

# HCV Regulatory Update

SERC-NAHRO

June 2017

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**HCV  
Regulatory Update**

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Adam Ensalaco



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**Welcome!**

- Today's topics:
  - HOTMA
  - Streamlining final rule
  - Guidance on arrest records
  - VAWA 2013 update
  - Portability changes



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**Where Are the References?**

- HUDCLIPS
  - <http://www.hud.gov/offices/adm/hudclips/>
- NAHRO website
  - <http://www.nahro.org/index.cfm>



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**VAWA 2013 Update**



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**VAWA 2013 Background**

- *Federal Register* notice August 6, 2013
  - Overview & initial implementation
- Letter to executive directors  
September 2013
- Final rule published November 16, 2016
  - "Compliance date" May 15, 2017
  - Emergency transfer plans effective date:  
June 14, 2017



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**VAWA 2013 Background**

- Revised VAWA forms posted December 2016
  - Translated versions: May 2017
- Notice PIH 2017-08
  - May 19, 2017



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**VAWA 2013 Changes**



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**VAWA 2013 Guidance**

- Expands protections to victims of sexual assault
- Clarifies that, victims cannot be discriminated against on the basis of any protected class, and HUD programs must also be operated consistent with HUD's Equal Access Rule (See 24 CFR 5.2001(a).)



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**VAWA 2013 Guidance**

- New definitions (e.g., affiliated individual and sexual assault, and others) and revises previously defined terminology (e.g., bifurcate and stalking). (See 24 CFR 5.2003.)
- New requirements for notification of occupancy rights under VAWA
  - Model Notice of Occupancy Rights Under VAWA (form HUD-5380)



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**VAWA 2013 Guidance**

- Emergency transfer plan requirement
  - establishes record keeping and reporting requirements
  - Model Emergency Transfer Plan (form HUD-5381), and Emergency Transfer Request (form HUD-5383). (See 24 CFR 5.2005(e).)
- Revises documentation requirements



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**VAWA 2013 Guidance**

- New Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (form HUD-5382). (See 24 CFR 5.2007.)
- New guidance on bifurcation of the lease



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**VAWA 2013 Guidance**

- All tenants and applicants, and not only those determined to be victims of domestic violence, dating violence, sexual assault, or stalking, receive statutorily required notification of their VAWA rights.
- Clarifies that PHAs may establish a preference for victims.



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**VAWA 2013 Guidance**

- Establishes new requirements under PBV for a family's right to move as a result of the family, or a member of the family, being or having been the victim of domestic violence, dating violence, dating violence, sexual assault, or stalking. (See 24 CFR 983.261.)



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**VAWA 2013 Guidance**

- Guests, unassisted members, and live-in aides of the family are ineligible for VAWA protections that are available only to tenants and participants.



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**VAWA 2013 Guidance**

- As a reasonable accommodation, a tenant/participant can request VAWA protections based on the grounds that the live-in aid is a victim.
  - "Other reasonable accommodations may be needed on a case-by-case basis."



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**VAWA 2013 Guidance**

- When a guest or unassisted member is a victim, a tenant/participant cannot be evicted or have assistance terminated on the basis of the domestic violence, dating violence, sexual assault or stalking of the guest or unassisted member.



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**VAWA 2013 Guidance**

- Unassisted members who are also on the lease may qualify by way of the lease for VAWA protections at 24 CFR 5.2005(c).



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**VAWA 2013 Guidance**

- The VAWA Final Rule provides that PHAs cannot deny, terminate, or evict on the basis of *or as a direct result of* domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.



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**VAWA 2013 Guidance**

- Common "Adverse Factors" which may be the result of domestic violence, dating violence, sexual assault, or stalking:
  - Poor credit history
  - Poor rental history
  - Criminal record
  - Failure to pay rent



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**VAWA 2013 Guidance**

- Other disqualifiers may also stem from VAWA issues, therefore PHA must offer VAWA forms to anyone being denied or terminated and must evaluate each VAWA claim on its own merits.
- Guidance in section 7.3 (pg. 9) of the notice.



