



Special Attention of:
CPD Field Office Directors and Deputy Directors;
HOPWA Grantees

Notice: CPD-17-12
Issued: November 8, 2017

This notice remains effective until amended, superseded, or rescinded.

Cross References: 42 U.S.C. 12901-12;
Pub. L. No. 114-201, Title VII; Pub. L. No. 115-31, Div. K, Title II, Sec. 203.

This Notice supersedes Notice CPD-16-17

SUBJECT: Implementation of the Housing Opportunity Through Modernization Act Changes to the Housing Opportunities for Persons With AIDS Program (Revised)

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I. Purpose

The purpose of this Notice is to provide guidance concerning Title VII of the Housing Opportunity Through Modernization Act (HOTMA), Public Law 114-201, that amended section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to modernize the Housing

Opportunities for Persons With AIDS (HOPWA) allocation formula and address other administrative provisions, and section 853 (42 U.S.C. 12902) to add certain program definitions. HUD intends to undertake rulemaking in the future to conform HOPWA regulations at 24 CFR Part 574 to the new HOTMA provisions and propose other changes. However, with the exception of the provisions discussed in Section III. of this Notice, the HOTMA provisions became effective on July 29, 2016, and impact HOPWA formula allocations in FY 2017 and subsequent years.

This Notice supersedes and replaces the previously issued Notice CPD-16-17, Implementation of the Housing Opportunity Through Modernization Act Changes to the Housing Opportunities for Persons With AIDS Program, to provide updated information. An amendment to section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) was enacted on May 5, 2017, under the Consolidated Appropriations Act, 2017, Public Law 115-31, to modify the “Stop-Loss” method for the five-year phase-in of the revised HOPWA formula calculation authorized under HOTMA. Section II.E. of this Notice details the “Stop-Loss” provisions, as amended. The amendment provided year-over-year funding stability across grantees by limiting decreases and increases to a grantee's share of total available formula funds received in the preceding fiscal year.

Language has also been added to Section II.C. of this Notice to clarify that 75 percent of HOPWA formula funds allocated to each eligible Metropolitan Statistical Area or State will be based on the area's share of the total number of individuals living with HIV or AIDS in all such eligible areas. Notice CPD-16-17 misstated that 75 percent of HOPWA formula funds allocated to each eligible Metropolitan Statistical Area or State will be based on the area's share of the total number of individuals living with HIV or AIDS in the United States. This correction clarifies how HOPWA formula funding is allocated by HUD consistent with the revised formula calculation under HOTMA.

II. Changes that Became Effective on July 29, 2016

A. Eligibility

HOTMA amended section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to make the following changes to the eligibility requirements for HOPWA formula funding:

1. The eligibility requirements for HOPWA formula awards changed from cities that are the most populous unit of general local government in a metropolitan statistical area (MSA) with more than 500,000 people and more than 1,500 cumulative AIDS cases and States with more than 1,500 cumulative AIDS cases outside of eligible MSAs to cities that are the most populous unit of general local government in an MSA with more than 500,000 people and more than 2,000 persons living with HIV or AIDS and States with more than 2,000 persons living with HIV or AIDS outside of eligible MSAs (see 42 U.S.C. 12903(c)(1)(A)).

2. Grantees that received a HOPWA formula allocation in FY 2016 will remain eligible for subsequent allocations until FY 2025, as long as the HOPWA program receives appropriated funding and the grantee has a HUD-approved Consolidated Plan (see 42 U.S.C. 12903(c)(2)(A) and (C)).
3. HUD must redetermine the continued eligibility of a grantee that received an allocation in FY 2016 at least once during the 10-year period following FY 2016. In allocating FY 2026 HOPWA formula funds, HUD will redetermine the continued eligibility of grantees that received allocations in FY 2016 and subsequent years. In FY 2026, States and MSAs must meet the eligibility criteria of the HOPWA formula in effect at that time to receive a formula allocation regardless of previous status as a HOPWA grantee.

B. Source of Data

Previously, the data used to determine eligibility for HOPWA formula funding and allocate resources was the cumulative number of AIDS cases confirmed by the Director of the Centers for Disease Control and Prevention (CDC) as of March 31 of the preceding fiscal year. HOTMA changed the source of data used to determine eligibility and allocate resources to the number of individuals living with HIV or AIDS as confirmed by the Director of the CDC as of December 31 of the most recent calendar year for which such data are available (see 42 U.S.C. 12903(c)(1)(B)). For the FY 2017 HOPWA formula allocations, this is the number of individuals living with HIV or AIDS reported to and confirmed by the CDC as of December 31, 2015.

