



August 9, 2024

Ethan Handelman  
Deputy Assistant Secretary for the Office of Multifamily Housing Programs  
U.S. Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

CC: Jennifer Larson, Jennifer Lavorel

Dear Mr. Handelman,

Thank you for your continued commitment to effective implementation of the Housing Opportunity Through Modernization Act (HOTMA). On behalf of our nationwide membership of affordable senior housing providers, we urge HUD to take the following actions to clarify and improve HOTMA implementation:

- Communicate quickly – and clearly – about how housing providers should handle the current HOTMA compliance date (which is effectively September 2024) without the necessary implementation tools, and urgently communicate any changes to HOTMA compliance requirements.
- Clarify compliance penalties and constructive approaches between housing providers and Contract Administrators during the interim HOTMA implementation phase.
- Work with the Treasury Department and with Housing Finance Agencies to align HOTMA implementation timelines between HUD-assisted and tax credit-financed properties, including for properties with layered subsidies.
- Commit to producing resident-facing materials and additional implementation support for impacted housing communities.

### **About LeadingAge**

LeadingAge represents more than 5,400 nonprofit aging services providers and other mission-driven organizations serving older adults. Alongside our members and 36 partners in 41 states, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership encompasses the entire continuum of aging services, including affordable housing, skilled nursing, assisted living, memory care, retirement communities, adult day programs, community-based services, hospice, and 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.

### **Communicate Quickly and Clearly about the HOTMA Compliance Timeframe**

LeadingAge's priority is to achieve clarity and consistency about the HOTMA implementation timeline. In order to protect HUD-assisted residents from adverse impacts, and to prevent housing providers from inappropriate compliance penalties, we urgently need clarity from HUD on the status of the HOTMA compliance timeline.

Currently, HUD's full compliance date for HOTMA is January 1, 2025, but the necessary implementation tools have not yet been provided by HUD. However, housing providers begin January 1 tenant file processes in the preceding September, which is just a few weeks away. Further, implementation for housing providers is not a matter of "flipping a switch" – once HUD's tools and materials are ready, providers will need to update systems, conduct staff trainings, give certain types of notice to residents, and more – all of which will take many months.

Without the tools to implement HOTMA or any communication from HUD on next steps, housing providers are unclear on how to conduct critical property processes impacting HUD-assisted households. Because of the looming compliance date that effectively begins in September, some housing providers may move forward with HOTMA implementation beginning next month (despite there being no tools to support the implementation), while others may not.

### ***Confusion Around the Timeline for Asset Limitation Implementation***

The current scenario is creating well-founded confusion and concern among housing communities, and it could have significant negative impacts on the residents and applicants of affordable housing properties. The negative impacts include potentially falsely increasing tenant rent or inaccurately deeming certain applicants ineligible to move into HUD-assisted housing (or continue receiving housing assistance) due to new asset limitation established under HOTMA.

Confusion around implementation has already resulted in, for example, inaccurate messaging to residents about the timing of housing assistance termination due to the new asset limitations. This may lead to households that are currently eligible for housing assistance giving up their unit or giving up their place on the waiting list after waiting for years.

One letter sent by a housing provider to a HUD-assisted resident in Massachusetts includes a number of inaccurate statements, stemming from confusion about HOTMA implementation, indicating an imminent eviction for the assisted resident:

*"HOTMA makes important changes to the federal government's programs... There has been a change that will affect your household at your next annual recertification effective October 1, 2024. HOTMA has changed the eligibility requirements regarding assets. Previously, there was not a limit on what assets a household had. Among other asset rules effective January 1, 2024, any household that has assets with a total cash value of more than \$100,000 are ineligible for assistance, and furthermore, are ineligible to live at a property subsidized through HUD's Multifamily Programs... I am very sorry to have to share this news with you."*

The current state of confusion around HOTMA compliance timing has also resulted in messaging from well-known housing compliance experts to housing communities urging them to move forward with HOTMA compliance beginning this September. For example, an August 7 message went out to broad parts of the housing community, stating that HOTMA provisions – including asset limits – must be applied to tenant files beginning with recertifications conducted beginning in September:

*"For the Annual Recertifications (ARs) effective from 1/1/2025, all HOTMA updates must be included. Since 120-day notices will be sent out shortly, properties need to process these ARs with the new HOTMA requirements. Key updates include:*

- \* *Streamlining procedures*
- \* *Handling changes in household composition*
- \* *Allowing for hardship situations*
- \* *Enforcing new asset limits*

*Additionally, your property will need to establish a timeline for processing Interim Recertifications (IRs)."*

Overall, LeadingAge is very concerned about the resident displacement that may result from inaccurate HOTMA implementation timing, specifically related to the asset limitations; housing providers are currently unclear on what to do beginning in September and whether they will have to issue corrections ahead of the current January 1, 2025 deadline – a highly labor-intensive practice.

