

Taking Advantage of HOTMA Reforms



Welcome and Introductions



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Housing Opportunities through Modernization Act of 2016

- Modifies various provisions of the U.S. Housing Act of 1937 and related housing regulations
- Most significant changes pertain to Section 8 and Public Housing programs
- Additional reforms introduced to homeless and veterans programs, rural housing, and mortgage insurance

HOTMA Guidance & Implementation

- Housing Opportunities through Modernization Act of 2016 (Public Law 114-201) – *July 29, 2016*
- HUD Initial Implementation Guidance (81 FR 73030) – *October 24, 2016*
- HUD Implementation Notice (82 FR 5458) – *January 18, 2017*
- Technical Corrections to Implementation Notice (82 FR 32461) – *July 14, 2017*
- PIH Notice 2017- 20: HOTMA Housing Quality Standards Implementation Guidance – *October 27, 2017*
- PIH Notice 2017-21: HOTMA Implementation Guidance for Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) provisions – *October 30, 2017*
- PIH Notice 2018-03: Guidance on Use of Operating Subsidy for Capital Fund Purchases – *February 28, 2018*

Section 8 Programs



PROJECT-BASED VOUCHER PROVISIONS

Definition of “PHA-Owned” Unit

- PHA must use independent entity to perform certain project functions if unit is PHA-owned
- Effective April 18, 2017
- PHA-Owned units include:
 - Units owned by the PHA (or units where PHA has a “controlling interest” in the entity that owns the unit)
 - Units owned by an entity wholly-controlled by the PHA
 - Units owned by a LLC or LP in which the PHA holds a controlling interest in the managing member or general partner

Controlling Interest in PHA-Owned Units

- “Controlling interest”:
 - Holding more than 50% of all managing member or general partner interests;
 - Holding more than 50% of the stock of any corporation;
 - More than 50% of the members of the Board of directors also serve as the directors, officers, or employees of the PHA;
 - Power to appoint more than 50% of the members of the board of directors of a non-stock corporation; or
 - Having equivalent levels of control in other organizational structures
- PHA does not have controlling interest if (i) it holds a fee interest as ground lessor of a property, but no ownership interest, or (ii) only holds a security interest under deed of trust/mortgage

Using PBV in PHA-Owned Projects without Competition

- If PHA is engaged in an initiative to improve, develop, or replace a public housing site, the PHA may attach PBVs to a project without following a competitive process where PHA has any *ownership interest* in or *control* over the project
- Replacement unit = current public housing unit or removed from inventory within 5 years of AHAP/HAP
- PHA ownership/control does not have to meet the definition of “PHA owned”

Adding PBV Units to HAP Contract

- PBV HAP may be amended to add units at any time during the contract term or at the contract extension point without competition
- Previous limitation: HAP contract amendments had to occur in first 3 years following contract execution
- Environmental approval not required if units are added to an existing HAP

Extended PBV HAP Contract Terms

- HAP contracts can be executed for 20 years (prior limitation was 15 years)
- At any time during the initial term of the HAP, the PHA and project owner can agree to extend the contract up to a maximum of 20 years
- HAP contract extensions beyond the initial term can also run for up to 20 years

Additional HAP Contract Conditions

- PBV families have a right to remain in the project and receive tenant-based assistance when PBV HAP contract is terminated or expires without extension
- Unit must still meet HQS and rent must be reasonable
- HAP contracts must contain (or be amended to contain) HUD required language

Increase in Maximum PBV Units within Program

Within a PHA's Voucher Program

- PBV program cap increased, allowing PHAs to project-base to up to 20% of their authorized units (as opposed to 20% of voucher budget authority under prior regulations)
- An additional 10% of units can be project-based if they meet an exception category: Homeless, Veteran, Supportive Services, Poverty Rate of 20% or less
- Existing/rehabilitation units and replacement units do not count towards the cap if units were previously subject to federal rent restrictions or received another form of HUD long-term housing subsidy

Increase in Maximum PBV Units within Project

Within a Project:

- Project-cap is the greater of 25% of all project units or 25 units
- The greater of 40% of all project units or 25 units can be project-based if located in a census tract with poverty rate of 20% or less or where tenant-based vouchers are difficult to use
- Exceptions: Units exclusively for elderly families and households eligible for supportive services, which must be made available to all families receiving PBV assistance

Increase in Maximum PBV Units within Project

- Supportive Services Exemption
 - Family cannot be required to participate in the services
 - Services may be provided on or off-site
 - Exemption may include, but is not limited to, households with a disabled family member
 - Families that become ineligible for supportive services during the tenancy cannot be terminated from the program or evicted
- For HAP contracts in place prior to April 18, 2017, and using former supportive services exemption, PHA and owner continue to operate under pre-HOTMA requirements unless both agree to conform to HOTMA changes

