized households attempting to have subsidy reinstated following an instance of failure to recertify timely.

- These restrictions do not apply to households undergoing an Initial Certification as part of a PBRA RAD Conversion.
- These restrictions apply to all Section 8 properties. This does include all Section 202/8 properties.
- These restrictions do not apply to Section 236 IRP, Section 202/162 PAC, 202 or 811 PRACS, 811 PRA, or SPRAC properties.

DISQUALIFIER #1 – ASSET CAP

The household will be ineligible for assistance if the family's net cash value of included assets exceeds \$105,574.

- HUD has clarified that the cap value of \$105,574 is fixed. Owners do not have the ability to adjust the cap to a higher or lower amount. However, HUD will adjust it annually for inflation.
- Perspective on Impact- keep in mind, nationwide, there are currently only an estimated 11,000 assisted households in the entire TRACS database with asset cash values that exceed \$105,574.

- Of that 11,000, some of those households are living in Section PRAC communities and thus, are no affected by this disqualifier. Others also currently include retirement accounts which, under HOTMA, will be excluded going forward.
- Assets that have been disposed of for less than fair market value within the past 24 months are to be included in the asset total when comparing the household's asset value to the \$105,574 cap.

DISQUALIFIER #1 – ASSET CAP

Best Practice: DHG discourages any property representative from attempting to aid an applicant in liquidating an asset to avoid disqualification. That is the responsibility of the applicant (with or without the assistance of family, friends, or financial advisors).

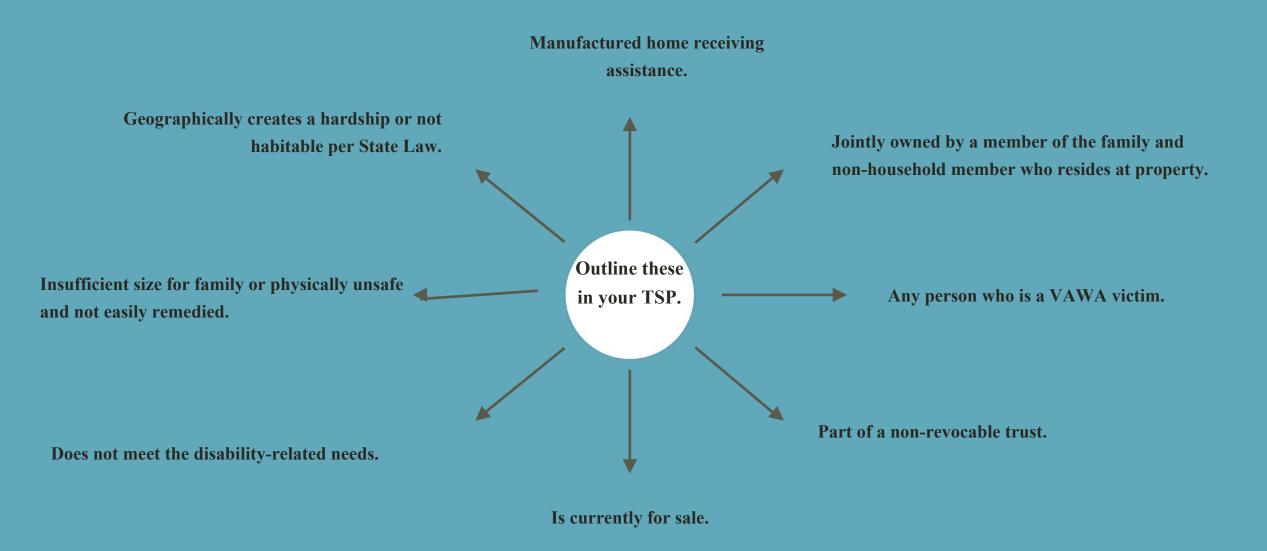


DISQUALIFIER #2 – OWNERSHIP OF REAL PROPERTY

Households cannot be admitted if the family has present ownership interest in, a legal right to reside in, and the authority to sell real property that is suitable for occupancy.

- Owners must ask the initial questions to identify ownership of real property within the household.
- Owners can rely upon self-certification as to whether a family has any present ownership. However, owners must seek third party verification of a family's legal right to reside or sell, and whether the property is suitable for occupancy or not.
- The net cash value of Real Property is to be included in the sum of included assets totaled to determine if the family is disqualified pursuant to the Disqualifier #1- Asset Cap.
- If an applicant owns real property with a negative cash value (meaning they owe more than what the property is worth), then the cash value and asset income of that asset for income calculation purposes is \$0.