**In order to address the current confusion and inconsistency around HOTMA compliance, it is utterly important that HUD communicate quickly and clearly about how housing providers should handle the current HOTMA compliance date (which will effectively begin in September 2024) given the fact that no tools are currently available for implementation. HUD should also communicate as early as possible about any action that would push back the current January 1, 2025, compliance date.**

We also ask that instead of choosing a particular date by which housing providers need to be HOTMA compliant, HUD consider delaying compliance until further notice. This will give the agency and housing communities much-needed flexibility: Instead of projecting a compliance date ahead, HUD should wait to announce a new compliance date until the implementation tools are ready, after which we can collectively determine a date by which compliance is realistic.

The implementation tools that are needed are primarily the forms, the model lease, and the TRACS update, as well as trainings and materials, including resources to help residents understand changes to their rent or eligibility for housing assistance under new HOTMA rules. Any new, realistic compliance date should allow for a grace period during which new systems and processes can be adopted and tested. At a minimum, the new compliance date should not be prior to January 1, 2026.

Again, LeadingAge's primary goal is to achieve clarity and consistency about the HOTMA implementation timeline to avoid negative impact on housing communities. We urge HUD to communicate as soon as possible – prior to September – to make housing providers and residents aware of any changes to the deadline for HOTMA compliance and to ensure consistency in implementation.

### **Compliance During the Interim Implementation Phase**

Housing providers are also concerned about receiving penalties during Management and Occupancy Reviews (MORs) for being out of compliance with HOTMA currently and for the rest of the calendar year. LeadingAge has witnessed significant inconsistencies across the HUD-assisted portfolio regarding current MOR penalties for HOTMA-related policies. For example, one provider in Florida received the results of their MOR, which specifically cited HOTMA errors ("the recently implemented HOTMA Provision/Regulation is missing from the TSP") resulting in findings and point deductions.

**We urge HUD to issue urgent communication to clear up the confusion among Performance-Based Contract Administrators (PBCAs), who are approaching HOTMA-compliance inconsistently in Management and Occupancy Reviews (MORs) across the country.**

HUD's Implementation Notice 2023-10 currently states the following compliance penalties:

***Prior to the January 1, 2025, compliance date:***

- *MFH owners will not be penalized for HOTMA-related tenant file errors during the Management and Occupancy Reviews (MORs).*
- *Contract Administrators will issue observations with corrective actions.*

***On or after the January 1, 2025, compliance date:***

- *Contract Administrators will issue HOTMA-related findings during MORs.*
- *MFH owners must correct all HOTMA-related observations that were issued by Contract Administrators in 2024.*

While we believe that HUD has been clear that only observations should be given related to certain HOTMA compliance aspects during 2024, HUD has also been clear that a finding (vs. an observation) may be warranted in some situations, namely if the property's Tenant Selection Plan (TSP) was not updated by May 31, 2024. We don't dispute this; however, there is currently confusion on whether or not the contents of the updated, non-implemented TSP should receive a finding vs. an observation for accurate representation of HOTMA requirements. This confusion is leading to Contractor Administrators currently issuing HOTMA-related findings during MORs on the *content* of the non-implemented TSPs, rather than findings related to whether and when the TSP was updated and made publicly available, as listed as the requirement for TSPs in HUD Implementation Notice 2023-10.

Our interpretation of HUD communication to date is that the current calendar year (and additional time as necessary due to any continued implementation delays) should be administration as a "transition period" during which nearly all aspects of HOTMA compliance are approached with observations rather than findings and the associated point-deductions during MORs.

We believe it is HUD's intention that the transition to HOTMA compliance be handled constructively between housing providers, HUD, and Contract Administrators. Observations during MORs are an important way to constructively implement HOTMA – observations are still required to be corrected, but they don't carry a penalty for the property. We request that HUD clarify and maintain this approach until the agency moves forward with full compliance (including any compliance date delays).

