Review: Housing Opportunity through Modernization Act of 2016 (HOTMA)

D.L. Morgan and Associates

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Background

Housing Opportunity Through Modernization Act of 2016 was passed by the House on February 2, 2016

It was passed, without change, by the Senate on July 19, 2016

President Obama signed it into law on July 29, 2016

This program will review the new reforms in Title 1 of HOTMA, which covers programs funded under Housing Choice Vouchers, Section 8 Project-Based Rental Assistance and Public Housing with focus on the expected program changes for the Section 8 Program

Background- continued

- Some provisions are effective upon enactment- no HUD action required to implement
  - Reasonable Accommodation Payment Standard up to 120%
  - Establishment of Fair Market Rent upon reduction of FMR
    - Allows PHA option to continue to use the higher payment standard
  - Family Unification Program
    - Aging out of Foster Care
  - Preferences for United States Citizens or Nationals
    - Only Applies to Guam
    - Priority for admission to PHA, HCV, etc.

Background- continued

- Provisions upon enactment- continued
  - Exception to Public Housing Agency Resident Board Member
    - LA, Alaska, Iowa, Mississippi
  - Inclusion of Public Housing Agencies and Local Development Authorities in Emergency Solutions Grants
    - May award to these entities
  - Inclusion of Disaster Housing Assistance in Certain Fraud and Abuse Prevention Measures
    - Requiring income verifications
  - Energy Efficiency Requirements Under Self-help Homeownership Opportunity Program
    - Prohibits HUD from requiring energy efficiency standards on SHHOP

Background- continued

- Provisions upon enactment- continued
  - Formula and Terms for Allocations to Prevent Homelessness for Individuals Living with HIV or Aids
    - Alterations to allocations- requires HUD to publish guidance

Background- HUD Guidance Required

- Amends HUD Statutes but requires guidance/regulatory changes
    - Initial Inspections in Section 8 Voucher Units
    - Enforcement of HQS for Section 8 Voucher Units
    - Income Reviews
    - Income Reviews for Project-based Housing
    - Limitation on Public Housing for Over-income Families
    - Limitations on Eligibility for Assistance Based on Assets
    - Units Owned by Public Housing Agencies
    - PHA Project-based Assistance
    - Public Housing Capital and Operating Funds

Background- HUD Guidance Required

- Use of Vouchers for manufactured Housing
- Modifications of FHA Requirements for Mortgage Insurance for Condominiums
- Definition of Geographic Area for Continuum of Care Program
- HOPWA Allocations

Current Law
vs.
HOTMA

Housing Choice Voucher (HCV) Inspections

Prior Law:

- The PHA must inspect and determine whether a unit selected by a family complies with the voucher program's housing quality standards (HQS) requirements BEFORE beginning assistance payments. If the PHA owns the unit, inspections must be performed by the local government or another entity approved by HUD

Housing Choice Voucher (HCV) Inspections

- HOTMA: The bill alters the initial inspection requirements in two ways:

- 1. Units must still be inspected prior to assistance payments UNLESS the unit qualifies under an alternative inspection. Payments may be made if a unit does not pass the initial inspection for failure resulting from "non-life threatening conditions".

- 2. The PHA may allow occupancy in advance of the initial inspection if the unit was inspected by an alternative inspection standard under another federal housing program that is at least as stringent as HQS. The alternative inspection must have been satisfactory and within the last 24 months

Ongoing Inspection cure periods

- All life threatening deficiencies must be cured within 24 hours

- Non-life threatening deficiencies must be cured within 30 days

- The PHA will hold payments during the cure period and pay assistance retroactively when the deficiencies are found to be cured through a follow up inspection.

The Abatement Under HCV

- If inspection deficiencies are not cured within the prescribed timeframes, the PHA will abate subsidy payments for a further 60 days (or other reasonable time established by the PHA).
- Tenants are protected from eviction due to subsidy payments being withheld during the abatement period
- Tenants may elect to terminate the lease and move during the abatement period
- If the PHA terminates the contract with the owner for non-compliance, the lease between the owner and tenant also terminates.

When a Tenant Opts to Move

- The PHA must give an additional 90 days to find another qualified unit, extended as necessary and in accordance with PHA policy
- The tenant may elect a preference for the next available public housing unit operated by the PHA.
- If the tenant is displaced without fault for the failed inspection, the PHA may provide an amount of up to two months of the abated assistance to be used for security deposits or for utility hook-ups and moving expenses for the new unit
- The tenant must repay any refund of their security deposit for the original unit to the PHA. The owner may not withhold security deposit for the abated subsidy payments.

