

# HOTMA Voucher Provisions

Proposed Implementation Rule: Oct. 8, 2020 Federal Register Notice

# HOTMA Voucher Provisions

- Housing Opportunity Through Modernization Act of 2016, Pub. L. 114-201, 130 Stat. 782 (HOTMA)
- 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, PIH 2017–20, and PIH 2017–21

# Proposed Rule

- Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes, 85 Fed. Reg. 63664 (Oct. 8, 2020)
- Covers:
  - Initial Housing Quality Standards (HQS) inspection options and HQS enforcement
  - PHA-owned unit definition
  - Manufactured home space rent calculation and payment options
  - Project-Based Voucher provisions
  - Regulatory changes for Voucher programs (unrelated to HOTMA)
- **Comment Due Date Extended: January 6, 2021**
  - [www.regulations.gov](http://www.regulations.gov) or by mail

## Proposed Rule: Goals

- Codify HOTMA provisions already implemented via Federal Register, considering public comments
- Implement additional HOTMA provisions
- Propose changes to 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

# Agenda

The focus of this briefing is on the more significant changes to the following program areas:

- Utility Allowances
  - Housing Quality Standards
  - Project-Based Vouchers
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- We encourage you to review the proposed rule for changes to the following program areas and provide comments:
    - Manufactured home space rentals
    - Payment standards
    - HCV homeownership option
    - General HCV program changes

# Utility Allowances

# HCV Utility Allowance Changes Unrelated to HOTMA (982.517)

- HUD proposes several non-HOTMA related updates to the utility allowance regulations to:
  - Lessen administrative requirements and
  - Provide greater flexibility in setting utility allowances that allow PHAs in certain markets to ensure energy efficient units and local lease practices do not cause UA to be artificially high
- PHAs will not be required to submit their utility allowance schedule to the field office unless requested (modified 982.517(a)(2)).
- Changes to 982.517(b):
  - Requirement that UA does not cover cable and satellite TV separated out as a subparagraph under (b) and wireless internet added.
  - Updated fair housing citations related to reasonable accommodation utility allowances

HCV Utility  
Allowance  
Changes  
Unrelated to  
HOTMA  
(982.517)

**Option for Area-Wide Energy Efficient UA  
Schedule:**

- PHAs may adopt an area-wide energy-efficient utility allowance schedule. (982.517(b)(2)(ii))
- PHA would continue to maintain regular UA schedule and use the energy-efficient schedule only for units that meet certain energy-efficient criteria.
- LEED, Energy Star or other Energy Savings Design (ESD) standards included in HUD's Utility Schedule Model.
- HUD may identify additional ESD standards by FR notice.
- UA Schedules must be applied consistently.



## Utility Allowances - Requested Comments

Q11: Should HUD authorize PHAs to use energy-efficient utility allowance schedules for a broader range of projects than are defined at § 982.517(b)(2)(ii)?

i.e. LEED, Energy Star, Energy Savings Design standards included in HUSM

HCV Utility  
Allowance  
Changes  
Unrelated to  
HOTMA  
(982.517)

**Option to Include Flat Fees in UA Instead of Standard Amount on Schedule**

- PHAs may calculate family utility allowances based on actual flat fees charged by owner in the lease, instead of using the area-wide values, if the fee charged by owner is less than applicable utilities on UA schedule. (982.517(b)(2)(iii))
- e.g. Owner charges a flat fee of \$20 for water, sewer, and trash. If PHA calculated the UA for these utilities, they would add \$65 to the tenant's utility allowance. The PHA may adopt a policy across the board to always use the actual fees instead of the amount on the UA schedule.
- If adopted, policy must be applied consistently.

# HCV Utility Allowance Changes Unrelated to HOTMA

## **Clarifications for PBV and Homeownership**

- Homeownership program: Utility allowance for actual home purchased always applies. (982.641(f)(3))
- PBV: PHAs shall apply the utility allowance for the actual PBV unit size leased for the period prior to a family's move to an appropriately sized unit. (983.2)

# PBV Utility Allowance Changes Unrelated to HOTMA

- Waivers for site-specific utility allowances may be approved at the field office level (983.301(f)(4)).
- PHAs and owners will use PBRA guidance in Notice 2015-04 to request and justify the site-specific utility allowance.
- Request must demonstrate that HCV UAs will:
  - Cause undue burden on families (if HCV UA is too low)
  - Discourage conservation and efficient use of HAP funds (if HCV UA is too high).
- Request must include consumption data to show reduction of UA will not cause undue burden on families.

