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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR-5976-N-03]

**Housing Opportunity Through Modernization Act of 2016:
Implementation of Various Section 8 Voucher Provisions**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Implementation and request for comment.

SUMMARY: On July 29, 2016, President Obama signed into law the Housing Opportunity Through Modernization Act of 2016 (HOTMA). Several of the statutory amendments made by HOTMA affect the Project-Based Voucher (PBV) program or the Housing Choice Voucher (HCV) program. HOTMA also gave HUD the authority to implement many of those changes by notice, and those statutory changes are not effective until HUD issues that notice. This document serves as the implementation notice for several of the provisions of HOTMA that impact the HCV and PBV programs, and seeks additional public input on both the implementing requirements in this document and future changes to these programs.

DATES: Effective date: **[INSERT DATE THAT IS 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Comment due date: **[INSERT DATE THAT IS 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit comments regarding this document. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Please direct all questions about this notice to HOTMAquestionsPIH@hud.gov.

SUPPLEMENTARY INFORMATION

I. Background

On July 29, 2016, President Obama signed HOTMA into law (Public Law 114-201, 130 Stat. 782). HOTMA made numerous changes to statutes that govern HUD programs, including section 8 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f). HUD issued a notice on October 24, 2016, at 81 FR 73030, announcing to the public which of the statutory changes made by HOTMA could be implemented immediately, and which required further guidance from HUD before owners, public housing agencies (PHAs), or other grantees may use the new statutory provisions.

This document implements new statutory provisions regarding certain inspection requirements for both HCV tenant-based and PBV assistance (found in § 101(a)(1) of HOTMA), the definition of PHA-owned housing (§ 105 of HOTMA), and changes to the PBV program at large (§ 106 of HOTMA) by providing the additional information needed for PHAs and owners to use those provisions. The document also implements and provides guidance on the statutory change to the HCV housing assistance payment (HAP) calculation for families who own manufactured housing and are renting the manufactured home space (§ 112 of HOTMA).

While this document makes the provisions below effective, HUD seeks further public comment on the implementation of these provisions. Below each section describing the implementation of a statutory provision, HUD has included specific questions for public comment. All comments must be submitted using the two methods detailed above.

II. Implementation Information

A. Inspections of Dwelling Units (HOTMA § 101(a)(1))

Section 101(a)(1) of HOTMA adds a modified subparagraph (A) to section 8(o)(8) of the 1937 Act (42 U.S.C. 1437f(o)(8)). The amended subparagraph continues the requirement of

inspections of dwelling units assisted under section 8(o) of the 1937 Act to determine that the units meet housing quality standards (HQS) prior to the PHA making a housing assistance payment. However, new language provides an exception to this requirement, allowing the PHA to approve the assisted tenancy and commence housing assistance payments if the unit fails the inspection but only has non-life-threatening HQS deficiencies. If a PHA makes payments under that exception, the PHA must withhold any assistance payments if the non-life-threatening deficiencies are not remedied within no more than 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS.

In addition, new language authorizes occupancy of a unit prior to the inspection being completed if the unit had, in the previous 24 months, passed an alternative inspection method under section 8(o)(8)(E). The PHA must inspect the unit within 15 days of receiving the Request for Tenancy Approval. Once the unit passes the HQS, the PHA may make assistance payments retroactively, dating back to the beginning of the assisted lease term, which is the effective date of the HAP contract. Per 24 CFR 982.309(b), the term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

This document does not implement other provisions in section 101(a) of HOTMA.

1. Occupancy Prior to Meeting HQS (§ 8(o)(8)(A)(ii) of 1937 Act)

As a result of the HOTMA amendments to Section 8(o)(8)(A)(ii) of the 1937 Act, PHAs may choose to approve an assisted tenancy, execute the HAP contract, and begin making housing assistance payments on a unit that fails the initial HQS inspection, provided the unit's failure to meet HQS is the result only of non-life-threatening conditions, as such conditions are defined by HUD. In exercising this administrative flexibility under § 8(o)(8)(A)(ii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD

regulations and requirements. If the PHA exercises this authority, this document overrides the requirement at 982.305(a)(2) and (b)(i) that the PHA has determined that the unit meets HQS before approval of the tenancy and beginning of the initial lease term. (The PHA must still conduct the HQS inspection prior to approval of the tenancy and the beginning of the initial lease term in accordance with those regulations.)

A. HUD Definition of Non-Life-Threatening and Life-Threatening Conditions.

For the purposes of implementing § 8(o)(8)(A)(ii), HUD is defining a non-life-threatening condition as any condition that would fail to meet the housing quality standards under 24 CFR 982.401 and is not a life-threatening condition. Further, for the purposes of this implementation notice, HUD is defining life-threatening conditions as follows:

(1) Gas (natural or liquid petroleum) leak or fumes. A life-threatening condition under this standard is one of the following: (a) a fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking; or (b) a strong gas odor detected with potential for explosion or fire, or that results in health risk if inhaled.

(2) Electrical hazards that could result in shock or fire. A life-threatening condition under this standard is one of the following: (a) a light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed; (b) a light fixture is hanging by its wires; (c) a light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day to day use of the unit; (d) a receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed; (e) a receptacle (outlet) or switch has a missing or damaged cover plate and electrical connections or wires are exposed; (f) an open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses; (g) a cover is

missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections; (h) any nicks, abrasions, or fraying of the insulation that expose conducting wire; (i) exposed bare wires or electrical connections; (j) any condition that results in openings in electrical panels or electrical control device enclosures; (k) water leaking or ponding near any electrical device; or (l) any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition.

(3) Inoperable or missing smoke detector. A life-threatening condition under this standard is one of the following: (a) the smoke detector is missing; or (b) the smoke detector does not function as it should.

(4) Interior air quality. A life-threatening condition under this standard is one of the following: (a) the carbon monoxide detector is missing; or (b) the carbon monoxide detector does not function as it should.

(5) Gas/oil fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney or venting. A life-threatening condition under this standard is one of the following: (a) the chimney or venting system on a fuel fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gases; (b) a gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside; (c) a fuel fired space heater is not properly vented or lacks available combustion air; (d) a non-vented space heater is present; (e) safety devices on a fuel fired space heater are missing or damaged; or (f) the chimney or venting system on a fuel fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged which may cause improper or dangerous venting of gases.

(6) Lack of alternative means of exit in case of fire or blocked egress. A life-threatening condition under this standard is one of the following: (a) any of the components that affect the function of the fire escape are missing or damaged; (b) stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency; or (c) the building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency.

(7) Other interior hazards. A life-threatening condition under this standard is a fire extinguisher (where required) that is missing, damaged, discharged, overcharged, or expired.

(8) Deteriorated paint, as defined by 24 CFR 35.110, in a unit built before 1978 that is to be occupied by a family with a child under 6 years of age. This is a life-threatening condition only for the purpose of a condition that would prevent a family from moving into the unit. All lead hazard reduction requirements in 24 CFR part 35, including the timeline for lead hazard reduction procedures, still apply.

(9) Any other condition subsequently identified by HUD as life threatening in a notice published in the Federal Register. HUD will notify PHAs if such changes are made.

(10) Any other condition identified by the administering PHA as life-threatening in the PHA's administrative plan prior to this notice taking effect.

B. Administrative Plans.

Before implementing § 8(o)(8)(A)(ii), PHAs must amend their HCV administrative plans to include HUD's definition of non-life-threatening conditions as any conditions that would fail to meet the housing quality standards under 24 CFR 982.401 and do not meet the definition of life-threatening provided in this notice. The PHA's HCV administrative plan must list the specific life-threatening conditions that will be identified through the PHA's inspections,

including the life-threatening conditions listed in Section 1.A. above and any other conditions that the PHA identified in its HCV administrative plan as life-threatening prior to this notice taking effect.

The PHA must also specify in its administrative plan how it will apply the flexibility provided by § 8(o)(8)(A)(ii) to its HCV and/or PBV program. The PHA may opt to apply the policy to all the PHA's initial inspections or to a portion of the PHA's initial inspections. The PHA's administrative plan must specify the circumstances under which the PHA will enter into a HAP contract for a unit that fails the initial HQS inspection as a result only of non-life-threatening conditions and the circumstances under which a PHA will require the unit to meet all HQS standards before entering into the HAP contract.

The changes to the PHA's HCV administrative plan to define non-life-threatening conditions and to specify how the policy will be applied across its portfolio of units may constitute significant amendments to the PHA's PHA plan, in which case a PHA must follow its PHA plan amendment and public notice requirements before implementing § 8(o)(8)(A)(ii).

