

**ANTHONY HOUSING AUTHORITY**

Anthony, Texas

**CONTINUED OCCUPANCY POLICY FOR  
PUBLIC HOUSING OVER-INCOME FAMILIES**

**Adopted by PHA Board of Commissioners**

**Resolution No.:** \_\_\_\_\_

**Date of Adoption:** \_\_\_\_\_

**Effective Date of Implementation:** \_\_\_\_\_

## **ADMISSIONS AND CONTINUED OCCUPANCY POLICY FOR PUBLIC HOUSING OVER-INCOME FAMILIES**

### **Implementation Schedule**

**Staff Training Date, if needed:** \_\_\_\_\_

### **Distribution to Functional Areas**

**This policy has been distributed to staff in the following departments:**

- Public Housing Managers**
- Admissions/Occupancy Staff**
- Financial Staff**
- Maintenance Staff**
- Other Specify:** \_\_\_\_\_

**Date Policy Prepared: April 4, 2023**

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## **CONTINUED OCCUPANCY POLICY OF PUBLIC HOUSING OVER-INCOME (OI) FAMILIES**

HUD establishes income limits by family size for the area in which each PHA is located. These income limits will be published by HUD annually and are used to determine the family's initial eligibility and level of assistance for the public housing program. Section 103 of the Housing Opportunity Through Modernization Act (HOTMA) of 2016 amended the U.S. Housing Act of 1937 and placed an income limitation on families for continued occupancy in public housing units.

### **A. Applicability**

Section 103 of HOTMA applies to all PHAs operating a public housing program, including Moving to Work (MTW) Agencies, with one exception, a PHA which owns or operates fewer than 250 public housing units. This PHA may lease a public housing unit to a non-assisted OI family, in accordance with its PHA Annual Plan (or supporting documents), if all of the following conditions are satisfied:

1. There are no eligible low-income applicants on the waiting list;
2. There are no eligible low-income families applying for public housing assistance when the unit is leased to an OI family;
3. The PHA advertises the availability of public housing units to eligible low-income families including publication of a notice for at least 30 days in at least one newspaper of general circulation before offering the unit to an OI family;
4. The OI family rents the unit on a month-to-month basis at a rental amount which is not less than the cost to operate the unit;
5. The lease to the OI family provides that the OI family agrees to vacate the unit when it is needed by an eligible family; and
6. The PHA gives the OI family at least 30 days' notice to vacate the unit when it is needed for rental by an eligible family.

### **B. Determination of Over-Income Limit**

The PHA will determine the over-income limit by multiplying the applicable income limit for a very low-income public housing family by a factor of 2.4.

1. The very low-income limit varies by family size.
2. The PHA will calculate the over-income limit for each family size in its public housing program.
3. When determining the public housing family's over-income status, the PHA will not include income that is excluded from such as amounts based on participation in the Family Self-Sufficiency (FSS) program and all families receiving the earned income disallowance (EID).
4. The PHA will compare the over-income limit to the family's annual income during an annual or interim income reexamination.

If the family's annual income is greater than the over-income limit, then the family exceeds the over-income limit for the public housing program, and will be notified.

5. Once the PHA has adopted its continued occupancy policy for public housing OI families, the PHA will update the over-income limits for the public housing program in its ACOP no later than 60 days after HUD publishes new income limits each year.

### **C. PHA Continued Occupancy Policy for Public Housing Over-Income (OI) Families**

The continued occupancy policy for public housing OI families (hereinafter referred to as continued occupancy policy) adopted and implemented by the PHA is in compliance with the Fair Housing Act, Civil Rights, Section 504 of the Rehabilitation Act (Section 504), Title II of the Americans with Disabilities Act (ADA), and will grant reasonable accommodations that may be necessary for persons with disabilities.

1. When the PHA becomes aware, either through an annual or interim reexamination that a public housing program family's income, including families participating in the FSS program and all families receiving EID, exceeds the established income limit for the family size, the PHA will implement its continued occupancy policy to terminate the tenancy of the over-income public housing family **or** allow the over-income public housing family to remain in the public housing unit and charge the over-income public housing family the alternative non-public housing rent.
2. The PHA's continued occupancy policy is to terminate the tenancy of the OI family.

Note: The PHA may not evict or terminate the tenancy of OI families in the public housing program based on income until the family has been over 120% area median income for 24 consecutive months and the PHA has implemented the continued occupancy policy in the PHA's written policies.

### **D. 24 Consecutive Months Grace Period**

The period of time an over-income public housing family has to reside in their public housing unit is 24 consecutive months before the PHA enforces its continued occupancy policy.

