September 12, 2023

Ethan Handelman
Deputy Assistant Secretary
Office of Multifamily Housing Programs
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

RE: Partial Implementation Delay, Asset Limitation Exceptions, and Exemptions from Asset Limitations Under HOTMA

Dear Deputy Assistant Secretary Handelman:

On behalf of LeadingAge, we request urgent action regarding implementation of the Housing Opportunity Through Modernization Act, or HOTMA, for affordable senior housing providers assisted through HUD's Multifamily Housing programs.

Specifically, **we urge the Department to:**

- **Correct its interpretation of the enforcement of asset limitations.**
- **Clarify exceptions to new asset limitations.**
- **Delay certain implementation requirements under HOTMA.**

Thank you for your urgent action on behalf of older adults in affordable housing.

About LeadingAge

We represent more than 5,000 nonprofit aging services providers and other mission-minded organizations that touch millions of lives every day. Alongside our members and 38 state partners, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, community-based services, hospice, home-based care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home. For more information visit leadingage.org.

Exemptions to Enforcement of Asset Limitations

On behalf of our nationwide membership of affordable senior housing providers and the many older adults they serve, we value HUD's thoughtfulness in implementing HOTMA. However, the current implementation approach is not aligned with congressional intent and will cause harm to residents.

2519 Connecticut Ave., NW | Washington, DC 20008-1520
P 202.783.2242 | F 202.783.2255 | LeadingAge.org

In particular, HUD should follow the HOTMA authorizing statute, P.L. 114-201, which clearly allows housing providers to choose not to enforce the new HOTMA asset limits during recertifications and also provides owners the option to exempt certain currently served residents from enforcement of HOTMA's new asset limits based on adopted policies.

Under Section 104 of HOTMA, paragraph (5) of subsection (e) states: "[w]hen *recertifying* the income of a family residing in a dwelling unit assisted under this Act, a public housing agency or owner may *choose not to enforce the limitation* under paragraph (1) *or may establish exceptions to such limitations based on eligibility criteria* . . . ." (emphasis added).[1] Paragraph (5) also describes how "eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided."

Clearly, the statutory language allows discretion for affordable senior housing providers in enforcing the asset limits at recertifications and the ability to establish exceptions to HOTMA's asset limits for currently assisted residents.

In addition to clear statutory language, written correspondence with experts at the time of HOTMA enactment confirms the discretion to enforce the new asset limitations. option for owners to establish a policy that declines to enforce the new asset limitations under HOTMA during recertifications. An analysis by the Center on Budget and Policy Priorities from 2016 reiterates the intent of the law related to enforcement of asset limits: "[HOTMA] allows PHAs and owners to adopt a policy of not enforcing the asset limitations at all, to establish exceptions, or to delay for up to six months evictions of tenants."[2]

In addition, the HOTMA implementation final rule, published on February 14, 2023, states: "Pursuant to § 5.618(c), PHAs and owners are given discretion in enforcing the asset limitation on eligibility for assistance at reexamination in § 5.618(a). HUD will issue additional guidance on the use of this discretionary authority."

However, HUD has indicated that it does not intend to follow congressional intent in HOTMA implementation regarding exceptions to the asset limitations, but rather to allow only the six-month delay option. In FAQs and talking points published by Multifamily Housing on the new asset limitations and program eligibility, HUD states: "The statute does not permit families to be grandfathered in under this provision…Owners may delay initiation of termination of assistance/eviction for *no more than 6 months* for families who exceed the asset limit or own disqualifying real property…Owners may establish nonenforcement and/or exception policies to allow families to cure their asset ineligibility, *not to exceed a six-month timeframe*." [3] (emphasis added). Implementation materials provided by HUD for PHAs also include only the six-month delay option and no further discretion for housing providers.

In the final rule, HUD unnecessarily and problematically intertwines the statute's authorization for owners to delay termination of assistance for no more than six months if a family does not comply with the HOTMA asset limit, in Section 104 of HOTMA, paragraph (6) of subsection (e), with the owner's ability to opt out of the asset limits for current residents altogether, the authority for which is given under Section 104 of HOTMA, paragraph (5) of subsection (e).

---

[1] P.L. 114-201, pages 14-15 https://www.congress.gov/114/plaws/publ201/PLAW-114publ201.pdf
[2] LeadingAge and CPPB analysis, page 3
[3] Multifamily Housing HOTMA Talking Points

It is crucial that HUD follow statutory language and congressional intent by allowing housing providers to establish policies that would exempt currently served residents from the new asset limits beyond the stated 6-month window, as they would otherwise face eviction.

In contrast to initial *certifications* of assets and income of applicants, *recertifications* are conducted cyclically with current residents to verify continued eligibility and update rent-setting based on income and other factors. Under HOTMA, applicants and new residents would be subject to the new asset limitations, preventing households with habitable properties or assets over 100,000 from receiving rental assistance, unless otherwise exempt.

Aging-Related Exceptions to New Asset Limits

It is also critical that HUD clarify exceptions allowable under the new asset limitations under HOTMA. HUD's HOTMA implementation final rule states that the owner may adopt exceptions related to the "suitability for occupancy" of real property owned by HUD-assisted residents. Specifically, the final rule refers to geographic locations of the property in relation to a family's place of work or educational institution, proximity to accessible transportation, and disability-related needs. In § 5.618(a)(2), the rule also refers to the condition of the property related to the health and safety of residents, as well as environmental factors.

In many cases, owned property, while technically habitable, may be located far from the older adult's support systems, including caregivers or supportive services. In addition, the older adult may no longer be able to drive certain distances or manage the upkeep of the yard or house.

In other words, while an older adult resident's property may be "suitable" for a resident without certain limitations, the house may not be appropriate for aging. HUD's implementation guidance for HOTMA should clarify that aging-related limitations be accepted as exceptions to the new asset limitations related to real property.

Partial Delay to HOTMA Implementation

HUD's final rule requires compliance of certain new provisions beginning on January 1, 2024. However, since publication of the final rule in February, 2023, HUD has not issued further implementation guidance for Multifamily Housing providers. HUD has also not provided webinars for Multifamily Housing, or the updated forms and TRACS changes needed to implement the many changes under HOTMA.

Beginning in September, housing providers conduct recertifications that are effective January 1, 2024. Without the needed implementation materials from HUD, housing providers have continued conducting recertifications per HUD's current (soon to be "old") rules, but will have to conduct corrections once HUD's implementation rules for HOTMA are released.

These corrections add significant time for housing staff, and they may have significant negative impact on residents. We therefore urge HUD to delay the compliance date of certain aspects of HOTMA; this will allow enough time for software updates to TRACS, new forms, and further guidance for housing providers, as well as communication with residents about the coming changes.

Thank you for your urgent action to ensure smooth implementation of HOTMA and continued access to affordable housing for older adults with low incomes. Please direct any questions to Juliana Bilowich, Director of Housing Policy and Operations with LeadingAge (jbilowich@leadingage.org).

We look forward to our continued partnership.

Sincerely,

Juliana Bilowich
Director, Housing Operations and Policy