ALLOWABLE EXEMPTIONS/EXCEPTIONS TO THE REAL PROPERTY DISQUALIFIER:



ASSET LIMITATIONS AT RECERTIFICATION FOR IN-PLACE HOUSEHOLDS





Limited enforcement w/ cure period.

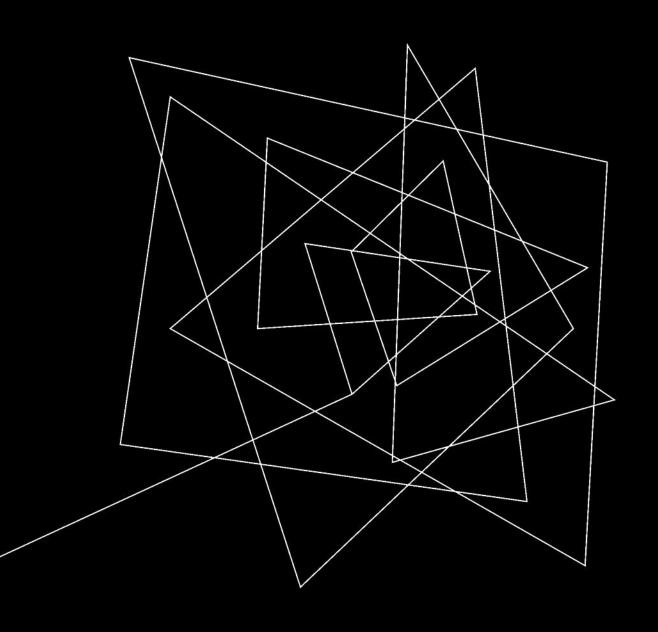


Full enforcement.

Total enforcement with 1 difference. Family has opportunity during maximum 6-month period to cure to avoid termination of assistance.

Can choose to delay enforcement for up to a max of 6 months from the date of the certification wherein disqualification is confirmed. At the end of 6-month period, owner would *terminate assistance*.

*** Warning: Section A.3.b of the Second Notice still has erroneous word choice within the document that refers to "eviction of assistance" or "eviction proceedings."



HOTMA'S IMPACT ON EXPENSES AND DEDUCTIONS

How these
Categories
Change with
HOTMA

Elderly/Disabled Family Deduction -

Starting with certifications created after TRACS 203A software implementation, HOTMA increases the elderly/disabled deduction from \$400 to \$550.

Dependent Deduction- Will adjust to \$500. Equivalent adjustments for FTS Capped Earned Income and Adoption Assistance thresholds.

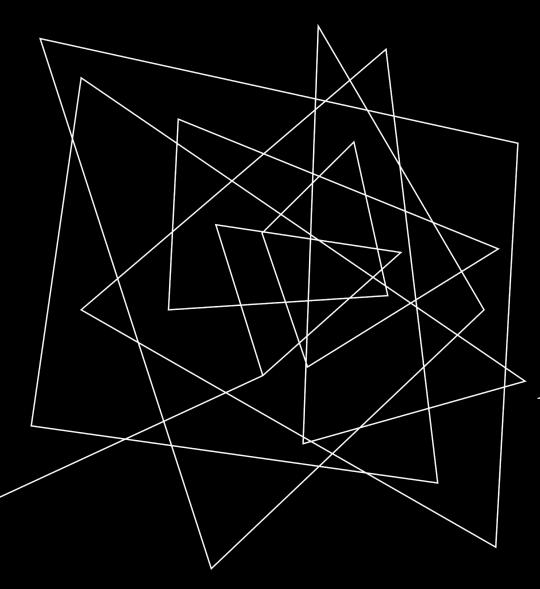
Childcare Expense Deduction –

Prerequisites remain unchanged.

Medical Expense Deduction - renamed Health and Medical Care Deduction. Expenses eligible will be those that exceed 10% of annual income, as opposed to 3% amount.

Disability Expense

Attendant Care and Auxiliary
Apparatus Deduction.
Expenses eligible for the deduction will be those that exceed 10% of annual income, as opposed to the current 3% amount.



