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**Special Attention of:**

Public Housing Agencies;  
Public Housing Hub Office Directors;  
Public Housing Program Center Directors;  
Regional Directors;  
Field Office Directors; and  
Resident Management Corporations

**NOTICE: PIH-2019-11(HA)**

Issued: May 3, 2019

Expires: Effective until amended,  
superseded, or rescinded

Cross References: 83 FR 35490

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**Subject: Final Implementation of Public Housing Over-Income Limit under the Housing Opportunity Through Modernization Act of 2016 (HOTMA)**

**1. Purpose**

*What this Guidance Does.* The purpose of this notice is to provide supplemental information on the implementation process for public housing income limits brought about by HOTMA and detailed in *Federal Register* Notice (83 F.R. 35490) published July 26, 2018 (2018 FR Notice). The supplemental information provided includes:

1. Background on the methodology used to calculate the over-income limit.
2. Guidance for Public Housing Agencies (PHAs) on how to implement the new statutory income limit for continued occupancy in public housing including the new documentation, notification, and tracking requirements.

*What this Guidance Doesn't Do.* This notice does not address how a PHA is to set rents for over-income families that the PHA has allowed to remain in public housing.

*Future Guidance.* Section 103 of HOTMA requires HUD to issue a proposed rule, which will include guidelines for how PHAs are to set their rent policies for over-income families after the two-year grace period for being over-income has ended. Additionally, the requirement to submit an annual report on the number of over-income families and the number of families on the public housing waiting lists will be made effective through a separate PIH notice.

**2. Background**

HOTMA was signed into law on July 29, 2016 (Public Law 114-201, 130 Stat. 782); section 103 of HOTMA amends section 16(a) of the United States Housing Act of 1937 (42 U.S.C. 1437n(a)) (1937 Act) and establishes an income limitation for continued occupancy in public housing. The law requires that after a family's income has exceeded 120 percent of the area median income (AMI) (or a different limitation as may be established by the Secretary) for two consecutive years (the "grace period"), a PHA must terminate the family's tenancy within 6 months of the second income determination or charge the family a monthly rent equal to 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 regulations. For purposes of this document, the income limit established by HOTMA will be referred to as the “over-income limit.”

PHAs are required to establish policies for continued occupancy in public housing. Through the development of those policies, a PHA is able to consider specific circumstances in which they would provide for flexibility in the administration of over-income requirements, provided such policies are in compliance with the 1937 Act and all applicable fair housing requirements. PHAs are subject to, among other fair housing and civil rights authorities, Section 504 of the Rehabilitation Act (Section 504), the Fair Housing Act, and Title II of the Americans with Disabilities Act (ADA), which include, among other requirements, the obligation to grant reasonable accommodations that may be necessary for persons with disabilities.

On November 29, 2016 at 81 FR 85996 (2016 FR Notice), HUD published a notice soliciting public input on the methodology used to determine the over-income limit by using the very low-income (VLI) level as the basis for the applicable area as the baseline and multiplying it by 2.4. Specifically, comments were requested on whether the practice adequately considered local housing costs and made appropriate adjustments for higher housing costs. This is discussed further in section four of this notice.

In response to the 2016 FR Notice, HUD received public comments on 11 related issues which HUD responded to in the aforementioned 2018 FR Notice. The 2018 FR Notice also announced the official applicable effective date of the provisions of section 103 of HOTMA as September 24, 2018 and finalized the method of determining the over-income limit as described in the 2016 FR Notice. The timing of required PHA compliance is discussed further in section five of this notice.

### **3. Applicability**

Section 103 of HOTMA applies to all PHAs operating a public housing program, including Moving to Work (MTW) Agencies, with one exception. Pursuant to section 3(a)(5) of the 1937 Act and 24 CFR 960.503, the over-income limit does not apply to families with income exceeding the over-income limit if they are housed by PHAs operating fewer than 250 public housing units who are renting to over-income families because there are no income-eligible families on the PHA’s waiting list or applying for public housing.