C. Application of Life-Threatening Definition to all Inspections.

A PHA that chooses to implement § 8(o)(8)(A)(ii) must apply the list of life-threatening conditions identified in its HCV administrative plan to all HQS inspections that the PHA conducts, not just the initial inspections. In other words, PHAs that adopt § 8(o)(8)(A)(ii) must amend their HCV administrative plans to include HUD's definition of life-threatening conditions, as well as any additional life-threatening conditions included in the PHA's HCV administrative plan that were already defined in the PHA's HCV administrative plan prior to this notice taking effect, and must use those definitions in its ongoing HQS inspections and HQS enforcement activities as well as its initial inspections. The PHA must use the new definition of

life-threatening deficiencies across all of its HQS inspections even if the PHA chooses to apply § 8(o)(8)(A)(ii) only to a portion of its initial inspections. The only exception to this uniformity requirement is the presence of deteriorated paint in units built before 1978 to be occupied by a family with a child under the age of 6. The presence of such hazards during the initial HQS inspection means a PHA may not approve the tenancy, execute the HAP contract and make assistance payments until lead hazard reduction is complete. However, in the case where the deficiency is identified for a unit under HAP contract during a regular or interim HQS inspection, lead hazard reduction need not be completed within 24 hours. Instead, PHAs and owners must follow the requirements in 24 CFR part 35.

D. Documenting the Absence of Life-Threatening Conditions.

A PHA that chooses to implement § 8(o)(8)(A)(ii) must ensure that the unit does not have any life-threatening deficiencies before the PHA approves the assisted tenancy and executes the HAP contract. The PHA must document that the unit passes all inspection items that relate to any life-threatening deficiencies identified in the PHA's HCV administrative plan (including those on HUD's list of life-threatening deficiencies). HUD will provide guidance for PHAs on how to incorporate HUD's definition of life-threatening conditions into its regular HQS procedures for purposes of implementing § 8(o)(8)(A)(ii).

E. Notification of Owners and Tenants.

PHAs that adopt § 8(o)(8)(A)(ii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. If the initial inspection on the unit identifies one or more non-life-threatening deficiencies, the PHA must provide the family a list of the deficiencies and offer the family the opportunity to decline to enter into the assisted lease without losing the voucher. The PHA must also notify the family that if the owner fails to correct

the non-life-threatening deficiencies within the PHA-specified time period, the PHA will terminate the HAP contract, which in turn terminates the assisted lease, and the family will have to move to another unit in order to receive voucher assistance.

F. Housing Assistance Payments.

PHAs that adopt § 8(o)(8)(A)(ii) may, with the agreement of the family, approve the assisted tenancy, execute the HAP contract, and make housing assistance payments for a unit that fails the initial HQS inspection only as a result of non-life-threatening conditions as defined above. If the non-life-threatening conditions are not corrected within 30 days of the PHA notifying the owner of the unit, in writing, of the unit's failure to comply with HQS, the PHA must withhold any further assistance payments until those conditions are addressed and the unit is in compliance with the housing quality standards. After the 30-day correction period has passed and the PHA begins withholding payments, the PHA may establish a policy regarding the maximum amount of time it will withhold payments before abating payments or terminating the HAP contract for owner non-compliance with HQS. Once the unit is in compliance, the PHA may use any payments withheld to make payments for the period during which payments were withheld.

The PHA will follow its administrative policy on when to issue a new voucher to the family and when to terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances may the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

If the PHA adopts this administrative policy, 24 CFR 982.305(a) and (b) remain in effect, with the exception that the PHA is required to inspect the unit and determine that there are no life-threatening deficiencies (rather than determining the unit satisfies the HQS) before the approval of the assisted tenancy and the beginning of the assisted lease term.

G. Notification of HUD.

PHAs that plan to adopt § 8(o)(8)(A)(ii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to HOTMA_HQS@hud.gov. This notification allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP).

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(ii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator 11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(ii) will be scored based on the new statutory standard. Until further guidance is provided, PHAs should continue to report as usual in PIC (that is, the date the PHA enters into PIC for when the unit passes HQS inspection is the date that the unit is found to have no HQS deficiencies, including no non-life-threatening deficiencies).

Questions for Comment:

1. Is HUD's definition of non-life-threatening conditions as any condition that does not meet HUD's definition of life-threatening appropriate? If not, is there an alternate definition HUD should use?

2. HUD's list of life-threatening conditions is based on the definition currently being used by the UPCS-V demonstration. Are there other sources that HUD should consider for this list?

3. Is establishing 180 days as the maximum time the PHA may withhold or abate payments before terminating the HAP contract for the owner's failure to make the repairs the appropriate time frame? Should this time period be shorter or longer?

4. How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(ii)?

5. Are there any other discretionary factors that PHAs should consider in implementing § 8(o)(8)(A)(ii)?

2. Alternative Inspections (§ 8(o)(8)(A)(iii) of 1937 Act)

The new § 8(o)(8)(A)(iii) of the 1937 Act authorizes occupancy of a unit prior to the PHA's inspection being completed if the property has, in the previous 24 months, passed an alternative inspection method that qualifies as an alternative inspection method pursuant to § 8(o)(8)(E). In this case, a PHA may also make assistance payments retroactively, dating back to the effective date of the HAP contract and assisted lease term, once the unit has been inspected and found to meet HQS standards. In exercising this administrative flexibility under § 8(o)(8)(A)(iii), PHAs must comply with the definitions and requirements in this section, in addition to those provided in HUD regulations and requirements. If a PHA exercises this authority, this document overrides the regulatory requirement at 24 CFR 982.305(a)(2) and (b)(1)(i) that the PHA inspect the unit and determine it meets HQS prior to approving the

tenancy and the beginning of the assisted lease term. The requirements of this document also overrides §§ 982.305(b)(2) and 982.305(c)(1) and (3).

A. Eligible Alternative Inspection Methods.

In order to qualify as an alternative inspection method for § 8(o)(8)(A)(iii), the inspection method must meet the same requirements for the use of alternative inspections under 24 CFR 982.406. Specifically:

- (1) The PHA must be able to obtain the results of the alternative inspection.
- (2) If the alternative inspection employs sampling, the PHA may rely on such alternative method only if the HCV or PBV unit was included in the population of units forming the basis of the sample. For example, if a 100-unit property includes 20 units that are occupied by HCV-assisted families or are under a PBV contract, then those 20 units must be included in the universe of units from which the sample was pulled. This does not mean that the 20 units had to be included in the actual sample of units that were inspected under the alternative inspection, but that these units were included in the universe of potential units from which the sample was drawn.
- (3) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, without prior HUD approval. However, before employing this alternative method the PHA must amend its HCV administrative plan and notify HUD as described below.
- (4) If the PHA wishes to rely on an alternative inspection method other than that used for HOME, LIHTC, or inspections performed by HUD, the PHA must, prior to amending its HCV administrative plan, submit to HUD's Real Estate Assessment Center (REAC) a copy of the

inspection method it wishes to use, along with its analysis of the inspection method that shows that the method “provides the same or greater protection to occupants of dwelling units” as would HQS. A PHA may not rely upon such alternative inspection method unless and until REAC has reviewed and approved use of the method and the PHA has amended its HCV administrative plan and notified HUD as described below. A PHA that uses such alternative inspection method must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to HQS. If the PHA or REAC determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method for § 8(o)(8)(A)(iii).

B. Administrative Plans.

The PHA must identify the alternative inspection method(s) being used in its HCV administrative plan, making clear the specific properties or types of properties for which the inspection method(s) will be employed. This change may be a significant amendment to the PHA Plan, in which case a PHA must follow its PHA Plan amendment and public notice requirements before using the alternative inspection method.

C. Authorization of Occupancy.

Section 8(o)(8)(A)(iii) states that the PHA may “authorize occupancy” before the PHA completes its inspection if the property passed the alternative inspection. The PHA authorizes occupancy in response to a Request for Tenancy Approval (RFTA) received from the family. Upon receiving the RFTA, a PHA that elects to use this provision determines whether the property in which the unit is located received an inspection within the previous 24 months that

qualifies as an alternative inspection and the unit meets any additional requirements established in the PHA administrative plan. If the property has passed the alternative inspection within the past 24 months, the PHA may approve the assisted tenancy before the PHA conducts the initial HQS inspection. If the PHA chooses to approve the assisted tenancy prior to conducting the HQS inspection, the PHA enters into the HAP contract with the owner and the owner and family enter into the lease agreement and HUD prescribed tenancy addendum before the PHA's HQS inspection takes place. The PHA must conduct the HQS inspection within 15 days of receiving the RFTA (as described below) and after it has executed the HAP contract.

