

HOTMA Voucher Final Rule Briefing

Housing Opportunity Through Modernization Act of 2016

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

Scope of Changes

- ▶ Makes changes to over 100 regulations
 - ▶ Primarily changes Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) regulations
 - ▶ Codifies HOTMA provisions already implemented via Federal Register
 - ▶ Implements remaining HOTMA Voucher provisions
 - ▶ Changes regulatory provisions unrelated to HOTMA
 - ▶ Reduces regulatory burden on Public Housing Agencies (PHAs) and owners
 - ▶ Clarifies, simplifies, and, in some instances, eliminates HUD-imposed requirements
 - ▶ Eliminates obsolete regulatory provisions
- ▶ Considers 44 public comments

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)
- ▶ Final Rule, 89 Fed. Reg. 38224 (May 7, 2024)

Today and beyond...

- ▶ Today's training is intended to serve as a brief introduction to some of the most significant changes as a result of the HOTMA voucher final rule
- ▶ **This training *does not* cover all of the changes made by the HOTMA voucher final rule**
- ▶ HUD intends to make the following additional resources available:
 - ▶ Comprehensive implementation guidance
 - ▶ Many PIH Notices will require updates
 - ▶ Training and technical assistance

Effective Dates

- ▶ The HOTMA voucher final rule is effective June 6, 2024, except for certain provisions:
 - ▶ **PHA-owned certification and PHA-owned agreement certification:** 24 CFR 982.451(c), 24 CFR 983.154(h), and 24 CFR 983.204(e)
 - ▶ **PBV Housing Assistance Payments (HAP) contract rider:** 24 CFR 983.154(g) and 24 CFR 983.157

Compliance Dates

- ▶ Compliance is required on the effective date (June 6, 2024), except for the following provisions:
 - ▶ *90 days after effective date* (September 4, 2024)
 1. Information when family is selected: 24 CFR 982.301 and 24 CFR 983.252
 2. Payment standards: 24 CFR 982.503
 3. Homeownership program: 24 CFR 982.625 to 982.641
 4. PBV analysis of impact: 24 CFR 983.58(b)
 5. Overcrowded, under-occupied, and accessible PBV units: 24 CFR 983.260
 6. Section Eight Management Assessment Program (SEMAP): 24 CFR 985.3

Compliance Dates (continued)

- ▶ *180 days after effective date* (December 3, 2024)
 1. Payment standard changes: 24 CFR 982.505
- ▶ *One year after the effective date* (June 6, 2025)
 1. Independent entities for PHA-owned units: 24 CFR 983.57 and 24 CFR 983.155(b)
 2. Removal of families from PBV waiting list: 24 CFR 983.251(e)
 3. Occupancy of PBV units under the increased program cap and project cap excepted units: 24 CFR 983.262
 4. Administrative Plan. While 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.

Note: the delayed compliance date for revisions to existing Administrative Plan policies does not authorize delayed compliance with any other final rule provision

General Voucher Program Rules

- ▶ Highlighting today:
 - ▶ Non-metropolitan County Small Area Fair Market Rents (SAFMR)
 - ▶ Simplified Process to Adopt an Exception Payment Standard
 - ▶ Applying an Increase in the Payment Standard
 - ▶ Utility Allowances
 - ▶ Housing Quality Standards (HQS) Enforcement
 - ▶ PHA-owned Certifications
- ▶ Other major areas:
 - ▶ Inspection Flexibilities
 - ▶ Homeownership Option
 - ▶ Manufactured Home Space Rentals
 - ▶ Independent Entities for PHA-owned Units
 - ▶ Section Eight Management Assessment Program (SEMAP)

Non-metropolitan County Small Area FMRs

- ▶ HUD has traditionally published non-metropolitan county Fair Market Rents (FMRs) only
- ▶ Now HUD will begin publishing ZIP code level SAFMRs for non-metropolitan counties too
- ▶ PHAs may use these non-metropolitan SAFMRs, but are not required to do so
 - ▶ Exception payment standards
 - ▶ For entire jurisdiction as an “opt-in”
- ▶ 24 CFR 888.113(c)(3)

Simplified Process to Adopt an Exception Payment Standard up to 120% of FMR/SAFMR

- ▶ Under prior regulations, HUD had options for PHAs to request exception payment standards above the basic range
- ▶ In recent years, HUD has published a streamlined waiver notice simplifying the process to request those exception payment standards up to 120 percent of the FMR/SAFMR
- ▶ In this final rule, HUD makes permanent a simplified process to request exception payment standards up to 120 percent of the FMR/SAFMR

Simplified Process to Adopt an Exception Payment Standard up to 120% of FMR/SAFMR

- ▶ Upon notification to HUD, a PHA may adopt an exception payment standard up to 120 percent 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)

New Requirements for Applying an Increase in the Payment Standard

- ▶ If the payment standard amount is increased during the term of the HAP contract, the PHA must use the increased payment standard amount to calculate the monthly housing assistance payment for the family beginning no later than the earliest of:
 - ▶ (i) The effective date of an increase in the gross rent that would result in an increase in the family share;
 - ▶ (ii) The family's first regular or interim reexamination; or
 - ▶ (iii) One year following the effective date of the increase in the payment standard amount.
- ▶ The PHA may adopt a policy to apply a payment standard increase at other times
- ▶ 24 CFR 982.505(c)(4)

