

Housing Opportunity Through Modernization Act of 2016

Definition of PHA-owned; PBV Provisions

PIH Implementation Notice





HOTMA Background

- Enacted 7/29/16 (P.L. 114—201), making numerous changes to statutes that govern HUD programs.
- Previously published guidance:
 - On 10/24/16, HUD published initial implementation guidance in the *Federal Register* (81 FR 73030).
 - On 1/18/17, HUD published an FR Notice (82 FR 5458) that served as the implementation notice for several of the provisions affecting the Housing Choice Voucher (HCV) and PBV programs and sought comment on various questions. (The provisions implemented by this Notice had an effective date of 4/18/17.)
 - On 7/14/17, HUD published in the FR (82 FR 32461) some technical corrections to the 1/18/17 FR Notice.

https://www.hud.gov/program_offices/public_indian_housing/hotmaresources



PIH Implementation Notice

- This Webcast covers the material in the recently published PIH Implementation Notice, which is available on the HUD Web site.
- The notice includes the HOTMA provisions that were implemented in the 1/18/17 FR Notice (as corrected on 7/14/17). The following HOTMA items have not yet been implemented:
 - Direct to HAP (i.e., no AHAP) for new construction/rehab;
 - Rent adjustment by an operating cost adjustment factor;
 - Owner-maintained, site-based waiting lists;
 - Environmental review requirements for existing housing.
- To consolidate guidance on the PBV program, the Notice also incorporates past PBV guidance, some of which is unchanged by HOTMA.



The PIH Implementation Notice Supersedes Five Notices in their Entirety

Notices PIH 2002–22 and 2006–16

- The two notices address rent determinations for PBV units at properties financed with Low Income Housing Tax Credits (LIHTCs).
- Both notices are rescinded.
- PBV rents for LIHTC units under existing and prospective PBV HAP contracts are determined in accordance with PBV regulations at 24 CFR §983.301.

Notice PIH 2011–54

- “PHA-owned units” is revised by HOTMA, which enacts a statutory definition of such units.
- “Proposal Selection Process” is revised by HOTMA to authorize a PHA to attach PBV assistance to certain PHA-owned projects without following a competitive process.
- The balance of the Notice is included in Appendix II to the PIH Implementation Notice.

Notice PIH 2015–05

- “Section I” is included in Appendix III to the PIH Implementation Notice, with minor updates to reflect previous changes to VMS guidance unrelated to HOTMA.
- “Section II” is superseded by HOTMA, under which a PHA may project-base up to 20 percent of its ACC authorized units.
- “Section III” is changed by HOTMA, which revises the definition of PHA-owned units.
- The PIH Implementation Notice also covers the role of the independent entity with respect to PHA-owned units.

Notice PIH 2015–10

- The HUD approval process and “review factors” described in PIH 2015–10, which addresses the project-basing of HUD-VASH vouchers, are superseded by HOTMA.
- “Confirming sufficient budget authority” is revised by HOTMA to allow PHAs to calculate their own PBV program cap.



Structure of PIH Implementation Notice

- The PIH Implementation Notice is divided into attachments and appendices.
- Each attachment addresses one major topic.
- The four appendices cover (1) PBV program cap calculation instructions; (2) PHA plan, Administrative Plan, and other PBV topics; (3) reporting; and (4) HCV, homeownership, and PBV inspection requirements.
- This Webcast is divided into segments; each segment represents an attachment or an appendix.



Presenters

From the HUD/PIH Housing Voucher Management & Operations Division:

- Ryan Jones, Housing Program Specialist
- Jennifer Lavorel, Housing Program Specialist
- Amaris Rodriguez, Housing Program Specialist
- Phyllis Smelkinson, Housing Program Specialist



Attachment A: PHA-Owned Units



PHA-OWNED UNITS

- Previously, a PHA-owned unit was only defined in regulation. With the passing of HOTMA, now PHA-owned units are defined in law.
- If a unit is PHA-owned, the PHA must identify and use an independent entity to perform certain functions concerning the project.
- The new definition of PHA-owned applies to all PHA-owned units, including units rented under the HCV program, units bought under the homeownership option, and units project-based under the PBV program.

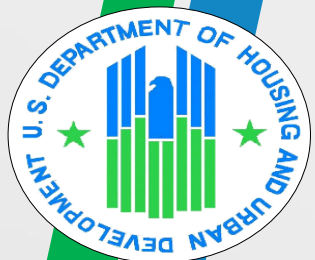


PHA-OWNED UNITS

What is a PHA-owned unit under HOTMA?

A unit that is located in a project that is:

1. Owned by the PHA (including the PHA having a “controlling interest” in the entity that owns the unit);
2. Owned by an entity wholly-controlled by the PHA; or
3. Owned by a limited liability company (LLC) 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.



PHA-OWNED UNITS

**What is a controlling
interest?**

Holding more than 50% of the stock of any corporation.

Having the power to appoint more than 50% of the members of the board of directors of a non-stock corporation (such as a non-profit corporation).

More than 50% of the members of the board of directors of any corporation also serve as directors, officers, or employees of the PHA.

Holding more than 50% of all managing member interests.

Holding more than 50 % of all general partner interests in a partnership.

Having equivalent levels of control in other organizational structures.



PHA-OWNED UNITS

Under which scenario would a unit not be considered PHA-owned per HOTMA?

1. The PHA holds a fee interest as ground lessor of the property on which the building is situated, but no ownership interest in the unit itself;
2. The PHA holds only a security interest under a mortgage or deed of trust on the unit; or
3. The PHA has only a non-controlling interest in an entity that owns the unit or in the managing member or general partner of an entity that owns the unit.



PHA-OWNED UNITS - Examples

Scenario 1:

- 4 of the 6 members of ABC Corporation's Board of Directors are also employees of PHA A, but none of them perform any work directly related to PHA A's HCV and PBV programs.
- ABC Corporation owns the View Gardens project, which was selected by PHA A for PBV assistance.

Result:

PHA-owned. In this scenario, PHA A has a controlling interest over ABC Corporation because more than 50% of ABC Corporation's Board of Directors are also employees of the PHA.



PHA-OWNED UNITS - Examples

Scenario 2:

- PHA A owns the land where the View Gardens project is located.
- PHA A has no ties to ABC Corporation, the entity which owns the View Gardens project.
- View Gardens is selected for PBV assistance by PHA A.

Result:

Not PHA-owned. In this scenario, PHA A owns only the land but has no ownership of the project or any ties that would result in a controlling interest of ABC Corporation.



PHA-OWNED UNITS - Examples

Scenario 3:

- PHA A can appoint 3 of the 6 members of the Board of Directors of ABC, Inc., a non-profit organization.
- ABC, Inc. owns View Gardens, a project that was selected by PHA A for PBV assistance.

Result:

Not PHA-owned. In this scenario, PHA A has no controlling interest over ABC, Inc. because they can appoint only 50% (not more than 50%) of the Board of Directors of ABC, Inc.



