

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Final Rule: Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews under the Fixing America's Surface Transportation (FAST) Act

Background

In early December 2015, the President signed the Fixing America's Surface Transportation Act (FAST Act) into law. The FAST Act contained language that allowed public housing authorities (PHAs) and owners agents (O/As) to conduct full income recertification for families with 90 percent or more of their income from fixed income every 3 years (triennial) instead of annually. In December 2017, HUD issued an interim rule to align the current regulatory flexibilities with those provided in the FAST Act. The interim rule also sought to extend to certain multifamily housing (MFH) programs some of the streamlining changes that were proposed for and made only to the housing choice voucher (HCV) and public housing (PH) programs. This [final rule](#) finalizes and implements the December 2017 FAST Act interim rule, with one change that clarifies owners are not required to make adjustments to non-fixed-income.

This NAHMAanalysis will highlight NAHMA member comments to the Dec. 2017 Interim rule and HUD's responses to the comments.

NAHMA Comments and HUD Responses

1. Utility Reimbursements (§ 5.632)

- **Comment:** NAHMA members support the streamlining changes; however, we need additional clarification on what policies owner/agents (O/As) should adopt to assist tenants that might experience a financial hardship under the rule. If a tenant is getting a utility reimbursement, it means they have very limited or no income at all, and as a result it is difficult to project what would trigger or constitute a financial hardship. Has HUD analyzed or calculated the amounts at which tenants may claim a financial hardship?

HUD Response: Hardship policies for utility reimbursements will be addressed through program-specific guidance.

- **Comment:** Also, please provide clarification on the statement, “the PRACs that HUD would be open to amending the assistance contracts of owners....” How does HUD plan to do this?

HUD Response: The provisions of this rule do not affect the regulation and program guidance governing the requirements of adjusting utility allowances. PHAs and owners must perform utility allowance adjustments in accordance with established guidance.

2. Streamlined Certification of Fixed Income (§§ 5.233, 5.657, 960.257, and 982.516)

- **Comment:** NAHMA members support the streamlining changes to fixed income; however, members need clarification regarding when they can and cannot choose to verify non-fixed income. Do O/As always have to verify non-fixed income regardless of the percentage of the income that is fixed?

HUD Response: Section 78001 of the FAST Act amended the United States Housing Act of 1937 to allow PHAs and owners in the HCV, PH, and PBRA programs to eliminate annual income reviews in some years by applying a COLA determined by the Secretary to fixed income sources for families with incomes that are made up of at least 90 percent fixed income. The FAST Act did not require PHAs and owners to verify non-fixed income amounts in years where no fixed-income review is required, but did require them to use third-party documentation for a full income recertification every 3 years.

The interim final rule and this final rule both reflect the FAST Act by allowing PHAs and owners to use a COLA for fixed sources if such sources make up at least 90 percent of a tenant’s income. HUD has made a slight adjustment in the regulatory text in this final rule to clarify the language in §§ 5.657(d)(3)(i), 960.257(c)(3)(i), and 982.516(b)(3)(i) to emphasize that PHAs and owners are not required to make adjustments for non-fixed income in such instances when using streamlined income determinations.

This rule does not alleviate the responsibility to conduct reexaminations each year, but rather changes the standards for income verification during those reexaminations.

“Reexaminations” encompass more actions than income verifications. For example, reexaminations consider verifications of expenses related to deductions, verifications of family composition, compliance with the Community Service and Self Sufficiency requirement in the public housing program, etc.

- **Comment:** *Triennial certifications* Please provide clarification on “every three years.” For example, a tenant moves in January 1, 2018 and an O/A does a complete verification of the tenant’s income, including asset income. Does “every three years” mean that the next time the O/A would need to complete a verification is January 1, 2020 (which is actually two years but it is the third year of their tenancy) or does it mean January 1, 2021 (which is literally 3 years after January 1, 2018). NAHMA members recommend providing examples in the rule or subsequent guidance.

HUD Response: The provisions of this rule are discretionary. Owners that choose to implement streamlined annual recertifications must use third-party verification of income at move-in for new tenants and for existing tenants at the first annual recertification after the rule becomes effective. Streamlined methods of verification of income may be applied to the annual recertification the year after third-party verified certification (year 2) and the next annual recertification (year 3). Third-party verification of income must be used for the following annual certification (year 4). HUD will not provide a common use form at this time.

- **Comment:** NAHMA members are concerned that the interim rule does not address how to treat medical expenses for residents that are on fixed income. For example, some residents claim medical expenses to help lower their rent. Should O/As do full recertifications for residents with medical expense claims, but then do streamlined recertifications on residents that do not claim medical expenses (i.e., who only have income plus assets)?

HUD Response: The FAST Act and the interim rule provide administrative relief to PHAs and owners. PHAs and owners may elect a streamlined income determination for families on a fixed income. However, the provision only pertains to the verification of sources of income. PHAs and owners must continue to conduct third-party verification of deductions, including medical expenses deductions.

HUD proposed a rule to implement income changes made by HOTMA, including medical expense deductions, published on September 17, 2019, at 84 FR 48820. HUD does not perceive a conflict between the FAST Act and HOTMA.

- **Comment:** Finally, how will the streamlining provisions be implemented with TRACS? Will software packages know what to do if O/As do or do not choose to do streamlined recertifications? In particular, there needs to be some type of structure in place so that Management Occupancy Reviews are conducted with consistency across the portfolio.

HUD Response: The provisions in this rule can be handled by the current iteration of TRACS. Although streamlining certifications is now permitted by owners, form HUD-50059 is still required to be completed by owners and signed by tenants and submitted to TRACS. HUD will consider changes to TRACS that may make tracking streamlined years easier.

3. Family Declaration of Assets Under \$5,000 (§ 5.659)

- **Comment:** NAHMA members are very supportive of this provision; however, members often have difficulty getting information back from banks, and as a result, gathering six consecutive bank statements would not be easy. In addition, the question arises of whether O/As would need to use the asset income the tenant states they are receiving on the declaration, similar to the tax credit program?

HUD Response: For move-ins and annual recertifications initiating the 3-year streamlining cycle, PHAs and owners or agents must adhere to current program guidance. For years 2 and 3, the rule requires households to complete a declaration of assets of \$5,000 or less.