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**Notification**

- New Forms:
- HUD Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternative Documentation form HUD-5382
  - Replaces 50066
- VAWA Notice of Occupancy Rights (form HUD-5380)



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**Notification**

- VAWA informing notice and certification form must be provided
  - To current participants within 12 months after effective date of final rule (by December 16, 2017)
  - To all new admissions
  - With any notice of denial, and
  - With any notice of termination



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**Notification**

- Model owner notification of rights and obligations
  - Appendix II of PIH 2017-08
  - 6 pages
  - Notice is optional (HUD encourages its use)
  - VAWA information is included in tenancy addendum



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**Emergency Transfers**

- PHAs must establish an emergency transfer plan (ETP) for victims as part of their admin plan
- PHA may be able to use current practice as a basis if it meets requirements
- Must adopt policies and provide emergency transfers no later than June 14, 2017



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**Emergency Transfers**

- ETP must provide for immediate transfer to a safe unit if one is available and client would not have to apply
- Policies must describe priority of VAWA transfers in relation to other transfers
- Must describe policies for emergency transfers of HCV participants



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**Emergency Transfers**

- Victim qualifies if transfer “expressly requested” and victim believes there is a threat of imminent harm
- Victims of sexual assault qualify for emergency transfers if:
  - They reasonably believe there is a threat of imminent harm, or
  - The sexual assault occurred on the premises within 90 days before transfer request



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**Emergency Transfers: PBV**

- PHA must allow emergency transfer to tenant-based HCV if tenancy is 1 year or more
  - If voucher available
- PHA policy may allow emergency transfers to tenant-based HCV after less than 1 year
  - Not mandatory



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**Emergency Transfers**

- HCV owners (including PBV) are not required to provide emergency transfers
  - Refer any requests to PHA
  - PHA is the "covered housing provider" referenced in the rule



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**Emergency Transfers**

- PHA may choose to provide a voucher to facilitate the emergency transfer without having first terminated assistance to the perpetrator
- PIH 2017-08 includes step-by-step examples of emergency transfer procedures for PH, HCV & PBV



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**Reasonable Time to Establish Eligibility**

- Applies only to mixed families in which victim is noncontending family member
- Following a lease bifurcation in which the perpetrator was the eligible HOH
- Must allow 30 days for victim to establish eligibility



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**VAWA 2013 Policies**

- PIH 2017-08 includes a 5-page list of policies required for annual plan and admin plan
  - Appendix I
- PHAs should have already implemented some of the required policies
  - Review list and revise as necessary



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**VAWA 2013 Forms**



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**Form HUD-5380**

- Notice of Occupancy Rights is the official HUD informing notice
  - 8 pages
  - Reduce by single-spacing and duplexing to 2 sheets
- PHAs were instructed in 2013 to provide informing notices and have been awaiting the HUD version



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**Form HUD-5381**

- Model emergency transfer plan
- Must be modified for agency-specific info
  - Including other housing programs administered by PHA
- PHA version must be based on HUD model



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**Form HUD-5382**

- Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation
- Replaces HUD-50066
- Adds new line for name of person completing form (if not completed by victim)



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**Form HUD-5383**

- Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
- "Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit."



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**HOTMA Provisions  
FR Notice January 18, 2017**



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**Implementation Notice**

- The January 2017 notice implements selected portions of HOTMA in HCV & PBV programs
- Notice also solicits comments on current and future implementation
- Effective date: April 18, 2017
- Comments due: March 20, 2017



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**Implementation Notice**

- The notice contains implementation instructions for:
  - Optional pre-contract inspection policies for HCV & PBV
  - PBV program changes
  - Change in HAP calculation for manufactured home owner renting a space



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**Option to Approve Tenancy  
Prior to Meeting HQS**



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**Tenancy Approval Option**

- PHAs may choose to approve tenancy, execute HAPC, and make payments for units that fail initial HQS inspection
  - Only if deficiencies are non life-threatening
  - PHAs are not required to adopt this option
  - Requires revisions to administrative plan policies
    - May require revisions to PHA plan



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**Life-Threatening Deficiencies**

- For purposes of this option, HUD has provided a list of deficiencies which ARE life-threatening
  - Previously determined by PHA policy
  - PHA may add other deficiencies to HUD's list



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**Life-Threatening Deficiencies**

- In order to implement this option, PHAs must adopt HUD's list in the administrative plan
- AND must use the HUD-defined list of life-threatening deficiencies for ALL HQS inspections and enforcement activities
  - Not limited to initial inspections
  - Must incorporate existing admin plan definition of life-threatening deficiencies



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**Life-Threatening Deficiencies**

- HUD's list includes:
  - Gas leaks
  - Electrical shock or fire hazards
  - Inoperable/missing smoke detector, carbon monoxide detector, or fire extinguisher
  - Unsafe venting of gas/oil appliances
  - Blocked egress
  - Deteriorated paint if condition would prevent move-in (LBP rules apply)