Exceptions to Program Cap and Project Cap

- PBV Existing and Rehabilitation Unit
 - Unit covered under PBV HAP first effective on or after April 18, 2017
 - Unit received one form of housing assistance or was rent restricted at least 5 years prior to date PHA either issued project RFP or selected the project (either competitively or non-competitively)

Exceptions to Program Cap and Project Cap

- PBV New Construction Replacement Unit
 - Original unit must have received HUD assistance or been subject to federal rent restriction no more than 5 years from date PHA issued the RFP or selected the new construction PBV project (either competitively or non-competitively)
 - Newly constructed unit is located on the same site as unit it is replacing
 - Expansions & modifications allowed if the majority of replacement units are built on the same site of the original development, and off-site units either touch, share common border with, or are across a public right of way from the original site
 - Primary purpose of planned development is/was to replace affordable units previously existing on site
 - HAP contract first became effective on or after April 18, 2017

Exceptions to Program Cap and Project Cap

- Certain HUD-VASH units and RAD units also excepted
- Unit-size configurations and total number of PBV assisted units may change
- Exception to the program cap cannot be applied to units exceeding the total number of covered units in the original project
- See Appendix I, PIH Notice 2017-21 for detailed PBV Program Cap calculation instructions

Project Basing HUD-VASH and Family Unification Program Vouchers

- Family Unification Program (FUP) vouchers can now be project-based
- HUD-Veterans Affairs Supportive Housing (VASH) vouchers can be project based without prior HUD review and approval
- PHAs must continue to follow all HUD-VASH program requirements

HQS PROVISIONS

Non-Life Threatening

- Discretionary Provision
- Requires PHA adoption of HUD's definition of Life Threatening (LT) and Non-Life Threatening (NLT) conditions
- Allows PHAs to approve an assisted tenancy and make HAPs on a unit that failed to meet HQS, provided the unit has only NLT conditions
- HAPs must be withheld if the NLT conditions are not corrected within 30 days of notification of the HQS failure

Non-Life Threatening

- May be implemented for:
 - Tenant-based and/or project-based program
 - All initial inspections or a portion of them
- Families must be given the option to accept or decline the unit
- PHAs must withhold HAP and terminate the HAP contract if NLT deficiencies are not timely corrected
- 180 days is maximum number of days HAP contract may continue if the unit is not in compliance with HQS
- PHA must email HUD after Admin Plan is amended, but at least 30 days before policy implementation. PHA must also notify HUD if policy is discontinued

Alternate Inspections

- Discretionary provision
- PHAs must obtain alternative inspection results
- Where sampling of units are inspected, the PHA unit must have been part of the sample
- Inspections completed under the following are allowable alternatives without prior HUD approval:
 - HOME Investment Partnership program
 - Housing financed under LIHTC
 - Inspections performed by HUD
- Other alternative methods must be approved by HUD's REAC

Alternate Inspections

- PHAs can approve assisted tenancy, before conducting initial HQS inspection, if in the previous 24 months the property has passed a qualifying alternative inspection
- HAP is not paid until the PHA completes its initial HQS inspection
- Initial HQS must be completed within 15 days of receipt of request for tenancy approval
- PHA must email HUD after Admin Plan is amended, but at least 30 days before policy implementation. PHA must also notify HUD if policy is discontinued

Alternate Inspections

- PHAs must explain alternative inspection method to family
- Family can decline unit outright, decline until it has passed HQS inspection or accept the unit
- Owner has the option to accept the HAP contract under the alternate inspection provision
- Owner must be notified that no payments made until unit meets HQS
- HAP contract must be executed before lease and tenancy commences. This overrides the 60 day window for HAP execution

Alternate Inspections

- HAP paid retroactively after passed HQS inspection
- HAPs not made until all HQS deficiencies have been corrected, assuming within required time frames
- Abate HAP if deficiencies are not corrected timely
- 180 days is maximum number of days HAP contract may continue if the unit is not in compliance with HQS
- If NLT provision is also in effect and unit fails HQS with NLT deficiencies, PHA can begin HAPs
- If NLT provision is also in effect and unit fails HQS with LT deficiencies, PHA must withhold HAPs



FAIR MARKET RENTS & PAYMENT STANDARDS

Fair Market Rents

- Fair Market Rents
 - New HUD procedure for publication of FMRs
 - PHA opportunity for comment and reevaluation of FMRs before the rents become effective
 - PHA discretion to retain current payment standards in subsidy calculation despite reductions in the applicable FMR

Fair Market Rents

- Discretionary portion of the provision
- If the payment standard is reduced, a PHA can retain the current (higher) payment standard for the family as long as the family resides in that unit
- If this provision is not applied, at the time of the decrease in payment standard, the new decreased payment standard would be applied to the family's subsidy calculation at the second regular reexam follow the decrease in payment standard