PHASE IN FOR HEALTH/MEDICAL

AND ATTENDANT/AUXILIARY EXPENSES

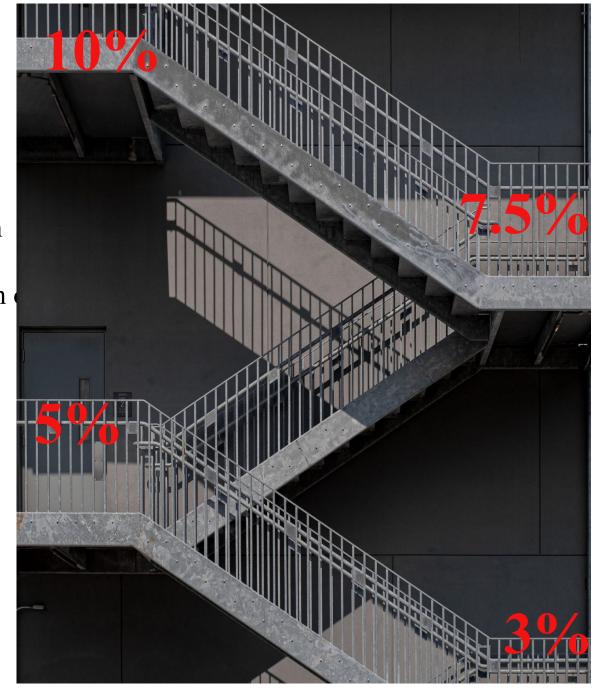
Let's Examine Phase In of Deductions

Medical Expense Deduction –

• There will be an option for in-place households currently receiving a medical expense deduction on the certification in effect on December 31, 2023, to automatically be eligible for a phased in application the higher 10% threshold.

Disability Expense Deduction-

• Like the new Health and Medical Care Deduction, there will be an option for in-place households currently receiving a disability expense deduction on the certification in effect on December 31, 2023, to automatically be eligible for a phased in application of the higher 10% threshold.



MANDATORY PHASE IN FROM 3% TO 10% FOR IN-PLACE HOUSEHOLDS

The Final Rule **requires** owners to implement, for existing households, a phased in implementation for the increase in the threshold from 3% to 10% for Health and Medical Care and Attendant Care and Auxiliary Apparatus Expenses.

- The start of a potentially 24-month long phase-in will begin with the first full certification performed on the household following implementation of the owner's new TRACS 203A software.
- Owners will implement an intermediary 5% for the certifications processed for the first 12 months and then a 7.5% for the subsequent 12-month period.
- By the end of the 24-month period, the household will be required to pay the first 10% of their annual income as the out-of-pocket expense before the remaining amount is included as a deduction.

MANDATORY PHASE IN FROM 3% TO 10% FOR IN-PLACE HOUSEHOLDS



Phase In is portable – meaning phase-in must continue if a household unit transfers within the same property or for a PBRA RAD Conversions. Portability from property to property only applies if the new property owner has opted to implement a written policy (within the tenant selection plan) to continue the phased-in relief upon admission. This is not mandatory.

• Copy of the HUD 50059 from the prior owner is required to be in the file if owner allows for continuation at move in. If these are not available, the owner can accept self-certification and the reason the 50059s are not available.

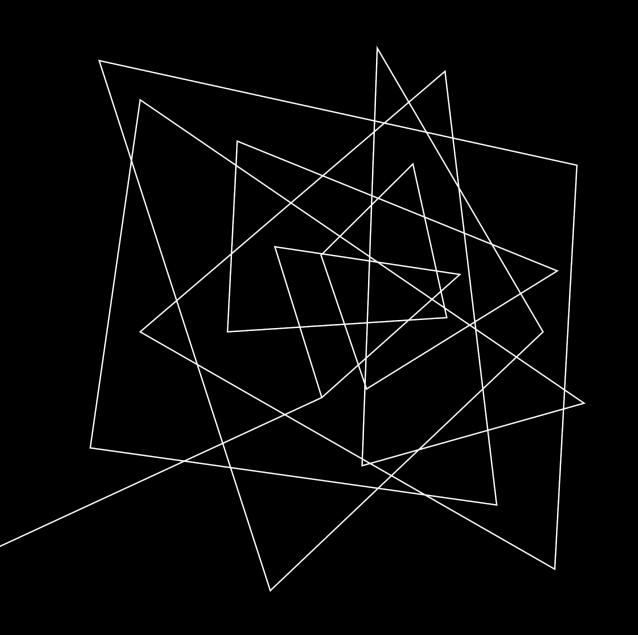
If the reexamination that initiates phase-in of the deductions is an Interim recertification, the owner must process another certification one year later to ensure the household only remains at the appropriate % level on the phase in schedule for exactly 12 months unless phase-in ends.