1. Once the PHA has determined a public housing family to be over-income through an annual or interim reexamination, the effective date of the action will be the point in time for which the 24 consecutive month grace period begins.
2. If the PHA becomes aware, through a subsequent annual or interim reexamination, during the consecutive 24-month grace period that the family's income has decreased to an amount that is below the over-income limit, the family will be entitled to a new 24 consecutive month grace period if the PHA later determines that the family's income once again exceeds the over-income limit.
3. At all times prior to the end of 24 consecutive months, the family will continue to be public housing program participants.
4. There are no exceptions to the limitation on public housing tenancy for HUD assisted families who are determined to be over-income for 24 consecutive months.

5. During the 24 consecutive month grace period, the family will continue to pay their current rent choice amount (*i.e.*, income-based rent, flat rent, or if applicable, the prorated rent for mixed families).
6. Because there is a 24-month process to declare an over-income public housing family ineligible for public housing assistance, large increases to the over-income limit for higher rental markets may result in public housing families who are over-income in the initial 12-months not being considered over-income in the second 12 months as the over-income limit is adjusted upward in subsequent years.
7. If the family has exceeded the over-income limit for 24 consecutive months, the PHA will enforce its continued occupancy policy to terminate the family's tenancy.
8. Annual and Interim Reexaminations

For OI families who are in their grace period:

- a. Annual and interim reexaminations will be conducted in accordance with the PHA's Admissions and Continued Occupancy Policy (ACOP).
- b. An income reexamination must be conducted 12 months after the initial over-income determination, unless it has been determined the family's income fell below the over-income limit since the initial over-income determination.
- c. An income reexamination must be conducted 24 months after the initial over-income determination, unless it has been determined the family's income fell below the over-income limit since the second over-income determination.

## **E. Families Determined to be Over-Income Prior to the Final Rule**

On July 26, 2018 (2018 Notice), HUD announced the official applicable effective date of the provisions of Section 103 of HOTMA as September 24, 2018, and instructed PHAs to complete the process for amending their OI policy within six (6) months after the applicable date published.

1. Effective March 24, 2019, the PHA was required to update its ACOP to implement a continued occupancy policy of over-income public families based on the 2018 Notice. All over-income policies were to include the imposition of the over-income limit in the public housing program, when the 24 consecutive month grace period would begin, and the notification requirements to the over-income families.
2. HUD did not enforce the PHA's continued occupancy policy based on the 2018 Notice that required the PHA to either terminate families who have been over income for two (2) consecutive years or charge over-income public housing families an alternative rent as HUD had not provided guidance on how to determine such rent.
  - a. If the PHA's continued occupancy policy opted to terminate, HUD determined that the PHA could elect to follow the policy but were not required to do so until the issuance of the Final Rule.

With the issuance of the Final Rule, the PHA must begin the termination procedure within the time frame specified in this policy.

- b. If the PHA elected not to terminate over-income families who exceed the grace period, the PHA was required to offer the families the option of paying an income-based rent or a flat rent at their next annual reexamination.

If the PHA's continued occupancy policy opted to charge an alternative rent, with the issuance of the Final Rule, the PHA must require the family to execute a new lease for Non-Public Housing Over-Income (NPHOI) families and charge the family the non-public housing rent no later than 60 days after the effective date of the Final Rule or at the next lease renewal, whichever is sooner.

3. Over-income public housing families who have already exceeded the 24 consecutive month grace period or two (2) consecutive reexamination cycles under the existing notification requirement are not entitled to another 24 consecutive month grace period.
4. If the PHA followed the previous existing notification which instructed the PHA to compare the over-income limit to the family's adjusted income, the PHA does not need to redetermine the family's over-income status based on the Final Rule guidance for annual or interim reexamination effective prior to the date of the Final Rule.
5. New notice requirements do not apply retroactively, so any family that has properly received notice under the previous existing notification requirement will not be required to receive new notices.

## **F. Notification of OI Families**

If the PHA determines the public housing family has exceeded the over-income limit pursuant to an income reexamination, the PHA will provide written notification to the family of the over-income determination.

1. Initial Over-Income Limit Notification
  - a. The PHA will provide written notification to the over-income public housing family no later than 30 days after the PHA's initial determination.
  - b. The notice must state that the family has exceeded the over-income limit and continuing to exceed the over-income limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy to terminate the tenancy of the OI family.
  - c. The notice will contain information on the OI family's right to request a hearing and instructions on how to request such hearing if the family disputes the PHA's determination.
  - d. The PHA will make note to the family's file to calculate the family's income 12 months after the initial determination to determine if the family remains over-income.