In the case where the PHA exercises its authority under § 8(o)(8)(A)(iii), the PHA must execute the HAP contract with the owner before the PHA's inspection takes place. The PHA must execute the HAP contract with the owner on or before the beginning of the lease term, not within 60 days of the beginning of the lease term as provided in 24 CFR 982.305(c). Since the family will have moved into the unit before the PHA does the initial inspection, the PHA must have a contractual relationship with the owner at the time of the inspection so that the PHA can take enforcement action if the unit does not pass HQS and the owner does not make the necessary repairs within the required timeframes.

D. Timing of the PHA Inspection.

Section 8(o)(8)(A)(iii) allows the PHA to authorize occupancy before the PHA's inspection is completed. It does not eliminate the requirement under § 8(o)(8)(A)(i) for the PHA (or designated entity) to conduct the initial inspection. Under the current program regulations at 24 CFR 982.305(b)(2), a PHA with up to 1,250 budgeted units in its tenant-based program must complete the initial inspection within 15 days of receiving the RFTA, and a PHA with more than 1,250 budgeted units in its tenant-based program must complete the initial inspection within a

reasonable time after the PHA receives the RFTA. All PHAs that implement Section 8(o)(8)(A)(iii) must complete the initial inspection within 15 days of receiving the RFTA for units located in properties that have met the requirements of an eligible alternative inspection in the past 24 months. The 15-day standard applies to all units for which the PHA employs § 8(o)(8)(A)(iii), regardless of the size of the PHA's tenant-based program.

E. Housing Assistance Payments

The PHA must conduct the initial HQS inspection within 15 days of receiving the RFTA. If the unit passes the PHA's inspection, the PHA may make HAPs retroactively to the effective date of the HAP contract and the start of the assisted lease term. If the unit does not pass the PHA's inspection, and if the PHA has not adopted § 8(o)(8)(A)(ii) regarding the correction of non-life-threatening deficiencies, the PHA may not make housing assistance payments until the HQS deficiencies have been corrected. The PHA must notify the owner in writing of the defects and take enforcement action against the owner if any life-threatening defect (as identified in the PHA's HCV administrative plan) is not corrected within 24 hours or any other defect is not corrected within 30 calendar days or any PHA-approved extension. If the PHA has adopted § 8(o)(8)(A)(ii) and the unit has only non-life-threatening deficiencies, the PHA may make housing assistance payments according to the procedures specified in Section A.1. above.

In deciding whether to implement Section 8(o)(8)(A)(ii), HUD recommends that PHAs carefully consider the complications that could arise if a PHA enters into a HAP contract with an owner on the basis of an alternative inspection but then identifies HQS deficiencies in its initial inspection. The family may be living with these deficiencies during the correction period and may ultimately have to move if the owner is not willing to make the corrections. The PHA will follow its administrative policy on when to issue a new voucher to the family and when to

terminate the HAP contract for owner non-compliance with HQS. HUD expects PHAs to require prompt correction of HQS deficiencies to minimize the amount of time a family could be living in a unit that is not HQS compliant. There may be some cases where repairs cannot be made immediately. However, under no circumstances will the HAP contract continue beyond 180 days of the effective date of the HAP contract if unit is not in compliance with HQS.

F. Notification of Owners and Tenants.

PHAs that adopt § 8(o)(8)(A)(iii) must notify owners and families, as applicable, of the new procedures and timelines for assistance payments. When authorizing a family to move into a unit prior to the PHA's inspection, the PHA must advise the family of the PHA's list of life-threatening deficiencies so that the family can look for such items in the unit and notify the PHA immediately if such deficiencies are found or decline to enter into the lease with the owner.

G. Notification of HUD.

PHAs that plan to adopt § 8(o)(8)(A)(iii) must notify HUD of their intention to do so. The notification must be provided at least 30 days before the new policy is implemented and must be sent by email to HOTMA_HQS@hud.gov. This allows HUD to track the usage of this provision as authorized by this notice for the purpose of making adjustments to the PHA's scoring under HUD's Section Eight Management Assessment Program (SEMAP) as needed.

H. Section Eight Management Assessment Program (SEMAP).

SEMAP Indicator 11, Pre-Contract HQS Inspection, scores the PHA based on the percentage of units that pass the HQS inspection before the beginning of the assisted lease and HAP contract. This indicator is inconsistent with § 8(o)(8)(A)(iii), assuming a PHA utilizes the new statutory flexibility. Therefore, HUD will issue specific guidance on how SEMAP Indicator

11 will be modified to ensure that PHAs that adopt § 8(o)(8)(A)(iii) will be scored based on the new statutory standard.

Question for Comment:

How should HUD modify SEMAP Indicator 11 for PHAs that elect to implement § 8(o)(8)(A)(iii)?

B. Units Owned by a PHA (HOTMA § 105)

HOTMA amends section 8(o) of the 1937 Act to provide a statutory definition of units owned by a PHA, overriding HUD's current definition at 24 CFR 983.3 for the PBV program and as a PHA-owned unit is described at 24 CFR 982.352. A unit is now "owned by a public housing agency" only if the unit is in a project that is one of the following categories:

- (1) Owned by a PHA.
- (2) Owned by an entity wholly controlled by the PHA.
- (3) Owned by a limited liability company 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. A "controlling interest" is—
 - (A) holding 50 percent or more of the stock of any corporation;
 - (B) having the power to appoint 50 percent or more of the members of the board of directors of a non-stock corporation (such as a non-profit corporation);
 - (C) where 50 percent or more of the members of the board of directors of any corporation also serve as directors, officers or employees of the PHA;
 - (D) holding 50 percent or more of all managing member interests in an LLC;
 - (E) holding 50 percent or more of all general partner interests in a partnership; or
 - (F) equivalent levels of control in other organizational structures.

Units in which PHAs have a different ownership interest are no longer considered to be owned by the PHA.

In order to be considered a “PHA-owned” unit as described above, the PHA must have ownership interest in the building itself, not simply the land beneath the building.

For units that were previously considered to be PHA-owned but are no longer PHA-owned due to this definitional change, the PHA must obtain an opinion from its legal counsel that the project in question falls outside the statutory definition. The PHA must keep the opinion in the PHA’s files. Until such time that the opinion letter is obtained, the PBV project remains PHA-owned for purposes of program requirements and HUD monitoring. If an ownership structure changes in the future that removes a project from the definition of PHA-owned, the PHA must obtain and keep the same sort of opinion letter. If an ownership structure changes in a manner that would cause a PBV project to be classified as PHA-owned (e.g., PHA ownership interest is increased to an amount greater than 50 percent), the PHA must identify, in writing, within 30 days of the change in ownership, the proposed independent entity that will perform all of the applicable independent entity responsibilities for the project in compliance with 24 CFR section 983.59 and PIH Notice 2015-05 (or subsequent guidance) for PBV and 24 CFR section 982.352(b) for HCV tenant-based assistance.

For PBV projects where the PHA has an interest in the project, but such interest does not cause the project to be classified as PHA-owned housing as described above, HUD may review the PHA’s rent determination for such projects, including the PHA’s methodology of determining rent comparability. HUD intends to issue additional guidance concerning HUD review and monitoring of rent determinations and rent adjustments for PBV projects, including cases in which the PHA has an interest in the PBV project.

Questions for Comment

1. Should the definition of “controlling interest” be different?
2. Are there programmatic issues with changing a unit’s designation from PHA-owned to not PHA-owned that need to be address by HUD?
3. What, if any, additional oversight and monitoring should HUD undertake for units in which the PHA has ownership interest in order to ensure that all program requirements (including rent reasonableness and housing quality standards) are being met, especially in cases where the PHA responsible for enforcing those standards has a financial interest in the project?

C. Project-Based Vouchers (HOTMA § 106)

This section makes several statutory changes to the Project-Based Voucher (PBV) Program in section 8(o)(13) of the 1937 Act. The amendments include:

(1) changing the terminology in the statute from “structure” to “project” where the statute refers to structure instead of project;

(2) changing the PHA HCV program limitation on PBV vouchers from a 20 percent funding limitation to a 20 percent unit limitation calculation and allowing for additional project-basing of vouchers by raising the limit an additional 10 percent for homeless families, families with veterans, supportive housing for persons with disabilities or elderly persons, or in areas where vouchers are difficult to use. The statute also excludes certain projects that were previously subject to federally required rent restrictions or were receiving another type of long-term HUD housing subsidy from the program PBV limitation entirely;

(3) changing the income-mixing cap on the number of PBV units in a project to be the greater of 25 units in a project or 25 percent of the units in a project (the project unit cap), and making changes to the categories of PBV units that are excepted from this project unit cap;

(4) allowing the PHA to provide for an initial PBV contract of up to 20 years and to further extend that term for an additional 20 years;

(5) allowing the PHA to establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan;

(6) allowing the PHA to attach assistance to structures in which the PHA has an ownership interest or control without following a competitive process; and

(7) allowing PHAs to project-base HUD-VASH and FUP vouchers in accordance with statutory and regulatory requirements of the PBV program without additional requirements for approval by HUD.

