

Client Alert: The Housing Opportunity Through Modernization Act (HOTMA)

On July 29th, President Obama signed into law the **Housing Opportunity Through Modernization Act (or HOTMA)**, after it was passed unanimously by both the House of Representatives and the Senate. Title I of HOTMA makes significant amendments to the public housing and Section 8 programs which benefit public housing agencies (PHAs), especially regarding the Project Based Voucher (PBV) program and public housing. Some of the most important statutory changes include:

Setting policies and requirements for over-income families residing in public housing

- Permitting PHA discretion to utilize additional budget authority for project-based vouchers (PBVs). The existing 20% cap is increased by an additional 10% for project-based vouchers which are dedicated to certain special populations such as elderly families, veterans, homeless and families receiving supportive series. In addition, PBVs that are attached to units that were previously subject to federal rent restrictions or subsidy will not count towards the limitation.
- Several provisions will make it easier for PHAs to utilize PBVs in the redevelopment and replacement of aging portfolios including streamlining the definition of PHA owned units and eliminating the competitive selection requirement for PHA owned properties
- Extending the contract term for project-based vouchers from 15 to 20 years.
- Allowing PHAs additional discretion related to payment standards. This provision will assist PHAs in allowing for increased income mixing in PHA properties.
- Permitting the establishment of Replacement Reserves using Capital Funds
- Additional flexibility to use Operating Funds for Capital Fund purposes.

Please see our summaries below for more details.

[Project-Based Vouchers](#)

The Act considerably expands the ability of PHAs to use PBVs. PHAs may now project-base up to 20 percent of their authorized vouchers, whereas under prior law PHAs were limited to using 20 percent of their voucher funding for PBVs. Under the Act, PHAs are permitted to use an additional 10 percent of their authorized vouchers as PBVs if they are to be used to house the homeless or veterans, to provide supportive housing to persons with disabilities or the elderly, or if market conditions make vouchers particularly difficult to use. The 20 percent limitation also does not apply to units that previously received some other form of federal subsidy. Further, PBV assistance for a particular project may not exceed the greater of 25 units or 25 percent of the units in the project, whereas prior law only allowed 25 percent of units to have PBVs unless the project was devoted exclusively to housing the elderly or disabled families receiving supportive services. The act eliminates the exception for disabled families.

However, the exceptions are expanded by the Act to include projects in areas where vouchers are difficult to use or where the poverty rate is 20 percent or lower.

Also, PHAs are now allowed to enter PBV contracts for up to 20 years, whereas they were limited to just 15 years before.

What constitutes a PHA-owned PBV project is also clarified. The term “owned by a public housing agency” means a unit that is located in a property owned by a PHA, by an entity wholly owned by a PHA, or by a limited partnership or LLC in which a PHA has a controlling interest. Holding an interest in a project’s ground lease, a security interest under a mortgage or deed of trust, or a non-controlling interest in an entity that owns a unit does not constitute ownership, such that certain additional regulations pertaining to PHA-owned units will not apply.

The process of awarding PBVs to certain projects is also simplified. A PHA is now permitted to award PBVs to projects it controls or possesses an ownership interest in without using a competitive process, so long as the public is made aware of the PHA’s ability to do so through the PHA’s public housing agency plan. PHAs and property owners are also permitted to expand PBV contracts to include additional units in a property without going through a competitive selection process, and may contract with owners of units currently under construction, so long as the owner can prove that the as-completed units will comply with requirements.

The Act makes several other changes to the PBV program. Owners are now also allowed to host property-specific waiting lists for individuals interested in living at their properties. Also, PHAs are permitted to project-base HUD-Veterans Affairs Supportive Housing (VASH) Vouchers and Family Unification Program (FUP) vouchers according to the same policies governing general purpose vouchers.

Inspections

Under the Act, PHAs are allowed greater flexibility to temporarily accept and pay for Section 8 units that are determined to be non-compliant with housing quality standards. PHAs may allow units with noncompliant, non-life-threatening conditions to be occupied prior to their correction, so long as the conditions are corrected within 30 days. PHAs may also make payments on such units, and are able to retroactively reclaim any disbursed funds if the noncompliant conditions are not corrected. The Act also provides further clarification as to how a PHA can designate a unit as being noncompliant, and a PHA’s ability to withhold or abate subsidy payments upon this occurring. When such a designation is given, tenants are also provided the opportunity to terminate their lease and request a new unit.

Income Reviews

The Act also streamlines requirements on PHAs with regard to reviewing tenants’ incomes. A PHA must only review an assisted family’s income upon the family initially receiving housing assistance and anytime a family’s income is estimated to increase by 10 percent or more, unless less than 90 percent of

a family's income comes from fixed income, in which case annual reviews are required. Families are also permitted to request reviews anytime their incomes decrease by an estimated 10 percent or more. HUD is also required to put in place a system by which PHAs can verify incomes and employment of individuals, and also have access to information contained in the Do Not Pay System established under the Improper Payments Elimination and Recovery Improvement Act of 2012. However, the Secretary is permitted to make adjustments to particular PHAs' income formulas if it appears this new means of allocating income leads to reductions that are too significant.

Over Income Tenants

Rental assistance for tenants with incomes greater than 120 percent of area median income (AMI) is also curtailed. PHAs must charge tenants whose incomes are for two consecutive years 120 percent or more of the AMI either the fair market rent for the unit or the amount of the government subsidy. A PHA may also choose to terminate a tenant's lease in such an instance. The 120 percent AMI limitation is subject to change under the Secretary's discretion, based on factors such as construction and number of vacancies in a particular PHA's area. These determinations are contingent upon the Secretary's review of annual reports required by all PHAs.

Limitation on Assets

In addition, limitations are placed on PHAs' ability to assist families with significant net assets. PHAs are prohibited from renting units to families whose net assets exceed \$100,000 (adjusted annually for inflation) or who possess a property suitable for occupancy. There are certain exceptions to this, including for victims of domestic violence, families offering a property for sale, families using assistance to pursue home ownership opportunities, or if a PHA has a policy in its plan providing exceptions to this limited eligibility. PHAs are also permitted to delay evictions for such individuals for up to six months. All applicants for housing assistance in turn are required to authorize PHAs to obtain necessary records from any financial institutions for verification of net assets.

Replacement Reserves

PHAs are also permitted to use public housing Capital Funds to establish replacement reserves for capital activities. There is no minimum amount that may be deposited into the reserve, but HUD may establish a maximum amount. In addition, when initially establishing a replacement reserve, HUD may permit a PHA to transfer more than 20 percent of its public housing Operating Funds into the reserve.

Other Changes

For federal fiscal year 2016 and thereafter, a PHA is permitted to use up to 20 percent of its Operating Fund for Capital Fund purposes, if the PHA's plan allows for it to do so. The Secretary is now required to regularly collect and publish utility consumption data for particular areas that the Secretary believes will aid PHAs in setting utility allowances. HUD must also publish model guidelines for heating requirements

in public housing units. Additionally, an individual may use a Family Unification Program voucher as they age out of foster care for 36 months instead of just 18, individuals up to 24 years in age instead of just 21 are now eligible for the Family Unification Program, and HUD is required to publish guidance on how PHAs and public child welfare agencies can improve coordinative efforts regarding the program.

The Act received widespread support from public and private entities and is evidence of a bipartisan consensus that certain changes to affordable housing programs were needed.

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