Section 103 requires PHAs to implement the over-income limit. The statutory changes in section 103 of HOTMA do not address the treatment of families whose income exceeds the local low-income limit (80% of AMI), but is below the applicable over-income limit established in HOTMA (50% of AMI multiplied by 2.4). As such, the requirements and flexibilities to be provided through new regulations at 24 CFR 960.261 will be addressed through future rulemaking to establish a uniformed definition of over-income.

#### **4. Definition of Over-Income**

The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120 percent of the AMI. However, HUD can adjust the over-income limit if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. HUD exercised this discretion as described in the 2016 and 2018 FR Notices respectively.

HUD currently calculates three declining ranges of income eligibility for the public housing program: low-, very low-, and extremely low-income limits. The VLI limit was selected because it is calculated for every FMR area and, in certain areas, factors in several adjustments to better align income limits with program requirements. Since VLI is preliminarily calculated as 50 percent of the estimated AMI for the family, in most cases, multiplying it by 2.4, would result in a figure matching 120 percent. For those areas without an adjustment, the result is an over-income limit of exactly 120 percent of AMI. For areas where HUD has made an adjustment to the VLI limit, the result of the multiplier will be higher or lower than 120 percent of AMI, depending on the adjustments made. (See appendix for examples)

The final over-income limit should then be compared to the family's adjusted income and as with the existing ranges of income eligibility, the new over-income limits will also be tiered by family size. HUD's income limits were developed by HUD's Office of Policy Development and Research and are updated annually. Information about HUD's income limits and HUD's methodology for adjusting income limits as part of the income limit calculation can be found at <https://www.huduser.gov/portal/datasets/il.html>.

#### **5. Effective Date of Over-Income Limits and Integration into the Admissions and Continued Occupancy Policies (ACOP)**

*ACOP.* PHAs must update their Admissions and Continued Occupancy Policies (ACOP) to implement these changes no later than 6 months after the applicable date of the 2018 FR Notice. Such policies must include the imposition of an over-income limit in the program, clear descriptions of all instances of when the two-year timeframe begins, and the notification requirements put forth by section 103 of HOTMA.

*PHA Plans and Significant Amendments.* If the implementation of this provision requires a significant amendment to a PHA's annual plan, as determined by the PHAs definition of a significant amendment, the PHA must immediately take steps to complete the significant amendment process to effectuate the policy change. PHAs must complete all relevant PHA plan changes no later than 6 months after the applicable date of the 2018 FR Notice.

*Updates.* Going forward, PHAs must also update the over-income limits in their ACOPs no later than 60 days after HUD publishes new income limits each year.

*Timing.* It should be noted that PHAs must first complete the process for amending their ACOP within six months after the applicable date of the 2018 FR Notice (Sept. 24, 2018) before implementing the over-income policy. Interim and annual reexaminations that take place after

completion of the policy amendment must apply the over-income limit. Therefore, any family that is deemed over-income because of an interim and/or annual reexamination that takes place on the earlier of the date the ACOP and/or PHA Plan is amended or March 24, 2019 will be subject to the appropriate over-income limit.

## **6. Documentation, Notification, and Tracking**

*Documentation.* Once a PHA has completed updates to its ACOP and, if necessary, its PHA plan, and the PHA discovers through an annual reexamination or an interim reexamination that a family's income exceeds the applicable over-income limit, the PHA must document that the family exceeds the threshold and make a note in the tenant file to compare it with the family's income a year later.<sup>1</sup> The form HUD-50058 actions that would trigger the two-year grace period are: '2 = Annual Reexamination' and '3 = Interim Reexamination.' PHAs are required to begin tracking these actions once a family's income exceeds the applicable over-income limit.

*Written Notifications/Tracking 2-Year Grace Periods.* If one year after the initial over-income finding by the PHA, the family's income continues to exceed the over-income limit, the PHA must provide written notification to the family.<sup>2</sup> This notification must inform the family that their income has exceeded the over-income limit for one year, and if the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family will be subject to either a higher rent or termination based on the PHA's policies. If the initial over-income determination was made during an interim reexamination, the PHA must conduct a second interim income reexamination on that date one year later. However, if a PHA discovers through an annual or interim reexamination that a previously over-income family has income that is now below the over-income limit, the family is no longer subject to these provisions. A previously over-income family would be entitled to a new two-year grace period if the family's income once again exceeds the over-income limit.

