



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitle A and Chapters II, IV, V, VIII, IX, and XX

[Docket No. FR-5976-N-01]

Housing Opportunity Through Modernization Act of 2016: Initial Guidance

AGENCY: Office of General Counsel, HUD.

ACTION: Initial Implementation Guidance.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). This new statute provides updates and improvements to statutes that authorize and prescribe requirements for multiple HUD programs and the Department of Agriculture's single-family housing guaranteed loan program. The purpose of this document is to advise HUD program participants and interested members of the public of those statutory provisions that are effective immediately and those provisions that will require further action by HUD to become effective or to be used by HUD program participants.

DATES: Effective Date: This document is effective October 24, 2016.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact the following people (none of the phone numbers are toll-free):

Public Housing, Housing Choice Voucher (including project-based vouchers), and moderate rehabilitation programs: email HOTMAquestions@hud.gov.

Multifamily Housing programs: Danielle Garcia, Branch Chief, Assistant Housing Oversight Division, Office of Housing, 202-402-2768.

HOME Investment Partnerships program: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, 202-708-2684.

Self-Help Homeownership Opportunity Program (SHOP) program: Jackie Williams, Director, Office of Rural Housing and Economic Development, Office of Community Planning and Development, (202) 708-2290.

Housing Opportunities for Persons With AIDS (HOPWA) program: Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, 202-402-5374.

Homeless programs: Norm Suchar, Director, Office of Special Needs Assistance, Office of Community Planning and Development, 202-708-4300.

The address for all offices is the Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 29, 2016, President Obama signed HOTMA into law (Public Law 114-201, 130 Stat. 782). HOTMA amends the United States Housing Act of 1937 (1937 Act) and other housing laws to modify multiple HUD programs, along with the Department of Agriculture's Single Family Housing Guaranteed Loan Program. Significant amendments include setting a maximum income level for continued occupancy in public housing, expanding the availability of Family Unification Program vouchers for children aging out of foster care, changes to the housing quality standards for Section 8 Voucher units, multiple changes to the Project-Based Voucher program, modifying requirements for mortgage insurance for condominiums under the Federal Housing Administration, creating a Special Assistant for Veterans Affairs in HUD, and changing the allocation formula for the Housing Opportunities for Persons With AIDS (HOPWA) program.

II. Implementation, Generally

HOTMA makes several of its provisions effective upon enactment (July 29, 2016). Other statutory changes made by HOTMA become effective only after the issuance of a notice or regulations by HUD, or at the start of the calendar year following the publication of a notice or regulation. Some provisions require rulemaking to implement, while some are strictly changes in terminology or conforming changes.

This document is intended to:

(1) Advise the public of statutory provisions that are effective immediately and advise of actions that may or should be taken now to comply with the changes (Section III of the document).

(2) Identify those provisions of HOTMA that are not effective until HUD subsequently issues a notice or regulation (Section IV of the document).

This document does not provide a section-by-section analysis of HOTMA, nor does it provide guidance on all sections. However, the guidance in this document, read together with the statutory language,¹ is intended to aid HUD program participants and the public generally in understanding (1) the prompt action HUD recommends be taken now or in the very near future, and (2) the reasons for any deferred action with respect to certain statutory provisions. HUD is committed to working closely with its program participants to see that the changes made by HOTMA are successfully implemented and that these programs are significantly improved to provide assistance to the families HUD serves.

III. Provisions of HOTMA Effective upon Enactment or Otherwise Already in Effect—No HUD Action Required to Implement

¹ The text of HOTMA, along with a summary prepared by the Congressional Research Service, can be found at <https://www.congress.gov/bill/114th-congress/house-bill/3700>.

This section outlines provisions of HOTMA that are effective upon enactment of HOTMA (July 29, 2016) and can be implemented immediately. HUD notes that in many cases the statutory provisions listed in this section may require conforming rulemaking at a later date to update HUD's regulations to reflect these statutory changes. HUD may also issue other types of guidance to further explain these provisions. Below is the list of HOTMA sections that are effective immediately.

