



HOTMA Voucher Provisions

Housing Opportunity Through Modernization Act of 2016

Pub. L. 114-201, 130 Stat. 782

HOTMA HCV & PBV Final Rule

- Substantive changes to ~76 regulations
 - Codifies HOTMA provisions already implemented via Federal Register
 - Implements remaining HOTMA Voucher provisions
 - Changes regulatory provisions unrelated to HOTMA
 - Reduce regulatory burden on PHAs and owners
 - Clarify, simplify, and, in some instances, eliminate HUD-imposed requirements
 - Eliminate obsolete regulatory provisions
 - Considers 44 public comments
- 24 CFR 983 Regulations have been updated to incorporate the HOTMA Final Rule

HOTMA Voucher Provisions

- PHA Plan provisions
- Definitions and Administrative Plan requirements
- Housing Quality Standards (HQS) provisions
- Payment Standard provisions
- Manufactured home space rent calculation
- Project-Based Voucher provisions

HOTMA Voucher Implementation History

- Initial Guidance, 81 Fed. Reg. 73030 (Oct. 24, 2016)
- Implementation of Voucher Provisions, 82 Fed. Reg. 5458 (Jan. 18, 2017)
 - Technical Correction: Implementation of Voucher Provisions, 82 Fed. Reg. 32461 (Jul. 14, 2017)
 - Notices PIH 2017-18 (Manufactured Home Space Rentals), PIH 2017–20 (HQS), and PIH 2017–21 (PBV/PHA-owned)
- Proposed Rule, 85 Fed. Reg. 63664 (Oct. 8, 2020)
 - Detailed overview recording/slides available
https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project
 - PIH Notice 2024-19 HOTMA & PBV Final Rule Implementation Guidance
<https://www.hud.gov/sites/dfiles/OCHCO/documents/2024-19pihn.pdf>

Compliance Dates

- PIH Notice 2024-19 HOTMA HCV & PBV Final Rule provides guidance on the effective dates for different provisions in the Final Rule
- Most provisions are effective June 6, 2024
- Most changes in the Final Rule require updates to PHAs Administrative Plan
 - PHAs have until June 6, 2025 to make changes to their Administrative Plan
 - However – PHA cannot implement any flexibility or provision from the Final Rule until their Administrative Plans have been updated
 - HUD's regulations contain a centralized list of minimum voucher program-wide Administrative Plan policies (24 CFR 982.54) and a *new* list of PBV-specific Administrative Plan policies (24 CFR 983.10), details are located throughout 24 CFR parts 982 and 983.

Major HOTMA Provisions Newly Implemented General HCV

Enforcement of HQS

- The PHA may withhold payments once the PHA has notified the owner of deficiencies. If the unit is brought into compliance during the applicable cure period, the PHA resumes HAP and repays withheld HAP
- The PHA must abate the HAP if the owner fails to make the repairs within the applicable cure period, resuming HAP upon HQS compliance
- If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the notice of abatement, the PHA must terminate the HAP contract (or remove the PBV unit) and provide the family a voucher (or public housing unit, in some cases)
- The PHA may use up to two months of the assistance payments that were abated for costs directly associated with the relocation of the family
- Initial HQS inspection options
 - PBV: available only for existing housing, before HAP contract
- HCV: 24 CFR 982.404; PBV: 983.208; PH 24 CFR 960.202

Major HOTMA Provisions Codified: General PHA Owned Units

- Definition of PHA-owned units
- Prior to execution of HAP contract (or Agreement to enter into HAP contract (AHAP), for PBV), the PHA must establish a separate legal entity to serve as the owner (Same as old rule)
- Option (new) **(delayed)**: instead of HAP contract (and AHAP, for PBV), the PHA may sign a HUD-prescribed certification if the PHA-owned unit or project is not owned by a separate legal entity from the PHA
 - PHA certifies that it will fulfill all the required program responsibilities of the owner and PHA
- HCV: 24 CFR 982.451(c); PBV: 24 CFR 983.154(h), 983.204(e)

Major Changes Unrelated to HOTMA General HCV

Exception Payment Standards (EPS) Simplified Process up to 120%:

- Upon notification to HUD, a PHA may adopt an exception payment standard up to 120% of the FMR if it meets one of these following criteria:
 - Fewer than 75 percent of the families to whom the PHA issued tenant-based rental vouchers during the most recent 12-month period for which there is success rate data available have become participants in the voucher program; or
 - More than 40 percent of families with tenant-based rental assistance administered by the agency pay more than 30 percent of adjusted income as the family share.
- 24 CFR 982.503(d)
- Removes the option for new success rate payment standards

Major HOTMA Provisions Newly Implemented PBV

- **Highlighting today:**
 - Admin Plan and PHA Plan Requirements
 - Record Retention
 - Noncompetitive Selection
 - PHA-Owned HAP Contracts
 - Program and Project Caps
 - Environmental Review for Existing Housing
 - Development without AHAP
 - HAP Contract Extensions
 - Substantial Improvement after HAP Contract
 - Owner-Maintained Waiting Lists
 - Operating Cost Adjustment Factors

Major HOTA Provisions Newly Implemented PBV

- **Other major areas:**
 - Definitions
 - Subsidy Layering Review
 - Development Requirements
 - Contract Termination (Right to Remain)
 - Adding or Substituting Units
 - Waiting Lists
 - Overcrowded, Under-occupied, and Accessible Units
 - Family Right to Move
 - Rent Calculation

PHA Plan

- ****NEW**** 24 CFR 903 now clarify which PHA Plan requirements apply to PBV
- Helpfully the Annual and 5-year PHA Plan forms do not have space for the PBV info required by regulation. You will have to include the PBV info as an attachment to your regular submission or Plan Revision.
- If PHA intends to select one or more projects for PBV without competition the PHA **MUST** include a statement of this intent in its 5-Year Plan or revision **PRIOR** to making the non-competitive selection
- 24 CFR 903.6(c), 24 CFR 903.7

Administrative Plan

- PHA must adopt PBV policies in their Administrative Plan prior to any action for PBV – nothing changed here
- 24 CFR 982.54 contains a centralized list of minimum voucher program-wide Admin Plan policies (apply to all HCV, not just PBV)
- 24CFR 983.10 includes list of PBV-specific Admin Plan Policies
- There is a delayed compliance date of June 6, 2025 for Admin Plan updates
 - HOWEVER
 - Delayed compliance of Admin Plan update DOES NOT delay compliance with the Final Rule
 - If a PHA wants to incorporate any flexibilities allowed by the Final Rule must update Admin Plan first

PBV Recordkeeping

- ****NEW**** Regulation requires that the PHA must maintain records throughout the HAP contract and for Three Years thereafter for EACH PBV contract
 - Evidence of Competition and Basis for selection
 - SLR, ER, AHAP, Analysis of Impact (if needed)
 - HAP Contract and any riders, amendments and extensions
 - Approval of Independent Entities
 - Accessibility Features of project and units
 - Other records related to PBV or as required by HUD
 - 24 CFR 983.12

Noncompetitive Selection of PBV Projects

- **Subject to certain limitations, a PHA may noncompetitively select:**
 - A project in which the PHA has an ownership interest or over which the PHA has control, where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site (Current)
 - A project currently under the public housing program or that is replacing the public housing project in which a PHA has no ownership interest, or over which a PHA has no control (New)
 - A project consisting of PHA-owned units (New)
 - A project that underwent an eligibility event within five years of the project selection date, where one or more families qualify for enhanced voucher assistance under Section 8(t) and provide informed consent to relinquish their enhanced voucher for PBV assistance (New)
- Prior to any noncompetitive selection, the PHA must notify the public of its intent to noncompetitively select one or more projects through its 5-Year Plan
- 24 CFR 983.51(c)

Contracts for PHA-Owned Units

Contracts for PHA-Owned Units:

- Prior to execution of HAP contract (or AHAP, for PBV), the PHA must establish a separate legal entity to serve as the owner (current)
- Option: instead of HAP contract (and AHAP, for PBV), the PHA may sign a HUD-prescribed certification if the PHA-owned unit or project is not owned by a separate legal entity from the PHA (new) (delayed)
 - PHA certifies that it will fulfill all the required program responsibilities of the owner and PHA