PHAs must ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other disabilities. The PHA must ensure effective communication using appropriate auxiliary aids and services, such as interpreters, transcription services, brailled materials, large print, and accessible electronic communications, in accordance with Section 504 and ADA requirements. 24 C.F.R. § 8.6 and § 8.28; 28 CFR part 35, Subpart E. This includes the availability, free of charge, of sign language or other types of interpretation. For persons with vision impairments, upon request, this may include materials in braille or on tape.

*Terminations and Higher Rent Payments.* Twelve months after the second consecutive over-income finding, if the family is still over-income, the family is subject to termination or higher rental payments. As previously stated, HUD will provide additional information and guidelines for PHAs to set alternative rents for over-income families that the PHA has allowed to remain in public housing, and any other guidance regarding this provision in a forthcoming notice.

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<sup>1</sup> See section 16(a)(5) of the U.S. Housing Act of 1937

<sup>2</sup> See section 16(a)(5) of the U.S. Housing Act of 1937

Families not permitted to stay by the PHA must have their tenancy terminated no later than six months after the second over-income finding by the PHA.

## **7. Technical Assistance**

Additional questions should be directed to the local Public Housing Field Office Director. Contact information and locations of these offices are available on HUD's website at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/about/focontacts](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/about/focontacts).

## **8. Paperwork Reduction Act**

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0230. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

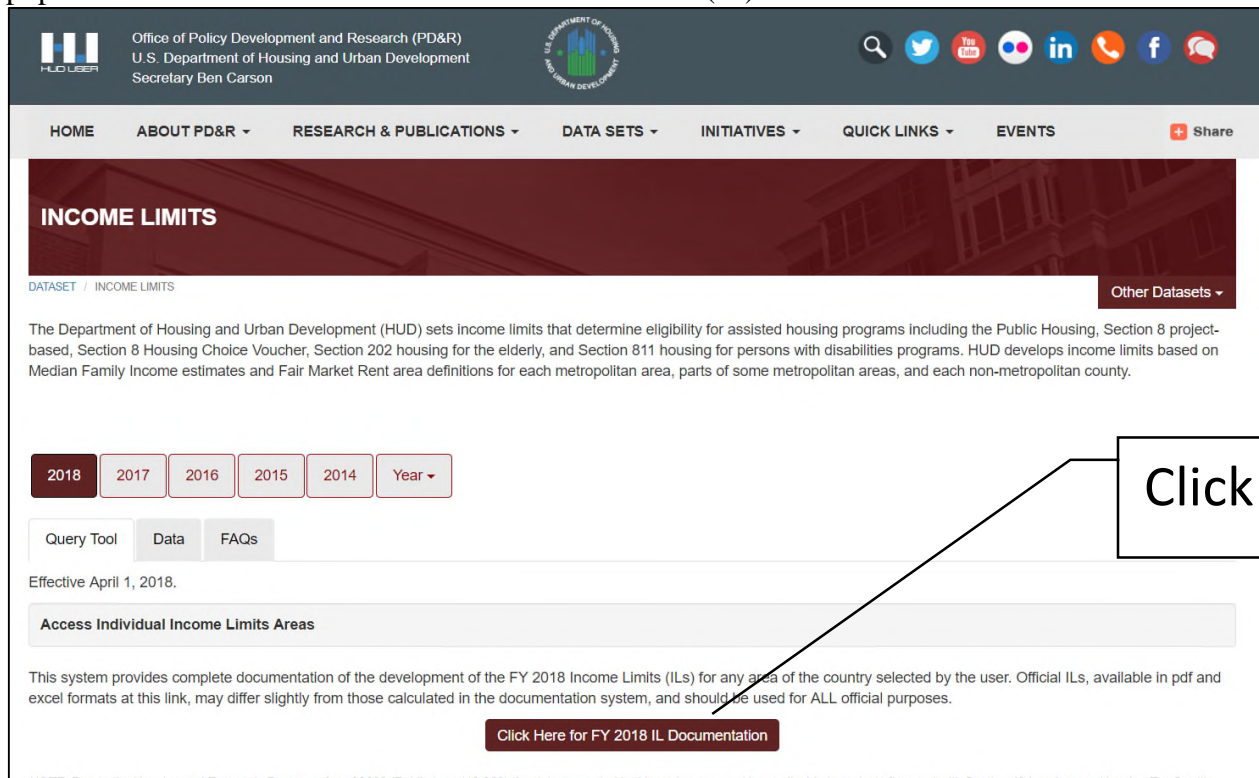
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R. Hunter Kurtz, Principal Deputy  
Assistant Secretary for Public and Indian  
Housing