## Utility Allowances - Requested Comments

- Q37: How could HUD streamline its utility allowance policies across the RAD PBV, traditional PBV, and HCV programs?
- Q38: Should HUD permit the use of a site-specific utility allowance schedule for the HCV program? Is there additional information, including utility consumption data sources, that HUD should consider in setting utility allowance policy?

# Housing Quality Standards (HQS)

# HOTMA HQS: Codifying Previously Implemented Change

## Initial HQS Inspection Options

- **Non-life-threatening deficiencies (NLT)**
  - PHA may execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions
- **Alternative inspections**
  - PHA may execute the HAP contract prior to inspecting the unit if the property has passed an alternative inspection in the previous 24 months (i.e., an inspection conducted for another housing program).
  - The PHA cannot make a payment to the owner until the PHA has inspected the unit and found it to meet HQS standards, at which point the PHA makes the assistance payments retroactively back to the effective date of the HAP contract

HOTMA HQS  
Conforming  
Change  
982.305

**Initial HQS Inspection Options**

This proposed rule would update 982.305 to reflect that a HAP contract may, in certain cases, be executed prior to a dwelling unit meeting HQS when the PHA adopts either the initial HQS inspection NLT option or the initial HQS inspection alternative inspection option



HOTMA HQS  
Conforming  
Change  
982.405  
982.406

**Initial HQS Inspection Options**

The proposed rule also includes a change to 982.405, which covers the requirements for PHA initial and periodic unit inspections. This proposed rule would add a new paragraph (§ 982.405(i)) to cover the initial HQS inspection non-life-threatening option.

HUD is also proposing a change to section 982.406, which specifically covers the requirements for the use of alternative inspections. This rule would add a new paragraph (e) to § 982.406 to codify the HOTMA-authorized use of alternative inspections for initial HQS inspections, in addition to the existing requirements for biennial inspections.

# HOTMA HQS: Codifying Previously Implemented Change

## **Establishment of life-threatening deficiencies**

- This proposed rule codifies the existing list of life-threatening deficiencies (982.401(o))- all other deficiencies would be considered NLT
- Updates to the list will be made through FR Notices which allow for public comments before final implementation
- The list of life-threatening deficiencies will be applicable to all PHAs (Not only those adopting the NLT provision)
- Additionally, any other condition identified by the PHA as life-threatening in the PHA Admin Plan would also be a life-threatening deficiency

# HQS Requested Comments

- Q3: Regarding the proposed list of life-threatening conditions:
  - Is HUD's list of life-threatening conditions appropriate?
  - Are there conditions listed that should not be considered life-threatening?  
Are there conditions absent from the list that should be considered life-threatening?

# Proposed HOTMA HQS Changes

## **Deficiencies caused by tenant**

Under 982.404(a)(4), the owner is not responsible for a breach of the HQS that is not caused by the owner and for which the family is responsible.

HOTMA provides that if a PHA determines that any damage that results in an HQS deficiency was caused by the tenant, the PHA may waive the requirement that the owner is responsible for correcting the deficiency.

The PHA must proactively take action to waive the owner's responsibility to correct the tenant related HQS deficiency in order for that responsibility to be placed on the family.

# Proposed HOTMA HQS Changes

## Enforcement of HQS

HUD is proposing to add a new paragraph to 982.404 to implement the HOTMA provisions regarding when a PHA may withhold payments and when a PHA must abate payments and terminate the HAP contract as the result of HQS deficiencies (§ 982.404(d))

HOTMA provides that-

- The PHA **may** withhold payments once the PHA has notified the owner of the deficiencies. If the PHA withholds the payments and the unit is brought into compliance during the applicable cure period, the PHA must resume payments and provide assistance payments to cover the time period the assistance payment was withheld
- The PHA **must** abate the HAP if the owner fails to make the repairs within the applicable cure period. If the owner fails to make the repairs within 60 days (or a reasonable longer period established by the PHA) of the determination of noncompliance, **the PHA is required to terminate the HAP contract**

# Proposed HOTMA HQS Changes

## Enforcement of HQS

- The PHA must notify the family and the owner that the PHA is abating the payments and that if the unit does not meet HQS within 60 days after the determination of noncompliance (or a reasonable longer period established by the PHA
- If the owner makes the repairs and the unit complies with the HQS within the required timeframe, the PHA must recommence payments to the owner. (However, the PHA may not make any payments to the owner for the period of time the payments were abated.)

