



## ‘Not a Problem:’ Over-Income Proposal for Public Housing Brings Changes

**BRAD STANHOPE, SENIOR EDITOR, NOVOGRADAC & COMPANY LLP**

Over-income residents in public housing get plenty of headlines, but many in public housing say it’s much ado about nothing.

“Really, statistically, this is not a major problem across the industry,” said Adrienne Todman, CEO of National Association of Housing and Redevelopment Officials (NAHRO). “It’s only a problem because the [2015] Inspector General report was effectively politicized.”

Congress considered it an issue and the U.S. Department of Housing and Urban Development (HUD) published a notice in the Federal Register in July announcing the method it will use to determine the over-income limit of 120 percent of the area median income (AMI). That was part of a mandate in the Housing Opportunity Through Modernization Act (HOTMA) of 2016, which required that if a household in public housing exceeds 120 percent of AMI for two consecutive years, tenancy must be terminated or the household must be charged the greater of two options for rent. Those options are the fair market rent or the total monthly subsidy.

HUD still needs to determine how public housing authorities (PHAs) determine the monthly subsidy. It will also issue guidelines for how PHAs set policies to address over-income families after the two-year grace period.

“For many housing agencies, this is not a major issue and systems are already in place to adjust the rents of families to their income, so we’re pleased that Congress set broad parameters [in HOTMA],” Todman said. “In fact, the reaction runs counter to the long-held goal of creating mixed-income communities. Unfortunately, the exaggerated narrative that ‘millionaires are living in public housing,’ went viral. We were concerned that the proposal would be far more draconian. Thankfully, the response, so far, has been manageable.”

### **IG Report’s Role**

In 2015, the IG conducted an audit of over-income families in public housing. The report determined that about 25,000 families earned more than the

continued from page 1

2014 eligibility income limits (generally 80 percent of the AMI) and most of those did so for more than one year.

The report recommended that HUD create policies to reduce that number. But the biggest splash was that nearly 300 families in public housing earned more than \$90,000 a year and one—in New York City—earned \$500,000 annually.

While that number was a minuscule amount of the more than 1 million public housing units, it caught the attention of the public and of Congress. That led to the public housing provisions in HOTMA and the subsequent notice in the Federal Register implementing these provisions.

The notice said HUD will preliminarily calculate the 120 percent mark by multiplying the 50 percent of local very-low-income level (it's generally 50 percent of the AMI, with several adjustments, including high-housing-costs adjustments) by 2.4. This methodology implements the flexibility provided through HOTMA that allows the HUD secretary discretion to establish different income limitations based on local issues such as construction costs, vacancy rates or unusually high or low incomes.

“The current HUD notice defines how to determine the threshold,” said Eric Oberdorfer, public housing policy advisor at NAHRO. “In HOTMA, the language provided discretion to adjustments on how to define 120 percent of AMI. From community to community, that's very different. In New York, you're still not going to get far [with 120 percent of AMI], because that's still considered more low-income than in certain parts of Nebraska, for example. HUD's notice allows for flexibility.”

PHAs must also update their Admissions and Continued Occupancy Policies to implement over-income limits.

That must include the imposition of an over-income limit, all instances of when the two-year time begins and notification requirements. They must complete all relevant policy and PHA plans changes by the end of March 2019, six months after the date (Sept. 24, 2018) that the notice was effective.

### Is This an Issue?

For many in the public housing world, this is a minimal issue.

“It gets a lot of headlines and makes people look bad, but it's not that common,” said Rich Larsen, CPA and partner in Novogradac & Company's Toms River, N.J., office.

Todman said the significance is that it makes over-income tenants an issue.

“The reaction was significant in that it demonized over-income tenants and made them a problem to solve,” said Todman.

Kristi Duffy, director of staff operations at the Perth Amboy Housing Authority in New Jersey, said that before her agency went through a conversion through the Rental Assistance Demonstration program—which moved apartments largely out of the public housing—there were enough over-income families to make it noticeable.

“We had about 360 units and maybe 20 that were over-income,” Duffy said. “That's not a lot, but it's also not a small number.”

Nearly all PHAs have a waiting list for their housing and every over-income family occupies an apartment where a low-income family could live. However, those involved stressed that the higher-income families in public housing do not receive any additional subsidy.

continued on page 3

# U.S. PUBLIC HOUSING TENANT DATA

Based on 2017 data



Residents in public housing:  
**2,070,627**



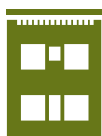
Residents per unit:  
**2.1**



Average household  
annual income:  
**\$14,753**



Households earning more  
than \$20,000 annually:  
**23%**



Households classified very low  
income (less than 50 percent  
of area median income):  
**90%**



Average length of tenancy:  
**122 months**

Sources: HUD, Novogradac & Company LLP

continued from page 2

“Initial eligibility for public housing tops out at 80 percent of AMI,” Todman said. “During a family’s tenancy, there are other rent determination rules, like flat rents that are tied to fair market rents for families that exceed 80 percent. But they represent a modest percentage of families who live in public housing across the country.”

Among those who do, many would struggle to pay market-rate rents.

“Some of the over-income families are really over income,” Duffy said. “In bigger units, there are multiple adults employed, but in fairness, these [adult] kids can’t afford to move out.”

## Reaction to the Guidance

There were mixed reactions to the HUD notice.

“The biggest concern was that they were going to say eviction is the only option,” said Georgi Banna, director of policy and program development at NAHRO. “Now, to pay more is an option. [Over-income families] can stay if they pay fair market rent or the subsidy.”

Todman said having some over-income families also helps PHAs with the bottom line.