This notice does not implement all the provisions of section 106 of HOTMA, but only those where HUD believes it is reasonable to do so and does not provide undue burden on PHAs to implement. HUD may provide additional guidance to this notice to ensure effective implementation and elaborate on issues that may need clarification.

Provisions under section 106 of HOTMA that are not implemented by this document and that the PHA and owner may not yet implement are as follows:

(1) Entering into a PBV HAP Contract for any unit that does not qualify as existing housing and is under construction or recently has been constructed regardless of whether the PHA and owner executed an Agreement to Enter a Housing Assistance Payments Contract (AHAP) (see section 106(a)(4) of HOTMA);

(2) Providing rent adjustments using an operating cost factor (see section 106(a)(6) of HOTMA);

(3) Establishing and utilizing procedures for owner-maintained site-based waiting lists (see section 106(a)(7) of HOTMA); and

(4) Concerning the environmental review requirements for existing housing (see section 106(a)(8) of HOTMA).

1. Changing “structure” to “project” (§ 106(a)(1) of HOTMA)

This provision amends section 8(o)(13) by replacing the term “structure” with the term “project” throughout the paragraph. No guidance is needed to make this change. In accordance with the law, this document serves as official notice that this statutory change is effective as of **[INSERT DATE THAT IS 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. HUD will issue any needed conforming regulatory changes in the future.

2. Changing the Maximum Amount of PBVs Permitted in the PHA HCV Program (§ 8(o)(13)(B) of 1937 Act).

This section of the document overrides 24 CFR 983.6 of the PBV program regulations.

A. Maximum Amount of PBVs in the PHA’s HCV Program

Under the new § 8(o)(13)(B) of the 1937 Act, PHAs may now project-base up to 20 percent of the PHA’s authorized units, instead of 20 percent of the PHA’s voucher budget authority. However, the PHA is still responsible for determining the amount of budget authority it has is available and ensuring that the amount of assistance that will be attached to the units is available under the ACC, regardless of whether the PHA has vouchers available for project-basing.

Prior to issuing a request for proposals (RFP) (24 CFR 983.51(b)(1)), selecting a project based on a previous competition (24 CFR 983.51(b)(2)), or selecting a project without following a competition process where the PHA has ownership interest and is engaged in improving,

developing or replacing a public housing property or site (see section C.7 of this document), the PHA must submit to the local field office all the following information (in lieu of following the requirements of 24 CFR 983.6(d)):

(1) The total number of units authorized under the Consolidated Annual Contributions Contract (ACC) for the PHA (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below). This number of authorized units includes special-purpose vouchers such as HUD-VASH (except as provided in section D below) and Family Unification Program vouchers. The PHA must also identify the number of PBV units that are excluded from total, if applicable.

(2) The total number of units currently committed to PBV (excluding those PBV units entirely excluded from the cap described in sections C.2.C and C.2.D below.). The number of units “committed to PBV” is comprised of the total number of units that are either (a) currently under PBV HAP contract, (b) under an Agreement to Enter into HAP contract (AHAP), or (c) covered by a notice of proposal selection (24 CFR 983.51(d)). The PHA must also identify the number of PBV units that are excluded from the total, if applicable. This number must match the number of PBV units excluded from the baseline units (discussed above).

(3) The number of units to which the PHA is proposing to attach project-based assistance through the new RFP or selection.

The PHA is no longer required to submit information on funding or available budget authority when submitting information to HUD on its intent to project-base vouchers. However, PHAs are still required to provide this PBV unit information to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the Request for Proposals (or makes the selection based on a previous competition or noncompetitively as applicable). The PHA

continues to submit the required information electronically to the HUD field office by sending an email to pbvsubmission@hud.gov. The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

B. Additional Project-Based Units

HOTMA further allows PHAs to project-base an additional 10 percent of its units above the 20 percent program limit, provided those additional units fall into one of the following categories:

(1) The units are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), and contained in the Continuum of Care Interim Rule at 24 CFR 578.3. See <https://www.federalregister.gov/d/2012-17546> and <https://www.federalregister.gov/d/2016-13684>.

(2) The units are specifically made available to house families that are comprised of or include a veteran. A veteran is an individual who has served in the United States armed forces. The PHA may further define “veteran” for purposes of determining if the units are eligible for this exception. For example, the PHA could require that the veteran must be eligible to receive supportive services from the Department of Veterans Affairs or require that the veteran was not dishonorably discharged.

(3) The units provide supportive housing to persons with disabilities or to elderly persons. The definitions of a person with disabilities and an elderly person are found at 24 CFR 5.403. Supportive housing means that the project 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. Such services may include (but are not limited to):

- (A) meal service adequate to meet nutritional need,
- (B) housekeeping aid,
- (C) personal assistance,
- (D) transportation services;
- (E) health-related services;
- (F) educational and employment services: or
- (G) other services designed to help the recipient live in the community as independently as possible.

The PHA must include in the PHA administrative plan the types of services offered to families for a project to qualify for the exception and to the extent to which such services will be provided. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project. A PHA may not require participation as a condition of living in an excepted unit, although such services may be offered.

Note that in accordance with 24 CFR 983.354, with the exception of an assisted living facility, the owner of a PBV project may not require the assisted family to pay charges for meals or supportive services, and non-payment of such charges by the family is not grounds for termination of tenancy. In the case of an assisted living facility (as defined in § 983.3) 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.

(4) The units are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

These categories are those under which a PHA is permitted to project-base an additional 10 percent of its units above the normally applicable 20 percent PBV program limitation. These categories are separate and distinct from exceptions to the income-mixing requirements that limit the number and percentage of units within a particular project to which PBV assistance may be attached (no more than the greater of 25 units or 25 percent of the units), which is discussed later in this document.

If a PHA wishes to add PBV units under this exception authority, the PHA must submit the same information in section C.2.A above to the Field Office, and identify the exception category (or categories) for which the PHA will project-base additional units (up to an additional 10 percent above the normally applicable PBV program limitation) and the specific number of units that qualify under the exception category.

PBV units may only be covered by this 10 percent exception authority if the PBV HAP contract was first executed on or after the effective date of this notice.

C. Units Not Subject to PBV Program Unit Limitation

New language in section 8(o)(13)(B) provides that units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD do not count toward the percentage limitation when PBV assistance is attached to them.

(1) Exception requirements. For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice; and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project based on a prior competition or without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the section 8 moderate rehabilitation program, including the single-room occupancy (SRO) program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement (Rent Supp) program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (RAP) (section 236(f)(2) of the National Housing Act).

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance or HCV tenant-based assistance are not covered by this exception. (The statute provides that the units must have been receiving

“other” project-based assistance provided by the Secretary in order to cover by the exception authority.)

Both existing units and units rehabilitated under the PBV program are eligible for this exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) PBV New Construction Units that Qualify for the Exception as Replacement Housing. For purposes of this notice, a PBV new construction unit must meet all of the following requirements in order to be a replacement unit and qualify for this exception to the program limitation:

(a) The unit which the PBV new construction unit is replacing (i.e., the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above no more than 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project based on a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection used to determine if the 5-year threshold has been met is the date of the PHA written notice of owner selection under 24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. An expansion of or modification to the prior project’s site boundaries as a result of the design of new construction project is acceptable as long as a majority of the replacement units are built back on

the site of the original public housing development and any units that are not built on the existing site share a common border with, are across a public right of way from, or touch that site.

(c) 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:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) 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.

HUD is specifically seeking comment on what changes HUD should consider making to the initial conditions set forth under this notice in order for a PBV new construction unit to qualify as replacement housing and the exception to the PBV program limitation. Please see the questions for comment section, below.

(3) Unit size configuration and number of units for new construction and rehabilitation projects. The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the program limitation exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The

maximum number of PBV units that would meet the exception from the program limitation in this example would be 40 units, and the remaining 10 PBV units in the project would count against the program limitation.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

(4) Applicability of PBV project selection requirements. For owner proposals involving all of these PBV properties (existing, rehabilitation, and new construction), the standard criteria for selection of projects and the units to which project-based assistance can be attached, including consistency with the PHA Plan, the goals of deconcentrating poverty and expanding housing and economic opportunities, site selection, and all civil rights requirements, are still in effect. Likewise, the requirements of HUD Notice PIH 2013-27 that concern the voluntary relinquishment by families of enhanced voucher assistance for PBV assistance remains in effect. The only difference is that the PBV units in these projects will not be included in determining if a PHA has exceeded its PBV program cap. These units are excluded from both the total number of units authorized under the PHA's ACC and the number of units committed to PBV in the program.