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**Tenancy Approval Option**

- PHAs may choose to implement the option for some or all initial inspections
  - Policies must describe criteria
  - Must utilize HUD-defined list of deficiencies even if option is only used for some initial inspections
  - Change may constitute a significant amendment to PHA plans



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**Tenancy Approval Option**

- Notification requirements
  - Owners and families must be informed of new policies
  - List of life-threatening deficiencies provided to family
    - Option to decline leasing the unit
    - Consequences of continued HQS noncompliance



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**Tenancy Approval Option**

- 30-day timeline for correcting fail items
  - After written notification to owner
- HAP must be withheld if unit cannot pass HQS after 30 days
  - Maximum abatement period determined by policy but may not exceed 180 days
  - HAPC is terminated and voucher issued



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**Tenancy Approval Option**

- PHAs must notify HUD at least 30 days before adopting this option
  - Tracking purposes
  - Adjustment of SEMAP score



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**Option to Permit Occupancy  
Prior to Inspection**  
  
(Alternative Inspections)



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**Alternative Inspections**

- PHAs may choose to permit occupancy prior to HQS inspection if unit has passed "alternative inspection" within 24 months
- Must inspect within 15 days of receipt of request for tenancy approval (RFTA)
  - Regardless of program size



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**Alternative Inspections**

- Acceptable alternative inspections are those permitted under the streamlining final rule
  - HOME, tax credit, HUD inspections
  - HUD approval required for other alternatives



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**Alternative Inspections**

- HQS inspection is required within 15 days
  - If unit passes, HAP paid retroactively to effective date of lease & HAPC
  - If unit fails, no HAP until deficiencies corrected
- Timeline for corrections
  - Life-threatening: 24 hours
  - Non-life-threatening: 30 days (PHA may approve extension)



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**Alternative Inspections**

- HUD recommends that PHAs carefully consider potential complications if unit has passed alternative inspection but fails HQS
  - Families living with deficiencies or required to move
  - Owners unwilling to make repairs



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**Alternative Inspections**

- Notification requirements
  - Owners and families must be informed of new policies
  - List of life-threatening deficiencies provided to family
    - Family can identify such deficiencies, promptly notify PHA, and decline to lease unit



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**Alternative Inspections**

- PHAs must notify HUD at least 30 days before adopting this option
  - Tracking purposes
  - Adjustment of SEMAP score



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**Manufactured Home Owner  
Renting a Space**

Change in HAP Calculation



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**Manufactured Home Owner**

- Assistance for owners of manufactured homes is a special housing type
- Optional for PHAs unless necessary as a reasonable accommodation
- HOTMA revises the HAP calculation for these participants in two ways



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**Manufactured Home Owner**

- Payment standard
  - PS is now the lower of the voucher bedroom size or bedroom size of the manufactured home
  - PHA's regular payment standards are used
- "Space rent"
  - For purposes of HAP calculation, the definition of "rent" is revised to include debt service and fees



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**Manufactured Home Owner**

- Revised definition of rent now includes:
  - Space rent
  - Maintenance/management charges
  - Amortization (debt service, insurance, taxes)
  - Applicable utility allowance



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**Manufactured Home Owner**

- Implementation timeline
  - For current participants, changes must be implemented at the next annual reexam following April 18, 2017 (rule's effective date)
  - No more than one year after effective date if next annual reexam date is later



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**Manufactured Home Owner**

- Utility reimbursements may be paid to family, lender, or utility company
- HUD is not yet implementing an optional provision of HOTMA permitting payment of entire HAP to family rather than space owner
  - Seeking public comment on how to ensure enforcement



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**HOTMA Provisions Awaiting Implementation**



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**Income**

- Calculation of annual income
  - Initial occupancy: Projected income is used
  - After initial year: Prior-year income use is mandatory
- PHA may use income information determined by another federal assistance program
- Repeal of EID!
  - Will HUD "grandfather in" current participants?