## 2. Second Over-Income Limit Notification

- a. The PHA will conduct an income reexamination 12 months after the initial over-income determination, unless the PHA determined the family's income fell below the over-income limit since the initial over-income determination.
- b. If the PHA determines the family has exceeded the over-income limit for 12 consecutive months, the PHA will provide written notification of this 12-month over-income limit determination no later than 30 days after the income reexamination that led to the 12-month over-income determination.
- c. The notice will state that the family has exceeded the over-income limit for 12 consecutive months and continuing to exceed the over-income limit for a total of 24 consecutive months will result in the PHA following its continued occupancy policy to terminate the tenancy of the OI family.
- d. The notice will contain information on the OI family's right to request a hearing and instructions on how to request such hearing if the family disputes the PHA's determination.
- e. The PHA will make note to the family's file to calculate the family's income 24 months after the initial determination to determine if the family remains over-income.

## 3. Third and Final Over-Income Limit Notification

- a. The PHA will conduct an income examination 24 months after the initial over-income determination, unless the PHA determined the family's income fell below the over-income limit since the second over-income limit determination.
- b. If the PHA determines the family has exceeded the over-income limit for 24 consecutive months, the PHA will provide written notification of this 24-month over-income limit determination no later than 30 days after the income reexamination that led to the 24-month over-income limit determination.
- c. The notice will state that the family has exceeded the over-income limit for 24 consecutive months and in accordance with the PHA's continued occupancy policy for OI families, the PHA will terminate the family's tenancy.
- d. The notice will contain information on the OI family's right to request a hearing and instructions on how to request such hearing if the family disputes the PHA's determination.

## 4. Reexaminations Flat Rent Options

- a. The PHA will no longer apply the three (3) year reexamination provision to families once the PHA determines that the family is over-income.
- b. Once a PHA determines the family is over-income, the PHA will follow the documentation and notification requirements of this section.



## 5. Effective Communication

The PHA will ensure that all notices and communications are provided in a manner that is effective for persons with hearing, visual, and other disabilities.

- a. For persons with vision impairments, upon request and free of charge, this may include brailled materials, large print, or materials on tape.
- b. For persons with hearing impairments, upon request and free of charge, this may include sign language or other types of interpretation, appropriate auxiliary aids, and services, such as interpreters, transcription services, and accessible electronic communications. Section 504 and ADA requirements (24 CFR 8.6 and 24 CFR 8.28; 28 CFR part 35, Subpart E).

## G. Termination of Tenancy of an Over-Income (OI) Family

It is the PHA's continued occupancy policy to terminate the tenancy of over-income public housing families.

1. The PHA must terminate the tenancy of the OI family no more than six (6) months after the third and final written over-income limit notice has been issued to the over-income public housing family.
2. The PHA's notification to terminate the OI family's tenancy will state the period of time before tenancy termination.
  - a. It is the PHA's continued occupancy policy to terminate the tenancy of an over-income public housing family 30 days after the third and final written over-income limit notice has been issued to the over-income public housing family.
  - b. The PHA will provide the appropriate notice of termination of tenancy (notice to vacate) in accordance with state and local laws.
3. The family's public housing lease will convert to month-to-month lease term to account for the period before termination of tenancy.
4. Families that are in the period before termination of tenancy continue to be public housing program participants and must abide by all the PHA's public housing requirements, including but not limited to:
  - a. Choice of Rent
    - 1) The PHA will continue to charge the over-income public housing family the family's choice of income-based, flat rent, or if applicable prorated rent for mixed families during the period before termination.
    - 2) The family must continue to pay the tenant rent by its due date.
  - b. Annual and Interim Reexamination
    - 1) For OI families in the period before their tenancy termination, the PHA must conduct an interim reexamination of family income as required per the PHA's

interim policies because the over-income public housing family is still a public housing program participant prior to termination.

- 2) However, decreases resulting from the income determination will not:
  - a) Reset the period before termination; or
  - b) Make the over-income public housing family eligible to remain in the public housing program beyond the period before termination as per the PHA's continued occupancy policy.
- c. Compliance with the Community Service and Self-Sufficiency Requirements.

Over-income non-exempt adult family members in the period before their tenancy termination must continue to comply with CSSR.

#### 5. Waiting List: Preference

The PHA whose policy is to terminate OI families after the 24 consecutive month grace period may not use this preference and this preference may not be applied to current public housing families (*e.g.*, OI families facing termination of tenancy pursuant to PHA policies) or families who have vacated the public housing project.

## H. Annual Reporting

The PHA will submit annually to HUD, and make publicly available, a report that specifies, as of the end of the year (end of the calendar year or December 31<sup>st</sup>), the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing projects and provide any other information regarding over-income families requested by HUD.