# Proposed HOTMA HQS Changes

## **Enforcement of HQS**

Additionally, HOTMA provides that-

- The family must be given 90 days or longer to lease a new unit upon termination of the HAP contract. The family must be given a preference for public housing if the family fails to find a new unit with their voucher.
- The PHA may use up to two months of the assistance payments that were withheld or abated under the family's terminated HAP contract for cost directly associated with the relocation of the family. This includes security deposits and reimbursements for moving expenses

## HQS Changes Unrelated to HOTMA

### PHA timeframe for tenant reported HQS deficiencies

**If the deficiency is life-threatening**, the PHA would have to both inspect the housing unit and notify the owner within 24 hours.

The owner would have to make the repairs within 24 hours of the PHA notification.

**If the deficiency is NLT**, the PHA would have to both inspect the unit and notify the owner whether the deficiency is confirmed within 15 days.



## HQS Requested Comments

- Q4: Are HUD's proposed deadlines by which the PHA must both inspect the unit and notify the owner if the reported deficiency is confirmed reasonable?

# HQS Changes Unrelated to HOTMA

## **Alternative verification methods for Initial HQS Inspections**

HUD is proposing to expand the use of alternative methods, such as photos, to verify the correction of a deficiency to initial HQS inspections.

Currently, on-site reinspections are required for deficiencies identified during an initial HQS.

# HOTMA HQS Conforming Change

## HQS-related changes in PBV

- HUD proposes to limit the use of the NLT and alternative inspection options to existing housing
- HUD proposes to allow the PHA to choose to abate payments for the entire PBV HAP contract and terminate the entire PBV HAP contract rather than just the individual unit due to a unit's noncompliance with the HQS
  - Applies to PBV contracts that entered into or renewed after the effective date of the regulations

## HQS for PBV Requested Comments

- Q24: HUD requests comment on the use of the NLT and alternative inspection options for PBV new construction and rehabilitation.
  - Are there circumstances where it would be acceptable for a newly constructed or rehabilitated PBV unit to fail to meet HQS once the construction or rehabilitation was completed, making the NLT a reasonable option for PHAs?
  - Are there circumstances where the alternative inspection option can fulfill the initial HQS inspection requirements for PBV rehabilitation or new construction?

# Project-Based Vouchers (PBV)

# HOTMA PBV- Conforming Changes

## **Percentage Limitation (Program Cap):**

- PHA may project-base up to 20 percent of its authorized voucher units.
- An additional 10 percent may be project-based if units serving homeless; veterans; providing supportive housing for elderly or disabled; or located in areas where vouchers are difficult to use.
- NEW - Units added to contracts executed prior to April 18, 2017, may qualify for the exceptions.

# HOTMA PBV- Conforming Changes

## Percentage Limitation (Program Cap):

FR implementation notice	Proposed rule
PHA defines veteran in its administrative plan	Defines veteran as a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable

## Percentage Limitation – Other changes

<b>Current regulation</b>	<b>Proposed rule</b>
PHA notifies HUD prior to RFP or selection of intent to project-base	No HUD notification; PHA determines if within program cap and able to project-base additional units



# HOTMA PBV- Conforming Changes

## **Income Mixing (Project Cap):**

- Refers to the number of units in a project that may be project-based.
- Previously, 25 percent of units. HOTMA changed to higher of 25 units or 25 percent of units (assisted or unassisted) in project.

# HOTMA PBV- Conforming Changes

## **Income Mixing (Project Cap):**

- Previously excepted units for elderly, disabled, and families receiving supportive services.
- HOTMA changed exceptions to elderly and families eligible for supportive services.
- HOTMA allows higher percentage (40% instead of 25%) for units in low-poverty census tracts (poverty rate of 20% or less) and in areas where vouchers are difficult to use.