### Calculating the Over-Income Limit

In this appendix, instructions are provided on how to look up the very low-income (VLI) limit and compute the over-income limit while also providing illustrative examples related to adjustments. HUD’s income limits were developed by HUD’s Office of Policy Development and Research and are updated annually. Information about HUD’s income limits and HUD’s methodology for adjusting income limits as part of the income limit calculation can be found at: <https://www.huduser.gov/portal/datasets/il.html>.

**Step 1: Landing Page** – By clicking the link above, the landing page pictured below will populate. Then select the button titled ‘Income Limits (IL) Documentation’.



**Step 2: Select a State** – Scroll down the list on the left and select the applicable state. Once a state is selected, a list of counties will appear on the right. (See step 3)

The screenshot shows the 'FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM' interface. It features a logo for HUD USER in the top left. The main heading is 'FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM'. Below this, there is a section titled 'First select a state:' followed by a dropdown menu listing states: Alabama - AL, Alaska - AK, American Samoa - AS, Arizona - AZ, Arkansas - AR, California - CA, Colorado - CO, Connecticut - CT, Delaware - DE, and District of Columbia - DC. Below the state list, there is a text prompt: 'Or select a FY 2018 HUD Metropolitan Fair Market Rent/Income Limits Area (HMFA):' followed by a dropdown menu showing 'Abilene, TX MSA'. At the bottom center, there is a blue button labeled 'View HMFA Calculations'.

**Step 3: Select a County**– Scroll down the list on the right and select the applicable county. Select the ‘View County Calculations’ button.

The screenshot shows the 'FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM' interface. It features a logo for HUD USER in the top left. The main heading is 'FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM'. Below this, there are two dropdown menus. The first is titled 'First select a state:' and lists states from Nebraska - NE to Ohio - OH. The second is titled 'Then select a county:' and lists counties in Ohio: Shelby County, OH, Stark County, OH, Summit County, OH, Trumbull County, OH, Tuscarawas County, OH, Union County, OH, Van Wert County, OH, Vinton County, OH, Warren County, OH, and Washington County, OH. A blue button labeled 'View County Calculations' is positioned below the county list. A callout box with the text 'Click Here' has a line pointing to the 'View County Calculations' button. Below the button, there is a text prompt: 'Or view FY 2018 statewide Income Limits for Ohio:'.

**Step 4:** View appropriate VLI Limit based on the applicable number of persons in a family.

**FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM**

HUD.gov HUD User Home Data Sets Fair Market Rents Section 8 Income Limits MTSP Income Limits HUD LIHTC Database

**FY 2018 Income Limits Summary**

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

FY 2018 Income Limit Area	Median Family Income <a href="#">Explanation</a>	FY 2018 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Akron, OH MSA	\$73,200	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	25,650	29,300	32,950	<b>36,600</b>	39,550	42,500	45,400	48,350
		Extremely Low Income Limits (\$)* <a href="#">Explanation</a>	15,400	17,600	20,780	<b>25,100</b>	29,420	33,740	38,060	42,380
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	41,000	46,850	52,700	<b>58,550</b>	63,250	67,950	72,650	77,300

**NOTE:** Summit County is part of the Akron, OH MSA, so all information presented here applies to all of the Akron, OH MSA.

