



Legislation Text

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To: Contra Costa County Housing Authority Board of Commissioners

From: Joseph Villarreal, Executive Director

Report Title: PUBLIC HEARING AND CONSIDERATION OF HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN AMENDMENTS IN RESPONSE TO HUD’S UPDATES OF SECTIONS 102 AND 104 OF THE HOUSING OPPORTUNITIES THROUGH MODERNIZATION ACT OF 2016 (HOTMA)

Recommendation of the County Administrator Recommendation of Board Committee

RECOMMENDATIONS:

OPEN the public hearing for the consideration of the Housing Authority's (HACCC) amendments to the Housing Choice Voucher Administrative Plan, RECEIVE testimony, and CLOSE the public hearing.

ADOPT Resolution No. 5262, titled the public hearing and consideration of Housing Choice Voucher administrative plan amendments, in response to HUD’s updates of sections 102 and 104 of the Housing Opportunities Through Modernization Act of 2016 (HOTMA)

BACKGROUND:

The U.S. Department of Housing and Urban Development (HUD) issued Initial Guidance in the Federal Register on October 24, 2016 announcing sweeping changes in the Public Housing and Housing Choice Voucher Programs. At that time, only a fraction of the changes announced by HUD were implemented immediately. Many changes were not implemented pending further legislative review and policy development. Since then, HUD has been slowly releasing parts of the changes as they became ready. On July 18, 2023, this Board approved the changes to Section 103 of HOTMA that made significant changes regarding income limits for the Public Housing program and policies for families who exceed the “over-income” limit after the 24-month grace period.

The changes being implemented in Section 102 and 104 of HOTMA are some of the most extensive changes made to the Housing Choice Voucher and Public Housing programs in over 10 years. These changes are being implemented to modernize the rental assistance programs and bring them in line with societal norms of today. Moreover, HUD is making changes to the deductions permitted in the calculation of rent and implementing restrictions on participation in the program for households with excessive wealth. The changes are transformative to the rental assistance program and have resulted in extensive changes being proposed for the Housing Choice Voucher program Administrative Plan.

As required by HUD, HACCC staff provided public notice of this hearing in the East, West, and Contra Costa Times on May, 20, 21 and 22, 2024. Staff met virtually with the agency’s Resident Advisory Board (RAB) on two different occasions to discuss the proposed changes to the Administrative Plan: May 9 and May 16, 2024. The RAB approved the proposed changes to the Annual Plan at their May 16, 2024, meeting.

Staff have implemented extensive changes to the Admin Plan in response to HUD's updates of Section 102 and 104 of HOTMA. The following substantial changes were made to the Housing Choice Voucher Program Administrative Plan as it pertains to HACCC Policy:

- Added Language to replace all references to Housing Quality Standards (HQS) with National Standards for the Physical Inspection of Real Estate (NSPIRE)
- Added and clarified existing language regarding Fair Housing complaints indicating when and how to file them as well as added language regarding VAWA complaints.
- Added language that indicates applicants cannot be receiving a duplicative subsidy as well as meet the net asset and property ownership restrictions in order to qualify for housing assistance.
- Revised the definition of family to include otherwise eligible youth between the ages of 18 and 24 who have or will leave foster care within 90 days and is homeless or at risk of becoming homeless at the age of 16 or older.
- Added language that permits an HCV voucher to be issued to a surviving partner of the VASH Voucher who is the VAWA victim once the VASH participant's voucher is terminated. If one is not available, the surviving partner will be eligible to continue to use the VASH voucher until such a time as the HCV voucher is available.
- Added language that denies admission to the rental assistance programs if a family revokes their consent permitting HACCC to access their financial records from financial institutions.
- Families with Net Family Assets of more than \$100,000 and/or the family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell the real property (based on laws of the state or locality in which the property is located) that is suitable for occupancy by the family as a residence will not be eligible to continue to receive rental assistance and will be terminated from program participation. HACCC shall provide a grace period of six months from the effective date of the Annual or Interim Reexamination within which the assisted family may cure the noncompliance with the Net Asset threshold. Moreover, families with such net assets shall be denied admission to the rental assistance programs.
- Under the amended 1937 Act, families that have a present ownership interest in, a legal right to reside in, and the legal authority to sell real property that is suitable for occupancy for the family (unless the person is a victim of domestic violence or if the family is offering the property for sale) are not eligible to receive rental assistance. A present ownership interest would include any title to a home, any ownership of membership shares in a cooperative, and any lease or other right to occupy a home or cooperative, all as

defined by the State or local laws of the jurisdiction where the property is located.