Section 102(d). Reasonable Accommodation Payment Standards

Section 102(d) of HOTMA amends section 8(o) of the 1937 Act to allow PHAs to establish a payment standard of up to 120 percent of the FMR as a reasonable accommodation for a person with a disability, without HUD approval.

Implementation action: The final rule on "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs," published on March 8, 2016, at 81 FR 12354, previously provided PHAs with the flexibility establish a payment standard up to 120 percent of the FMR as a reasonable accommodation for a person with a disability, effective April 7, 2016. As a result, no further action is needed to implement this section.

It is noted the PHA may also establish an exception payment standard of more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability, but in such cases must request approval from HUD.

Section 107. Establishment of Fair Market Rent

This section changes how HUD publishes Fair Market Rents (FMRs), and the procedure to allow PHAs and other interested parties to comment on the FMRs and request HUD to

reevaluate the FMRs in a jurisdiction before those rents become effective. Section 107 also amends section 8(o)(1)(B) of the 1937 Act to provide that in the Housing Choice Voucher (HCV) Program no PHA is required, as a result of a reduction in the FMR, to reduce the payment standard applied to a family continuing to reside in a unit under a HAP contract at the time the FMR was reduced. Currently, if a reduction in the FMR causes the PHA's payment standard to exceed the basic range (110 percent of the FMR), the PHA is required to reduce the payment standard so that the payment standard would be within the basic range of the new FMR. The program regulations at 24 CFR 982.505(c)(3) further provide that for families under a housing assistance payment (HAP) contract at the time of the decrease in the payment standard, the new decreased payment standard would be applied to the family's subsidy calculation at the family's second regular re-examination following the decrease in the payment standard amount. As a result of the change in the law, the PHA may choose to continue to use the higher payment standard for the family's subsidy calculation for as long as the family continues to receive voucher assistance in that unit. If a PHA chooses to continue to use the higher payment standard for the subsidy calculation for the family, then the PHA must adopt policies in its administrative plan that further explain this provision.

Implementation action: This provision was effective upon enactment of HOTMA. HUD's FMRs for Fiscal Year 2017, published in the Federal Register on August 26, 2016, reflect the new procedures for calculation of FMRs. Effective July 29, 2016, PHAs may choose, but are no longer required, to reduce the payment standard for a family who remains under HAP contract at the family's second annual reexamination. HUD will issue additional guidance on this change in the future. PHAs with questions in the interim may contact the local HUD Field Office.

Section 110 Family Unification Program for Children Aging out of Foster Care

This section of HOTMA makes changes to the Family Unification Program (FUP) for children aging out of foster care. The law revises the length of the term that a FUP-eligible youth may receive FUP assistance from 18 months to 36 months. Please note that this change applies to youth currently receiving FUP assistance as well as any new participants. In addition, the law revises the eligibility requirements for FUP-eligible youth. Previously, FUP-eligible youth must be at least 18 years old and not more than 21 and have left foster care at age 16 or older. Under the new law, FUP-eligible youth must: be at least 18 years old and not more than 24; have left foster care at age 16 or older or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act; and be homeless or at risk of being homeless. PHAs should refer to the definition of “at risk of homelessness” at 24 CFR 576.2. HOTMA also requires HUD to issue guidance, after consultation with other appropriate Federal agencies, on how to improve coordination between PHAs and public child welfare agencies to carry out the FUP program.

Implementation action: The changes to the FUP program were effective upon enactment of HOTMA. PIH issued a letter on August 29, 2016, to FUP PHA Executive Directors to ensure that such PHAs are aware that this provision was effective upon enactment. In addition, HUD plans to issue the guidance on improving coordination between PHAs and public child welfare agencies by the statutory deadline of January 25, 2017.