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**Income**

- Stricter enforcement of minimum rent hardship exemptions
- Exclusion for aid and attendance for veterans
- Other exclusions listed appear to currently be excluded anyway



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**Assets**

- Exclusion of imputed asset income, unless net assets exceed \$50,000
  - May accept self certification from the family
- Optional asset cap of \$100,000
- May not have an ownership interest in real property that is suitable for occupancy
  - Exception for VAWA or if the family is selling



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**Assets**

- Excluded from assets:
  - Retirement accounts
  - Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a member of the family that resulted in a member of the family being disabled
  - 529 college savings accounts



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**Adjusted Income**

- Increases elderly/disabled allowance from \$400 to \$525
- Deduction for medical expenses which exceed 10% of annual income (changed from 3%)



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**Interims**

- At any time family may request an interim if a change in income/deductions causes a 10% or more decrease in adjusted income
  - PHAs will no longer process interim decreases when adjusted income has decreased less than 10%



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**Interims**

- PHA must perform an interim if change in income or deductions results in 10% or more increase in adjusted income
  - Except any increase in earned income
    - Unless increase in earned income corresponds to previous decreases
- PHA not required to conduct an interim in the last 3 months of a certification period



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### Utility Data

- Requirements for HUD to provide PHAs with data on local utility consumption for use in determining utility allowances



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### HCV Inspections

- Abatements must last for a minimum of 60 days until family must move
  - PHA may establish longer reasonable period
  - Currently up to PHA policy
- Must provide family 90 days or longer to locate new unit in this case
  - If family can't find a unit, provide a preference for occupancy in a PH unit



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### Streamlining Final Rule



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**Streamlining Final Rule**

- Most provisions effective April 7, 2016
  - Longer timeline for EID
- Changes require revisions to administrative plan and annual plan
- Notice PIH 2016-05 published April 8, 2016
  - Separate attachment for each option



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**HCV Streamlining Options**



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**Streamlined Annual Reexams**

- PHA may elect to conduct a streamlined income determination for family members with a fixed source of income
  - Optional policy
- Note that the notice refers to “streamlined annual reexam” but it is streamlined verification only



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**Streamlined Annual Reexams**

- At admission, 3rd party verification of all income sources for all family members is required
  - Or must document in file why 3rd party verification was not available



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**Streamlined Annual Reexams**

- After admission, PHA may adopt a policy to conduct a full reexam every 3 years for all fixed sources of income
  - Even if family also has other sources of income
- Must still follow traditional verification methods for all other sources of income



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**Streamlined Annual Reexams**

- "Fixed" source of income means:
  - Income consists solely of periodic payments at reasonably predictable levels



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**Streamlined Annual Reexams**

- Social Security, SSI, SSDI
- Federal, state, local, or private pensions
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits or other similar types of periodic receipts
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest



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**Streamlined Annual Reexams**

- For each fixed source, apply verified COLA or current interest rate to previously verified or adjusted amount



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**Streamlined Annual Reexams**

- Must verify COLA or current interest rate from either:
  - A public source, or
  - Tenant-provided, third-party generated documentation



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**Streamlined Annual Reexams**

- Must obtain third-party documentation:
  - If public source or tenant-provided documentations unavailable
  - Every 3rd reexam
- Remember, the PHA may choose not to streamline in this way



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**Streamlined Annual Reexams**

- Policy issues
  - To streamline or not to streamline?
  - Tracking of 3-year period
    - Add item to reexam checklist?



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**Earned Income Disallowance**

- Two changes to the EID
  - Mandatory: Reduced time frame
  - Optional: Percentage of exclusion in second year



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**Earned Income Disallowance**

- Changes to the EID will apply to individuals qualifying on or after May 9, 2016
  - Awaiting HUD clarification on PIH 2016-05
- For individuals qualifying prior to May 9, the old rules still apply
  - Could last into 2020



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**Earned Income Disallowance**

- Reduces amount of time a participant is eligible to receive EID from a maximum of 4 years to a maximum 2 years
  - Two 12-month periods run consecutively regardless of breaks in employment
  - No more tracking!



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**Earned Income Disallowance**

- In Year 2, PHAs must exclude "at least 50%" of the income increase due to earnings
  - Could exclude 100% in both years
  - Could continue to exclude 50% in Year 2
  - Could select another percentage



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**Self-Certification of Assets**

- Optional policy
- Rationale: assets have little to no impact on overall PHA subsidy need
- The verification process is burdensome and error-prone



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**Self-Certification of Assets**

- At admission, third-party verification of all assets, regardless of amount, for all family members is required
  - Or must document in file why 3rd party verification was not available



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**Self-Certification of Assets**

- Thereafter, when net family assets equal \$5,000 or less, PHA may accept self-certification
  - PHA may continue to 3rd-party verify all assets, regardless of amount
- Must obtain 3rd party verification of all family assets every 3 years