# HOTMA PBV- Conforming Changes

## **Income Mixing (Project Cap) – Supportive Services:**

- PHA may use FSS as part of supportive services package but may not rely solely on FSS in meeting the exception. Supportive services used in connection with the FSS program may be made available to non-FSS PBV families at the project.
- Termination from PBV program for FSS non-compliance no longer allowed.

**Q18/Q36: Does the regulation clearly convey how FSS may be used in meeting the supportive services exception?**

# HOTMA PBV- Conforming Changes

## **Income Mixing (Project Cap):**

- If unit loses excepted status:
  - Substitute the excepted unit for a non-excepted unit of same size (if it meets HQS and rent reasonable).
  - Temporarily remove the unit from the PBV HAP contract and provide the family with tenant-based assistance.
  - Change the unit's designation to a non-excepted unit, if it doesn't place the project above the project cap.

## Income Mixing - Requested Comments

Q16/Q34: Does the proposed rule sufficiently address the project cap requirements in relation to a unit losing its excepted status?

Q17/Q35: Should other options not considered by the proposed rule be available to the PHA when a unit loses its excepted status?

# HOTMA PBV- Conforming Changes

## **Percentage Limitation/Project Cap - Excepted units:**

- Units previously receiving HUD subsidy or subject to federal rent restrictions are exempt from both caps. Secretary authorized to establish additional exempted categories via regulation.
- New categories added in proposed rule → LIHTC and Section 515 Rural Rental Housing Loan units.

## Excepted Units - Requested Comments

Q23: Increased number of PBVs may impact a PHA's ability to effectively address the PBV family right to move and on a PHA's ability to serve its tenant-based waiting list. Is there a specific PBV threshold that should trigger additional monitoring requirements? What approaches should be considered to address this concern?

# HOTMA PBV- Newly Implemented

## Percentage Limitation/Project Cap:

- Areas where vouchers are difficult to use defined as:
  - A ZIP code area where the rental vacancy rate is less than 4 percent; or
  - A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan FMR

**Q12: Is there a better way to identify areas where vouchers are difficult to use, which does not involve a complex calculation or one that requires data not already available to HUD?**



# HOTMA PBV- Conforming Changes

## **HAP Contract Term:**

- Previously, up to 15 years. HOTMA changed to up to 20 years (for initial term and extensions).
- Proposed rule conforms the regulation to current HUD implementation guidance, including restructuring regulation to clarify differences between initial contract term and first and subsequent extensions.

## HAP Contract Term - Requested Comments

Q27: PHAs must wait until 24 months prior to the expiration of the HAP contract to extend the contract for longer than 40 years. Should HUD permit a contract extension prior to that period to facilitate financing or for other reasons? What period would be reasonable?

# HOTMA PBV- Conforming Changes

## **Addition of Eligible Units:**

- Previously, eligible unassisted units could be added to the contract only within 3 years of contract execution.
- HOTMA changed so such units may be added at any time during term of contract if compliant with all PBV requirements.
- NEW - Units added to the HAP contract following execution of the contract must be units that existed and were part of the project when the HAP contract was executed.

# HOTMA PBV- Newly Implemented

## OCAF Rent Adjustments:

Current regulation	Proposed rule
Owner requests rent increase	<ul style="list-style-type: none"><li>• Owner requests rent increase, or</li><li>• PHA/owner agree to automatic rent increases through an OCAF</li></ul>

# HOTMA PBV- Newly Implemented

## **OCAF Rent Adjustments:**

- Owner-requested increase and OCAF increases take effect on annual anniversary date of the PBV HAP contract.
- Rent increases under both methods subject to maximum PBV rent (generally, lower of rent reasonable rent, owner request, or PHA determined amount up to 110% of FMR (or Exception Payment Standard)-Utility Allowance).

# HOTMA PBV- Newly Implemented

## **OCAF Rent Adjustments:**

- OCAF shall not result in a negative adjustment.
- Additional increase up to maximum PBV rent required at contract extension if requested by owner.
- Additional increase up to maximum PBV rent allowed during term of contract if requested by owner.