“Rent from a so-called ‘over-income family’ is often more of a sure thing than the federal subsidy, which is then also pro-rated,” Todman said.

Duffy said over-income families are a mixed bag for PHAs.

“A lot of over-income people stay and stabilize the neighborhood,” Duffy said. “That’s true, but now it’s

continued on page 4

continued from page 3

to the point that we have several thousand people on waiting lists. This is a good idea to push along. There should be some sort of income limit.”

### What’s Next

Oberdorfer said he expects proposed regulations early in 2019, with an open comment period and final regulations in 2020.

“Agencies have to track families beginning around the end of March 2019,” Banna said. “They have six months

to update their policies and the two-year period begins in late March or early April 2019.”

Larsen said PHAs already do annual income recertification, so that’s not difficult.

“I don’t know if this is that big an issue,” Larsen said. “It mostly protects politicians from an embarrassing situation.” ❖

---

*This article first appeared in the December 2018 issue of the Novogradac Journal of Tax Credits.*

© Novogradac & Company LLP 2018 - All Rights Reserved

*Notice pursuant to IRS regulations: Any U.S. federal tax advice contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any advice expressed in this article is limited to the federal tax issues addressed in it. Additional issues may exist outside the limited scope of any advice provided – any such advice does not consider or provide a conclusion with respect to any additional issues. Taxpayers contemplating undertaking a transaction should seek advice based on their particular circumstances.*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.novoco.com](http://www.novoco.com).*

## EDITORIAL BOARD

PUBLISHER

Michael J. Novogradac, CPA

EDITORIAL DIRECTOR

Alex Ruiz

TECHNICAL EDITORS

Thomas Boccia, CPA

Owen P. Gray, CPA

James R. Kroger, CPA

John Sciarretti, CPA

Mike Morrison, CPA

Daniel J. Smith, CPA

## COPY

SENIOR EDITOR

Brad Stanhope

MARKETING MANAGER

Teresa Garcia

SENIOR WRITER

Mark O'Meara

CONTENT MANAGEMENT SPECIALIST

Elizabeth Orfin

CONTRIBUTING WRITERS

Justin Cree

David Graff

Flyann Janisse

Carolyn Magill

Stephanie Naquin

John Sciarretti

Richard Sidebottom

John Tess

Stephen Tracy

Steven Varaday

Jason Watkins

## ART

CARTOGRAPHER

David R. Grubman

CREATIVE DIRECTOR

Alexandra Louie

PRODUCTION

James Matuszak

Laura Fischer

## CONTACT

CORRESPONDENCE AND EDITORIAL SUBMISSIONS

Alex Ruiz

alex.ruiz@novoco.com

415.356.8088

ADVERTISING INQUIRIES

Christianna Cohen

christianna.cohen@novoco.com

925.949.4216

EDITORIAL MATERIAL IN THIS PUBLICATION IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED OTHERWISE.

ADVICE AND INTERPRETATION REGARDING THE LOW-INCOME HOUSING TAX CREDIT OR ANY OTHER MATERIAL COVERED IN THIS PUBLICATION CAN ONLY BE OBTAINED FROM YOUR TAX ADVISOR.

## ADVISORY BOARD

### LOW-INCOME HOUSING TAX CREDITS

Bud Clarke

BOSTON FINANCIAL INVESTMENT MANAGEMENT

Tom Dixon

BOSTON CAPITAL

Rick Edson

HOUSING CAPITAL ADVISORS INC.

Richard Gerwitz

CITI COMMUNITY CAPITAL

Rochelle Lento

DYKEMA GOSSETT PLLC

John Lisella

U.S. BANCORP COMMUNITY DEV. CORP.

Philip Melton

BELLWETHER ENTERPRISE

Thomas Morton

PILLSBURY WINTHROP SHAW PITTMAN LLP

Mary Tingerthal

MINNESOTA HOUSING FINANCE AGENCY

Rob Wasserman

U.S. BANCORP COMMUNITY DEV. CORP.

### PROPERTY COMPLIANCE

Michael Kotin

KAY KAY REALTY

Kerry Menchin

CONAM MANAGEMENT CORPORATION

Michael Snowden

HIGHRIDGE COSTA HOUSING PARTNERS

Gianna Solari Richards

SOLARI ENTERPRISES INC.

### HOUSING AND URBAN DEVELOPMENT

Flynn Janisse

RAINBOW HOUSING

Ray Landry

DAVIS-PENN MORTGAGE CO.

Denise Muha

NATIONAL LEASED HOUSING ASSOCIATION

Monica Sussman

NIXON PEABODY LLP

### NEW MARKETS TAX CREDITS

Frank Altman

COMMUNITY REINVESTMENT FUND

Merrill Hoopengardner

NATIONAL TRUST COMMUNITY INVESTMENT CORP.

Scott Lindquist

DENTONS

Matthew Philpott

U.S. BANCORP COMMUNITY DEV. CORP.

Ruth Sparrow

FUTURES UNLIMITED LAW PC

Elaine DiPietro

BLOOMING VENTURES LLC

### HISTORIC TAX CREDITS

Jerry Breed

MILES & STOCKBRIDGE

John Leith-Tetrault

NATIONAL TRUST COMM. INVESTMENT CORP.

Bill MacRostie

MACROSTIE HISTORIC ADVISORS LLC

John Tess

HERITAGE CONSULTING GROUP

### RENEWABLE ENERGY TAX CREDITS

Bill Bush

STEM INC.

Benjamin Cook

NEXTPOWER CAPITAL

Jim Howard

DUDLEY VENTURES

Forrest Milder

NIXON PEABODY LLP