Section 113. Preference for United States Citizens or Nationals

This section only applies to Guam and establishes a preference or priority in receiving financial assistance (e.g., admission to public housing, the HCV program, etc.) for any citizen or national of the United States over aliens covered by section 141 of the Compacts of Free

Association between the United States and the Marshall Islands, the Federated States of Micronesia, and Palau.

Implementation action: This provision was effective upon enactment of HOTMA. No regulatory action is needed for this section of HOTMA to be implemented.

Section 114. Exception to Public Housing Agency Resident Board Member Requirement

This section provides for an exception for certain jurisdictions (Housing Authority of the County of Los Angeles or any PHA in the States of Alaska, Iowa, and Mississippi) from the resident board member requirements under section 2(b) of the 1937 Act.

Implementation action: This provision was effective upon enactment of HOTMA, and the exception has been in effect for a number of years through the appropriations acts. As a result, no further action is needed to implement this section. This statutory provision does not alter the regulatory provision at 24 CFR 964.405(b).

Section 402. Inclusion of Public Housing Agencies and Local Development Authorities in Emergency Solutions Grants

Section 402 of HOTMA amended section 414(c) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11373(c)) to authorize local governments that receive Emergency Solutions Grants (ESG) funds to subaward all or a portion of those funds to public housing agencies, as defined under section 3(b)(6) of the 1937 Act (42 U.S.C. 1437a(b)(6)), and local redevelopment authorities, as defined under State law. Implementation action: This provision was effective upon enactment of HOTMA. No regulatory action is needed to authorize local governments to subaward ESG funds to public housing agencies and local redevelopment authorities. However, HUD intends to issue guidance explaining the conditions and requirements that apply to subawarding ESG funds to PHAs and local redevelopment authorities.

Section 501. Inclusion of Disaster Housing Assistance Program in Certain Fraud and Abuse Prevention Measures

This section provides that the Disaster Housing Assistance Program shall be considered a program of HUD under section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 for the purpose of income verifications.

Implementation action: This provision was effective upon enactment of HOTMA, and it has previously been in effect through HUD appropriations acts for a number of years, and therefore no additional action is needed for implementation.

Section 502. Energy Efficiency Requirements under Self-Help Homeownership Opportunity Program.

This provision prohibits HUD from requiring units developed under the Self-Help Homeownership Opportunity Program (SHOP) to meet energy efficiency standards other than those in section 109 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12709).

Implementation action: This provision was effective upon enactment of HOTMA. The changes will be reflected in the future SHOP Notice of Funding Availability, and HUD will provide current grantees with additional information on how this provision affects their prior year funding.

Section 701. Formula and Terms for Allocations to Prevent Homelessness for Individuals Living with HIV or AIDS.

This provision makes several changes to the Housing Opportunities for Persons with AIDS (HOPWA) program. These changes include: alterations to the allocation formula; continued eligibility of Fiscal Year 2016 grantees; authorization to award funds to alternative

grantees as requested by the original grantee in accordance with specified criteria; and amended definitions.

Implementation action: These changes apply to the formula for Fiscal Year 2017 funds. HUD's Office of Community Planning and Development (CPD) is preparing more detailed guidance to explain how these changes will affect Fiscal Year 2017 funding. This section requires HUD to issue regulations in order to exercise discretion regarding reallocations of funds distributed by formula, and HUD is developing those regulations.

IV. Provisions that Require Rulemaking or Guidance by HUD

There are several provisions in HOTMA that amend HUD statutes but, under their own terms, are not effective until HUD issues a notice or regulation. Other provisions make changes to HUD statutes that, while effective upon enactment of HOTMA, require HUD rulemaking or the issuance of detailed guidance for implementation. This section addresses both types of HOTMA provisions requiring further HUD action. For these provisions, PHAs, multifamily owners, or grantees may not use the provisions of HOTMA until HUD issues a rule or notice.

