

Comments and Responses to the BHA FY 2023 Federal Annual Plan Amendment #1.

The following document contains the comments and responses received on the BHA's FY 2023 Federal Annual Plan Amendment #1. BHA staff met with the Resident Advisory Board discussing the Plan Amendment and sent copies of the Plan Amendment to the RAB. The Plan Amendment was out for public comment on May 16, 2023 and the comment period closed on June 30, 2023 with a virtual public hearing held on zoom June 13, 2023 at 6 pm.

The BHA took steps to notify the public of the FY 2023 Federal Annual Plan Amendment and the opportunity to comment. The BHA placed an advertisement in the Boston Globe, made the Plan Amendment available for review at BHA's headquarters at 52 Chauncy St., and on its website www.bostonhousing.org.

Admissions including ACOP

Comment: These comments are submitted in response to the BHA's proposed Amendment 1 to the Boston Housing Authority (BHA) Public Housing Agency (PHA) Plan for FY 2023. I appreciate the information that BHA staff shared with the BHA Resident Advisory Board (RAB) at its June 8 meeting regarding the amendment, as well as the discussion at the public hearing on June 13, 2023. This is to supplement oral remarks that I made during both that meeting and the public hearing.

The issue of federal public housing over-income limits is not a new one. Back almost a decade ago, there were concerns raised about whether there were households in federal public housing that might have relatively high incomes and whether those families continued to need public housing, particularly where there is a scarcity of affordable housing and long waiting lists of desperate families with very low incomes who can't otherwise afford market housing in Boston.

HUD issued a notice of intent to engage in rule-making on this in late 2015. Congress then decided to address the issue in the Housing Opportunities Through Modernization Act (HOTMA), Public Law 114-201, 130 Stat. 782 (July 29, 2016). Section 103 of HOTMA amended 42 U.S.C. 1437n(a), to require that public housing authorities (PHAs) determine if households were over 120% of Area Median Income (AMI), or an alternate but similar threshold in successive recertifications, and to require certain action to be taken if a household was above the threshold for more than 24 consecutive months. Rulemaking under many aspects of HOTMA has taken a while, but it was understood that the federal public housing over-income provision would be implemented, on an interim basis, prior to the completion of other rulemaking. A Federal Register notice was issued in 2018 (83 FR 35490, July 26, 2018), and a PIH Notice was issued by HUD in 2019 (PIH Notice 2019-11, May 3, 2019), regarding the over-income rule.

Based on the interim guidance from HUD, BHA made revisions to its Admissions and Continued Occupancy Policy (ACOP) a few years back, after going through the PHA Plan process for resident and public feedback. As provided in HOTMA and HUD's guidance, BHA elected to permit over-income households to remain in public housing but to pay a higher rent. It's my understanding that after this ACOP revision, any household that was identified as over-income at recertification (and then tracked to see if that over-income status remained for 24 consecutive months) was informed that it could remain after the 24-month period, but would have to pay the higher rent.

Response: Thank you for the comment. Your understanding of how over-income households have been treated in the ACOP prior to this proposed change is accurate.

Comment: Earlier this year, HUD issued final rulemaking for many of the income and rent determination provisions of HOTMA and revised the federal public housing over-income provision. Most of this rulemaking becomes effective January 1, 2024, and our office anticipates working with BHA, the RAB, and residents in reviewing how BHA may implement other HOTMA changes (particularly where there are areas left to PHA discretion). However, HUD said that for the over-income provision, PHAs would need to implement its further revisions sooner, and revise any policies, lease provisions, or PHA Plans. See PIH Notice 2023-3, March 13, 2023. I understand that this is the reason for the PHA Plan amendment.

HUD has significantly changed what consequences flow from a PHA's exercise of options under the over-income rule. For example, if an over-income household remains past the 24-month period, and the PHA elects to not terminate the household's tenancy, the household becomes "a non-public housing over-income tenant (NPHOIT)".

Such NPHOITs also become responsible for utilities, and the PHA will not receive any subsidy for their units. NPHOITs are no longer eligible to participate in the resident council, either as Board members or as residents voting on community matters. Different leases would be required for those individuals. And while a PHA might establish an admission preference for NPHOITs who subsequently lose income and again have incomes within public housing initial occupancy limits, such individuals are obligated to pay the market rent in the interim and likely as not would be evicted for non-payment.