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**Self-Certification of Assets**

- Certification must state the amount of income family expects to receive
  - Amount must be included in family's income
  - May be on a reexam form with each asset listed
- Policy issues:
  - Tracking of 3-year period
  - Revision of reexam form



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**Utility Reimbursement**

- PHA may elect to establish policies on frequency of utility reimbursements (URPs)
  - May continue to reimburse families monthly
  - Payments must be made at least once per calendar year quarter for reimbursements totaling \$45 or less per quarter
    - May not make payments less frequently



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**Utility Reimbursement**

- If PHA reimburses quarterly, must establish hardship policies if quarterly payments pose a financial hardship on families
- If reimbursement is paid on a debit card, PHA must ensure that no fees are paid by the family



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**Utility Reimbursement**

- If family moves out in advance of next scheduled payment, PHA must make a prorated payment
  - If family leaves with an outstanding credit, must reconcile credit with the family when the HAP contract terminates or shortly thereafter/prior to lease expiration in PH



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**Utility Reimbursement**

- If PHA pays the utility supplier directly, must notify the family of the amount paid to the utility supplier



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**Utility Reimbursement:  
Notice PIH 2016-05**

- Quarterly payments could be made retrospectively at end of quarter or prospectively before beginning of quarter
  - Hardship policies needed only if retrospective method is used
  - Think about reconciling URPs when situation changes during quarter



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### Utility Reimbursement

- Policy issues
  - How many URPs under \$15/month?
  - Complexity of balancing/reimbursement for movers/terminations
  - Hardship policies
    - Suggestion: waived upon request



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### Biennial Inspections

- Both biennial inspections and use of alternative inspection standards are optional
  - PHAs may conduct biennial inspections, annual inspections, or a mix of the two
  - Option available since July 2014



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### Biennial Inspections: Notice PIH 2016-05

- PHAs continuing annual inspections must amend admin plan
- If mixing annual and biennial, must be based on fair method connected to the unit, not set for PHA convenience
  - Example: unit has not failed HQS last two years



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### Biennial Inspections

- If PHA relies on alternative inspection methods:
  - Must identify method in the admin plan
  - HCV units must be included in the population of units forming the sample
  - May not rely on inspections if a property fails
  - If property passes, even if deficiencies are identified, may rely on inspection



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### Biennial Inspections

- If inspections other than LIHTC, HOME or HUD inspections are used, must submit protocol to HUD for approval
  - Typically local housing code inspections
    - Code must meet or exceed HQS
  - Must certify annually code hasn't changed or re-submit to HUD for approval



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### Reinspection Fees

- PHA may establish a "reasonable" fee for specific situations
  - PIH 2016-05: based on "local practices for establishment of similar fees"
  - Must not be prohibited under state/local law



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**Reinspection Fees**

- PHA may never charge owners for:
  - Any inspection/reinspection of the unit prior to initial term of the lease
  - First inspection during assisted occupancy
  - Deficiencies caused by the family
  - When inspector cannot gain access to the unit



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**Reinspection Fees**

- PHA may establish a reasonable fee for reinspections in two situations:
  - Owner notifies PHA that a repair was made and subsequent reinspection shows it wasn't
  - Allotted time period for repair has lapsed and reinspection shows repair was not made
    - Regardless of whether the owner reported repairs were made



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**Reinspection Fees**

- Policy is optional
- PHA should establish local policies
  - Could specify alternate standards such as fees only on second reinspection



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**Reinspection Fees**

- Owner may not pass fee along to family
- Fees are included in PHA's admin fee reserve
- Fees may be used only for activities related to provision of HCV assistance



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**Reinspection Fees**

- Things to consider:
  - How will the PHA collect fees?
  - What if owner refuses to pay?
  - Could charging a fee discourage owner participation?
  - HAPC already contains remedies for HQS fails



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**Inspections**

- If a participant or government official reports life-threatening (24-hour) conditions, PHA must inspect the unit within 24 hours of when the PHA received notification
- If condition is not life-threatening, PHA must inspect the unit within 15 days of when the PHA received the notification



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**Interim Reexams When Adding a Family Member**

- Removed regulatory requirement to conduct an interim when a new family member added
- New language: Appropriate change must be made at the effective date of a regular or interim reexam
  - Aligns with PH requirement



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**Interim Reexams When Adding a Family Member**