PHA-OWNED UNITS - Examples

Scenario 4:

- PHA A holds 51% of ABC Corporation's stock.
- ABC Corporation owns the View Gardens project, which was selected by PHA A for PBV assistance.

Result:

PHA-owned. In this scenario, PHA A has a controlling interest over ABC, Corporation because they hold more than 50% of ABC Corporation's stock.



PHA-OWNED UNITS

When does the new PHA-owned definition apply?

- The new PHA-owned definition applies to PBV HAP Contracts and AHAPs executed on or after April 18, 2017.



PHA-OWNED UNITS

What happens if a project is under a PBV HAP contract executed before April 18, 2017, but due to the definitional change, it's no longer considered PHA-owned?

- The project remains classified as PHA owned for purposes of program requirements and monitoring until the PHA obtains an opinion from its legal counsel that the project is no longer PHA owned.



PHA-OWNED UNITS

What if the ownership structure of a project changes in the future and as a result the project is no longer PHA-owned under the new definition?

- The project remains classified as PHA owned for purposes of program requirements and monitoring until the PHA obtains an opinion from its legal counsel that the project is no longer PHA owned.



PHA-OWNED UNITS - Examples

Scenario 5:

- PHA A executed a PBV HAP contract with ABC Corporation for the View Gardens project on May 1, 2015.
- PHA A holds 45% of the stock of ABC Corporation.
- The PBV HAP contract was executed prior to HOTMA and was considered PHA-owned under the previous definition.

Result:

PHA A may discontinue the use of an independent entity for View Gardens after it has obtained an opinion from its legal counsel that View Gardens is not PHA-owned under the new statutory definition.



PHA-OWNED UNITS - Examples

Scenario 6:

- PHA A held 55% of ABC Corporation's stock at the time it executed a PBV HAP contract with ABC Corporation for the View Gardens project.
- The HAP contract was executed on May 1, 2017.
- PHA A has since sold some its ABC Corporation's stock and it now holds 45% of such stock.

Result:

PHA A may discontinue the use of an independent entity for View Gardens after it has obtained an opinion from its legal counsel that View Gardens is no longer PHA-owned under the new statutory definition.



PHA-OWNED UNITS

What must I do once my PHA's legal counsel renders an opinion?

- Keep the legal opinion in your files (for the length of the PBV HAP contract, the HCV HAP contract, or Homeownership assistance, as applicable).
- If the legal opinion specifies that the project is no longer PHA-owned, you are no longer required to use an independent entity to perform the applicable responsibilities concerning the project.



PHA-OWNED UNITS

Am I required to seek an opinion from my PHA's legal counsel in all cases where my agency determines that a project is not PHA-owned?

- While you may want to seek a legal opinion in all cases where your agency determines that a project is not PHA-owned, you are only required to do so in the cases described in slides #17 and #18 above.



PHA-OWNED UNITS

What if the ownership structure of a project changes in the future and as a result the project is now considered PHA-owned?

- The PHA must identify to the local HUD Field Office of Public Housing, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform the applicable independent entity responsibilities.



PHA-OWNED UNITS - Examples

Scenario 7:

- PHA A held 25% of ABC Corporation's stock at the time it executed a PBV HAP contract with ABC Corporation for the View Gardens project.
- PHA A has since bought more of ABC Corporation's stock and it now holds 51% of such stock.

Result:

View Gardens is now considered PHA-owned under the statutory definition and the PHA must identify to the local HUD Field Office of Public Housing the independent entity it will use for View Gardens.



PHA-OWNED UNITS - RAD

What if, under a RAD conversion, my agency has been deemed to have sufficient control or ownership over the converting project?

- RAD uses a different definition of control/ownership for purposes of HUD's requirement for ownership or control of the Covered Project by a public or non-profit entity for RAD conversions.
- Therefore, under certain circumstances, a project may meet the RAD definition of ownership or control, but may not be considered to be PHA owned under PBV requirements. In such a circumstance, the PHA would not be required to use an independent entity.



Attachment B: PHA-Owned Units and Independent Entities



INDEPENDENT ENTITIES

Which entity can perform the independent entity functions?

- The unit of general local government or a HUD-approved independent entity.
- If the PHA itself is the unit of general local government or an agency of such government, then the next level of general local government may perform such functions without HUD approval.
 - For example, if the PHA itself is the city or an agency of the city, then the county or state government may perform the functions without HUD approval.
- The PHA may choose to have a HUD-approved entity serve as the independent entity even if there is another level of local government that may perform such functions.



INDEPENDENT ENTITIES

What if there is no next level of general local government?

- The independent entity must be a HUD-approved public or private entity other than the PHA or the unit of general local government of which the PHA is a part.



INDEPENDENT ENTITIES

Characteristics of an Independent Entity:

No legal connection to the PHA.

No financial connection to the PHA (except for compensation for services performed in connection to PHA-owned units).

No other connection to the PHA that would cause an improper influence.

Unbiased performance of functions relating to PHA-owned units.



INDEPENDENT ENTITIES

Independent entity functions:

Determining rent reasonableness. Or, reasonableness of the sale price and financing (for homeownership families).

Inspecting units. And, reviewing the inspection report prepared by the family's independent inspector (for homeownership families).

Review the contract of sale (for homeownership families).

Assist the family in negotiating rent with the owner (for HCV families).



INDEPENDENT ENTITIES

Independent entity functions:

Reviewing the PBV selection process.

Establish term of initial and any renewal PBV HAP contract.

Establishing PBV contract rents (initial rent and re-determined rent).

Communicating the results of inspections and rent reasonableness determinations.



INDEPENDENT ENTITIES – Review of PBV Selection Process

- As it relates to the PBV selection process, both competitive and non-competitive selections must be reviewed by the local HUD Office of Public Housing or the independent entity.
- Before the PHA may finalize the selection process, the HUD Field Office or the independent entity must provide a letter stating that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA's Administrative Plan.
- The PHA's selection procedures must apply to all PBV proposals and must be designed in a manner that does not effectively eliminate the submission of proposals for non-PHA-owned units or give undue preferential treatment (e.g., additional points) to PHA-owned units.



INDEPENDENT ENTITIES

Review of PBV Selection Process

Submission Requirements

All proposals submitted in connection with the particular selection, including proposals submitted for non-competitive selections (in accordance with 24 CFR 983.51(b)(2)).

A copy of the relevant section of the PHA's Administrative Plan.

A copy of any standard operating procedures, worksheets, checklists, or other work product used in the selection process.

If the proposal was selected competitively, a copy of the solicitation.

For non-competitive selections, a copy of the proposal for the previous competition and any award letter.

Any other document deemed necessary by HUD or the independent entity.



INDEPENDENT ENTITIES – PBV Rents

- The independent entity determines rent (initial rent to owner and re-determined rent to owner) for PHA-owned units in accordance with the same requirements as for other PBV units.
- Rent to owner is re-determined by written notice from the independent entity to the PHA specifying the amount of the re-determined rent.
- The independent entity notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. Such amendments must be documented by a signed exhibit to the HAP contract.