Project-Based Vouchers

Prior Law:

- The PHA may opt to project-base up to 20 percent of its ***budget authority.***
- HUD regulations allow more than this amount if the proposed allocation is effected by budget cuts (after the commitment of the project-based vouchers)
- Initial term is 15 years with possible 15-year additional increments under certain circumstances (like deconcentration of poverty or expansion of housing opportunity endeavors)

Project-Based Vouchers

- No more than 25 percent of the units in a project may be project-based with exceptions for housing for the elderly, disabled, or persons receiving supportive services
- Families may relocate with the next available voucher after the first year. PHA may allow higher subsidies if reasonable for housing mobility and restricting tenant's contributions to 30% of their AGI.

Project-Based Vouchers

- **HOTMA:**

- The 20 percent requirement is changed from budget authority to ***authorized number of vouchers***

- Maximum term of the initial contract is increased to 20 years

- The maximum number of units is changed 25 percent of the total units or 25 units, whichever is greater. Certain exceptions may be made to assist the elderly, disable, or persons receiving supportive services or to enhance housing opportunities where vouchers are difficult to use.

- In census tracts with a poverty rate of 20 percent of less, vouchers may be project-based in 25 units or 40 percent of the total units in the project

Project-Based Vouchers

- **HOTMA, continued:**

- PHAs may add to existing PBV contracts or enter into a PBV contract for a property under constriction and agree to operating cost adjustment factors (rather than market rent comparisons) and to establish site-based waiting lists.

- PHAs may commit to PBVs without competition for properties owned or controlled by the PHA.

- Upon termination of the contract, families have the option of using their HCV to remain in the property

- Vouchers under Family Unification or HUD-VASH programs may be project-based subject to the same requirements

Affordability and Minimum Rents

- Prior Law:

- For rent and utilities, families pay the higher of 10% of annual income or 30% of adjusted gross income plus the amount that the rent and utility costs exceed the payment standard.

- For public housing, welfare rent or minimum rent are also factors.

- PHAs must have a policy to allow for exemption of minimum rent for hardship exceptions.

- In public housing, tenants are permitted to select a “flat rent” that is not calculated on the income. The flat rent must be supported by local standards and rent comparisons.

Affordability and Minimum Rents

- HOTMA:

- Rent calculations remain the same with exception to the requirements for interim adjustments (more on that later)

- By January 29, 2017, HUD must certify to Congress that it is enforcing minimum rent hardship exceptions

Recertification and Interim Adjustments for Income Changes

- Prior Law:

- Interim adjustments for decrease in tenant income at tenant’s request/verification.

- Interim adjustments for increases in income at the discretion of the PHA as long as income is recertified at least once annually (except for families on a fixed income which can be recertified every three years)

- Recertifications for families selecting Public Housing flat rents every three years.

Recertification and Interim Adjustments for Income Changes

- HOTMA:

- Recertifications as under prior law.

- Interim adjustments at tenant’s request for decreases of more than 10% of the family’s adjusted income.

- Interim adjustments for any increase in income exceeding 10 percent of the adjusted income (except for earned income increases unless the family has already elected for a interim due to an earned income decrease during the recertification year).

Use of prior-year income

- Prior Law:

- Income was projected to include all income expected to be received during the 12 months following the certification.

- Shorter periods could be used (as in the case of zero income). Rents are subject to recertification at the end of that period then.

Use of prior-year income

- HOTMA:

- Agencies and owners must use income from the prior year when setting rents, except for initial income determinations or at interim adjustments due to changes in income.

Work Related Deductions

- Prior Law:

- Earned Income Disallowance of 100% for first period and 50% for second period required for voucher holders with disabilities or for public housing residents experiencing an increase in earned income when recently unemployed, underemployed or on welfare.

- Reasonable child care expenses for children under the age of 13, so an adult family member can work or seek employment

Work Related Deductions

- HOTMA:

- HUD Earned Income Disallowance is eliminated. PHAs may opt to disregard income but with no additional funding from HUD.

- Child care expense deductions remain the same for working families, except seeking employment has been removed.

Dependent Deductions

- Prior Law:

- $480 for each dependent. No provision to adjust deduction for inflation.

Dependent Deductions

- HOTMA:

- $480 for each dependent adjusted for inflation in future years.

Deductions for Elderly/Disabled

- Prior Law:

- $400 deduction for each elderly or disabled family. Disabled or elderly family includes qualifying head, co-head/spouse or sole member. A disabled child does not qualify the family as a disabled family.