- Must still determine eligibility
- Releases, criminal background, etc.
- If rent would decrease, must process under regulations on interim reexams
  - Example: addition of child
- Policy recommendation: continue to conduct interims



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**Student Rule:  
Tuition and Required Fees**



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**Amendment to the  
Definition of Tuition**

- PIH 2015-21 issued December 10, 2015
- Amends the student rule enacted in 2005
- The student rule requires PHAs to include in annual income some student financial aid for some students



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**Notice PIH 2015-21**

- The student rule has 2 parts
  - Part A: Some students are ineligible for HCV assistance
  - Part B: Some student financial aid must be counted



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**Notice PIH 2015-21**

- Part B does not apply to students applying or receiving assistance with their parents
- Part B does not apply to students who are at least 24 years old AND have at least 1 dependent child
  - Could be the student's adult child who is disabled or a FT student
- Student loans are not counted



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**Notice PIH 2015-21**

- As originally written, the rule required PHAs to count student aid “exceeding tuition”
- In December 2014, HUD changed the rule to require counting of student aid exceeding “tuition and required fees”



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**Notice PIH 2015-21**

- HUD did not define “required fees” and it was up to PHAs to determine what fees are “required”
- Notice PIH 2015-21 clarifies and provides guidance on which fees are excluded from annual income
  - Follows DOE guidelines



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**Notice PIH 2015-21**

- Required fees include fixed sum charges required of a large proportion of students, including but not limited to:
  - Writing lab fees
  - Science lab fees
  - Fees specific to the student’s program (nursing program)



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**Notice PIH 2015-21**

- Required fees do not include expenses related to attending an institution of higher education:
  - Books
  - Parking fees
  - Meal plan
  - Student health fees
  - Transportation



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**Use of Criminal Records**

*Notice PIH 2015-19*  
*OGC guidance 4-4-16*  
*HUD FAQ 4-5-16*



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**Use of Criminal Records**

- Three recently-issued documents address use of arrest and other criminal records
  - Notice PIH 2015-19
  - Guidance document from HUD OGC
    - [http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf)



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**Use of Criminal Records**

- Three recently-issued documents address use of arrest/criminal records
  - HUD FAQs for PIH 2015-19
    - <http://portal.hud.gov/hudportal/documents/huddoc?id=faqexcludearrestrec33116.pdf>



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**Use of Criminal Records**

- Current regulations require denial/termination for some types of criminal activity, and allow PHAs discretion to establish policies for other types of criminal activity
  - Screening and Eviction Final Rule (2001)



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**Use of Criminal Records**

- Mandatory denial (statutory):
  - Conviction for methamphetamine manufacture on premises of assisted housing
  - Subject to state lifetime sex offender registration requirement
- Not subject to consideration of circumstances



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**Use of Criminal Records**

- Other “mandatory” denials (not statutory)
  - Currently engaging in illegal drug use
  - Evicted from assisted housing for drugs within 3 years
  - Pattern of drug use or alcohol abuse that threatens...
- Subject to consideration of circumstances



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**Use of Criminal Records**

- PHAs must establish policies that enable it to screen out/terminate persons engaging in
  - Violent criminal activity
  - Drug-related criminal activity
  - Other criminal activity that threatens health, safety or peaceful enjoyment
- Subject to consideration of circumstances



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**Use of Criminal Records**

- Consideration of circumstances was not required (but was permitted) under the S&E rule for non-statutory denials
  - Supreme Court case *Rucker v HUD*



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**Notice PIH 2015-19**

- Published November 2, 2015
- States that an arrest, in and of itself, is not sufficient evidence of criminal activity to justify a denial or termination of housing assistance



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**Notice PIH 2015-19**

- Notice 2015-19 clarifies that an arrest record alone is not sufficient evidence that the subject actually engaged in the illegal activity
- However, the behavior leading to the arrest may be sufficient cause for denial or termination



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**Notice PIH 2015-19**

- Notice contains a reminder that PHAs are not REQUIRED to adopt "one-strike" style policies
- Balance between ensuring safety and providing second chances for individuals with criminal records



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**Notice PIH 2015-19**

- PHAs may still take adverse action based on the conduct leading to an arrest
- Arrest record may trigger an inquiry into whether there is sufficient evidence to determine that a person engaged in disqualifying criminal activity



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**Notice PIH 2015-19**

- Other evidence which may be utilized in making a determination
  - Police reports describing the arrest
  - Witness statements
  - Other relevant documentation
  - Conviction
    - But PHAs are NOT required to “wait for a conviction” before taking adverse action



