



## 24 CFR Parts 5, 92, 93, 570, 574, 576, and 578

[Docket No. FR-6057-N-06]

### **Housing Opportunity Through Modernization Act: Implementation of Sections 102, 103, and 104; Extension of Compliance Date and Safe Harbor Implementation**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development (HUD).

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** This document extends the compliance date for HUD’s final rule entitled “Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104” (HOTMA final rule) for Community Planning and Development (CPD) programs. Specifically, HUD is extending the compliance date for the HOME Investment Partnerships program (HOME), HOME-American Rescue Plan program, Housing Trust Fund (HTF), Housing Opportunities for Persons With AIDS (HOPWA), Community Development Block Grant program (CDBG), Emergency Solution Grants (ESG), Continuum of Care (CoC) programs, and CPD programs funded through competitive processes (Competitive Programs). HUD is extending the compliance deadline for all grantees and allowing grantees that are ready to comply to set an earlier compliance date between January 1, 2024, and January 1, 2026. In addition, HUD is permitting the implementation of certain income safe harbors established in the HOTMA final rule prior to the extended HOTMA compliance date. HUD is taking this action due to delays in updating the HUD systems to comply with HOTMA and to allow additional time for jurisdictions, participants, and grantees to incorporate HUD’s income and asset requirements into their own programs and flexibility to transition implementing HOTMA requirements under their own timelines.

**DATES:** The compliance date for the final rule published February 14, 2023, at 88 FR 9600, is extended. CPD participating jurisdictions, participants, and grantees (CPD grantees) subject to

24 CFR parts 5, 92, 93, 570, 574, 576, and 578, or who apply the income requirements in 24 CFR part 5 pursuant to Notices of Funding Opportunity (NOFOs), are not required to comply with the changes established by the HOTMA final rule until January 1, 2026.

**FOR FURTHER INFORMATION CONTACT:** For HOME and the HTF, Milagro Fisher, Senior Affordable Housing Specialist, Office of Affordable Housing Programs, at telephone (202) 708-2684, Room 7160; for HOPWA, Lisa Steinhauer, Senior Program Specialist, Office of HIV/AIDS Housing, at telephone (215) 861-7651, Room 7248; for CDBG, B. Cory Schwartz, Deputy Director, State & Small Cities Division, at telephone (202) 402-4105, Room 7282. The mailing address for each office contact is Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-7000. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On February 14, 2023, HUD published the HOTMA final rule (88 FR 9600). The HOTMA final rule established a January 1, 2024, effective date for the revisions it made to HUD's income regulations at 24 CFR parts 5, 92, 93, 570, and 574. These revisions also affected CPD programs subject to 24 CFR parts 576 and 578, as well as Competitive Programs using NOFOs that reference the regulations at 24 CFR part 5. On September 29, 2023, HUD's Office of Public and Indian Housing (PIH) and Office of Housing (Housing) issued joint notification PIH 2023-27/H 2023-10, which enabled Public Housing Agencies (PHAs) and multifamily owners to establish their own compliance dates for sections 102 and 104 of HOTMA as early as January 1, 2024, and no later than January 1, 2025. Similarly, on December 8, 2023, HUD published the Housing Opportunity Through Modernization Act: Implementation of Sections 102, 103, and 104; Extension of Compliance Date (88 FR 85648) to extend the compliance date

of the HOTMA final rule to January 1, 2025, for all CPD programs that use HUD's 24 CFR Part 5 income regulations.

## **II. Further Extensions of the HOTMA Final Rule Compliance Date**

On September 18, 2024, PIH announced that PHAs were not to implement and comply with the section 102 and 104 income and assets provisions in the HOTMA final rule by January 1, 2025. This extension was due to delays in updating the HUD systems to comply with the rule. Then, on September 20, 2024, Housing issued notification H 2024-09 to announce that multifamily owners were not to implement and comply with the HOTMA final rule until July 1, 2025. This was also due to delays in updating the HUD systems to comply with the rule. Now, HUD has determined that CPD grantees receiving assistance through CPD programs, which often overlap with PIH and multifamily programs, must be provided with certain flexibilities. HUD is communicating these flexibilities through this document.

HUD's determination that these flexibilities are necessary was made in light of the fact that CPD grantees may not be able to comply with the requirements of the HOTMA final rule until after HUD has provided the guidance and performed the software updates necessary for CPD grantees to implement the HOTMA final rule. Even after the necessary guidance is provided and updates to HUD systems are made, CPD grantees will still need additional time to incorporate this guidance into their program policies and procedures and to update their own systems and software. Therefore, in recognition of these operational issues and challenges, HUD is allowing CPD grantees to set their own compliance dates for the applicable HOTMA final rule provisions. These compliance dates may be as early as January 1, 2024, and no later than January 1, 2026. Until these new compliance dates, CPD grantees must continue to adhere, as applicable, to the requirements found in both their program regulations and the regulations at 24 CFR 5.603, 24 CFR 5.609, 24 CFR 5.611, and 24 CFR 5.617 as they existed prior to January 1, 2024. Furthermore, CPD grantees must continue to rely on the instructions provided in the document published December 8, 2023 at 88 FR 85648 for implementing the HOTMA final rule.