As noted above, the PHA is required to 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 that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units (i.e., identify the property and the covered program or programs under which the property was formerly assisted). The PHA submits the required information electronically to the HUD field office by sending an email to

pbvsubmission@hud.gov. The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

D. Other Units Not Subject to the PBV Program Unit Calculation.

In addition to the units listed under section C.2.C above, other units are not subject to the program limitation calculation and would be excluded in the total number of authorize units and the total number of PBV units currently committed to PBV that the PHA submits to the field office (in lieu of following the requirements of 24 CFR 983.6(b)).

(1) RAD exception. HUD waived the 20 percent limitation at section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6 for PBV units under the RAD demonstration. This waiver remains in effect, and, consequently, a PHA that continues to be exempted from submitting information on its PBV cap calculation to HUD when it is project-basing vouchers under RAD. Furthermore, RAD PBV units are excluded from both the total number of units under the ACC and the units committed to PBV when determining if the PHA has vouchers available to project-base under the program limit requirements.

(2) HUD-VASH PBV Set-aside vouchers. HUD has awarded vouchers specifically designated for project-based assistance out of the HUD-VASH appropriated funding made available from the FY 2016, FY 2015, FY 2014, FY 2013, FY 2011, and FY 2010 Appropriations Acts. Since these voucher allocations were specifically allocated for project-based assistance, HUD has determined that the PBV units supported by those vouchers should not count against the PHA's PBV program unit limitation as long as those vouchers remain under PBV HAP contract at the designated project. The Appropriations Acts funding these vouchers authorize the HUD Secretary, in consultation with the VA Secretary, to waive or specify alternative requirements for any provision of any statute or regulation that the HUD

Secretary administers in connection with the use of those HUD-VASH funds (except for requirements related to fair housing, labor standards, and the environment), upon a finding by the Secretary that any such waivers or alternative requirements are necessary for the effective delivery and administration of such voucher assistance. Accordingly, section 8(o)(13)(B) is waived for those HUD-VASH PBV vouchers.

This exception only applies to HUD-VASH PBV vouchers that were awarded to the PHA through the HUD-VASH PBV set-aside funding process. All other HUD-VASH vouchers, including those HUD-VASH vouchers that the PHA opts to project-base, are still subject to the PHA PBV program limitation, and would be included in the units authorized and units committed to PBV that the PHA submits to HUD under this document, which replaces the voucher funding information that was previously provided under 24 CFR 983.6(b).

(3) Additional categories established by HUD by regulation. Section 8(o)(B)(ii), as amended by HOTMA, further provides that the Secretary may, by regulation, establish additional categories for the exception to the PBV program unit limitation. HUD has not yet exercised this authority but may do so in the future.

For future PBV projects other than RAD, the PHA is required to 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 that the PHA intends to issue the RFP or make the selection. The PHA must indicate the specific exception that covers the units. The PHA submits the required information electronically to the HUD field office by sending an email to pbvsubmission@hud.gov. The PHA must also copy their local HUD Office of Public Housing Director on its email submission.

Questions for Comment:

1. Should HUD allow PHAs that are administering PBV units that would qualify under the additional 10 percent exception categories but were placed under HAP contract prior to the effective date of this notice count those units as excepted? This would potentially allow a PHA that was at the 20 percent limit to add new PBV units that do not fall under any of the exception categories, because counting the PBV units that were already under HAP under the new 10 percent exception authority would free up space under the regular 20 percent cap.

2. The new (o)(13)(B) further provides that the additional 10 percent exception may be applied to units that are difficult to use, as determined by the Secretary, and with respect to census tracts with a poverty rate of 20 percent or less. This document, for now, only applies the statutory exception provision to those units located in census tracts with poverty rates of 20 percent or less. What criteria should HUD use to define or determine the areas where vouchers are “difficult to use” for this exception category?

3. The statute allows the Secretary to issue regulations to create additional exception categories from the normally applicable PBV program limit, which could apply to the additional 10 percent authority or that could be exempted from the program limit entirely. What additional exception categories that should be included in the 10 percent authority? What other types of units should be exempted from the PBV program limit entirely?

4. This document sets out certain conditions that a PBV new construction unit must meet in order to be considered replacement housing and eligible for the exception to the PHA PBV program limitation. Are those conditions appropriate or should they be changed or expanded?

5. In light of the impact that additional exceptions and exemptions from the program limit will have on the number of vouchers available for tenant-based assistance under the HCV program, should HUD establish additional categories at all? What limits or requirements on

project-basing, if any, should be placed on the use of this exception authority to ensure that the PHA has sufficient tenant-based assistance available for families to exercise their statutory right to move from the PBV project with tenant-based assistance after one year of occupancy at the PBV project?

3. Changes to Income-Mixing Requirements for a Project (Project Cap) (§ 8(o)(13)(D) of 1937 Act).

This section overrides the PBV program regulations at 24 CFR 983.56(a) and 983.56(b)(1) and (2). This section also overrides §§ 983.262(c) and (d).

A. PBV Income-Mixing Project Cap, Generally

HOTMA amended the income-mixing requirement for an individual project found in section 8(o)(13)(D) of the 1937 Act. The limitation on the number of PBVs in a project is now the greater of 25 units or 25 percent of the units in a project. However, owners under current HAP contracts are still obligated by the terms of those HAP contracts with respect to the requirements that apply to the number of excepted units in a multifamily project. The owner must continue to designate the same number of contract units and assist the same number of excepted families as provided under the HAP contract during the remaining term of the HAP contract, unless the owner and the PHA mutually agree to change those requirements. For example, if an owner has a PBV HAP contract for a 20 unit project, and the HAP contract provides that 15 of those units were exempted from the 25 percent income mixing requirement because the units are designated for elderly families, the owner must continue to designate those units for occupancy by elderly families, notwithstanding the fact 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.

Except as provided below, the PBV HAP contract may not include units in excess of the greater of 25 units or 25 percent of the units in the project.

B. Exceptions to Project Cap

Units that are in one of the following categories are excluded from the 25 percent or 25-unit project cap on PBV assistance:

(1) Units exclusively serving elderly families (as such term is defined in 24 CFR 5.403).

(2) Units housing households eligible for supportive services available to all families receiving PBV assistance in the project. The project must make supportive services available to all assisted families in the project (but the family does not have to actually accept and receive the supportive service for the exception to apply to the unit). Families eligible for supportive services under this exception to the project cap would include families with a household member with a disability, among other populations. Such supportive services need not be provided by the owner or on-site, but must be reasonably available to the families receiving PBV assistance in the project and designed to help the families in the project achieve self-sufficiency or live in the community as independently as possible. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify under the exception and the extent to which such services will be provided.

A PHA may not require participation in the supportive services as a condition of living in an excepted unit, although such services may be offered. In cases where the unit is excepted because of FSS supportive services or any other supportive services as defined in the PHA administrative plan, if a family at the time of initial tenancy was eligible for FSS supportive services and successfully completes its FSS contract of participation or the supportive services

objective, the unit continues to count as an excepted unit for as long as the family resides in the unit even though the family is no longer eligible for the service.

However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently *is no longer eligible* for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the ineligible family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract (unless it is possible to substitute a different unit for the formerly excepted unit in the project in accordance with 983.207(a)).

(3) Projects that are in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey 5-Year Estimates.

The PHA may only refer qualifying families for occupancy of excepted units under (1) and (2) above.

C. Grandfathering of Certain Properties

The HOTMA amendments entirely eliminate the statutory exemption from a project cap for projects that serve disabled families and modify the supportive services exception. Previously, the statutory exception required that the family must be actually receiving the supportive services for the individual unit to be exempted from the income-mixing requirement. The new requirement provides that the project must make supportive services available to all assisted families in the project (but that the family does not have to actually accept and receive the supportive services for the exception to apply to the unit). However, projects that are using the former statutory exemptions will continue to operate under the pre-HOTMA requirements and will continue to renew their HAP contracts under the old requirements, unless the PHA and

the owner agree by mutual consent to change the conditions to the HOTMA requirement. The PBV HAP contract may not be changed to the HOTMA requirement if the change would jeopardize an assisted family's eligibility for continued assistance at the project (e.g., excepted units at the project included units designated for the disabled, and changing to the HOTMA standard would result in those units no longer being eligible as an excepted unit unless the owner will make supportive services available to all assisted families in the unit.)

D. Projects not Subject to a Project Cap

New language in section 8(o)(13)(D) exempts certain types of units receiving project-based voucher assistance from having a project cap entirely. These are PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD. This exception to the project cap may only be applied to projects that were not already under HAP contract on the effective date of this document. The exception may not be applied retroactively to projects under HAP contract on the effective date of this notice or subsequently applied at the extension of those HAP contracts.