Reasonable Accommodation Payment Standards

- PHAs can establish a payment standard up to 120% of the FMR as a reasonable accommodation for a person with a disability
- PHA's may also establish exception payment standards of more than 120% of the FMR, if required as a reasonable accommodation; however, HUD approval must be requested



AUTOMATICALLY IMPLEMENTED HOTMA PROVISIONS

Automatically Implemented HOTMA Provisions

- Fair Market Rents
- PHA reasonable accommodation payment standards
- Inclusion of PHAs and local development agencies in Emergency Solutions Grants
- Expanded Family Unification Program (FUP) eligibility and assistance duration for children aging out of foster care
- Exception to PHA resident board member requirements for select PHAs (applicable only to Housing Authority of LA County, and PHAs in Alaska, Iowa, and Mississippi)
- Preference for U.S. citizens or nationals for admission in receiving financial assistance (applicable in Guam only)



ADMINISTRATIVE PLAN CHANGES

Administrative Plan Changes

- Where certain HOTMA provisions are adopted, policies must be adopted and included in the Admin Plan
- Where a HOTMA policy represents a significant amendments to the PHA's PHA plan, a PHA must follow its PHA plan amendment and public notice requirements before implementing

Administrative Plan Changes

- NLT provision
 - HUD definition of NLT and LT conditions (can include prior plan LT conditions not included on HUD's list)
 - Definition of NLT and LT conditions must apply to all HQS inspections, not just initial inspections
 - Specify how the PHA will apply the flexibility for initial inspections in HCV and PBV, i.e. only where lease-ups are challenging or only for HCV etc.
 - Policy on suspending or abating HAP for failure to address NLT, including PHA policy on whether the PHA will repay the owner for withheld HAPs during non-compliance

Administrative Plan Changes

- Alternative Inspection
 - Specific alternative inspections methods that will be used
 - How the PHA will use the alternative inspection methods, i.e. details concerning specific properties or types of properties and which methods will apply to each.

Administrative Plan Changes

- Fair Market Rent
 - Amend the Admin Plan if the PHA chooses to adopt the policy to continue using the higher payment standard when payment standards decrease, policies must be adopted to further explain this provision

Project-Based Provisions in Admin Plan

- Project Cap
 - Where the exceptions to the project-based cap include developments where supportive services are offered, include the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.
- Additional Units without Competition
 - PHAs must detail their intent to add PBV units in this manner, along with their rationale for adding PBVs to a specific project.
- Attaching PBVs to structures Owned by PHAs
 - To be subject to the non-competitive exception, planned rehab or constructions must have a minimum of \$25k per unit in hard costs. The PHA must detail what work it plans to do on the property or site and how many units of PBV it is planning on adding to the site.

Public Housing

Capital Fund Replacement Reserves

- Replacement reserves can be used to fund capital fund activities
- HUD Secretary may allow PHA to transfer more than 20% of operating funds into replacement reserve

Operating Fund Flexibility

- PHAs have flexibility to use up to 20% of appropriated Operating Subsidy for eligible Capital Fund activities
- Only applies to Operating Subsidy appropriated/allocated in CY 2018 and beyond
- HUD to provide further guidance on the use of Operating Subsidy appropriated for CY 2016 and 2017

Eligible Capital Fund Activities

- Development, financing, and modernization of public housing
- Development of mixed-finance projects
- Deferred maintenance
- Management improvements
- Resident relocation
- Demolition and replacement
- Capital expenditures to improve resident safety & security
- Capital expenditures to facilitate & improve resident participation in economic self sufficiency programs



HOTMA PROVISIONS: NOT YET IMPLEMENTED

HOTMA Provisions Not Yet Implemented

- Change to the frequency of family income reviews and the calculation and verification of income
- Change to the definitions for public housing and Section 8 programs of income and adjusted income
- Change to the definition of “income” to “annual adjusted income” for the enhanced voucher program
- Income review for project-based housing
- Limitation on public housing tenancy for over-income families

HOTMA Provisions Not Yet Implemented

- Project-based rent adjustments based on Operating Cost Adjustment Factor (OCAF)
- Direct HAP contracts for new construction/rehab projects (no AHAP required)
- Environmental review requirements for existing housing
- Owner maintained, site-based waiting lists
- Allocations for the Housing Opportunities for Persons with AIDS (HOPWA) Program
- Definition of geographic area for continuum of care program

Questions?

Follow-up to today's presentation will be posted on our blog *Housing Plus* at www.housingplusblog.com.

A copy of these slides and a recording of the presentation will be available at www.ballardspahr.com/housing.

Upcoming Events

Conferences

- *Ballard Spahr | CSG Advisors 8th Annual Western Housing Conference, April 13, Denver*
- *Ballard Spahr National Housing Symposium, November 9, Washington, D.C.*

Webinars

- *Mod-Rehab RAD Conversions, May 1*

Contacts

Thank you for your time!

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