## OCAF Adjustments - Requested Comments

Q39: A PHA can set the PBV rent at any level up to 110% of FMR or EPS. Should HUD permit a PHA and owner to agree to OCAF adjustments up to the maximum level permitted by the statute (110% of FMR or EPS) without regard to the cap adopted by the PHA, as long as rents remain reasonable?

# HOTMA PBV- Newly Implemented

## Owner-Maintained Site-Based Waiting List:

Current regulation	Proposed rule
PHA already has discretion to establish a site-based waiting list.	PHA continues to have discretion on how to set-up its PBV waiting list.
PHA manages the PBV waiting list, and the owner may only occupy units with families referred by the PHA.	PHA may, at its discretion, allow owner to manage the site-based PBV waiting list.



# HOTMA PBV- Newly Implemented

## **Owner-Maintained Site-Based Waiting List:**

- PHAs may choose to use owner maintained PBV waiting lists for specific owners or projects.
- PHA may allow owner to manage a single waiting list that covers multiple projects owned by the owner.
- Owner must develop and submit a written tenant selection plan to the PHA for approval, which is incorporated into the PHA's admin plan.

# HOTMA PBV- Newly Implemented

## **Owner-Maintained Site-Based Waiting List:**

- Owner manages the waiting list (e.g. opening/closing waiting list, changes in application information, etc.) and may determine family's eligibility for a preference, and preliminary eligibility for placement on waiting list.
- PHA makes final eligibility determination and conducts informal reviews.

# HOTMA PBV- Newly Implemented

## **Owner-Maintained Site-Based Waiting List:**

- Owner required to follow all waiting list administration program requirements, including the public notice requirements of § 982.206.
- PHA responsible for oversight to ensure proper administration.
- Income-targeting requirements apply.

## Owner-Maintained Waiting List - Requested Comments

Q31: Are there any additional areas concerning owner-maintained site-based waiting lists that require further clarification?

Q32: Whenever a unit becomes vacant, the owner must promptly notify the PHA and refer the family to the PHA for final eligibility determination. The PHA must then make every reasonable effort to promptly make the final eligibility determination. What would be a reasonable timeframe for the PHA to complete this final eligibility determination?

# PBV Change- Unrelated to HOTMA

## **PBV Offer/Owner's Rejection:**

- Addresses impact of a family's rejection of the PBV offer, or the owner's rejection of the family, on the family's position in the PBV waiting list.
- Central PBV waiting list → admin plan addresses number of offers family may reject and if owner rejection impacts family's place on waiting list.
- Site-based PBV waiting list → family's name removed from site-based waiting list.

## PBV Offer/Owner's Rejection - Requested Comments

Q30: Should HUD establish additional or different criteria for the removal of the family from the PBV waiting list when a family rejects an offer, or the owner rejects the family?

## PBV Change- Unrelated to HOTMA

### **Wrong-sized/accessible units:**

- PHA must notify family/owner within 30 days of PHA determination that family is in a wrong-sized unit or a unit with accessibility features that the family does not need.
- If PHA offers continued tenant-based assistance other than an HCV, the PHA determines how much time the family has to move out of the PBV unit, not to exceed 90 days.

*Q33: are these timeframes reasonable?*

# HOTMA HCV and PBV- Conforming Changes

## Definition of PHA-Owned Units:

- Proposed rule defines a PHA-owned unit
  - Generally: unit owned by the PHA; an entity wholly controlled by the PHA; or a limited liability company or limited partnership in which the PHA (or an entity wholly controlled by the PHA) holds a controlling interest in the managing member or general partner
- An independent entity must perform certain functions for PHA-owned HCV and PBV units
  - Adds OCAF adjustment and completion of development
  - Removes submission of inspections and rent reasonableness determinations to HUD
- Proposed rule defines an independent entity
  - Unit of general local government or a HUD-approved entity
  - Cannot be connected to the PHA legally, financially (except compensation for services), or in any other manner that could cause the PHA to improperly influence the independent entity



# PHA-Owned Units - Requested Comments

- Q1: Proposed definition of a PHA-owned unit
- Q1: Proposed definition of independent entity
  - Too broad, particularly as it relates to an existing financial relationship?
  - Under what circumstances could the PHA and the independent entity be connected financially where the independent entity would still retain sufficient independence to perform its administrative responsibilities for PHA-owned units?
- Q5: Are there additional functions that an independent entity should perform in the case of PHA-owned units?
- Q6: Are there functions identified by the proposed rule that the PHA should be able to perform with respect to PHA-owned units instead of having an independent entity do so?