Utility Allowances

- ▶ An energy efficient utility allowance may be applied when an entire building meets Leadership in Energy and Environmental Design (LEED) or Energy Star standards
- ▶ A PHA may base its utility allowance on actual flat fees charged by an owner for utilities that are billed by the owner, if the flat fee is not greater than the utility allowance schedule amount
- ▶ 24 CFR 982.517

Enforcement of HQS

- ▶ Implements HOTMA provision governing enforcement of HQS
 - ▶ Provides a framework for the timing of discretionary HAP withholding, mandatory HAP abatement, or mandatory HAP contract termination, after deficiencies continue for specified periods
 - ▶ If contracts terminate, PHAs must give displaced families preference in public housing (PH) they operate and may use up to two months of abated HAP for costs directly associated with the relocation
 - ▶ Applies to HCV and PBV HAP contracts executed or renewed on or after Jun. 6, 2024
- ▶ HCV: 24 CFR 982.404; PBV: 24 CFR 983.208; PH: 24 CFR 960.202

Contracts for 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
- ▶ Option (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)

PBV Program Rules

- ▶ Highlighting today:
 - ▶ Noncompetitive Selection
 - ▶ Manufactured Homes
 - ▶ 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

PBV Program Rules

- ▶ Other major areas:
 - ▶ Definitions
 - ▶ Administrative Plans
 - ▶ Subsidy Layering Review
 - ▶ Record Retention
 - ▶ 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

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)

Attaching PBVs to Certain Manufactured Homes

- ▶ Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located
- ▶ 24 CFR 983.52(a)(5)

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
- ▶ 24 CFR 983.6, 983.54, 983.58, 983.59, 983.262

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)
- ▶ 24 CFR 983.56

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

Owner-Maintained Site-Based PBV Waiting Lists

- ▶ 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)

PBV OCAF Rent Adjustments

- ▶ PHA and owner may agree to automatic rent increases through an operating cost adjustment factor (OCAF)
 - ▶ Generally annual adjustment, but owner may request additional increases periodically and/or at contract extension
 - ▶ Rent to owner remains subject to rent reasonableness and other rent limitations
- ▶ 24 CFR 983.302

Thank you!

- ▶ Look for updates on the [HOTMA Resources webpage](#)
- ▶ PHAs and stakeholders of the HCV and PBV programs may send HOTMA-related questions to HOTMAVoucher@hud.gov

Appendix: Administrative Plan Examples

Examples:

- ▶ A PHA wishes to implement the new program flexibility at 24 CFR 983.251(c)(7) of the HOTMA voucher final rule, in order to allow an owner to maintain a waiting list for a PBV project. The PHA must adopt required Administrative Plan policies related to this waiting list change before the PHA may implement the change, because this is a new program flexibility never before available and for which no PHAs previously had Administrative Plan policies.
- ▶ A PHA's Administrative Plan policy with respect to PBV families' right to move is not compliant with the HOTMA voucher final rule requirements of 24 CFR 983.261(c) because the PHA's policy omits procedures for the family to contact the PHA. The PHA must update this Administrative Plan policy no later than June 6, 2025. However, the PHA must operate in a manner consistent with the HOTMA voucher final rule starting on the compliance date for 24 CFR 983.261 (June 6, 2024). This means the PHA must operate using procedures for the family to contact the PHA that are consistent with the HOTMA voucher final rule from June 6, 2024 forward, even if it does not update its Administrative Plan until June 6, 2025.

Appendix: Administrative Plan Examples (Cont.)

- ▶ A PHA wishes to operate a PBV program and has never adopted Administrative Plan policies regarding the PBV program. The PHA must adopt any needed Administrative Plan policies for operating a PBV program before the PHA may take any action with respect to PBVs, because this PHA will be using program flexibilities requiring adoption of new local policies not already present in the PHA's Administrative Plan.
- ▶ A PHA's Administrative Plan policy with respect to a PHA's offer of continued assistance for PBV families moving from wrong-size units is not compliant with the HOTMA voucher final rule requirements of 24 CFR 983.260(b) because the PHA's policy provides for an offer of tenant-based assistance in a program that cannot be used in any other PHA's jurisdiction (therefore, the program does not meet the definition of "comparable tenant-based rental assistance" in 24 CFR 983.3(b) of the HOTMA voucher final rule). The PHA must update this Administrative Plan policy no later than June 6, 2025. However, the PHA must operate in a manner consistent with the HOTMA voucher final rule starting on the compliance date for 24 CFR 983.260 (September 4, 2024). This means the PHA must offer continued assistance using a form of assistance allowable under 24 CFR 983.260(b) and must not offer continued assistance using the tenant-based assistance program that cannot be used in any other PHA's jurisdiction, from September 4, 2024 forward, even if it does not update its Administrative Plan until June 6, 2026.