(1) Exception requirements. For purposes of this document, the unit must meet the following conditions in order to qualify for this exception:

(a) The unit must be covered under a PBV HAP contract that first became effective on or after the effective date of this notice, and

(b) In the 5 years prior to the date the PHA either (i) issued the RFP under which the project was selected or (ii) selected the project without competition, the unit met at least one of the two following conditions:

(i) The unit received one of the following forms of HUD assistance:

(I) Public Housing Capital or Operating Funds (section 9 of the 1937 Act).

(II) Project-Based Rental Assistance (section 8 of the 1937 Act). Project-based rental assistance under section 8 includes the moderate rehabilitation program, including the SRO program.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

(V) The Rent Supplement program (section 101 of the Housing and Urban Development Act of 1965).

(VI) Rental Assistance Program (section 236(f)(2) of the National Housing Act); or

(ii) The unit was subject to a rent restriction as a result of one of the following HUD loan or insurance programs:

(I) Section 236.

(II) Section 221(d)(3) or (d)(4) BMIR.

(III) Housing For the Elderly (section 202 of the Housing Act of 1959).

(IV) Housing for Persons With Disabilities (section 811 of the Cranston-Gonzalez National Affordable Housing Act).

Units that were previously receiving PBV assistance are not covered by this exception. The statute provides that the units must have been receiving “other” project-based assistance provided by the Secretary in order to be covered by the exception authority.

For proposals involving these properties, the standard criteria for selection of projects and the units to which PBV assistance can be applied are still in effect. The only difference is that any PBV assistance provided to these properties may be used to project base up to 100 percent of the units in the project.

Both existing units or units rehabilitated under the PBV program are eligible for this project cap exception if the units meet the conditions outlined above. In addition, newly constructed units developed under the PBV program may also be excluded from the PHA program limitation, provided the newly constructed unit qualifies as a replacement unit as described below.

(2) PBV New Construction Units that Qualify for the Exception as Replacement Housing. For purposes of this document, the PBV new construction unit must meet the following requirements in order to be a replacement unit and qualify for the project cap exception (these are the same conditions that apply for units to qualify as replacement units for purposes of the exception to the PBV Program unit limit under section C.2.C of this document above):

(a) The unit which the PBV new construction unit is replacing (i.e., the original unit) must have received one of the forms of HUD assistance or was subject to a rent restriction as a result of one of the HUD loan or insurance programs listed above within 5 years from the date the PHA either (i) issued the RFP under which the PBV new construction project was selected or (ii) selected the PBV new construction project under a prior competition or without competition. If the PBV new construction project was selected based on a prior competition or without competition, the date of selection is the date of the PHA notice of owner selection (24 CFR 983.51(d)).

(b) The newly constructed unit is located on the same site as the unit it is replacing. (An expansion of or modification to the prior project's site boundaries as a result of the design of new construction project is acceptable as long as new project is generally located at the same site as the original project for purposes of this requirement.)

(c) 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:

(i) Former residents of the original project are provided with a selection preference that provides the family with the right of first occupancy at the PBV new construction project when it is ready for occupancy.

(ii) 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.

(3) Unit size configuration and number of units. The unit size configuration of the PBV new construction project may differ from the unit size configuration of the original project that the PBV units are replacing. In addition, the total number of PBV assisted units may differ from the number of units in the original project. However, under no circumstances may the project cap exception be applied to PBV new construction units that exceed the total number of covered units in the original project that the PBV units are replacing. For example, assume the PBV new construction project will consist of a total of 50 PBV units and is replacing a former section 236 project consisting of 40 units. The maximum number of PBV units that would meet the exception from the project cap in this example would be 40 units, and the remaining 10 PBV units would be subject to the project cap and would need to qualify for an exception on the basis of another exception category.

These same policies apply in the case where the owner is rehabilitating the project under the PBV program and is changing the unit configuration and/or total number of units in the project as a result of the rehabilitation.

Questions for Comment:

1. What other standards should HUD require for supportive services under B.2, above?
2. The Secretary has authority to define areas where tenant-based vouchers are “difficult to use.” This document, for now, only applies the statutory provision of census tracts with poverty rates of 20 percent or less. What are some other criteria that HUD should include? For example, other possible criteria include rental vacancy rates, voucher success rates, high cost areas as captured by the difference between the zip code level small area FMR and the metropolitan-wide FMR, or alternative measures of low-poverty areas.
3. Are there additional properties formerly subject to federal rent restrictions or receiving rental assistance from HUD that should be exempted from a project cap?
4. The statute allows HUD to impose additional monitoring and requirements on projects that project-base assistance for more than 40 percent of the units. How can PHAs ensure that this increase in PBV units will not hamper mobility efforts and moves to opportunity areas?

4. PBV Contract Terms (§ 8(o)(13)(F) and (G) of 1937 Act and §§ 106(a)(4) and (5) of HOTMA)

A. Initial Term of HAP Contract and Extension of Term.

The initial HAP Contract term may now be of a period of up to 20 years (instead of the prior 15-year limitation). The length of the term of the initial HAP contract for any HAP contract unit may not be less than one year nor more than 20 years (instead of the prior 15-year limitation on the initial term of the HAP contract). In addition, the PHA may agree to enter into an extension (at the time of the initial HAP contract execution or any time before the expiration of the contract, for an additional term of up to 20 years (as opposed to the prior 15-year limitation on the term of the contract extension). A HAP contract extension may not exceed 20 years. The

PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively.

PHAs and owners with HAP contracts that are still in the initial term may extend the initial term up to a maximum initial term of 20 years by mutual consent, and then may subsequently agree to extend the contract for up to 20 years. The maximum term of the HAP contract in that instance (initial term and subsequent extension) would be 40 years. PHAs and owners with HAP contracts that are no longer in the initial term may mutually agree to extend the HAP contract for a total extension term of 20 years. The maximum term of the HAP contract in that case would be 20 years plus the number of years that constituted the initial term of the HAP contract.

If the project in question is a PHA-owned project, any change in the initial term and any subsequent extension is also subject to the approval of the independent entity.

This section overrides 24 CFR 983.205(a) and (b) only with respect to the length of the initial term and the extension of the term of the HAP contract. Otherwise, all of the other requirements of those regulations remain in effect, including the requirements related to PHA-owned units.

B. Priority of Assistance Contracts

The new section 8(o)(13)(F)(i)(I) requires PHAs, in times of insufficient funding, to first take all cost-savings measures prior to failing to make payments under existing PBV HAP contracts (i.e., terminating the HAP contract). If the PHA has taken all cost-savings measures and still has insufficient funding to make HAPs, it is left up to the discretion of the PHA to

choose to terminate HCV or PBV assistance first. The list of cost-savings measures that must be taken prior to terminating assistance contracts are found in PIH Notice 2011-28.¹

C. Biennial Inspection Requirements

The new language in section 8(o)(13)(F)(i)(II) of the 1937 Act is a change that clarifies the frequency of inspection requirement for PBV projects to those found in paragraph (8), which allows for biennial as opposed to annual inspections. The language in paragraph (13)(F)(i)(II) merely clarifies that for PBV assistance, biennial inspections may be conducted using a sample of units. The PBV regulations at 24 CFR 983.103 were revised under the final rule entitled, “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,” published in the Federal Register on March 8, 2016, at 81 FR 12353. This rule amended regulations to reflect the biennial inspection requirement for PBV and that a random sampling of at least 20 percent of the PBV units in each building may be used to fulfill that biennial inspection requirement.

D. Additional Units Without Competition

The new language in section 8(o)(13)(F)(ii) allows PHAs and owners to amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements (see 24 CFR 983.51(b)) for those added PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and the individual project caps, found in sections 8(o)(13)(B) and (D) of the 1937 Act, respectively. Furthermore, prior to attaching additional units without competition, the PHA must submit to the local field office the information described in section C.2.A above, which pertains to demonstrating the PHA is able to project-

base additional units without exceeding the PHA program limitation on PBV units. PHAs must also detail their intent to add PBV units in this manner in their administrative plan, along with their rationale for adding PBVs to this specific project. This provision overrides the restriction in 24 CFR 983.207(b) that additional units may only be added to the HAP contract during the three-year period immediately following execution of the HAP contract. All of the other requirements under § 983.207(b) continue to apply.

E. Additional Contract Conditions

The new 8(o)(13)(F)(IV) allows the PBV HAP contract to have additional conditions, including conditions related to continuation, termination, or expiration. HUD is not adding any additional conditions to the PBV HAP contract at this time.