Section 101(a)(1). Initial Inspections in Section 8 Voucher Units

Section 101(a)(1) amends section 8(o) of the 1937 Act to authorize assistance payments for up to 30 days if an initial inspection reveals non-life-threatening defects and to authorize occupancy of units before an inspection by the PHA if the property has met the requirements of an alternative inspection in the previous 24 months.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Sections 101(a)(2) and (3). Enforcement of Housing Quality Standards for Section 8 Voucher Units

Section 101(a)(3) amends section 8(o) of the 1937 Act to require timeframes for correcting deficiencies discovered by inspections. The statute requires life-threatening deficiencies to be corrected within 24 hours and sets the time for correcting other deficiencies at 30 days unless the PHA determines otherwise. The section also provides families with 90 days to relocate to a new unit if an owner fails to correct the defaults and allows PHAs to use up to two months of any assistance amounts withheld or abated for costs directly associated with relocation of these families. Section 101(a)(2) is a technical amendment to make room for the new subparagraph (G) added by section 101(a)(3).

Implementation action: For section 101(a)(3), HUD is in the process of developing regulations, and section 101(a)(2) requires only a conforming rule by HUD. The statutory amendments made by sections 101(a)(2) and (3) will only go into effect when the regulations are issued to implement the new subparagraph added by section 101(a)(3).

Sections 102(a), (c), and (e). Income Reviews.

Section 102(a) of HOTMA amends section 3(a) of the 1937 Act to revise the frequency of family income reviews and the calculation of income. Specifically, this section requires that reviews of family income must be conducted upon admission and annually thereafter, depending on certain decreases or increases in annual adjusted income. This section also requires HUD, in consultation with other appropriate Federal agencies, to develop electronic procedures enabling PHAs to access income determinations for other Federal means-tested programs.

Section 102(c) of HOTMA amends section 3(b) of the 1937 Act to change the definitions for the public housing and Section 8 programs of income and adjusted income for each member

of the household who is 18 years or older and unearned income for each dependent who is less than 18. The changes in definitions require rulemaking to implement, and the statutory amendments are not effective until the rulemaking is complete.

Section 102(e) changes the definition of “income” to “annual adjusted income” for the Enhanced Voucher Program.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the beginning of the calendar year after the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Section 102(f) Income Review for Project-Based Housing

This section amends strikes the last sentence of paragraph (3) of section 8(c) of the 1937 Act (42 U.S.C. 1437f(c)(3)). This eliminates the requirement that reviews of family income shall be made no less frequently than annually.

Implementation action: HUD has the ability to implement these changes by notice or by regulation, and the statutory amendments are not effective until the beginning of the calendar year after the notice or regulation is issued. HUD is considering the appropriate method for implementation.

Section 103. Limitation on Public Housing Tenancy for Over-Income Families

The statute sets the maximum amount of annual adjusted income for continued occupancy in public housing at 120 percent area median income (AMI), which the Secretary may adjust based on certain statutory factors. The statute also requires that a family is only subject to this limitation if their annual adjusted income meets or exceeds the maximum amount for two consecutive years. In addition, for a family meeting this threshold for two consecutive years, the

PHA has the option to terminate the family's tenancy or to allow them to remain in the unit at a higher rent amount.

Implementation action: The statutory language recognizes that it is necessary in some areas to deviate from the income cap of 120 percent AMI. In order to allow HUD to exercise its discretion in a fair and effective manner, HUD will issue additional information in the future. In addition, the new section 16(a)(5)(A)(i)(II) of the 1937 Act requires regulations to determine the amount of subsidy allocated to a specific unit in order to determine family rent in the event a family chooses to remain in the unit.

Section 104. Limitation on Eligibility for Assistance Based on Assets

Section 104 sets limits on the assets that families residing in assisted housing may have. Section 104 also directs HUD, beginning October 1, 2017, to direct PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility.

Implementation action: This requirement must be put in place by rulemaking.