- This provision would not include the right to purchase title to a residence under a lease-purchase agreement. In addition, the statutory language excludes from net family assets (1) real property for which the family does not have the effective legal authority to sell in the jurisdiction in which the property is located and (2) equity in property for which the family is currently receiving homeownership assistance through the HCV program from a PHA.
- Clarified what is meant by “immediate vicinity”, when criminal background checks indicate criminal activity that deprives residents of the peaceful enjoyment of the premises in the immediate vicinity, to be a three-block radius.
- Additions to the HCV wait list that are formalities for 3rd part referrals for special funding sources such as Mainstream, Family Unification/Foster Youth Initiative, VASH, Stability Vouchers, Emergency Housing Vouchers or other similar funding sources that involve third-party agencies such as Health, Housing and Homeless Services or Employment and Human Services, etc, will not require public notice as required for other wait list opening efforts.
- Added language that HACCC will consider VAWA victimization as a condition for considering whether to admit or deny applicants.
- Added victim of VAWA as a reason for being reinstated to a waiting list if an applicant fails to respond to any notice regarding their waiting list status.
- Added language that re-defines Annual Income to mean all amounts received, not the amount a family is entitled to receive but did not receive as well as actual anticipated income from assets.
- Updated the list of Excluded Income sources pursuant to 24 CFR 5.609.
- Clarified that temporarily absent household members’ incomes will be included in the household income.
- HACCC shall use anticipated income to calculate annual income at initial and interim certifications. If unable to determine anticipated income, HACCC shall review historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.
- Clarified that HACCC must first determine the family’s income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current

income must be made.

- Clarified the definition of Earned Income for the purposes of calculating annual income.
- HOTMA removed the statutory authority for EID, so HUD cannot retain the disallowance once the statutory change is in effect, which will be upon the effective date of this final rule. However, if a family is receiving a disallowance of increase in annual income in accordance with §§ 5.617(c) and 960.255(b) on this final rule's effective date, participants should be able to benefit from EID for the full 24 months. EID will be available only to families that are eligible for and participating in the program on the effective date of the final rule; no new families may be added. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.
- Clarified the definition of an Independent Contactor as it applies to included income for annual income calculation purposes.
- HUD codifies a Federally mandated income exclusion under section 479B of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1087uu). Section 5.609(b)(9)(i) of the final rule excludes assistance that section 479B of the HEA requires to be excluded from a family's income. This provision excludes from income assistance to students under Title IV of the HEA even assistance in excess of tuition and required fees and charges. Student financial assistance must be a grant or scholarship received from the Federal government; a State, Tribal, or local government; a private foundation registered as a nonprofit; a business entity; or an institution of higher education. Furthermore, the grant or scholarship must be either expressly for tuition, book, supplies, room and board, or other fees required and charged to the student by the education institution; expressly to assist a student with the costs of higher education; or expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.
- The final rule states that student financial assistance does not include gifts from family or friends. In other words, gifts that are recurring and otherwise do not meet the criteria for the income exclusion for gifts would be counted as income under the final rule, regardless of whether the recipient of the gift is a student.
- HUD is modifying the language to exclude "nonrecurring" income received in the previous year that will not be repeated in § 5.609(b)(24). However, earnings as an independent contractor, day laborer, or seasonal worker are explicitly not within the category of excluded income.
- Revised the way HACCC views assets and calculates income from assets. Under § 5.618(b)(1), when all net family assets have a combined value of \$50,000 or less, the family is to include on its self-certification that the combined value of net family assets do not exceed \$50,000, and the family expects to receive from the family's assets. This amount is to be included in the family's income. The PHA or owner may rely on this self-certification to serve as verification for both assets and the amount of actual income the family expects to receive from such assets.