The difference may be specific to whether a finding or observation should be issued only related to tenant files vs. the Tenant Selection Plan (TSP) document (the practice vs. the policy). Again, we believe that the current calendar year (and additional time as necessitated by a potential compliance delay) should be administered as a "transition period" for both practice and policy – meaning, both the community policies and the tenant files should be given observations, not findings, related to HOTMA compliance until full implementation has occurred.

There is currently much inconsistency among MORs conducted by the Contract Administration community during the current "interim implementation" phase of HOTMA. It is critical that HUD issue clarity to the Contract Administrators, and to the industry as a whole, so that compliance is interpreted and approached consistently across the country during this extended transition period.

**Summary of current HOTMA compliance interpretation by certain Contract Administrators (specific to issuing findings vs. observations):**

- In a February 6, 2024, email to Performance-Based Contract Administrators (PBCAs), HUD reminded the PBCA community that nearly all issues for HOTMA are to be observations until January 1, 2025 with four noted exceptions. One of those exceptions is that the property's TSP and EIV P&P are "...properly updated and made publicly available."
- Certain CAs have interpreted the "properly updated" section to mean that the updates to the TSP must be in compliance with the [HUD chart](#) provided to the industry on HUD's Multifamily HOTMA page.
- If a portion of the TSP does not include each of the 'must statements' provided by HUD guidance (or falls outside of the mandatory and discretionary columns in HUD's chart), Contract Administrators believe that a finding is applicable in accordance with HUD guidance provided, even before full compliance is required by HUD. LeadingAge disagrees with this interpretation.

#### **LeadingAge's Requests for Constructive Compliance Approaches during the Interim Phase:**

- LeadingAge believes that an observation, not a finding, should be issued based on the content of the non-implemented, HOTMA-compliant Tenant Selection Plans that were required to be produced by housing providers by May 31, 2024.
- We request that HUD clarify that an observation should be issued instead of a finding based HOTMA-compliance until the date on which full compliance is required by HUD, applicable to both tenant files and community policies (including Tenant Selection Plans and EIV policies).
- We also request that HUD clarify what is meant by "make publicly available" in relation to the non-implemented TSPs.

#### **Implementation Alignment Between HUD-Assisted Properties and Housing Credit-Financed Properties**

Another area of confusion and misalignment related to HOTMA implementation relates to properties financed through the Low Income Housing Tax Credit. Various Housing Finance Agencies (HFAs) have approached the tax credit-applicable portions of HOTMA on a different implementation timeline than HUD has – in fact, many have moved forward to require compliance with certain HOTMA provisions earlier this year. This has not only deepened confusion; it has also resulted in properties with mixed subsidies finding themselves out of compliance with one of their regulating entities.

Because the confusion will only continue and deepen during any compliance delay, we ask that HUD work together with the Treasury Department and with HFAs to establish an aligned implementation schedule for HOTMA, applicable to both HUD-assisted and LIHTC-financed properties, and to clearly communicate about expectations and requirements for layered-subsidy properties.

#### **HOTMA Resources for Housing Providers and Residents**

As you know, HOTMA is a major rule change that deeply impacts housing staff and current and prospective residents of affordable housing communities. We value the resources that HUD has already made available to housing communities, and we ask that as implementation moves forward, HUD make every effort to produce additional materials and resources.

Importantly, implementation support should include resident-facing materials to assist current and prospective residents in understanding the implications of HOTMA, including the impacts of the new asset limitations and the enforcement options available to housing providers. These resources should be

easy to understand and available in multiple languages. Additionally, because housing providers have to retrain their staff to implement HOTMA, we ask that HUD make in-depth trainings available for housing providers, especially where communities have already spent money to train staff on HOTMA in anticipation of HOTMA implementation this year; any potential compliance delays will result in additional costly trainings to refresh staff knowledge at a later date.

Thank you for your continued collaboration on HOTMA implementation. We value our continued partnership with you to advance affordable housing solutions for older adults with low incomes. Please direct any questions to [jbilowich@leadingage.org](mailto:jbilowich@leadingage.org), LeadingAge's Director of Housing Operations and Policy.

Sincerely,

Juliana Bilowich  
LeadingAge