The section further requires that HAP contracts specify that, upon termination or expiration of a contract that is not extended, a family living at the property is entitled to receive a tenant-based voucher (the voucher that was previously providing project-based assistance for the family in the PBV project). The PHA must provide the family with a voucher and that family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance if the unit complies with inspection requirements and rent reasonableness requirements. The family must pay the total tenant payment (determined under 24 CFR part 5 subpart F) and any additional amount if the unit rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance (for example, the rent is reasonable, unit meets HQS, etc.). The owner may not terminate the tenancy of a family that exercises its right to remain except for a serious or repeated lease violation or other good cause.

Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

The statutory owner notice requirements related to the contract termination or expiration at 24 CFR 983.206 continue to apply to the PBV program. If the owner fails to provide timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of the rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of the rent. For families that wish to remain at the property, the HCV tenant-based assistance would not commence until the owner's required notice period ends.

Question for Comment

Are there additional parameters HUD should consider placing on PHAs and owners when amending HAP contract terms related to continuation, termination or expiration?

5. Preference for Families who Qualify for Voluntary Services (§ 8(o)(13)(J) of 1937 Act).

Section 106(a)(7)(A) and (C) of HOTMA makes changes to section 8(o)(13)(J) of the 1937 Act to allow a PHA to allow owners with PBV contracts to create and maintain site-based waiting lists. HUD is not implementing these provisions at this time, but instead will pursue rulemaking.

However, section 106(a)(7)(B) of HOTMA provides that a PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services,

offered in conjunction with assisted units, provided that the preference is consistent with the PHA plan. This is a change from the current regulatory requirement at 24 CFR 983.251(d), that provides in selecting families, PHAs may give preference to disabled families who need the services offered at a particular project in accordance with the limits under the regulatory paragraph, regardless of whether the family qualifies for the supportive service and will actually be able to receive the supportive services. Note, however, that the prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply. This document provides PHAs with additional guidance and information on how to establish such preferences.

A. Selection Preference for Families Who Qualify for Voluntary Services

(1) Consistency with Nondiscrimination and Civil Rights Statutes and Requirements.

Both the owner and the PHA are responsible for ensuring that the proposed preference is consistent with all applicable Federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and HUD's Equal Access Rule. See 24 CFR 5.105(a). It is also the responsibility of the PHA to ensure that an owner is carrying out the PHA's program in a manner consistent with Section 504. There are unique requirements regarding the selection preference when considered in the context of providing services for individuals with disabilities. In particular, the statutory language permitting a preference for individuals who qualify for voluntary services, including disability-specific services, must be read consistent with Federal laws that provide protections against discrimination based on disability and segregation of individuals with disabilities as well as the affirmative requirement that programs, services, and activities be provided in the most integrated

setting appropriate to the needs of individuals with disabilities. Among these requirements, PHAs and owners, and in certain circumstances services providers, may not impose eligibility criteria that discriminate on the basis of disability, and must comply with the integration mandate.

The HOTMA amendments permit a PHA to establish a preference based on who qualifies for voluntary services, including disability-related services, offered in conjunction with the assisted units. Consistent with Federal nondiscrimination laws, qualifications or eligibility criteria, including for voluntary services, cannot be applied in a discriminatory manner. In particular, PHAs, owners, and service providers cannot impose additional admissions criteria that discriminate or are applied in a discriminatory manner. Any individual who is qualified for the services must be able to receive the preference, including qualified individuals with disabilities, regardless of disability type.

Voluntary services can consist of a variety of activities, including for example, meal service adequate to meet nutritional needs, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, and other services designed to help the recipient live in the community as independently as possible. Voluntary services can also include disability-specific services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided to support a person with a disability. Such services may also include, for example, services provided by State Medicaid programs to promote community based settings for individuals with disabilities.

The revised statute permits such a preference to be established if it is consistent with the PHA plan. As part of the PHA plan review process, the Office of Fair Housing and Equal Opportunity, in consultation with the Office of General Counsel, will review each proposed preference for consistency with fair housing and civil rights requirements. As part of this process, HUD may request the PHA or owner provide any additional documentation necessary to determine consistency with the PHA plan and all applicable federal fair housing and civil rights requirements. In developing any proposed targeted preferences, PHAs must comply with the requirements outlined in PIH Notice 2012-31 and HUD's Statement on the Role of Housing in Accomplishing the Goals of Olmstead.

(2) Preferences for disability-specific services.

A PHA or owner may offer a preference for individuals who qualify for voluntary services offered in connection with the units. Such services may or may not include disability-specific services. For example, a preference may be only for persons who qualify for employment assistance, or for transportation services, or a preference may be for persons who qualify for either housekeeping assistance, case management, or outpatient health services. If a PHA or owner decides, however, that the only preference that will be offered is based on qualification for a disability-specific service, it is especially important for the entity to consider how to implement this preference consistent with Section 504 and the ADA, and their implementing regulations.

Further, the statutory language allowing an agency or owner to give preference to families who qualify for voluntary services, including disability-specific services, must be implemented consistent with the integration mandate under Section 504 and Title II of the ADA. 24 CFR 8.4(d); 28 CFR 35.130(d). The integration mandate, as mentioned earlier in the notice,

requires that covered entities ensure persons with disabilities can interact with persons without disabilities to the fullest extent possible. HUD has provided guidance on what the Department considers integrated settings in the housing context:

“Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.”²

By contrast, HUD has stated that segregated settings are “occupied exclusively or primarily by individuals with disabilities.”³

In addition, requirements under the Fair Housing Act, including the regulatory obligation under 24 CFR 100.70(c)(4) regarding dispersion of units occupied by individuals with disabilities and not assigning individuals with disabilities to a particular section or floor of a building, continue to apply.

As more states implement requirements under Title II of the ADA and *Olmstead*, which are focused on transitioning individuals from institutional and other segregated settings into integrated community-based settings, as well as assisting individuals at risk of

² Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, <http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>.

³ The U.S. Department of Justice provides additional relevant guidance on the application of the integration mandate under Title II and Section 504 in its Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, https://www.ada.gov/olmstead/q&a_olmstead.htm and its *Olmstead* compliance and enforcement efforts, <https://www.ada.gov/olmstead/index.htm>.

institutionalization from entering such settings, there is an increased need for affordable, integrated, and accessible housing opportunities. To assist with these concerns, PHAs or owners may want to coordinate with other relevant agencies implementing *Olmstead* planning and transition planning related to the Centers for Medicare and Medicaid Services (CMS)' Home and Community-Based Setting (HCBS) regulation in their State. HUD encourages the PHA or owner to consult with the relevant agencies who make determinations as to whether the housing qualifies as a HCBS under the CMS regulations to allow for State Medicaid funding to be accessed at the site. The CMS regulations specify the qualities that HCBS must have in order to receive funding, including that the setting is integrated.

B. Informed Client Choice and Self-Determination

HUD emphasizes the importance of client choice, independence, and self-determination in implementing this provision. Consistent with the statutory language, as well as federal fair housing and civil rights requirements, participation in services is voluntary. Accordingly, the existing regulatory language at 24 CFR 982.251(d)(2) stating that residents with disabilities shall not be required to accept the particular services at the project continues to apply. Program beneficiaries who receive housing because of the preference still have the ability to receive voluntary services from a service provider of their choosing, or choose not to participate in services at all. Similarly, an individual who chooses to no longer participate in a service or who no longer qualifies for services he or she did qualify for at the time of initial occupancy cannot subsequently be denied a continued housing opportunity because of this changed circumstance. A PHA or owner also cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs

C. Additional Requirements

- PHAs and project owners must also ensure that their programs are operated in a manner to affirmatively further fair housing under the Fair Housing Act, 42 USC 3608, and related authorities, such as the Affirmatively Furthering Fair Housing Rule, 24 CFR 5.150 et seq.
- Housing providers cannot use a preference to impose additional criteria that intentionally discriminates against members of any protected class or may result in a discriminatory effect. For recent HUD guidance on discriminatory effects under the Fair Housing Act, see Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf; Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency, <http://portal.hud.gov/hudportal/documents/huddoc?id=lepmemo091516.pdf>.
- PHAs and owners must also ensure their implementation of preferences and other operations comply with other Federal nondiscrimination requirements. This includes, among other requirements, providing reasonable accommodations for persons with disabilities, auxiliary aids and services necessary to ensure effective communication with individuals with disabilities, which includes ensuring that information is provided in appropriate accessible formats as needed, *e.g.*, Braille, audio, large type, accessible web-based applications, assistive listening devices, and sign language interpreters, and taking reasonable steps to maximize the utilization of accessible units (units accessible to persons with mobility impairments and units accessible to persons with hearing or vision impairments) by eligible individuals who need the accessibility features of the particular unit. For additional guidance on permissible PHA preferences, please see the Statement of the Department of Housing and Urban Development on the Role of Housing

in Accomplishing the Goals of Olmstead,

<http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf>, and PIH Notice 2012-31, <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-31.pdf>. In addition, HUD anticipates issuing additional guidance on the application of HOTMA, including fair housing guidance.