# HCV and PBV Changes Unrelated to HOTMA

## Contracts for PHA-Owned Units:

- Proposes clarifying rule: prior to execution of HAP contract, the PHA must establish a separate legal entity to serve as the owner
- Proposes option: instead of HAP contract, 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

# HOTMA PBV- Conforming Changes

## **Noncompetitive Selection:**

- Proposed rule allows a PHA engaged in an initiative to improve, develop, or replace a public housing property or site to attach PBVs to a structure in which the agency has an ownership interest without following a competitive process
  - PBVs need not be on the same site as the original public housing
  - No per-unit hard cost requirement
  - Creates a noncompetitive selection option where the PHA administering the PBV assistance has no ownership interest because the project is owned by another PHA that does not administer the HCV program

## Selection - Requested Comments

- Q15: Are there other situations that should be exempt from competitive selection requirements?

# PBV Changes Unrelated to HOTMA

## Definition of Existing Housing:

- Proposes clarification: a housing project in which all the proposed PBV units either fully comply or substantially comply with the HQS on the proposal selection date and which is ready to be placed under HAP contract with minimal delay
  - Substantially comply: any HQS deficiencies require only minor repairs to correct
  - Minor repairs: repairs that are minor in nature and could reasonably be expected to be completed within 48 hours of notification of the deficiency
  - Minimal delay: after inspections, all proposed PBV units not meeting HQS can be brought into compliance to allow PBV HAP contract execution within 48 hours

## Existing Housing - Requested Comments

- Q13: Proposed definition of existing housing
  - Is the 48-hour standard reasonable, particularly for larger projects?

# HOTMA PBV- Newly Implemented

## Environmental Reviews:

Current regulation	Proposed rule
Environmental review must be conducted for both existing and newly constructed or rehabilitated housing	Implements HOTMA provision eliminating environmental reviews for existing housing under certain conditions  Adds clarifying language regarding how environmental reviews are conducted for PBV and timing

# HOTMA PBV- Newly Implemented

## **Environmental Reviews:**

- Existing housing is exempt only if the project has previously received federal assistance and has undergone a federal environmental review under the applicable federal program
  - Exemption does not apply if a federal environmental review is required for funding other than PBV housing assistance payments



# Environmental Reviews - Requested Comments

- Q19: How should HUD ensure that an environmental review was conducted for properties that were previously Federally assisted and conducted their environmental reviews long ago?
- Q20: How administratively burdensome will it be for owners to demonstrate that an environmental review was conducted for the project in the past?
- Q21: Should the final rule establish a time limit for accepting environmental reviews conducted for previously Federally assisted properties?
- Q22: Are there preferable alternative approaches to implement the environmental review exception for PBV existing projects?
  - Are there site suitability reviews that occur in the non-Federal assistance context that would address HUD's concerns that PBV assistance is not attached to buildings or sites that pose potential risks to the residents' health and safety or the viability of the project?

# HOTMA PBV- Newly Implemented

## Development without AHAP:

Current regulation	Proposed rule
Owner and PHA must execute an Agreement to enter into Housing Assistance Payments (AHAP) that governs development work of newly constructed or rehabilitated project prior to HAP contract execution	Implements HOTMA provision for optional use of an AHAP and substantially restructures regulation  Owner must demonstrate compliance with applicable development requirements

# HOTMA PBV- Newly Implemented

## **Development without AHAP:**

- Development requirements apply when an owner undertakes development to:
  - Place the project under a HAP contract
  - Add previously unassisted units in the project to the HAP contract
- Development requirements:
  - Environmental review
  - Subsidy layering review (as applicable)
  - Labor standards (as applicable)
  - Equal opportunity
  - Equal employment opportunity
  - Accessibility (as applicable)
  - Broadband infrastructure (as applicable)
  - Eligibility to participate in federal programs and activities
- If no AHAP, development requirements apply to any work done after proposal submission (or board resolution for noncompetitive selection)

