



Rural Development

Joaquin Altoro
Administrator

Rural Housing Service
1400 Independence Ave, SW
Room 5011-S
Washington, D.C. 20250

TO: All RHS MFH National Office Directors
Field Office Staff
Rural Development

ATTN: Leadership Designees
Field Operations Division Program Staff
Rural Development

FROM: Joaquin Altoro
Administrator
Rural Housing Service

**JOAQUIN
ALTORO**

Digitally signed by
JOAQUIN ALTORO
Date: 2024.03.04
14:34:11 -05'00'

SUBJECT: Notification of Administrators Exception related to 7 CFR 3560.153
and 24 CFR 5.609(c)

PURPOSE

The purpose of this Unnumbered Letter (UL) is to provide notice to Multifamily Housing (MFH) staff of the attached Administrators Exception related to an upcoming regulation change resulting from the [Housing Opportunity Through Modernization Act](#) (HOTMA).

BACKGROUND

[7 CFR Part 3560.153\(a\)](#) requires the calculation of annual household income to be in accordance with [24 CFR 5.609](#). HOTMA, signed into law on July 29, 2016, makes changes to the requirements related to income calculations found in 24 CFR 5.609. To incorporate the changes made by HOTMA, the [U.S. Department of Housing and Urban Development \(HUD\) published a Final Rule](#) updating the existing 24 CFR 5.609 on February 14, 2023, with an effective date of January 1, 2024.

24 CFR 5.609(c) is a newly added subsection, but the Housing Act of 1949, which governs Rural Development Multifamily Housing, does not incorporate the requirements of these provisions.

EXPIRATION DATE:
December 31, 2024

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION

Effective January 1, 2024, 24 CFR 5.609(c) will be excluded from Rural Development reference to 24 CFR 5.609. New regulations found at 24 CFR 5.609(c) will not apply to Rural Development properties.

This Administrator's Exception will be in effect until the regulations found at 7 CFR 3560.153 are updated to refer only to 24 CFR 5.609(a) and (b).

Further guidance and handbook updates are underway to incorporate the changes made in 24 CFR 5.609(a) and (b).

Please refer to the attached copy of the Administrator's Exception for additional information.

If you have any questions regarding the guidance in this UL, please contact Julie Felhofer, Policy & Budget Branch Chief, Asset Management Division, (Julie.felhofer@usda.gov) or telephone 715-295-4069.

Attachment



November 7, 2023

Rural Development

Jason Church
Acting Deputy Administrator
Multifamily Housing

TO: Joaquin Altoro
RHS Administrator
Rural Development

Rural Housing Service
1400 Independence Ave SW
Room 5104-A
Washington, DC 20250

FROM: Jason Church
Acting Deputy Administrator
Multifamily Housing

Telephone (202) 494-5292

SUBJECT: Regulatory Waiver: 7 CFR 3560.153
Calculation of household income and assets

Regulation:

7 CFR 3560.153(a) requires the calculation of annual household income to be in accordance with 24 CFR 5.609. The Housing Opportunity Through Modernization Act (HOTMA), signed into law on July 29, 2016, makes changes to the requirements related to income calculations found in 24 CFR 5.609. To incorporate the changes made by HOTMA, the U.S. Department of Housing and Urban Development (HUD) published a Final Rule updating the existing 24 CFR 5.609 on February 14, 2023, with an effective date of January 1, 2024. 24 CFR 5.609(c) is a newly added subsection, but the Housing Act of 1949 does not incorporate the requirements of these provisions. Therefore, this exception request is made to clarify the requirements of HOTMA and the changes to 24 CFR 5.609.

Request:

This exception request is made in accordance with 7 CFR 3560.8. The proposed exception would be made to 7 CFR 3560.153(a), which states, "Annual income will be calculated in accordance with 24 CFR 5.609."

Effective January 1, 2024, the newly added 24 CFR 5.609(c) specifies the owner:

- (1) must calculate family income at initial occupancy and interim reexaminations where adjusted income is estimated to increase or decrease by 10%,
- (2) must calculate family income at annual reexaminations except where the owner uses streamlined income determinations,
- (3) can utilize other program's determination of income, and
- (4) will not be out of compliance solely due to de minimis errors by no more than \$30 per month.

USDA is an equal opportunity provider, employer, and lender.

Rural Development (RD) addresses these specified items within our current regulations. Specifically, within 7 CFR 3560.152(e) Tenant certification and verification and 7 CFR 3560 Subpart O, Unauthorized Assistance.

Section 501(b)(5)(A) of the Housing Act of 1949 (42 USC 1471(b)(5)(A)) (the RHS governing statute) incorporates the definitions of “income” and “adjusted income” found in sections 3(b)(4) and 3(b)(5), respectively, of the United States Housing Act of 1937 (42 USC 1437a(b)(4)-(5)) (the HUD governing statute). HOTMA amended the Housing Act of 1937 by adding two new sections, 3(b)(6)-(7) to the United States Housing Act of 1937 (42 USC 1437a(b)(6)-(7)). The definitions for “income” and “adjusted income” are still found in 24 CFR 5.609(a) and (b). Subsection (c) comes from newly added sections 3(b)(6) and (7) of the United States Housing Act of 1937. The RHS statute does not incorporate the requirements of Sections 3(b)(6) and (7), and therefore RHS would not be obligated to incorporate subsection (c) of the new regulation into its own regulations on income calculation.

Rural Development will be submitting a regulation update to 7 CFR 3560.153(a) to refer specifically to 24 CFR 5.609(a) and (b), excluding 5.609(c) from RD’s annual income calculation requirements. Until such time the regulation update is published, we are requesting an Administrator’s waiver in accordance with 7 CFR Part 3560.8 to specifically exclude the requirements of 24 CFR 5.609(c) from 7 CFR 3560.153(a).

Recommendation:

Under the authority granted in 7 CFR Part 3560.8 Administrator’s Exception Authority, we recommend approval of this request. This request is consistent with the applicable statute, does not adversely affect the interest of the Federal Government, does not adversely affect the accomplishment of the purposes of the Multifamily Housing (MFH) programs, and would not result in undue hardship on the MFH tenants. Upon approval, notice will be provided to Agency staff and to Borrowers and Management Agents.

Approve	<input checked="" type="checkbox"/>
Disapprove	<input type="checkbox"/>

**JOAQUIN
ALTORO**

Digitally signed by JOAQUIN
ALTORO
Date: 2023.12.05 12:17:26
-05'00'

Joaquin Altoro
RHS Administrator
Rural Development

_____ Date