INDEPENDENT ENTITIES - Inspections

- The PHA must provide families with up-to-date contact information for the independent entity and explain that a family requesting an inspection of the unit makes such a request directly to the independent entity.
- Appendix IV of the notice provides more information on HCV, Homeownership, and PBV inspection requirements.



INDEPENDENT ENTITIES - RAD

- The independent entity re-determines rent for RAD PBV units. That is, the independent entity is responsible for conducting the rent reasonableness determination and for processing Operating Cost Adjustment Factor (OCAF) adjustments for RAD PBV units.
- The review of the PHA selection process by an independent entity is waived for RAD PBV conversions.



INDEPENDENT ENTITIES – HUD Approval Process

- HUD changed the existing policy for independent entity review and approval by superseding the requirements established under Section III of Notice PIH 2015–05.
- Notice PIH 2015–05 required a PHA to submit documentation that demonstrated or supported the independent nature of the parties' relationship. With the publication of this notice, PHAs must, instead, submit a joint certification.



INDEPENDENT ENTITIES – HUD Approval Process

What to submit

- A joint PHA and independent entity certification.
- Dated and signed by the executive director, or equivalent position, of the PHA and the independent entity.
- Which clearly states the name, address, and point of contact for both the PHA and the proposed independent entity.
- And, certifies to the autonomous relationship between the PHA and the independent entity.

When to submit

- Before the function to be performed by the entity takes place.
- Consider the functions to be performed by the independent entity, whether your agency will use more than one independent entity for different functions, the HUD processing time, and how all of these elements interplay with the expected action (HCV HAP contract execution, homeownership closing, PBV proposal selection, etc.).

Other considerations

- The HUD Office of Public Housing retains the discretion to accept the certification on its face or to request additional information, or to use information available to the HUD Office, to question the validity of the certification.



INDEPENDENT ENTITIES

Can my agency use different independent entities to perform different functions?

- Yes. In such cases, the PHA must submit for approval each independent entity it plans to use and identify the function the entity will perform.
- PHAs are not required to, but may, submit all independent entities at the same time.



INDEPENDENT ENTITIES

Am I required to go through the HUD approval process if I am using a previously approved independent entity?

- No. However, if your agency will use an independent entity to perform a function other than the function for which the independent entity was previously approved, then you must certify in writing to HUD that you will use a previously HUD-approved independent entity to perform a new function (which must be identified in the certification).
- The entity must be qualified to perform the function.



INDEPENDENT ENTITIES

Payment for independent entity services

Eligible Sources of Funds

- HCV administrative fees.
- HCV administrative fee reserve.
- MTW PHAs - other sources if consistent with MTW Plan.

Ineligible Sources of Funds

- Other HUD program receipts.
- Families.



Attachment C: Program Limitation (Program Cap)



Program Limitation (Program Cap)

- PHA may attach PBV assistance to not more than 20% of a PHA's ACC authorized units.
 - "Authorized units" means the number of units under the PHA's current ACC.
- Previous limit was 20% of the voucher budget authority.
- The PHA is responsible for:
 - Ensuring sufficient budget authority will be available at the point of contract execution.



Program Limitation (Program Cap)

Example:

$$20\% \times 250 \text{ ACC Authorize Units} = \text{Program Cap of 50 units}$$



Program Limitation (Program Cap)

- What must be submitted?

See Appendix I
program cap
calculation
instructions

1. Total number of
units authorized
under the ACC

2. Total number of
PBV units entirely
excluded from the
program limitation

3. Number of units
under 10% program
cap exception
category

4. Total number of
units committed to
PBV

5. Number of units to
which the PHA is
proposing to attach
project-based
assistance through the
new RFP or selection



Program Limitation (Program Cap)

Information submitted no later than 14 days prior to:

- Issuing a request for proposal (RFP)
- Selecting a project based on a previous competition
- If applicable, selecting a project without following a competition process.

Submit information to:

- pbvsubmission@hud.gov
- The sample PBV Program Cap Calculation Worksheet may be included.

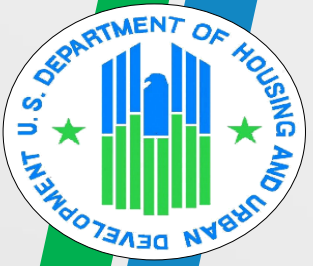


Program Limitation (Program Cap)

- Local HUD Office of Public Housing will determine whether proposal falls within the program limitation.
- HUD response by email.
- HUD's approval does not mean that it has confirmed PHA budget authority.