To automatically qualify for the phase-in as a current tenant, the household must:

- Have been receiving the deduction (based on the 3% calculation) on their active certification, as of December 31, 2023.
- Throughout the phase-in schedule, the calculations must yield expenses that exceed the percentage amount of out-of-pocket expenses the household is responsible for paying before the deduction applies. If, at any point, these out-of-pocket expenses are less than the required threshold percentage for the family, the phase-in will end, and the household will not receive the deduction.



MANDATORY
PHASE IN FROM
3% TO 10% FOR
IN-PLACE
HOUSEHOLDS



(GENERAL RELIEF)

FINANCIAL HARDSHIP FOR HEALTH/MEDICAL, ATTENDANT/AUXILIARY AND CHILDCARE EXPENSES

(GENERAL RELIEF) FINANCIAL HARDSHIP FOR HEALTH/MEDICAL or ATTENDANT/AUXILIARY EXPENSES

This hardship allows for the standard 10% threshold for the deduction to **be lowered to 5% for a period of 90 days.** To qualify for the financial hardship for Health and Medical Care and Attendant Care and Auxiliary Apparatus, the household must:

- Request the hardship, in accordance with the Owner's Hardship Policy and demonstrate that the family's applicable expenses are more than 59 adjusted annual income.
- These households could have previously undergone phase-in from 3% 5% to 7.5% to 10% and then requested the financial hardship at any poduring or following the completion of that gradual phase in.
- These households may have not had an income change that would have prompted an Interim.

Childcare Hardship Exemptions

Childcare Expense Deduction- The childcare expense deduction continues to be calculated based on out-of-pocket expenses incurred by the household to enable a member of the household to work, look for work, or go to school. Foster children can be the qualifying member going to care for the expenses to be eligible.

- HOTMA introduces a new option for a family whose eligibility for the childcare expense deduction is ending- most notedly because a working member stops working, but the need for childcare remains.
- These households may request a financial hardship exemption to continue the childcare expense deduction under certain situations.
- The owner must recalculate the family's adjusted income and continue the childcare deduction if the family demonstrates they are unable to pay their rent because of loss of the childcare expense deduction yet the expense is still necessary.

Discretionary Options Regarding Hardship Policies



The Notice reads: MFH Owners have discretion to establish policies for the purpose of determining eligibility for general hardship relief for the health and medical care expense deduction and for the child-care expense hardship exemption. MFH Owners must describe these policies in their Tenant Selection Plans, as applicable.



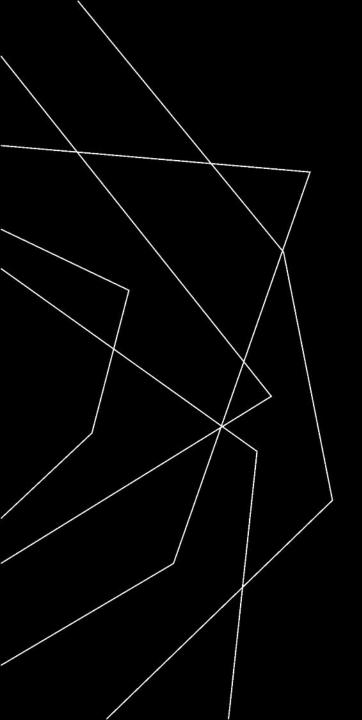
DHG's interpretation of the regulation is that
Owners have the discretion to establish written
policies regarding the types of circumstances that
will qualify a family for general relief to include
exercising the option to not process financial
hardships at all. We have requested HUD clarify
if that interpretation is correct and are awaiting
their response.



The Notice states that Owners must review circumstances at least every 90 days and, if circumstances remain the same, the owner may extend an additional 90 days. The owner has the discretion to establish a policy that limits the number of extensions. HUD established no max limit.

To initiate, extend, or end hardship, the owner must process a "Non-Interim".

What is that?



THANK YOU

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