#### 1. Data on the Number of OI Families Residing in Public Housing

This report will require no additional action on the part of the PHA. HUD will pull a report of this data as of December 31<sup>st</sup> each year and make in publicly available. The report will include:

- a. The number of families residing in public housing with incomes exceeding the over-income limitation, including:
  - 1) The number of families in the 24 consecutive month grace period,
  - 2) Those that are in the period before termination, and
  - 3) Those that are NPHOI families paying the alternative non-public housing rent.
- b. The PHA will report on the number of OI families residing in the PHA's public housing through income data already provided by form HUD-50058, under OMB approval number 2577-0083 and through unit data in the Inventory Management System/PIH Information Center (IMS/PIC) and/or its successor system: the Housing Information Portal (HIP).

2. Data on the Number of Families on Waiting Lists for Admission to Public Housing Projects
  - a. The waiting list data will be submitted via the *Public Housing Waiting List Data Collection Tool* in the Operating Fund Web portal.
    - 1) HUD will make the new reporting module available beginning January 1, 2024.
    - 2) All information provided, such as the number of households and the status of the waiting list (open or closed), should be current as of December 31<sup>st</sup> of the previous calendar year.
    - 3) All submissions will be due by March 31<sup>st</sup> of each year.
    - 4) HUD will combine this data with the data provided in IMS/PIC and/or HIP and the form HUD-50058 form and publish the Public Housing Over-Income Families and Waiting-Lists Report annually on the HUD website by April 30<sup>th</sup> of each calendar year.
  - b. The data may be provided by any authorized PHA official but will require the electronic signature of the Executive Director.
  - c. A PHA that maintains both an agency-wide and site-based wait lists, should be mindful not to duplicate households when reporting on the total number of families on the waiting list.

## DEFINITIONS

HOTMA amended the 1937 Fair Housing Act with new and expanded provisions related to families who are residing in public housing units while being over the income limit for the public housing program. The use of such definitions are reflected throughout this policy.

### **Alterative Non-Public Housing Rent**

This is the monthly amount the PHA must charge non-public housing over-income (NPHOI) families, allowed by the PHA's continued occupancy policy to remain in a public housing unit and who have completed the 24 consecutive month grace period.

It is a monthly rent equal to the greater of:

- The applicable Fair Market Rent (FMR) for the unit; or
- The amount of the monthly subsidy provided for the unit, which will be determined by adding the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.
  - For the Public Housing Capital Fund, the amount of Capital Funds provided to the unit will be calculated as the per unit Capital Fund assistance provided to a PHA for the development in which the family resides for the most recent funding year for which Capital Funds have been allocated;
  - For the Public Housing Operating Fund, the amount of Operating Funds provided to the unit will be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding obligation determination has been made;
- HUD will publish such funding amounts no later than December 31 each year.

### **HOTMA (Housing Opportunity Through Modernization Act of 2016**

- On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782).
- HOTMA makes numerous changes to statutes governing HUD programs, including sections 3, 8, and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act).
- In addition to amending regulations for HUD's public housing and Section 8 programs, the HOTMA Final Rule revises the program regulations for several other HUD programs. HUD did this in the interest of aligning its requirements across its programs or because the underlying program statute required HUD to make the revisions. These include the regulations for:
  - HUD's Community Development Block Grants,
  - HOME Investment Partnerships,
  - Housing Trust Fund,
  - Housing Opportunities for Persons With AIDS,
  - Supportive Housing for the Elderly (Section 202), and
  - Supportive Housing for Persons with Disabilities (Section 811) programs.

- Since HUD and other federal agencies may use the regulations revised as part of this rulemaking in the calculation of income for other programs or activities, the public should be aware that the effects of this rulemaking are not limited to the programs listed in this rule and preamble.

**Non-Public Housing Over-Income Family (NPHOI)**

- A family that has exceeded the over-income limit for 24 consecutive months who remains in a public housing unit.
- The NPHOI family is paying the alternative non-public housing rent.
- A NPHOI family are no longer public housing program (PHP) participants and are unassisted tenants.

**Over-Income (OI) Family**

- A family whose income exceeds the over-income limit.
- This term includes families during the grace period or that are in the period before termination and are still public housing program participants.

Note: In the public housing program, this term previously referred to a family that is not a low-income family (i.e., a family with an income exceeding 80% of the Area Median Income (AMI)).

**Over-Income (OI) Limit**

- The over-income limit is determined by multiplying the applicable income limit for a very low-income family, as defined in 24 CFR 5.603(b), by a factor of 2.4 (i.e., 120% of the AMI).
- HUD has codified this definition.

**EZ-STEPS GUIDE: HOW TO PROCESS PUBLIC HOUSING OVER-INCOME FAMILIES**

*(See Attachment)*

**NOTICE**

The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that this policy be reviewed by the Housing Authority's general counsel and/or attorney prior to approval by the Board of Commissioners.

The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.