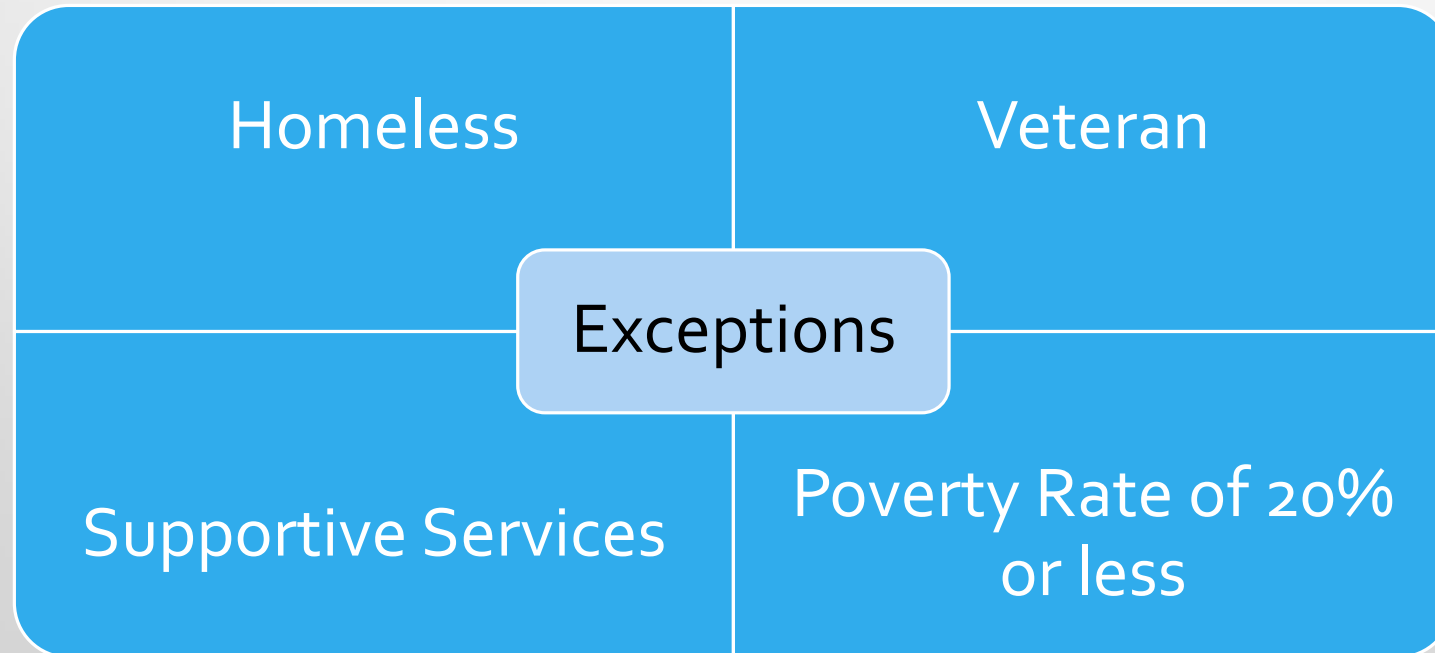


Attachment D: PBV Program Limitation — 10 Percent Increase for Eligible Units



PBV Program Limitation – 10% Increase for Eligible Units

- PHA may project-base an additional 10% of its units above the 20% program limit.
- Units must fall into an eligible exception category.





PBV Program Limitation – 10% Increase for Eligible Units

Exception Category - Homeless

- Units specifically made available to house individuals and families who meet the definition of homeless under Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C 11302).
- Complete definition provided in Attachment D.
- PHA may limit units to be covered under the exception category to a specific subset of homeless.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category - Veteran

- Units specifically made available to house families that are comprised of or include a veteran.
- PHA may further define veteran in its Administrative Plan.
- Example: An individual with an “other than dishonorable” discharge status who is ineligible for healthcare provided through the Veterans Health Administration.
- PHAs have discretion in establishing verification of eligibility.
- PBV HUD-VASH units applied for by a PHA and awarded specifically for PBV out of HUD-VASH appropriated funding are not included in this exception as they are already excluded from program cap.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category – Supportive Services

- Units provide supportive housing to persons with disabilities or to elderly persons.
- Supportive housing means:
 - Project that makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category – Supportive Services

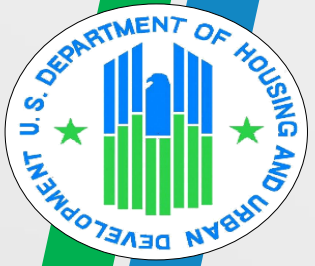
- Services may include but are not limited to:
 - Meal service adequate to meet nutritional need;
 - Housekeeping aid;
 - Personal assistance;
 - Transportation services
 - Health-related services;
 - Educational and employment services; or
 - Other services designed to help the recipient live in the community as independently as possible.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category – Supportive Services

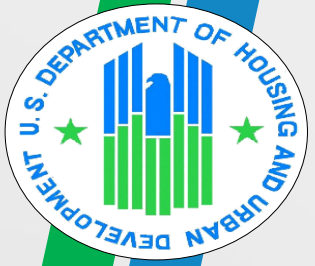
- Admin Plan must include:
 - Types of services
 - Extent to which such services will be provided (e.g. length of time services will be provided to a family, frequency of services, and depth of services)
- Services do not have to be made available by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project.
- Participation in the services cannot be required.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category – Supportive Services

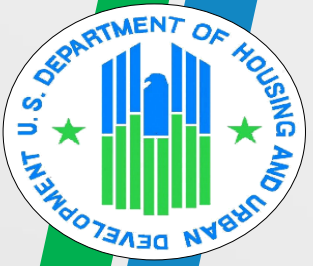
- With exception of an assisted living facility, tenants may not be required to pay for the meals or services being offered.
- Non-payment of such charges by the family is not grounds for termination of tenancy.
- In the case of an assisted living facility receiving PBV assistance, owners may charge families for meals or supportive services.
- These charges may not be included in the rent to owner or the calculation of reasonable rent.



PBV Program Limitation – 10% Increase for Eligible Units

Exception Category – Poverty Rate of 20%

- Units are located in a census tract with a poverty rate of 20% or less.
- Determined in the most recent American Community Survey 5-Year Estimate.
- Project that qualifies for increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in poverty rate for the census tract.
- Link to obtain poverty rate information included in Attachment D.



PBV Program Limitation – 10% Increase for Eligible Units

Impact on existing contracts

- PBV units that fall into one of the 4 exception categories may be covered by the 10% exception authority only if the units are:
 - Covered under a HAP contract first executed on or after April 18, 2017.
- PHAs do not need to reach the 20 percent program cap before they can designate eligible units for the 10 percent exception category.



PBV Program Limitation – 10% Increase for Eligible Units

Submission requirements

- PHA must identify the exception category and number of units that qualify.
- Information included in program cap submission.
- See Appendix I of Notice on calculating the number of voucher units that may be project-based.
- Refer to submission requirements described in Attachment C of Notice.



Attachment E: Income-Mixing Requirement (Project Cap)



PROJECT CAP

The project cap refers to the number of units in a project that can be subsidized with PBV assistance.

Pre-HOTMA Cap

- 25% of the units in a project.

HOTMA Cap

- Higher of: 25 units or 25% of units.

Increased HOTMA Cap

- 40% of units in projects located in census tract with poverty rate of 20% or less.



PROJECT CAP – Example 1

Total # of units in the project:	60
Pre-HOTMA project cap:	15 (60×0.25)
Post-HOTMA project cap:	25 (higher of: 25 units or 15 units (60×0.25))



PROJECT CAP – Example 2

Total # of units in the project:	20
Pre-HOTMA project cap:	5 (20×0.25)
Post-HOTMA project cap:	20 (higher of: 25 units or 5 units (20×0.25))



PROJECT CAP – Example 3

Total # of units in the project, which is located in a low-poverty census tract:	80
Pre-HOTMA project cap:	20 (80×0.25)
Post-HOTMA project cap:	32 (higher of: 25 units or 32 units (80×0.40))



PROJECT CAP

How does my agency determine that a project is located in a census tract with a poverty rate of 20% or less?

- HUD has made this information available at the following address:
https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project.
- Note that a project that qualifies for the increased project cap at the time of HAP contract execution continues to qualify for the exception for the length of the contract regardless of changes in the poverty rate for the census tract in which the project is located.



PROJECT CAP

Is there any other scenario where a PHA could project base 40% of the units in a project?

- Yes. HOTMA allows for an increased project cap for areas in which vouchers are difficult to use.
- However, HUD has not yet defined and implemented the exception authority for these “difficult to use” areas. Therefore, the 40 percent exception applies only to census tracts with poverty rates of 20 percent or less at this point.



PROJECT CAP

- An exception to the project cap means that a particular category of units is excluded from the project cap.
- Exception categories include:

Pre-HOTMA

- Units for elderly families.
- Units for disabled families.
- Units for families receiving supportive services.

Post-HOTMA

- Units for elderly families.
- Units for families eligible for supportive services.