**Step 5:** Multiply VLI by 2.4. Three examples will be provided below. Please note that there is an 'explanation' button for each income limit category that will explain what, if any, adjustments were made.

**Ex #1:** No Housing Cost Adjustment (Summit County, Akron, OH)

**FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM**

HUD.gov HUD User Home Data Sets Fair Market Rents Section 8 Income Limits MTSP Income Limits HUD LIHTC Database

**FY 2018 Income Limits Summary**

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

FY 2018 Income Limit Area	Median Family Income <a href="#">Explanation</a>	FY 2018 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Akron, OH MSA	\$73,200	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	25,650	29,300	32,950	<b>36,600</b>	39,550	42,500	45,400	48,350
		Extremely Low Income Limits (\$)* <a href="#">Explanation</a>	15,400	17,600	20,780	<b>25,100</b>	29,420	33,740	38,060	42,380
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	41,000	46,850	52,700	<b>58,550</b>	63,250	67,950	72,650	77,300

**NOTE:** Summit County is part of the Akron, OH MSA, so all information presented here applies to all of the Akron, OH MSA.

For a family of 4, calculate the Over-Income Limit as follows:

$$\mathbf{\$36,600 \times 2.4 = \$87,840}$$



**Ex #2: High Housing Cost Adjustment (Los Angeles County, Los Angeles, CA)**

FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM										
<a href="#">HUD.gov</a> <a href="#">HUD User Home</a> <a href="#">Data Sets</a> <a href="#">Fair Market Rents</a> <a href="#">Section 8 Income Limits</a> <a href="#">MTSP Income Limits</a> <a href="#">HUD LIHTC Database</a>										
FY 2018 Income Limits Summary										
Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.										
FY 2018 Income Limit Area	Median Family Income	FY 2018 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area	\$69,300	Very Low (50%) Income Limits (\$)	33,950	38,800	43,650	<b>48,450</b>	52,350	56,250	60,100	64,000
		Extremely Low Income Limits (\$)*	20,350	23,250	26,150	<b>29,050</b>	31,400	33,740	38,060	42,380
		Low (80%) Income Limits (\$)	54,250	62,000	69,750	<b>77,500</b>	83,700	89,900	96,100	102,300

**NOTE:** Los Angeles County is part of the Los Angeles-Long Beach-Glendale, CA HUD Metro FMR Area, so all information presented

For a family of 4, calculate the Over-Income Limit as follows:

$$\$48,450 \times 2.4 = \$116,280$$

**Ex #3: Ceiling Adjustment (Jefferson County, Birmingham, AL)**

FY 2018 INCOME LIMITS DOCUMENTATION SYSTEM										
<a href="#">HUD.gov</a> <a href="#">HUD User Home</a> <a href="#">Data Sets</a> <a href="#">Fair Market Rents</a> <a href="#">Section 8 Income Limits</a> <a href="#">MTSP Income Limits</a> <a href="#">HUD LIHTC Database</a>										
FY 2018 Income Limits Summary										
Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.										
FY 2018 Income Limit Area	Median Family Income	FY 2018 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Birmingham-Hoover, AL HUD Metro FMR Area	\$71,000	Very Low (50%) Income Limits (\$)	24,650	28,150	31,650	<b>35,150</b>	38,000	40,800	43,600	46,400
		Extremely Low Income Limits (\$)*	14,800	16,900	20,780	<b>25,100</b>	29,420	33,740	38,060	42,380
		Low (80%) Income Limits (\$)	39,400	45,000	50,650	<b>56,250</b>	60,750	65,250	69,750	74,250

**NOTE:** Jefferson County is part of the Birmingham-Hoover, AL HUD Metro FMR Area, so all information presented here applies to all of the Birmingham-Hoover, AL HUD Metro FMR Area. HUD generally uses the Office of Management and Budget (OMB) area definitions in

For a family of 4, calculate the Over-Income Limit as follows:

$$\$35,150 \times 2.4 = \$84,360$$