### **III. Implementation of the HOTMA Safe Harbor for ESG, COC programs, and HOPWA**

The HOTMA final rule established an income safe harbor provision at 24 CFR 5.609(c)(3). This provision permits PHAs and multifamily owners to determine the annual income of a family prior to the application of any deductions applied in accordance with 24 CFR 5.611 based on income determinations made under the rules of other Federal programs or means-tested forms of Federal public assistance. On September 13, 2024, PIH published updated HOTMA Implementation FAQs<sup>1</sup> describing that PHAs may implement the safe harbor provision at 24 CFR 5.609(c)(3).

Now, HUD is allowing certain CPD grantees that have program regulations that cross reference 24 CFR 5.609(c)(3) to use this safe harbor provision prior to implementing the HOTMA final rule. Grantees of the following CPD programs may use this safe harbor provision: HOPWA (see 24 CFR 574.310(e)), ESG (see 24 CFR 576.401(c)), and the CoC programs (see 24 CFR 578.77(b) and (c)). Before using this safe harbor provision, grantees of these CPD programs must update their program guidelines and establish policies and procedures that describe income verifications when using this safe harbor provision. HUD is providing these grantees, and specifically HOPWA grantees, the ability to use this income safe harbor provision so that its CPD program guidance more closely aligns with its Section 8 program guidance, as HUD's HOPWA regulations closely track Housing Choice Voucher program regulations.

### **IV. Implementation of the HOTMA Safe Harbor for HOME and HTF**

The HOTMA final rule also established separate safe harbor provisions at 24 CFR 92.203(a)(1) and (2) and at 24 CFR 92.252(h) for HOME and other safe harbor provisions at 24 CFR 93.151(a)(1) through (3), and 24 CFR 93.302(e) for HTF. Under 24 CFR 92.203(a)(1) and 24 CFR 93.151(a)(3), a participating jurisdiction or HTF grantee must accept a PHA's, owner's, or rental subsidy provider's income determinations, in accordance with 24 CFR 5.609, if a

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<sup>1</sup><https://www.hud.gov/sites/dfiles/PIH/documents/PIH%20HOTMA%20Implementation%20FAQ%2009.13.2024.pdf> updated September 13, 2024.

family is applying for or living in a HOME-assisted or HTF-assisted rental unit and the unit is being assisted by Federal project-based rental subsidy. Similarly, a participating jurisdiction or HTF grantee must accept a State project-based rental subsidy provider's income determination under the rules of that State program. In the same way, under 24 CFR 93.151(a)(1), for HTF-assisted units that are assisted under the public housing program, an HTF grantee must accept a PHA's determination of a family's annual income and adjusted income under 24 CFR 5.609 and 24 CFR 5.611. Moreover, under 24 CFR 92.203(a)(2) and 24 CFR 93.151(a)(2), a participating jurisdiction or HTF grantee may accept a Federal tenant-based rental assistance provider's income determinations if a family is applying for or living in a HOME-assisted or HTF-assisted rental unit and the family is being assisted by a Federal tenant-based rental assistance program.

Now, HUD is allowing participating jurisdictions and HTF grantees to use the safe harbor provisions in 24 CFR 92.203(a) and 24 CFR 92.252(h), or 24 CFR 93.151(a) and 24 CFR 93.302(e), prior to the new HOTMA final rule compliance date and upon publication of this document, even if they have not implemented the remaining provisions of the HOTMA final rule. Before using the safe harbor provisions, participating jurisdictions and HTF grantees must update their program guidelines and establish policies and procedures that describe income verification when using the safe harbor provisions. HUD is providing participating jurisdictions and HTF grantees the ability to use these safe harbor provisions so that its HOME and HTF guidance more closely aligns with its other HOTMA final rule implementation guidance and to reduce the administrative burden on CPD grantees associated with having to meet two different sets of income requirements for the same unit.

## **V. Conclusion**

Accordingly, HUD extends the January 1, 2025, compliance date for implementing the changes made by the HOTMA final rule to 24 CFR parts 5, 92, 93, 570, and 574 for the CPD programs described in this document until January 1, 2026. Until January 1, 2026, the grantees of these programs subject to these parts may instead choose to comply with these parts as they

existed prior to January 1, 2024, and may also implement the income safe harbor provisions described in this document.

**Marion McFadden,**

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Office of Community Planning and Development.*

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