6. Attaching PBVs to structures owned by PHAs (§ 8(o)(13)(N) of 1937 Act)

The new section 8(o)(13)(N) allows PHAs to attach PBVs to projects in which the PHA has an ownership interest or has control of, without following a competitive process, in cases where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The PHA's ownership interest does not have to meet the definition of the term "owned by a PHA" established by section 105 of HOTMA. For purposes of this section, an ownership interest means that the PHA or its officers, employees, or agents are in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; a stockholder; a member, or general or limited partner; or a member of a limited liability corporation. These PBV projects are still subject to all other applicable PBV requirements.

In order to be subject to this non-competitive exception, the PHA must be planning rehabilitation or construction on the project with a minimum of \$25,000 per unit in hard costs. The PHA must detail in its PHA administrative plan what work it plans to do on the property or site and how many units of PBV it is planning on adding to the site.

This section overrides the regulatory requirements for selection of PBV proposals at 24 CFR 983.51(b).

Questions for Comment:

1. Is the \$25,000 per unit threshold appropriate for this exception from the competitive process? HUD chose the \$25,000 threshold based on the findings of the 2010 Capital Needs study on the average existing capital need per public housing unit, but is seeking public comment on other possible dollar thresholds or methodologies for determining whether a PHA's rehabilitation or construction projects qualifies as an initiative to improve, develop, or replace a public housing property or site.

2. The law provides that this section is applicable to a PHA that has an ownership interest in or has control of the project. Are there examples or cases where a PHA may have control of a project but would not have any ownership interest in the project that HUD should address in future implementing guidance or when conforming the regulation to these provisions?

7. Project-Basing Special-Purpose Vouchers (§ 8(o)(13)(O) of 1937 Act)

HOTMA added a new section 8(o)(13)(O) to the 1937 Act, allowing PHAs to project-base Family Unification Program (FUP) and HUD-VASH vouchers without requiring additional HUD approval. This document serves as official notice that this statutory change is effective as of **[INSERT DATE THAT IS 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. This document also provides additional information on how PHAs may project-base HUD-VASH or FUP vouchers.

All normally applicable PBV requirements under 24 CFR part 983 or implemented through this document apply to project-based FUP and HUD-VASH vouchers, and PHAs must continue to meet all of their obligations to assist the required number of HUD-VASH and FUP families for their HCV programs.

A. HUD-VASH Vouchers

The most current requirements for the HUD-VASH program may be found in PIH Notice 2015-10. In that notice, HUD requires that PHAs wishing to project-base HUD-VASH vouchers must meet certain requirements in order to do so. Those PBV requirements are now superseded by the statutory amendments made by HOTMA.

However, statutory authorization for the HUD-VASH program, including section 8(o)(19) of the 1937 Act and the FY 2016 appropriations Act,⁴ requires that PHAs conduct their HUD-VASH programs in conjunction with a Veterans Administration Medical Center (VAMC), which must make supportive services available to individuals receiving HUD-VASH assistance. Therefore, in order to meet the requirement that the PHA provide rental assistance in conjunction with a VAMC's ability to provide supportive services, PHAs wishing to project-base HUD-VASH vouchers must consult with their partner VAMC to ensure that the VAMC will be able to continue to provide supportive services should the PHA project-base its HUD-VASH vouchers. Furthermore, PHAs that received HUD-VASH PBV set-aside funds must continue to comply with all of the terms and conditions that apply to those vouchers.

B. Family Unification Program (FUP) Vouchers

HOTMA also allows PHAs to project-base vouchers awarded to the PHA for the FUP program without further approval from HUD. However, HUD encourages PHAs wishing to do so to consider whether project-basing such vouchers yields significant benefits, whether doing so would limit the ability of youth to use such vouchers, and whether project-basing FUP vouchers would allow the PHA to serve the populations eligible for FUP vouchers in such a way as to keep the units filled. A PHA project-basing FUP vouchers may limit the project-based vouchers

⁴ Division L, Title II of the Consolidated Appropriations Act, 2016 (Public Law 114-113, approved December 18, 2015).

to one category of FUP eligible families, such as making the project-based vouchers exclusively available for FUP-youth.

Questions for Comment:

1. Is there an advantage to grouping FUP families (either FUP families, FUP youth, or all FUP families) in one project (as opposed to interspersed with other PBV units in a PHA's portfolio)?

2. How would the PHA administer waitlists and preferences to manage FUP availability across multiple waitlists?

3. How do PHAs ensure mobility access with a time-limited voucher (i.e., FUP voucher that is assisting a FUP-eligible youth)?

4. How do PHAs ensure full occupancy of PBV units with time-limited vouchers and limited numbers?

D. Using Vouchers in Manufactured Housing (HOTMA § 112)

Section 112 of HOTMA amends section 8(o)(12) of the 1937 Act with respect to the use of voucher assistance provided to families that are owners of manufactured housing. Prior to the HOTMA amendment, voucher assistance payments on behalf of owners of manufactured housing under section 8(o)(12) could only be made to assist the manufactured home owner with the rent for the space on which the manufactured home is located (the manufactured home space). Section 112 expanded the definition of "rent" for manufactured home owners receiving voucher assistance to also include other housing expenses, specifically the monthly payments made by the family to amortize the cost of purchasing the manufactured home (including any required insurance and property taxes) and tenant-paid utilities.

The use of housing assistance payments to assist a manufactured home owner with the rent of the manufactured home space and other eligible expenses continues to be a special housing type under 24 CFR part 982 subpart M. In general, the PHA is not required to permit families to use any of the special housing types and may limit the number of families using special housing types. However, the PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

For manufactured home owners that are currently receiving HCV assistance to rent the manufactured home space in accordance with 24 CFR 982.622 through 982.624, the PHA must implement the HOTMA changes to the calculation of “rent” and the amount of subsidy effective on the first regular reexamination following the effective date of this document, or no later than one year after the effective date of this document (if the first regular examination falls after that date). The new subsidy calculation shall apply from that point on during the term of the HAP contract.

24 CFR 982.622 and 982.624 continue to apply for HCV assistance provided on behalf of a manufactured home owner that is renting the manufactured home space. Section 982.623, which covers how the housing assistance payment is calculated, is no longer applicable. Instead, if a PHA chooses to provide voucher assistance to a manufactured home owner who is renting the manufactured home space, the monthly housing assistance payment is calculated as the lower of:

- (a) The PHA payment standard minus the total tenant payment; or
- (b) The rent of the manufactured home space (including other eligible housing expenses) minus the total tenant payment.

The PHA payment standard is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. The payment standard for the family is the lower of the payment standard amount for the family unit size or the payment standard amount for the size (number of bedrooms) of the manufactured home. The separate fair market rent (FMR) for a manufactured home space is no longer applicable to establishing the payment standard for a manufactured homeowner who is renting the manufactured home space since the payment is assisting the homeowner with other housing expenses. The PHA payment standard will be based on the applicable HUD published FMR for the area in which the manufactured home space is located.

The rent of the manufactured home space (including other eligible housing expenses) is the total of:

- (a) the rent charged for the manufactured home space;
- (b) owner maintenance and management charges for the space;
- (c) the monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- (d) the applicable allowances for tenant paid utilities.

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before

the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

The total amount for the rent of the manufactured home space and the other eligible expenses is reported in PIC on the HUD-50058 on line 12k, even though it includes amounts in addition to the total monthly rent payable to the owner under the lease for the contract unit.

The utility allowances are the applicable utility allowances from the PHA utility allowance schedule under 24 CFR 982.517 and 982.624.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender or utility company.

HOTMA further provides that the PHA may choose to make a single payment to the family for the entire monthly assistance amount rather than making the HAP directly to the owner of the manufactured home space the family is renting. HUD is not implementing this option at this time but is seeking comment on how to best implement this option, including how to best ensure the PHA may still take enforcement action when necessary against an owner who fails to fulfill his or her responsibilities under the HCV program.

Question for Comment

When implementing the option to allow the PHA to make a single HAP directly to the family, how would HUD ensure that a PHA take enforcement action against an owner of a manufactured home space who fails to fulfill his or her responsibilities under the HCV program? Would a manufactured home park owner be willing to enter into a contract under which he or she would receive no direct payment?

III. Environmental Impact Certification

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on www.regulations.gov.

Dated: January 10, 2017

Nani Coloretti,

Deputy Secretary

[FR-5976-N-03]

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