- Elderly/disabled families are eligible for medical expense deductions that exceed 3% of annual income.

Deductions for Elderly/Disabled

- HOTMA:
- Increase of standard deduction for elderly and disabled families to $525 with adjustments for inflation in future years.
- Limits deduction for medical, attendant care and auxiliary aid expenses to amounts exceeding 10% of income
- Hardship provisions will apply for families who cannot pay rent increases required due to this deduction change

Veterans' Aid and Attendance Expenses

- Prior Law:

- No specific exclusions although some expenses for veterans who are elderly or disabled would be included as a medical expense

Veterans' Aid and Attendance Expenses

- HOTMA:

- Income exclusion for any expenses related to aid and attendance under Section 1521 of title 38, United States Code, to veterans who are in need of regular aid and attendance

Cross Program Income Information Sharing

- Prior Law:

- Requires third-party verification for all income verification and deductions.
- PHAs required to document and explain any time a third-party verification was not obtained

Cross Program Income Information Sharing

- HOTMA:

- Allows PHAs and owners to rely on determination of income made by federal means-tested public assistance programs, including TANF, Medicaid and Food Stamp Programs

- PHA would still have to verify income exclusions as they may differ from other reporting agencies

- Income information may be in the form of award letters, paystubs or payroll reports hand carried by the participant

Income from Assets

- Prior Law:

- Requires PHAs to impute income from assets that exceed $5,000 using the higher of the current interest to impute income or the actual income received from the asset source

- Imputed or actual asset income is then used in the calculation of the family rent obligation

Income from Assets

- HOTMA:

- Actual income from assets is counted when determining rents but the imputed income is only counted on assets exceeding $50,000

Impact on program costs

Prior Law:

Increases or decreases in tenant rent payments can lower or raise the amount of funding for which a PHA is eligible.

Changes in funding eligibility in these programs do not automatically affect federal costs, however, because in some years Congressional allocations are below the amount for which agencies are eligible (think sequestration or Congressional pro-rations)

Impact on Program Costs

- HOTMA:
- Allows HUD to make adjustments in the funding levels impacted by the new rent provisions.
- HUD may adjust first year funding in which the provisions are implemented.
- HUD must report to Congress the overall impact on the programs and recommend legislative changes to address any overall material reduction in rent

Fair Market Rents

- Prior Law:

- HUD is required to establish Fair Market Rents (FMRs) for units based on unit sizes suitable for occupancy by low-income households for each market area.

- Proposed FMRs must be published in advance for comment in the Federal Register and Final FMRs must be published by October 1st of each year

Fair Market Rents

- HOTMA:
- Requires HUD to publish FMRs by October 1st but eliminates the Federal Register process.
- Proposed FMRs must be published at least 30 days before they go into effect.
- HUD must publish methodology used to determine FMRs
- For families already in place, PHAs are permitted to continue the payment standard based on the pre-reduction FMRs for FMRs that go down. PHAs are permitted to keep the family original FMR in place for the duration of their residency in the same unit

Payment Standards

- Prior Law:

- PHAs must set a payments standard at an amount between 90-110% of the published FMR. The payment standard is the maximum subsidy amount. To go over 110%, HUD permission was needed.
- If a family rents a house at a price higher than the payments standard for the area and unit size, the family pays the difference between the allowable payment standard and the gross rent (contract rent + utility costs)
- Initial rent burden at lease-up may be no more than 40% of the family's adjusted annual income

Payment Standards

- HOTMA:
- The payment standard is sent at 90-110% of the published FMR as before.
- The PHA does not need to request HUD permission to go up to 120% of the FMR for reasonable accommodations

Income Eligibility (Public Housing)

- Prior Law:
- Income limits apply at initial leasing
- Generally, families may receive housing assistance so long as their income is less than 80% of the area median income
- HUD permits PHAs to evict over income families unless they are participating in an FSS program or receiving an income disregard under EID
  - Must demonstrate units are available

Income Eligibility (Public Housing)

- HOTMA:

- Income levels above 120% of area median income for two consecutive years must cause termination of housing assistance within six months or charge the family a monthly rent equal to the higher of the FMR for the unit including operating and capital subsidies.