PROJECT CAP - Example

Total # of units in project:	60
Units for elderly families (excepted units):	20
Post-HOTMA project cap:	25 (higher of: 25 units or 15 units (60×0.25))
Total units in project that may be PBV'd:	45 (20 excepted units + 25 project cap)



PROJECT CAP

Is there a limit to the number of units in a project that can be excepted?

- No. A PHA can except all of the units in a project, or part of the units in a project.
- And, a PHA may combine exception categories in a particular project.



PROJECT CAP

Can I substitute excepted units for non-excepted units in a project?

- Yes. As units turnover, a PHA may generally transfer the exception status from one unit to another, provided it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 24 CFR §983.207(a).



PROJECT CAP

Am I required to designate the entire project as an elderly project?

- No. Under the PBV program, projects are not “designated” as elderly as is the case in other programs, such as the Public Housing or Section 202 Elderly Programs.
- However, the owner must identify under the HAP contract the particular number of units that are exclusively made available for elderly families.



PROJECT CAP

Can a unit retain its excepted status if the elderly family member no longer resides in the unit?

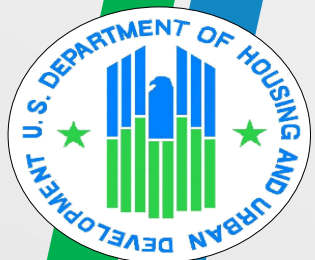
- If the elderly family member no longer resides in the unit due to circumstances beyond the control of the family (e.g., death or long-term or permanent hospitalization or nursing care of the elderly family member), regulations allow the remaining family members to continue to reside in the unit.
- The unit would retain its excepted status as long as the family continues to reside in the unit.



PROJECT CAP

What happens if the family vacates the unit?

- In order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family, unless it is possible to transfer the exception status to another unit as described later in this training.



PROJECT CAP

Supportive services exception:

Supportive services must be made available to all assisted families in the project.

The family must be eligible for one or more of the services, but is not required to participate in the services.

The family may include, but is not required to include, a household member with a disability.

The services must be reasonably available to the families residing in the project, but are not required to be provided by the owner or at the project.

Services must be designed to help families in the project achieve self-sufficiency or live in the community as independently as possible.

The PHA must include in its administrative plan the types of services that will be offered to families and the extent to which such services will be provided.



PROJECT CAP

If a family chooses to participate and completes the services, does the unit lose its excepted status?

- No. The unit continues to be excepted in this case as long as the family continues to reside in the unit.



PROJECT CAP

What if a family fails to complete the supportive services or becomes ineligible for those services for other reasons?

- A family that becomes ineligible for the supportive services during its tenancy cannot be terminated from the program or evicted from the unit.



PROJECT CAP

- If the family becomes ineligible during their tenancy for all of the services available to families at the project, the unit loses its excepted status.
- If the unit loses its excepted status the PHA may: ➡

Substitute the excepted unit for a non-excepted unit (if possible under 24 CFR 983.207(a)).

- The PHA may add units to the PBV HAP contract to allow for the substitution of units.
- For example, Bay View Project has a total of 100 units. 50 of those units are under a PBV HAP contract and are all excepted. The PHA may add non-excepted units to the contract to allow for the substitution of the excepted unit for the non-excepted unit.

Remove the unit from the PBV HAP contract and give the family an HCV.

- Once the family moves from the unit, the unit may be added back to the PBV HAP contract and filled with a family that is eligible for the services.



PROJECT CAP

If my agency administers a Family Self-Sufficiency (FSS) program, can it rely on FSS to meet the supportive services exception?

- A PHA may offer FSS as part of the supportive services package, but must not rely solely on FSS to meet the exception.
- This is because a PHA may not require participation in supportive services as a condition of living in an excepted unit, and FSS requires the family to engage in the services once enrolled.



PROJECT CAP

What impact do the HOTMA changes have on existing HAP contracts (contracts executed before April 18, 2017, the date the HOTMA changes became effective)?

- Despite the changes in the project cap exception categories, owners and PHAs remain obligated by the terms of those HAP contracts and will continue to renew their HAP contracts under the old requirements.
- That is, the owner must continue to designate the same number of contract units and assist the same number and type of excepted units as provided under the HAP contract during the remaining term of the HAP contract.



PROJECT CAP

EXAMPLE:

- PHA A executed a PBV HAP contract on May 1, 2015. The contract was for a 20-unit project, and 15 of those units were excepted from the 25 percent income-mixing requirement, because the units were designated for elderly families.
- The owner must continue to designate those units for occupancy by elderly families, despite that the statutory limit on PBV has been increased to 25 units, unless the owner and the PHA mutually agree to change the terms of the assistance contract.



PROJECT CAP

Impact of HOTMA changes on existing HAP contracts (cont.)

- However, the owner and the PHA may mutually agree to change the conditions of an existing HAP contract, unless doing so would jeopardize an assisted family's eligibility for continued assistance at the project.



PROJECT CAP

EXAMPLE:

- PHA A executed a HAP contract on May 1, 2015. 25 units were specifically for families with a household member with disabilities, and thus, excepted from the project cap. No supportive services were offered.
- PHA A and the owner would like to modify the contract to conform with HOTMA requirements.
- The HAP contract can only be modified if supportive services are offered to all families at the project. Otherwise, the family's eligibility is jeopardized because HOTMA no longer provides an exception to the project cap specifically for families with a household member with disabilities.



PROJECT CAP

Can my agency modify existing HAP contracts to add one of the new HOTMA categories of excepted unit?

- No. The PHA and owner must not change the terms of an existing HAP contract to add a new category of unit (such as those described under the Attachment F segment of this training), because those exceptions may only be applied to contracts that become effective on or after April 18, 2017.



PROJECT CAP

- PHAs may amend the HAP contract to add units, where applying the new project cap definition results in more PBV units.
- New units may be added at any time during the term of the HAP contract, but only if all other requirements of 24 CFR 983.207(b) are met.
- For example:

Total # of units in project:	60
Pre-HOTMA Cap:	15
Post-HOTMA Cap:	25
Units that may be added to contract:	10

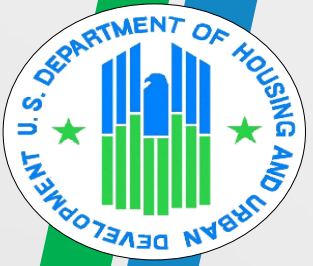


Attachment F: Units Not Subject to Program Limitation or Income-Mixing Requirement



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

- Some units previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the PBV program limitation and are exempt from the income-mixing requirement when PBV assistance is attached to them.
- Units must have been placed under HAP contract on or after April 18, 2017.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

Unit received one of the following forms of HUD assistance

- Public Housing Capital or Operating Funds (Section 9)
- Project-Based Rental Assistance (Section 8, Mod. Rehab, SRO)
- Housing for the Elderly (section 202)
- Housing for Persons with Disabilities (section 811)
- Rent Supplement Program (Rent Supp) section 101)
- Rental Assistance Program (section 236(f)(2)
- Flexible Subsidy program (section 201)

Unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs

- Section 236
- Section 221(d)(3) or d(4) BMR
- Housing for Elderly (section 202)
- Housing for Persons with Disabilities (section 811)
- Flexible Subsidy program (section 201)

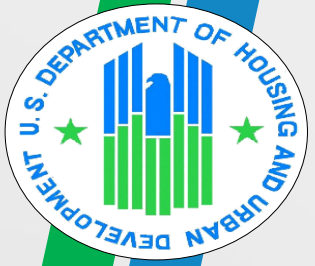


Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

- In addition to having received HUD assistance or having been subject to a rent restriction the unit must meet the following applicable conditions to qualify:

PBV Existing and Rehabilitation Units

- Unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017; and
- In the 5 years prior to the date the PHA either issued the RFP under which the project was selected, or selected the project based on a prior competition or without competition, the unit met at least one form of assistance or was subject to a rent restriction.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

PBV New Construction

- The unit that the PBV newly constructed unit is replacing must have received one of the forms of HUD assistance or must have been subject to a rent restriction as a result of one of the HUD local or insurance programs no more than 5 years from the date the PHA either:
 - Issued the RFP under which the PBV new construction project was selected; or
 - Selected the PBV new construction project based on a prior competition or without competition.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

PBV New Construction

- The newly constructed unit is located on the same site as the unit is replacing.
- An expansion of or modification to the prior project's site boundaries as a result of the design of the newly constructed project qualifies as the same site as long as a majority of the replacement units are built back on the site of the original development, and any units that are not build on the existing site share a common border with, are across a public right of way from, or touch that site.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

PBV New Construction

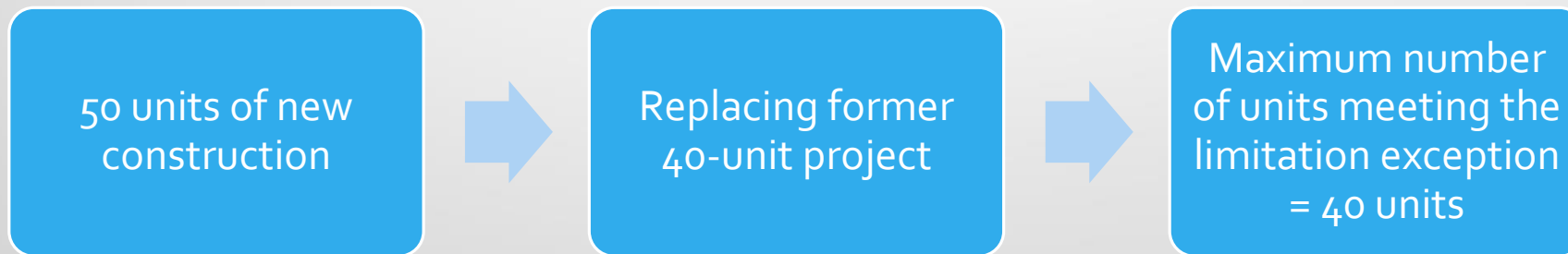
- One of the primary purposes of the planned development of the PBV new construction project is or was to replace the affordable rental units that previously existed at the site, as evidenced by at least one of the following:
 - Former residents of the original projects are provided with a selection preference that provides the residents with the right of first occupancy at the PBV new construction project; or
 - Prior to the demolition of the original project, the PBV new construction project was specifically identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

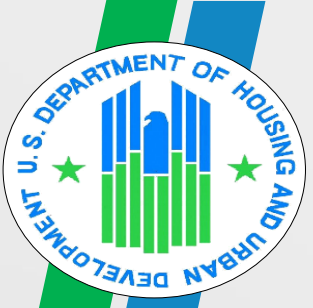


Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

Unit-size configuration, number of units

- Unit-size configuration may differ from units-size configuration of the original project.
- Total number of PBV assisted units may differ.
- Program limitation exception must not be applied to units that exceed total number of covered units in the original project.





Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

Applicability of PBV project-selection requirements

- The following standard requirements remain in effect for owner proposals involving excepted units for existing, rehabilitated, and newly constructed projects:
 - Consistency with the PHA Plan;
 - Goals of deconcentrating poverty and expanding housing and economic opportunities;
 - Site selection; and
 - All civil rights requirements.
- Requirements of Notice PIH 2013-27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remains in effect.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

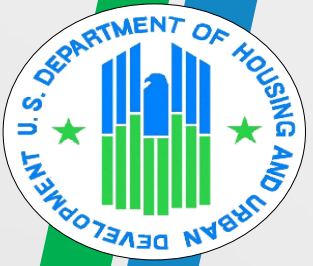
Other units not subject to the program limitation or income-mixing requirement

RAD

- Units not subject to program limitation or income-mixing requirements.

HUD-VASH

- HUD-VASH specifically designated for project-based assistance out of HUD-VASH appropriated funding.
- Exception does not apply to HUD-VASH that a PHA opts to project-base.



Units Not Subject to Program Limitations (Program Cap) or Income-Mixing Requirements (Project Cap)

Reporting requirements

- PHA must provide the number of PBV units to which it will be attaching PBV assistance under this exception authority to HUD no later than 14 calendar days prior to:
 - The date the PHA intends to issue the RFP; or
 - Make the selection.
- Must indicate the specific exception that covers the units.
- Information must be submitted by email to: pbvsubmission@hud.gov
- Exclude from submission future RAD projects.



Attachment G: PBV HAP Contract:
Initial Term and Extensions

Attachment H: Priority of PBV HAP Contracts

Attachment I: Biennial Inspections



PBV HAP Contract: Initial Term and Extension

- HOTMA amends Section 8(o)(13)(F) & (G) of the 1937 Act to provide that both the initial PBV HAP contract and any extension of the contract may have a term of up to 20 years, up from 15 years.
- 24 CFR 983.205(a) & (b) will be updated to reflect this change.

As of April 18, 2017

New contracts

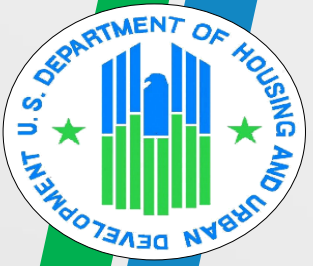
A PHA may enter into a new PBV HAP contract with an owner with an initial term of up to 20 years.

Contracts in initial term

For any PBV HAP contract that is still within the initial term, the PHA and the owner may agree to extend the contract for up to 20 years.

Existing contracts that have been extended

Contracts that have been extended at least once may be extended again, provided that extension beyond the initial term does not exceed 20 years.



PBV HAP Contract: Initial Term and Extension: No Limit on Number of Extensions

- The PIH Implementation Notice clarifies that there is no limit on the number of times a contract may be extended.
- For any contract extension beyond 20 years from the end of the initial term, however, the following conditions must be met:
 - The PHA must determine that the extension is appropriate to continue to provide affordable housing for low-income families or to expand housing opportunities.
 - This determination must be made no earlier than 24 months before the expiration of the PBV HAP contract.
 - The term of the extension may not exceed 20 years.