The term ‘HIV’ is now defined at 42 U.S.C. 12902(15) as infection with the human immunodeficiency virus. The term ‘individuals living with HIV or AIDS’ with respect to the counting of cases in a geographic area during a period of time, is now defined at 42 U.S.C. 12902(16) as the sum of—

- (A) the number of living non-AIDS cases of HIV in the area; and
- (B) the number of living cases of AIDS in the area.

C. Allocation of Resources

Section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) was amended through HOTMA to make the following changes to the method of allocating HOPWA formula resources:

1. The formula requirement that 75 percent of formula funds be distributed to eligible States and MSAs based on cumulative AIDS cases was changed to be based on individuals living with HIV or AIDS (see 42 U.S.C. 12903(c)(1)(A) and (B)). Seventy-five (75) percent of funds allocated to a particular MSA or State will be based on the area’s share of the total number of individuals living with HIV or AIDS in all such eligible areas.
2. The formula requirement that 25 percent of funds be distributed to cities with high per capita incidence of AIDS will instead be allocated based on the relative housing costs and poverty rates of eligible States and MSAs (see 42 U.S.C. 12903(c)(1)(C)).

- (a) Fifty (50) percent of funds in the 25 percent pool (12.5 percent of total formula funds) will be allocated to eligible MSAs and States based on share of total two-bedroom Fair Market Rent (published annually by HUD) weighted for persons living with HIV or AIDS in all such eligible areas.
- (b) Fifty (50) percent of funds in the 25 percent pool (12.5 percent of total formula funds) will be allocated to eligible MSAs and States based on share of poverty rate weighted for persons living with HIV or AIDS in all such eligible areas. For each eligible MSA and State, the poverty rate is derived from the same data source used in the Community Development Block Grant (CDBG) calculation (American Community Survey) from the same year.

The Secretary may select other methodologies to distribute the 25 percent pool of formula funds in the future through regulation.

D. Adjustments to Grants Based on FY 2016 Appropriations Acts

HOTMA amended the HOPWA statute to provide that allocations to grantees be adjusted annually based on the administrative provisions included in FY 2016 Appropriations Acts (see 42 U.S.C. 12903(c)(2)(B)).

The following four grants have special arrangements under FY 2016 Appropriations Acts administrative provisions:

1. The City of Paterson, NJ, is the grantee for Bergen County and Passaic County, NJ, and will be assigned the formula data of these counties. Accordingly, the City of Paterson will be allocated the amounts under the HOPWA formula that are based on the formula data in these counties.
2. Jersey City, NJ, is the grantee for Hudson County, NJ, and will be assigned the formula data of Hudson County. Accordingly, Jersey City will be allocated the amounts under the HOPWA formula that are based on the formula data in Hudson County.
3. Wake County, NC, is the grantee for the Raleigh, NC MSA, and will be assigned the formula data of the Raleigh, NC MSA. Accordingly, Wake County will be allocated the amounts under the HOPWA formula that are based on the formula data in the Raleigh, NC MSA.
4. A portion of the funds allocated to the Wilmington, DE MSA based on formula data in the portion of the MSA that is located in New Jersey will be allocated to the State of New Jersey for activities in Salem County, NJ.

HUD will reevaluate these special arrangements when the eligibility of all HOPWA formula grantees is redetermined for FY 2026.

FY 2016 Appropriations Acts authorized HUD to maintain the eligibility of States that otherwise

would not be eligible for formula funding based on cumulative AIDS cases when an MSA in that State newly qualifies for a direct formula allocation. In accordance with 42 U.S.C. 12903(c)(2)(A), all States that received allocations in 2016 pursuant to this provision will continue to be eligible to receive an allocation under the terms of the new HOPWA formula. When the eligibility of all HOPWA formula grantees is redetermined for FY 2026, these State grantees must meet the eligibility criteria of the HOPWA formula in effect at that time to continue receiving allocations (see Section II.A. of this Notice).

E. Adjustment to Grants (“Stop-Loss”)

Changes to grantee allocations resulting from the revised formula allocation method described in Section II.C. of this Notice will be phased-in over five years. For each of the following fiscal years, 2017, 2018, 2019, 2020, and 2021, each grantee that received an allocation in the previous fiscal year will not gain more than 10% or lose more than 5% of the share of the total available formula funds that the grantee received in the preceding fiscal year (see 42 U.S.C. 12903(c)(2)(D)). Grantees should note that this provision does not cap year-over-year funding changes, but instead caps the gain or loss of a grantee’s annual percentage share of total available formula funds.

Example: “Community A”

	FY16	FY17
Allocation	\$11,500,000	\$11,600,000
Total Available Formula Funds	\$301,500,000	\$320,400,000
Share of Total Available Formula Funds	3.81%	3.62%
Difference in Share of Total Available Formula Funds		-5%

Because the HOPWA program received a \$21,000,000 increase in appropriations for FY 2017, Community A’s allocation increased over its FY 16 allocation, but its share of the available formula funds decreased at the cap of 5%. Community A received 3.81% of the total available HOPWA formula funds in FY 2016. It received 3.62% of the total available formula funds in FY 2017. This represents a 5% loss in Community A’s share of total available formula funds from the preceding fiscal year.