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**OGG Guidance Memo**

- Issued 4-4-16
- Focuses on PHA policies
- Prohibits blanket policies requiring denial or termination for criminal background
  - Disparate impact on protected classes
    - Hispanic, African American



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**OGG Guidance Memo**

- Note that such “blanket” policies were encouraged under the Screening and Evictions Final Rule in 2001
- Policies for denial/termination due to arrests or convictions must be based on “demonstrable risk to safety and/or property”



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**OGG Guidance Memo**

- What is disparate impact?
  - Facially neutral policy that has a discriminatory effect, even if there was no intent to discriminate
  - Policies that have an unjustified disparate impact on protected classes are illegal
    - Supreme Court 2015



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**OGG Guidance Memo**

- Disparate impact examples
  - Siting of affordable housing
    - Exclusionary zoning
  - Residency preferences
  - Eligibility of formerly-incarcerated persons



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**OGG Guidance Memo**

- Arrest records are not sufficient proof of health/safety risk
- Conviction records are proof that the individual committed the crime
  - But not proof of health/safety risk



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**OGG Guidance Memo**

- Even if PHA policies are tailored to exclude only persons with certain types of convictions, the PHA must prove that these policies accurately distinguish between criminal conduct that constitutes a risk to health/safety/property and that which does not



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**OGG Guidance Memo**

- Policies must take into account the
  - Nature
  - Severity
  - Recency
    - Of the criminal conduct
- Determination **MUST** be made on a case-by-case basis



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**HUD FAQs**

- Posted 4-5-16
- Supplement to PIH 2015-19
- Contains sample language for acceptable admission policy
- PHAs should review ACOP/admin plan



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**Sample Admissions Policy**

“The fact that an applicant or tenant was arrested for a disqualifying offense shall not be treated or regarded as proof that the applicant or tenant engaged in disqualifying criminal activity. The arrest may, however, trigger an investigation to determine whether the applicant or tenant actually engaged in disqualifying criminal activity.



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**Sample Admissions Policy**

As part of its investigation, [the PHA or owner] may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider any statements made by witnesses or the applicant or tenant not included in the police report; whether criminal charges were filed;



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**Sample Admissions Policy**

whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal; and any other evidence relevant to determining whether or not the applicant or tenant engaged in disqualifying activity.”



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**What Does All of This Mean?**

- PHA needs to review admission and termination policies in the administrative plan
- Determinations must now be made on an individual basis
  - Do current policies reflect only the regulatory language?
  - Look-back periods?



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**What Does All of This Mean?**

- The individual evaluation must consider the nature, severity and recency of the crime, as well as
  - Tenancy history
  - Evidence of rehab
  - Age at time of crime



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**What Does All of This Mean?**

- What kind of criminal background could be found to create a risk to safety/property?
  - Murder?
  - Sexual assault?
  - ?
- Even in these cases an individual evaluation must be done



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**Streamlining Portability  
Final Rule**

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**Streamlining Portability  
Final Rule**

- Final rule published in the *Federal Register* August 20, 2015
- Notice PIH 2016-09: June 6, 2016
  - Replaces PIH 2012-42
- Corrected Form HUD-52665 revised August 17, 2016



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**Streamlining Portability  
Final Rule**

- Changes that apply to whole program (not just portability)
  - Mandatory voucher suspension (“tolling”)
    - No longer discretionary for PHAs
  - Changes to oral and written briefing requirements
    - Benefits of living in lower-poverty area
    - Explanation of how portability works



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**Streamlining Portability  
Final Rule**

- Changes to portability requirements
  - Notification to field office within 10 business days of denying a port due to insufficient funding
  - Expiration date of voucher issued by RHA must be at least 30 days after expiration date of voucher issued by IHA



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**Streamlining Portability  
Final Rule**

- Changes to portability requirements
  - The billing deadline has been extended from 60 to 90 days after expiration of the initial PHA’s voucher
    - To compensate for the extended search time



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**Streamlining Portability  
Final Rule**

- If tolling will delay initial billing
  - RHA must notify IHA before billing deadline
    - Must document that delay is due to tolling
  - IHA must extend initial deadline by 30 days
- Only applicable if suspension delays billing
  - Not automatic for every suspension



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**Streamlining Portability  
Final Rule**