Section 105. Units Owned by Public Housing Agencies

This section provides that the term 'owned by a public housing agency' means, with respect to a dwelling unit, that the dwelling unit is in a project that is owned by a PHA, by an entity wholly controlled by a PHA, or by a limited liability company or limited partnership in which a PHA (or an entity wholly controlled by a PHA) holds a controlling interest in the managing member or general partner. This section also provides that a dwelling unit is not deemed to be owned by a PHA where the PHA holds a fee interest as ground lessor in the property on which the unit is situated, holds a security interest under a mortgage or deed of trust

on the unit, or holds a non-controlling interest in an entity which owns the unit or in the managing member or general partner of an entity which owns the unit.

Implementation action: PHAs should continue their current practices until HUD can issue additional information on how affected PHAs can comply with any new requirements.

Section 106 PHA Project-Based Assistance

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include (1) changing the portfolio limitation on PBV vouchers from a funding to a unit calculation and allowing for additional project-basing of vouchers for homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use; (2) changing the cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project; (3) allowing PHAs to provide for an initial PBV contract of up to 20 years; (4) providing owners and PHAs the ability to adjust rents based on an operating cost adjustment factor; (5) permitting owners to use site-based waiting lists; (6) allowing PHAs to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and (7) allowing PHAs to use project-based HUD-VASH and FUP vouchers under the same policies and procedures applicable to general purpose vouchers.

Implementation action: HUD has the ability to implement these changes by notice or regulation, and the statutory amendments are not effective until the notice or regulation is issued. Some sections require regulations to add onto baselines set by the statute. HUD is considering the appropriate method for implementation.

Section 109. Public Housing Capital and Operating Funds.

Section 109 revises section 9 of the 1937 Act regarding (1) PHAs establishing a Capital Fund Replacement Reserve, for which HUD may allow a PHA to transfer more than 20 percent of its operating fund to establish the reserve; (2) a 20 percent operating funds cap for capital improvements; and (3) PHA accounting and reporting on replacement reserves funds.

Implementation action: These statutory changes are effective upon the enactment of HOTMA. However, in order for PHAs to implement the changes, additional guidance or rulemaking is required.

Section 112. Use of Vouchers for Manufactured Housing.

Section 112(b) of HOTMA extends the definition of “rent” for vouchers to include monthly payments for purchasing a manufactured home, tenant-paid utilities, and monthly rent for real property.

Implementation action: These statutory changes are only effective upon issuance by HUD of an implementing notice. The statutory amendments are not effective until HUD issues that implementation notice.

Section 301. Modification of FHA Requirements for Mortgage Insurance for Condominiums

Section 301 mandates several changes to FHA’s mortgage insurance for condominiums, including changes to requirements on project recertification, exceptions to the percentage of floor space that may be used for nonresidential or commercial purposes, private transfer fee covenants, and the minimum required percentage of units that must be owner occupied.

Implementation action: Some of these changes must be done by regulations, while the revision to the owner occupancy percentage may be done by rulemaking or an administrative document. HUD issued a proposed rule to implement provisions on all these subjects other than transfer fees, and including general parameters on owner occupancy, on September 28, 2016, at

81 FR 66565. In the near future, HUD will be issuing a Mortgagee Letter to establish the specific owner occupancy percentage. For other provisions of section 301, HUD is considering the appropriate implementation action.

Section 401. Definition of Geographic Area for Continuum of Care Program.

Section 401 requires HUD to issue a notice by October 27, 2016 defining “geographic area” for the Continuum of Care (CoC) program.

Implementation action: HUD is currently developing the notice.

Section 701. HOPWA Allocations.

Section 701 of HOTMA adds four paragraphs to section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)). The new paragraph (1)(C) allows the Secretary to change the allocation formula set in paragraph (1)(A) to account for differences in housing costs and poverty rates. The new paragraph (4) allows the Secretary to set criteria by which the Secretary determines a grantee is unable to properly administer its allocation.

Implementation action: Both of these provisions require HUD to issue regulations to exercise the Secretary’s discretion, and HUD is developing those regulations.

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Ariel Pereira, Associate General Counsel for
Legislation and Regulations

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