PBV Program and Project Caps

- **Both income-mixing requirement (project cap) and percentage limitation (program cap)**
 - Final rule codifies previously implemented HOTMA provisions and Fostering Stable Housing Opportunities (FSHO) provisions for foster youth
 - Two new types of “areas where vouchers are difficult to use”
 - New excluded unit types, including former tax credit (LIHTC) or § 515 Rural Rental Housing Loan projects
 - Final rule details occupancy requirements for units exclusively made available to certain families pursuant to an increased program cap or a project cap exception
- **Program cap only:**
 - PHAs must analyze the impact to their waiting lists if project-basing 50% or more of total voucher units
 - Amends the definition of veteran for purposes of the program cap exception

Environmental Review (ER) for PBV Existing Housing

- No ER is required to be undertaken before a PHA enters into a HAP contract for existing housing, *unless*:
 - ER is required by law or regulation relating to funding other than PBV HAP
 - The project or proposal was selected in accordance with the site selection standards at 24 CFR 983.55 in effect *before* June 6, 2024
- Pursuant to 24 CFR 983.55, a PHA may not select a project or proposal unless it has determined that the site and neighborhood is reasonably free from:
 - Disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants
 - The site and neighborhood may not be subject to serious adverse environmental conditions (*e.g.*, contamination and abnormal air pollution)

PBV Development without AHAP

- Final rule implements HOTMA provision to enter into a HAP contract for a project under construction or recently constructed without AHAP
 - Options:
 - Rehabilitation or new construction under AHAP, when complete execute HAP contract (current)
 - Rehabilitation or new construction with no AHAP, when complete execute HAP contract
 - Rehabilitation after HAP contract execution (**delayed**)
 - Development requirements apply (including payment of Davis-Bacon wages)
- 24 CFR 983.154, 983.157

PBV Contract Extensions

- Initial contract term may be up to 20 years and each extension period may be up to 20 years each
- Final rule provides that the PHA and owner may execute one or more extensions at any time before expiration of the HAP contract, but:
 - At no time may the total remaining term of the HAP contract, with extensions, exceed 40 years
 - Extension must be appropriate to continue providing affordable housing for low-income families or to expand housing opportunities
- 24 CFR 983.205(b)

PBV Substantial Improvement after HAP Contract

- Final rule details requirements for substantial improvement to projects already under a PBV HAP contract and substantial improvement to add previously unassisted units to the HAP contract
- May occur following the first two years of the effective date of the HAP contract or in extraordinary circumstances
- Substantial improvement to projects already under a PBV HAP contract requires PHA approval (or independent entity approval, for PHA-owned units)
- Resident protections apply when performing substantial improvement to occupied contract units

24 CFR 983.207(c), 983.212

Major HOTMA Provisions Newly Implemented

PBV

PBV OCAF Rent Adjustments:

- PHA/owner may agree to automatic rent increases through an operating cost adjustment factor (OCAF)
- Rent to owner remains subject to rent reasonableness and other rent limitations
- 24 CFR 983.302

Owner-Maintained Site-Based PBV Waiting List:

- PHAs may choose to use owner-maintained PBV waiting lists for specific owners or projects
- Owner must develop a written waiting list policy, which is incorporated into the PHA's Administrative Plan
- PHA makes final eligibility determination
- PHA responsible for oversight to ensure proper administration
- 24 CFR 983.251(c)(7)

Additional Changes Unrelated to HOTMA

PBV

PBV Definition of “Existing Housing:”

- Limits the definition to projects that:
 - Fully or substantially complies with HQS (minor work, can be done in 30 days)
 - No substantial improvement expected in first two years (owner must certify)
- Allows for manufactured housing to be used in PBV units
- Amends the definition of veteran for purposes of the program cap exception

Questions?????

- Look for updates on the **HOTMA Resources webpage**:
https://www.hud.gov/program_offices/public_indian_housing/hotmaresources
- HUD PBV webpage:
https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project
- PHAs and stakeholders of the HCV and PBV programs may send HOTMA-related questions to **HOTMAVoucher@hud.gov**