## PBV Changes Unrelated to HOTMA

### **Labor Standards (Davis-Bacon):**

- Proposes to remove the requirement that development activity performed on existing housing within 18 months after HAP execution be completed in compliance with Davis-Bacon wage requirements
- Applies Davis-Bacon wage rates to rehabilitated and newly constructed housing where an AHAP covering nine or more assisted units is entered into between the PHA and the owner
  - Davis-Bacon does not apply where rehabilitation or new construction occurs without AHAP

## Davis-Bacon - Requested Comments

- Q29: Should the PHA have the flexibility to exclude rehabilitation or new construction of PBV projects from Davis-Bacon coverage?
- Q29: Given the language in HOTMA that does not require an Agreement, should HUD still require Davis-Bacon coverage for new construction and rehabilitation through an alternate document?

# PBV Changes Unrelated to HOTMA

## **Development Activity on Units Under HAP Contract:**

- Proposes to implement development requirements that will govern the rehabilitation of properties already under a PBV HAP contract
- The following development requirements apply:
  - Equal employment opportunity
  - Accessibility (as applicable)
  - Broadband infrastructure (as applicable)
- No HAP may be paid while units are not in compliance with HQS (units may be temporarily removed from HAP contract during this time)

# PBV Changes Unrelated to HOTMA

## **Development Activity on Units Under HAP Contract:**

- Owner must obtain PHA approval to undertake development activity on units currently under a HAP contract
- Owner request may not occur within the first five years of the effective date of the HAP contract except in extraordinary circumstances
- Owner request must describe:
  - Development activity
  - Length of time it is anticipated that the units will not meet HQS
  - How the families will be rehoused during the period the units will not meet HQS

## Development Activity - Requested Comments

- Q25: The time period within which development work would not be permitted except in extraordinary circumstances
  - Is five years from the effective date of the HAP contract a reasonable time frame?
  - Are there better alternative time-frames or other approaches?
  - Are there reasonable, routine reasons why an owner may need to or choose to perform development activity within the first five years of the effective date of the HAP contract?
- Q26: Has HUD laid out reasonable guidelines for undertaking development activity on units under a HAP contract?



# HOTMA PBV- Conforming Changes

## **HAP Contract Termination or Expiration:**

- Each assisted family may remain in project with tenant-based voucher, if unit complies with HQS, rent is reasonable, and family pays its required share.
  - Owner may not terminate tenancy except as the result of a serious or repeated lease violations, or other good cause
- Exception: HAP contract termination or expiration without extension due to insufficient funding

## Termination/Expiration - Requested Comments

- Q28: Should the family have the ability to remain in the same unit and not just the same project?

# HOTMA PBV- Conforming Changes

## **HAP Contract Termination or Expiration:**

- In the event of insufficient appropriated funding, PHAs must avoid terminating an existing HAP contract if cost-saving measures make that possible
- The PHA may terminate a PBV HAP contract only if:
  - The PHA determines it lacks sufficient funding to continue HAPs for all voucher units under a HAP contract,
  - The PHA has taken specified cost-saving measures, and
  - HUD determines the PHA lacks sufficient funding
- A PHA must describe in its Administrative Plan the factors it will consider when determining which HAP contracts to terminate first

## Additional Requested Comments

- Q2: HUD proposes a new Administrative Plan section to identify areas of PHA discretion for PBV: are there other areas HUD should specify in that section?
- Q14: Should HUD adopt a different definition of “project” for elements of the PBV program other than to determine PHA compliance with the income-mixing requirement?
  - What definition should HUD adopt, and for which program elements?

## Additional Requested Comments

- Q40: HUD is not proposing any changes to the existing 24 CFR § 983.261 (Family Right to Move). Is § 983.261 clear?
- Q41: Input regarding areas in which aligning PBV program requirements with Housing Trust Fund program requirements will be particularly beneficial
- Q42: Should HUD establish a new regulatory provision in part 983 governing transfers of PBV assistance from one project to another?
- Q43: What, if any, PBV policies could HUD consider to incent communities to reduce local regulatory barriers that would decrease the cost of developing and producing housing?
  - What are some existing PBV-related community level data that HUD could collect to help inform future policy making?

# Questions