- HACCC must calculate the imputed return on the combined value of all net family assets when the net family assets are more than \$50,000 if no actual income can be computed from any of the net family assets.
- Section 104 of HOTMA, clarified the definition of Trusts and amended Section 16 of the 1937 Act, which excluded irrevocable trusts and trust funds that are not under the control of the family or household from being considered part of a family's net family assets.
- HUD is clarifying § 5.609(b)(2) to exclude from a family's income any distributions of a trust's principal, regardless of the form of the trust, because this is not income for the family.
- Clarifying that revocable trusts under control of the family count as an asset under the definition of "net family assets" in § 5.603. Only trusts that are irrevocable or not under the control of a family or household member are excluded from a family's net family assets. Since revocable trusts under the control of the family or household are considered part of the net family assets, the final rule clarifies at § 5.609(b)(2)(ii) that distributions from these trusts are not used to calculate annual income. Instead, HACCC must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable, under § 5.609(a)(2).
- Clarified that value of term life insurance which has no cash value to the individual before death is excluded from income calculation. However, whole life insurance which can be accessed by families do have a cash value and included in annual income.
- Updated the list of excluded assets from annual income calculations.
- Updated the deduction for an elderly or disabled family member from \$400 per household to \$525 per household subject annual adjustments by HUD. In addition, HUD announced that the standard dependent deduction of \$480 will be subject to annual adjustment as determined by HUD every January 1.
- The final rule makes a change from 3 to 10 percent of annual income for the threshold that applies to unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus deductions.
- Specifies that the inflationary index for all necessary adjustments will be based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). , annual inflationary adjustments will be established by rounding to the nearest dollar except that annual inflationary adjustments for the dependent deduction (§ 5.611(a)(1)) and the elderly or disabled family deduction ((§ 5.611(a)(2)) will be rounded to the next lowest multiple of \$25.

- HUD expects to make the revised amounts effective January 1st of each year for the following requirements in accordance with the inflationary adjustments covered by this final rule: the value cap on net family asset cap for imputing returns (§ 5.609(a)(2) and (b)(1)); the mandatory deduction for elderly and disabled families (§ 5.611(a)(2)); the restriction on the net family assets (§§ 5.618(a)(1)(i), 574.310(f)); the amount of net assets the PHA or owner may determine based on a certification by the family (§§ 5.618(b)(1), 5.659(e), 92.203(e); 93.151(e); 574.310(e)(3)(ii); 960.259(c)(2), and 982.516(a)(3)); and the mandatory deduction for a dependent (§ 5.611(a)(1)), which is also used to calculate the income exclusion for earned income of dependent students (§ 5.609(b)(14)) and adoption assistance payments (§ 5.609(b)(15)).
- HUD is creating two ways by which a family may qualify for a health and medical care and reasonable attendant care and auxiliary apparatus expenses hardship. First, a family may qualify for a lower threshold for unreimbursed health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses to be deducted from income if the family, at the time of the effective date of this final rule, is receiving the unreimbursed health and medical care expense and reasonable attendant care and auxiliary apparatus expense deduction at the 3 percent threshold. However, even families not receiving a deduction for health and medical care expenses and reasonable attendant care and auxiliary apparatus expenses at the time that this final rule is effective may still qualify for a hardship exemption if the family is experiencing a change in circumstances that would not otherwise trigger an interim reexamination. Families seeking a hardship exemption in this category must have eligible expenses that exceed 5 percent of the family's annual income in order to receive the benefit of the hardship exemption. The final rule increased to 5 percent the first year, 7.5 percent the second year, and reaching the new statutory standard of 10 percent in the third year or conclusion of 24 months from initial hardship exception. Transfers from Public Housing to the HCV Program will no longer be considered for a hardship exception and treated as a new admission with a 10% threshold.
- HUD is expanding § 5.609(b)(19) to cover all payments to a family from a State agency, regardless of whether such a payment is through Medicaid for the care of a family member in order for them to remain in the unit. The final rule includes funding through any Medicaid structure, not just managed care. Furthermore, it also excludes payments from, or authorized by, State agencies in states which use a source of funding other than Medicaid to provide for in-home support. HUD will continue to count payments for long-term care insurance as an unreimbursed health and medical care expense for purposes of § 5.611(a)(3)(i), but HUD clarifies that the payments cannot be excluded from the family's income.
- HOTMA amendments do require that HUD, by regulation, specifically provide hardship exemptions when the financial difficulty faced by the family is due to specific circumstances around childcare or health and medical care and reasonable attendant care and auxiliary apparatus expenses. HUD is adding language to the childcare hardship exemption to specify that the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.
- Clarified that HACCC will not use other programs' Safe Harbor determinations of income at annual certifications with the exception of Low-Income Housing Tax Credit program verifications.