Example: “Community B”

	FY16	FY17
Allocation	\$1,540,538.00	\$1,755,395.00
Total Available Formula Funds	\$301,500,000	\$320,400,000

Share of Total Available Formula Funds	.51%	.55%
Difference in Share of Total Available Formula Funds		7.23%*

*Result based on rounding percentages to the nearest hundredths.

Community B received .51% of the total available HOPWA formula funds in FY 2016. It received .55% of the total available formula funds in FY 2017. This represents a 7.23% gain in Community B's share of total available formula funds from the preceding fiscal year, which is within the 10% cap.

F. Alternative Grantees

Previously, HOPWA grantees were not authorized to designate an alternative grantee to administer its formula allocation on its behalf. A limited exception is that Appropriations Acts had given HUD the authority to honor a written agreement made annually between the city initially designated to be a formula grantee and its State(s), authorizing its State(s) to assume the responsibility for administering grant funds on a city's behalf. This provision is no longer necessary because of the HOTMA provision on alternative grantees detailed below.

HOPWA program statutory language was amended under HOTMA to authorize HUD to award funds to an alternative grantee upon the request of any eligible State or city that is the most populous unit of general local government in an MSA (see 42 U.S.C. 12903(c)(3)(A)). The request must be based on a written agreement between the eligible State or city that is the most populous unit of general local government in an MSA and the alternative grantee. The agreement must address how the alternative grantee will take actions consistent with the eligible State or city's HUD-approved Consolidated Plan. The written agreement term may be a maximum of ten years, but can be renewed by the parties with approval of the Secretary (see 42 U.S.C. 12903(c)(3)(B)). The alternative grantee must be a Public Housing Agency, a Unified Funding Agency, a State, a unit of general local government, or an instrumentality of State or local government (see 42 U.S.C. 12903(c)(3)(C)).

The alternative grantee will administer the formula allocation in place of the eligible State or city. Therefore, the originally eligible State or city that is the most populous unit of general local government in an MSA will have no responsibility for the administration or oversight of the grant; a grant agreement will be executed between HUD and the alternative grantee.

G. Discontinuation of Minimum Formula Allocations

Previously, 42 U.S.C. 12903(c) provided that eligible States and MSAs could not receive less than a \$200,000 allocation. The amendments made under HOTMA removed this provision, however, the new provisions ensuring continued eligibility of FY 2016 grantees (see Section II.A. of this Notice) and phasing the changes to allocations in over five years (see Section II.E. of this Notice) will help ensure relative stability of allocation amounts as grantees are transitioned to the new method for allocating formula funds described in Section II.C. of this Notice.

III. Changes that Require Rulemaking

HOTMA amended the HOPWA statute to allow HUD to reallocate formula allocations if an eligible State or MSA declines an allocation or the Secretary determines that the eligible State or MSA is unable to properly administer its grant funds (see 42 U.S.C. 12903(c)(4)). The new statutory language provides the following options for reallocating formula grant funds in these situations:

1. Reallocate funds reserved for a State to eligible metropolitan statistical areas within the State on a pro rata basis. Where there are no such eligible areas within the State, the reallocation will be made to the CDBG entitlement communities in the State on a pro rata basis (see 42 U.S.C. 12903(c)(4)(A)).
2. Reallocate funds reserved for a metropolitan statistical area to the State(s) in which the metropolitan statistical area is located (see 42 U.S.C. 12903(c)(4)(B)).
3. If the Secretary is unable to make a reallocation to a metropolitan statistical area, CDBG entitlement community, or State, the funds will be distributed on a pro rata basis via the HOPWA allocation formula described in Section II.C. of this Notice (see 42 U.S.C. 12903(c)(4)(C)).

42 U.S.C. 12903(c)(4) requires HUD to undertake rulemaking to establish in regulation the criteria the Secretary will use to determine if an eligible State or MSA should have its grant funds reallocated due to a lack of capacity to administer the allocation. Therefore, the reallocation provisions at 42 U.S.C. 12903(c)(4) will not go into effect with respect to a determination by the Secretary under that section until a final rule is published by HUD. Nonetheless, that section is in effect with respect to a State or MSA that declines its allocation.

IV. Point of Contact for Further Information

If you have questions pertaining to this Notice or need additional information on how HOTMA affects the HOPWA program, please contact Amy Palilonis, Senior Program Specialist, Office of HIV/AIDS Housing, at (202) 402-5916 or Amy.L.Palilonis@hud.gov.