- Changes to portability requirements
  - Portability admin fee is the lesser of 80% of IHA admin fee (prorated) or 100% of RHA admin fee
  - Family selection of RHA in case of overlapping jurisdictions
    - May seek assistance from IHA
    - IHA provides contact info for potential RHAs



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**Streamlining Portability  
Final Rule**

- Changes to portability requirements
  - No mandatory absorption
    - Proposed rule: mandatory if RHA utilization less than 95%
  - Rescreening
    - RHA "should be allowed" to rescreen
    - Explanation should be included in briefing packet



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**Streamlining Portability  
Final Rule**

- Policy issues
  - Tolling: no longer discretionary
    - Need to remove policy from admin plan
  - 3 new items for briefing packet & oral briefing
    - Benefits of living in lower-poverty area
    - Explanation of how portability works
    - Explanation of possible rescreening



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**Revised Form HUD-52665**

- Revision posted June 2016 contained an error in instructions for calculating portability admin fee
- Corrected version posted August 17
- Check that you have the correction



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Equal Access Final Rule



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**Equal Access Final Rule**

- Effective March 5, 2012, per final rule
- HUD programs open to all eligible persons regardless of:
  - Sexual orientation
  - Gender identity
  - Marital status



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**Equal Access Final Rule**

- Rule revises regulatory definition of “family” at CFR 5.403
  - “Family includes... regardless of actual or perceived sexual orientation, gender identity, or marital status”
    - Single, elderly, disabled, displaced, family with or without children, etc.



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**Equal Access Final Rule**

- Rule also revises definitions of elderly, near-elderly, disabled families to include cohead
  - Head, spouse, or cohead elderly/disabled
  - Required since 2001 by 50058 Instruction Booklet
    - Now added to regulation (CFR 5.403)



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**Equal Access:  
Notice PIH 2014-20**

- Published August 20, 2014
- Additional guidance on final rule
- Clarifies that HCV landlords become subject to the rule at the point of HAP contract execution



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**Equal Access:  
Notice PIH 2014-20**

- Requires PHAs to respond to complaints of violations of the equal access rule
  - May advise family to file FH complaint
- Complaint policies must include written notice to complainant and accused
  - Notice complaint received and results of investigation



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**Equal Access Final Rule**

- Check your PHA's policies in admin plan
  - Definition of family
  - Requirements to add family member
- Revise if necessary to comply with new rule



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**Small Area FMRs**



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**SAFMR Final Rule**

- Published November 16, 2016
  - Proposed rule June 16, 2016
  - 24 designated metro areas
  - Modified by HOTMA
- SAFMRs are intended to increase housing choice by setting fair market rents at zip code levels
  - Reduce concentration of vouchers in high-poverty areas



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**SAFMR Final Rule**

- 50th percentile FMRs in effect since 2000
  - Have not been effective in deconcentrating voucher holders
  - Resulted in higher rents for high-poverty areas
- PHAs currently using 50th percentile FMRs will
  - Transition to 40th percentile or
  - Utilize SAFMRs
  - May request exception PS



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**SAFMR Final Rule**

- PHAs in non-SAFMR designated areas
  - May request use of SAFMRs
  - May utilize exception PS for individual zip code(s)
    - Up to 110% SAFMR
- HUD will review designation of SAFMR areas every 5 years
- PBV projects exempt from SAFMR
  - But PHA could choose to implement for new contracts



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**SAFMR Final Rule**

- Tenant protections for payment standard reductions due to implementation of SAFMRs
  - 10%/year cap on FMR reduction
  - HOTMA options apply
    - “Hold harmless” option
    - Option to phase in payment standard decreases
  - PHAs may adopt different policies for tenant protections by zip code



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**SAFMR Final Rule**

- Increases threshold for redetermination of rent reasonableness from 5% to 10% FMR
- HOTMA changes HUD’s method of revising FMRs & SAFMRs
  - Must now be published for 30 day public comment period prior to implementation
  - Effective date 30 days after publication
    - May be later than October 1



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**SAFMR Final Rule**

- PHAs must implement revised payment standards within 3 months of effective date of new FMR/SAFMR
  - Only if current payment standards would be outside the basic range (90%-110% FMR)



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**VAWA 2013 Final Rule**

- Notice also contains new provision on divided households
- If a household is divided due to a VAWA-related crime, remaining household members may establish eligibility if HOH is excluded
  - 90 calendar days with possibility for 60-day extension



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**Thank You!**

- Thank you for attending!
  - Hope to see you again!



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