PBV HAP Contract: Initial Term and Extension: Example 1

The PHA and owner wish to enter into a new PBV HAP contract effective January 1, 2018, for the maximum term permitted (40 years).

Contract	Term	Start Date	End Date	Notes
Initial term	20 years	1/1/18	12/31/37	Maximum term
Extension	20 years	1/1/38	12/31/57	PHA may extend at any time before 12/31/37

Further extension is permitted but may not be determined before 12/31/55 (24 months before the end of the 20-year extension).



PBV HAP Contract: Initial Term and Extension: Example 2

Pre-HOTMA HAP

Contract	Term	Start Date	End Date	Notes
Initial	15 years	1/1/16	12/31/30	Was maximum permitted at the time
Extension	15 years	1/1/31	12/31/45	Agreed to prior to HOTMA

Contract is at pre-HOTMA maximum term (30 years).

Post-HOTMA HAP

Contract	Term	Start Date	End Date	Notes
Initial	20 years	1/1/16	12/31/35	HAP is still in initial term, so extension is permitted
Extension	20 years	1/1/36	12/31/55	

Contract is at post-HOTMA maximum term (40 years). Further extension permitted, but may not be considered until 12/31/53.



PBV HAP Contract: Initial Term and Extension: Example 3

Pre-HOTMA HAP

Contract	Term	Start Date	End Date	Notes
Initial	10 years	1/1/05	12/31/14	Initial term is over
Extension	15 years	1/1/15	12/31/29	Agreed to prior to HOTMA

At 25 total years, the contract is for a term that is less than the pre-HOTMA maximum of 30 years.

Post-HOTMA HAP

PHA wishes to extend the contract term to 40 years.

Contract	Term	Start Date	End Date	Notes
Initial	10 years	1/1/05	12/31/14	May not be extended
Extension	20 years	1/1/15	12/31/34	May be extended to 20 years

The maximum term the PHA may provide is 30 years, with the understanding that the PHA may consider a further extension no earlier than 12/31/32.



PBV HAP Contract: Initial Term and Extension: Example 4

The PHA enters into a HAP for the maximum initial term and wishes to extend the contract, but for not more than 10 years at a time.

Contract	Term	Start Date	End Date	Notes
Initial term	20 years	1/1/18	12/31/37	Maximum term
Extension #1	10 years	1/1/38	12/31/47	Permitted any time before 12/31/37
Extension #2	10 years	1/1/48	12/31/57	Permitted any time before 12/31/47
Extension #3	10 years	1/1/58	12/31/67	Permitted, but not before 12/31/55

Once the extension beyond the initial term has reached 20 years, no further extension is permitted without the required determination.



Attachment H: Priority of PBV HAP Contracts



Priority of PBV HAP Contracts

- HOTMA establishes a new Section 8(o)(13)(F)(i)(I) of the 1937 Act.
- In the event appropriated funds are insufficient to fund all vouchers administered by a PHA, the PHA *may not terminate* a PBV HAP contract if cost-saving measures that do not require the termination of a PBV HAP contract are available.
- A PHA that has taken all cost-saving measures has the discretion to terminate PBV HAP contracts.
- A PHA's Administrative Plan must state the factors it will consider in determining which type of assistance (HCV or PBV) to terminate first.



Priority of PBV HAP Contracts: Notice PIH 2011–28

Cost-saving measures are found in Notice PIH 2011–28, “Cost-Saving Measures in the Housing Choice Voucher (HCV) Program.”

- Increase family income-matching/verification and other anti-fraud efforts
- Assure rents are reasonable and utility allowances are accurate
- Stop absorbing ports and begin to deny portability moves
- Revise policies on when interims are required
- Establish a minimum rent or increase the minimum rent
- Stop issuing vouchers and pull back vouchers that have been issued to families who are not yet under lease
- Revise subsidy standards and/or payment standards
- Request a regulatory waiver

A PHA must identify in its Administrative Plan any additional cost-saving measures it will take prior to terminating contracts.



Attachment I: Biennial Inspections



Biennial Inspections

- HOTMA amends Section 8(o)(13)(F) of the 1937 Act to clarify that biennial inspections of PBV-assisted units may be conducted using a sample of units.
- The regulation at 24 CFR 983.103(d) already provides for sampling and is unchanged as a result of HOTMA. For example:
 - The sample must consist of at least 20 percent of the contract units in each building; and
 - If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, then the PHA must reinspect all of the contract units in the building.
- Notice PIH 2016–05 also provides for sampling and is likewise unchanged as a result of the HOTMA language.



Attachment J: Adding Units to PBV HAP Contract Without Competition



Adding Units to a PBV HAP Contract Without Competition

- HOTMA amends the 1937 Act to establish a new Section 8(o)(13)(F)(ii).
- The HOTMA change overrides 24 CFR 983.207(b).
- PBV requirements apply, including:
 - Percentage limitation (program cap);
 - Income-mixing requirement (project cap);
 - Rent reasonableness; and
 - The requirement that the anniversary and expiration dates for the new units be the same as those of the original units
- An environmental review is not required when units are added to an existing PBV HAP contract pursuant to this authority.

By mutual agreement of a PHA and owner:

Old rule

- A PBV HAP contract could be amended to add units without competition only within the 3-year period following contract execution.

New rule

- A PBV HAP contract may be amended to add units at any time during the contract term or at the point of contract extension without competitive selection.
- Applies to any contract in effect, irrespective of the execution date.



Attachment K: Contract Termination or Expiration Without Extension



Contract Termination or Expiration Without Extension

- HOTMA amends the 1937 Act to provide for a new Section 8(o)(13)(F)(iv).
- The new language provides that a family residing in a PBV-assisted unit:
 - may remain in that unit if the contract ends, and
 - may use the assistance previously provided under the contract.
- The unit must meet HUD's housing quality standards, and the rent must be reasonable.
- The statutory notice requirements apply:
 - An owner must provide such tenants with 1 year's notice.
 - With PHA agreement, the contract may be extended for a period of time sufficient to provide such notice.
 - Absent adequate notice, tenant rents may not be increased during the 1-year period, and tenants may not be evicted due to nonpayment of a higher rent.



Contract Termination or Expiration Without Extension: Owner Notification

- For any contract entered into prior to April 18, 2017, that remains in effect on that date, HUD is requiring PHAs to notify owners in writing that this provision is in effect.
- The notice to owners must contain the following language:

Pursuant to Section 106(a)(4) of the Housing Opportunity Through Modernization Act of 2016 and Paragraph 26.b. of Part 2 of the PBV HAP Contract for Existing Housing or Paragraph 27.b. of Part 2 of the PBV HAP Contract for New Construction or Rehabilitation, such contract is amended to provide that, upon termination or expiration of the contract without extension, each family assisted under the contract may elect to use its assistance to remain in the same project if the family's unit complies with the inspection requirements under section 8(o)(8) (42 U.S.C. 1437f(o)(8)) of the U.S. Housing Act of 1937 ("the 1937 Act"), the rent for the unit is reasonable as required by section 8(o)(10)(A) of the 1937 Act, and the family pays its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard.
- Any contract entered into on or after April 18, 2017, must include this language.