- HUD may adjust these limits for extenuating circumstances in the PHA jurisdiction. To qualify for this exemption, the PHA must report to HUD the percent of families over the area median income limit and the number of families on the public housing waiting list

Assets

- Prior Law:

- There was no maximum on assets held by a family. Income derived from the assets was included in the annual income calculations

Assets

- **HOTMA:**

- Makes applicants and current tenants ineligible for public housing or Section 8 if they have more than $100,000 in assets or have the legal ownership in a property they own that would be a suitable dwelling unit or that the family could sell and use proceeds to sustain housing at their expense without assistance

- Excluded assets include interest in Indian Trust Land, equity in homes purchased with a voucher, equity accounts in a HUD homeownership or FSS program, inaccessible trust funds, retirement accounts settlements or awards due to actions that resulted in the serious disability of a household member, tax protected education savings accounts personal property no of significant value and real property that the family does not have legal authority to sell.

- Allows the PHA to determine a family's assets based on the family certification that its assets do not exceed $50,000

Public Housing Operating and Capital Fund Flexibility

- Prior Law:

- Other than small housing authorities, a PHA was limited to 20% of its Capital funds to be transferred to the operating fund
- A 2015 change allowed PHAs to transfer up to 25% of the capital fund grants to operating fund and allowed HUD to extend that limit for anti-drug or anti-crime activities.
- PHAs were not permitted to transfer funds from operating funds to capital funds unless they were a small PHA. (fewer than 250 units)

Capital Funds

- Allows PHAs to transfer up to 20% of operating funds appropriated for the fiscal year 2016 and beyond to the capital fund

Public Housing Replacement Reserves

- Prior Law:

- A PHA must obligate at least 90% of their capital funds within 24 months

- A PHA must expend capital funds within 4 years from their receipt

Public Housing Replacement Reserves

- HOTMA:

- Housing authorities may use capital funds to establish a replacement reserve to cover anticipated needs that may require multi-year funding

- PHAs may not hold more than would be needed for the anticipated capital need.

- HUD reserves the right to cap this amount

Definition of a PHA Owned Unit

- Prior Law:

- A unit owned by the PHA or an entity such as a component unit substantially owned by the PHA

Definition of PHA Owned Unit

- Definition is revised to a unit owned directly by a PHA or by an entity in which a PHA has a controlling interest.

- Specifies that properties will not be considered PHA owned solely because a PHA holds a fee interest as a ground lessor, a security interest under a mortgage or deed of trust, or a non-controlling interest in an entity which owns or manages the property.

Manufactured Housing

- Prior Law:

- HCV payments only for cost of leasing the land in which the manufactured home sits.

- No payments toward utility costs, property taxes, personal property taxes, or other costs could be funded

Manufactured Housing

- HOTMA:

- Allows payments to be made for any cost associated with the ownership

- The payment standard for the bedroom size would apply

Tenant Board Representation

- Prior Law:

- At least one board member for the PHA must be from the resident population or who receives housing assistance under any of the housing programs operated by the PHA

Tenant Board Representation

- HOTMA:

- PHAs in Los Angeles County, Alaska, Mississippi, and Iowa would be permanently permitted to opt out of this requirement and instead establish an advisory board of at least six public housing, voucher or other Section 8 tenants that meets at least quarterly.

Family Unification Program

- Prior Law:

- Family Unification Program is a component of the HCV program that sets aside some vouchers for: 1) families where the lack of affordable housing is a primary factor placing a child at risk of child welfare placement or delaying return of a child from placement.

Family Unification Program

- HOTMA:

- FUP is extended to former foster care youth up to age 24 and to otherwise eligible youth who will leave foster care within 90 days and would be homeless without assistance.

- Youth leaving foster care could receive assistance for up to 36 months.

Utility Data

- Prior Law:

- No provisions

Utility Data

- HOTMA:

- Requires HUD to publish data regarding utility consumption and costs that can be collected cost-effectively and that HUD determines will be useful for setting voucher utility allowances to help reduce administrative burdens for PHAs and that would protect families from high rent and utility cost burdens relative to income

Public Housing Heating Guidelines

- Prior Law:

- Requires PHAs to provide adequate heat sources and during appropriate times of the year

Public Housing Heating Guidelines

- HOTMA:

- Directs HUD to publish model guidelines for minimum heating requirements for public housing

Migrants to Guam

- Prior Law:

- Migrants from three former US Pacific Territories (Marshall Islands, Micronesia, and Palau) that are lawfully living in the United States or its territories are eligible for housing assistance.

- In Guam, such families may not be given preference for assistance over US citizens and nationals

Migrants to Guam

- HOTMA:

- In Guam, US citizens and nationals are given preference for assistance over lawfully resident migrants from the Marshall Islands Micronesia, and Palau.

Questions????

Thank You!

I hope to see you again soon!