I understand that, in light of the changed options/requirements, BHA is now electing to terminate over-income tenants at the end of the 24 consecutive month over-income period (with the provision for the 6-month transition period permitted by HUD guidance). If an over-income tenant remained after the 6-month transition period, BHA would commence legal action, and the matter would play out in the Housing Court through the normal eviction process, and with the tenant continuing to be required to pay the same rent as prior to the termination. BHA also provided data to the RAB and at the public hearing, indicating that there were a relatively small number of families who would be affected (somewhere between 2-4), and that the incomes for such households are fairly high (\$140,000-\$200,000/year).

Response: Thank you for the comment. You have provided an accurate description of the proposed ACOP change for over-income households.

Comment: BHA has indicated, given that the HUD notice requirements for affected households are different than they were under interim guidance, that the implementation of the over-income rule for any household would not be immediate. Thus, BHA would need to give fresh notices for the initial over-income recertification, and then the two subsequent recertifications that showed a total of 24 consecutive months of over-income status, before there could be any termination of tenancy. GBLS agrees with this approach, particularly where households prior to now would have had the impression that they could remain and pay market rents and might subsequently be able to get an income-based rent if there was a decline in income that again made them public housing eligible.

Response: Thank you for the comment and again this is an accurate description of the proposed ACOP change for over-income households.

Comment: A few things would be beneficial as additional actions by BHA-- As HUD has indicated in PIH Notice 2023-3, while NPHOITs do not automatically get grievance and tenant participation rights, since they would no longer be federal public housing tenants, the same is not true if the PHA has elected to terminate over-income tenants, since they are still considered public housing tenants during the transition period. BHA should be explicit regarding the continuation of grievance and tenant participation (and LTO funding) rights.

Response: Thank you for your feedback. The BHA will take this into consideration when drafting the required notices.

Comment: For over-income tenants identified during the 24-month period, it would make sense for BHA to inquire whether they are interested in other housing options that may be a good fit for them. BHA and the City of Boston have been exploring homeownership options for public housing and Section 8 tenants. There could be individualized counseling and referral to appropriate housing options (such as workforce housing). This could be incorporated as a follow-up step at annual recertifications where households have been identified as over-income.

Response: BHA staff will take the comment under advisement.

Comment: Finally, and most importantly, GBLS recommends revising the ACOP to include provision for a family identified as over-income, at any time during the 24-month period, to request an interim recertification because it is the family's position that it is no longer over-income. BHA should include prominent notice of this right/option in the information about the over-income determination (in plain English and appropriately translated for limited English proficient households). Right now, many of these households may only think of asking for an interim recertification if they are on a "flat

rent” and where their income has declined enough that an income-based rent would be lower. But, given the way that the over-income rule works, a “flat rent” household may not have its income decline enough that an income-based rent makes sense, but removal of the over-income status would be of significant benefit to the household. Thank you for the opportunity to submit these comments and let me know if there are any questions or follow-up needed.

Response: BHA staff appreciate the comment however no ACOP change is required as all households have the right to request an interim recertification. Staff will carefully review over-income certifications so households are aware of their rights.

Comment: Appreciate the presentation from BHA at the public hearing and at the past RAB meeting on the amendment. This is an update since the last over-income conversation going back to 2017 and 2019, what HUD has included in HOTMA is different, allowing over-income households to remain housed means the unit will no longer be subsidized, and there is a long list of low-income households in need of affordable housing. We appreciate BHA’s transparency and the approach it has taken after BHA consulted with its General Counsel that any affected over-income resident will receive the first notification process after the Over-Income Policy has been approved. BHA’s approach and a just one is that no over-income household has been provided with the proper notices required by the HOTMA Final Ruling and therefore BHA would not be successful if taking a case to court. The BHA has informed that 2 or maximum 4 households would be currently affected by the Over-Income Policy. We believe it is important to highlight that this Policy will make the rent recertification notices very important and BHA should take care to emphasize that residents should report any income drops even if the income drop will not trigger a rent recertification. In the case of a household paying flat rent they may have an income decrease and they will continue to pay the flat rent but it is possible that the income decrease might bring the household under the over income threshold so they should report it.

Appreciate the BHA perspective that this will be prospective once the amendment has been submitted and approved by HUD. This is a good approach. BHA should do resident education with new recertification notices about the over income policy.

Another area to think about is tenant grievance rights during the 6 month period following 24 months of being over income. BHA has the option of leaving over income tenants in the 6 month window with grievance rights.

BHA does not have a choice for over income residents to remain on a resident council. BHA may need to reflect this change in the resident participation policy. And share this update with private partners.

Response: Thank you for your comments. BHA staff will carefully review the resident notifications to reflect the policy change and encourage income change reporting. Staff will also work to educate the residents about the policy change through meetings, mailings, and having information on the website. BHA will look to incorporate changes

into the Resident Participation Policy as needed and to inform private partners. BHA will take the comments under advisement.