Contract Termination or Expiration Without Extension: Transition from PBV to HCV HAP

- Payment of HCV assistance may not begin until:
 - The end of the required notice period.
 - An HCV HAP contract has been executed.
- A PHA may execute an HCV HAP contract before the PBV HAP contract terminates, but the HCV HAP contract may not be effective prior to the end of the PBV HAP contract.
- The HCV HAP contract must be executed no later than 60 days from the start of the family's lease. (24 CFR §982.305(c)(1))
- The HCV HAP contract may have a different rent than did the PBV HAP contract, as long as the HCV HAP contract rent is reasonable.



Contract Termination or Expiration Without Extension: Treatment of Family

- The family will not be considered a new admission to the program.
- The family will pay the total tenant payment and any amount by which the rent exceeds the applicable payment standard.
- The family's initial rent under the HCV HAP may exceed 40 percent of the family's adjusted monthly income.
- An owner may not terminate the tenancy of a family that exercises its right to remain except for in response to serious or repeated lease violations, or for other good cause.
- All other HCV program rules apply to families who remain in the project.



Attachment L: Attaching PBV to Certain PHA-Owned Projects Without Following a Competitive Process



PHA-OWNED UNITS

- Under HOTMA, a PHA may attach PBVs to a project in which the PHA has an ownership interest or over which the PHA has control, without following a competitive process, in cases in which the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site.
- In this context, the PHA's ownership interest does not have to meet the HOTMA definition of "PHA owned."
- See the segment on "Attaching PBV Without a Competitive Process" for more details.



Attaching PBV to Certain PHA-Owned Units Without Competition

- If a PHA has any ownership interest in a project (old definition) and is engaged in an initiative to improve, develop or replace a public housing property or site, no competitive process is required.
- Rehabilitation or new construction requires a minimum threshold of \$25,000 in hard costs per unit
- The \$25,000 threshold does not apply to existing units as long as the existing housing substantially complies with HUD's housing quality standards which must be described in the PHA's administrative plan.



PBVs for PHA-Owned Units

- PHA must detail in its administrative plan the number of units and work it plans to do on the property.
- Note that if the units also meet the definition of PHA-owned in Attachment A, an independent entity is required.
- Other PBV requirements: Units must be eligible for PBV assistance and the selection must satisfy all other statutory and regulatory requirements. Units under this section are subject to the program cap, income mixing requirements and exceptions in Attachment F.



Attachment M: Project-Basing Family Unification Program and HUD-VASH Vouchers



Project-Basing Family Unification Program and HUD-VASH Vouchers

- Family Unification Program (FUP) and HUD-Veterans Affairs Supportive Housing (VASH) voucher may project-based.
- PHAs were previously prohibited from project-basing FUP vouchers.
- Project-basing HUD-VASH vouchers previously required HUD review and approval.
- When a PHA chooses to project-base its HUD-VASH vouchers, it must ensure VAMC will continue to make supportive services available to the HUD-VASH families.
- These special-purpose vouchers are now treated like all other vouchers for the purpose of project-basing.
- Like HUD-VASH, project-based FUP vouchers are not subject to income-mixing requirement if services are included (services are required for FUP youth.)



Project-Basing Family Unification Program and HUD-VASH Vouchers

- HUD encourages PHA wishing to project-base FUP or HUD-VASH vouchers to consider whether the activity will:
 - Yield significant benefit to participants;
 - Impact the availability of tenant-based FUP or HUD-VASH vouchers; and
 - Impact voucher utilization.
- In determining whether project-basing will yield significant benefit to FUP or HUD-VASH participants, PHAs are encouraged to consider:
 - Impact on choice and access to areas of higher opportunity;
 - Success of FUP and HUD-VASH participants with tenant-based vouchers; and
 - How project-basing will improve FUP or HUD-VASH participant's access to supportive services.



Project-Basing Family Unification Program and HUD-VASH Vouchers

- In determining the impact of project-basing on the availability of tenant-based FUP or HUD-VASH vouchers, PHAs are encouraged to consider:
 - Extent FUP or HUD-VASH vouchers to be project-based (% of total FUP or HUD-VASH allocation.)
 - Unit size- FUP youth and HUD-VASH veterans typically require smaller unit size, while FUP families typically require a larger units size.
 - The 36-month time limit on youth FUP vouchers and whether youth will be less or more likely to request a voucher to move.



Project-Basing Family Unification Program and HUD-VASH Vouchers

Coordinated Entry and Referrals

- PHAs may work with their local Continuum of Care (CoC) in cooperation with their local Public Child Welfare Agency (PCWA), to prioritize entry into FUP PBV.
- Allows units to be targeted to people who most need supportive housing.
- For HUD-VASH, VA partners would ensure that the units are targeted to people who most need supportive housing.
- For FUP, PCWAs and PHAs may accept referrals from CoCs for eligible youths in support of a community's effort to prioritize assistance in FUP PBV units. Referrals must be signed off on by the PCWA.
- In HUD-VASH, all referrals come from the partnering VAMC.



Project-Basing Family Unification Program and HUD-VASH Vouchers

Limiting FUP vouchers to one category of FUP eligible families

- Project-based FUP vouchers may be limited to one category of FUP eligible participants (families or youth).



Appendix I: PBV Program Cap Calculation Instructions



Appendix II: Administrative Policies



OVERVIEW

- Appendix II of the notice addresses PHA Plan requirements, Administrative Plan requirements, and other PBV topics.
- It contains provisions of Notice PIH 2011–54 that are unchanged by HOTMA, provisions that are added or changed by HOTMA, and additional guidance on the PBV program that HUD is implementing via this appendix.



Notice PIH 2011–54

HOTMA notice supersedes PIH Notice 2011-54 (*Guidance of the PBV Program*). Noted below are changes and new requirements:

1. In regard to supportive services, a PHA may not require participation as a condition of living in an excepted unit (although such services may be offered) for contracts executed on or after April 18, 2017.
2. A PHA may adopt a policy in its FSS Action Plan and Administrative Plan that allows families to re-enroll in the FSS program if the contract was not completed.
3. A PHA may identify in its Administrative Plan any additional cost-savings measures that it will implement prior to terminating HCV or PBV assistance and which type of assistance it will terminate first.



Additions/Changes to 2011-54

5. The PHA must describe in its Administrative Plan what it means to “substantially comply” with HQS.
6. If a PHA is making PBV units specifically available to veterans, it must define “veteran” in its Administrative Plan.
7. The Administrative Plan must address effective dates of Small Area FMR, if applicable, and how this will apply to PBV units.