- Clarified HACCC’s policy on triennial certifications for fixed income households.
- Revised HUD requirements so that the use of EIV is required only at annual reexaminations, and not at interim reexaminations. However, PHAs and owners may use EIV for interim reexaminations if desired.
- HUD revised the language to clarify that the threshold for when a PHA, owner, or grantee must conduct a reexamination due to decreases in a family’s income is a change of ten percent or a lower threshold set by the PHA or owner.
- HOTMA amends the 1937 Act so that PHAs and owners may not consider a family’s increases in earned income for the purposes of an interim reexamination unless the family had previously undergone an interim reexamination during the year for a decrease in income.
- Amending the Admin Plan language to state that an Interim Reexamination will be conducted when the family’s income has increased by 10% or more of annual adjusted income and their share of rent will change as a result of the increase.
- HUD is specifying certain forms of income that are included in the category of ‘‘nonrecurring’’ income that would be excluded from the calculation of income: work on the decennial Census (less than 180 days and not resulting in a permanent position) (§ 5.609(b)(24)(i)); direct Federal or State payments or tax credits intended for economic stimulus or recovery (§ 5.609(b)(24)(ii)); amounts received directly by the family as a result of State or Federal refundable tax credits or refunds at the time they are received (§ 5.609(b)(24)(iii) and (iv)); gifts for holidays, birthdays, or special occasions (§ 5.609(b)(24)(v)); in-kind donations from food banks or other organizations (§ 5.609(b)(24)(vi)); and lump-sum additions to assets such as lottery or other contest winning (§ 5.609(b)(24)(vii)).
- With these revisions and additions, HUD intends to exclude from income sources of funds that cannot be relied upon to pay for a family’s housing needs, while providing additional clarity to PHAs and owners about what funds should still be considered income, given the broad definition contained in HOTMA.
- Added language that specifies what the effective date will be for annual and interim certifications when families report or fail to report changes in income.
- Fully revised Chapter 8 to reflect the adoption of new NSPIRE standards to replace HQS in HOTMA.
- Added language regarding when inspections deficiencies are determined Normal wear and tear and cannot be charged against the security deposit.

- Added language on the appropriateness of Annual and Interim recertifications and when they should be conducted. In addition, new language was added regarding Non-Interim Reexaminations and what is categorized as a Non-Interim Reexamination.
- Updated the language regarding the HCV Homeownership program as modified by HOTMA.
- Clarified HACCC's policies for conducting remote informal hearings and reviews.
- Updated all VAWA language to reflect changes included in HOTMA including the addition of human trafficking as a protected class.
- Updated Family Unification Program-Youth (FUPY) and Foster Youth to Independence Initiative (FYI) program policies and preferences so that FUP program/voucher vacancies can be re-issued to FYI-eligible youth.
- Updated the glossary to include all changes adopted by HOTMA.

The proposed changes to the Admin Plan are too extensive to be attached. A complete copy of the proposed Admin Plan is available for review at HACCC's main office.

FISCAL IMPACT:

No direct financial impact.

CONSEQUENCE OF NEGATIVE ACTION:

Should the Board of Commissioners elect not to approve the changes to the Admin Plan, HACCC will be out of compliance with HUD requirements. HUD may also impose additional sanctions.