



**Council of Large Public Housing Authorities**

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November 18, 2019

Regulations Division  
Office of General Counsel  
US Department of Housing and Urban Development  
451 7th Street SW, Room 10276  
Washington, DC 20410-0500

Re: [Docket No. FR-6057-P-01] Housing Opportunity Through Modernization Act of 2016; Implementation of Sections 102, 103, and 104

To Whom It May Concern:

The Council of Large Public Housing Authorities (“CLPHA”) is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation's largest and most innovative public housing authorities (“PHAs”) by advocating for policies and programs that most effectively serve low-income residents. Our members own and manage nearly half of the nation’s public housing program, administer a quarter of the Housing Choice Voucher (“HCV”) program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

We appreciate the opportunity to submit comments on the proposed changes to implement Sections 102, 103, and 104 of HOTMA. Despite HOTMA becoming law over three years ago, PHAs still await HUD notices and guidance around implementation of several HOTMA provisions, including significant PBV provisions. We urge HUD to more expediently implement the remaining HOTMA provisions given the considerable length of time that HUD has had available for comment and implementation.

Below, we respond to HUD’s specific requests for comment on changes affecting public housing, the Housing Choice Voucher program, project-based vouchers, and project-based rental assistance.

- 1) ***HUD requests comment on administrative burden or other implications of applying some sections of HOTMA to public housing, HCV, and PBV, while excluding PBRA and Section 202/811.***

Considering that all sections of HOTMA apply to PBRA and Section 202 for PHA owners, CLPHA does not anticipate additional administrative burdens here for PHAs.

- 2) ***HUD requests comment on defining a “reasonable amount of time” for PHAs to conduct an interim reexamination and whether HUD should specify a specific time frame.***

CLPHA recommends a 60-day period for the PHA to conduct an interim reexamination or allowing PHAs to be able to decide what constitutes a “reasonable amount of time.” PHAs need adequate time to receive the required paperwork from tenants, review that paperwork, and calculate household income.

- 3) ***HUD seeks comment on whether they should continue to require that PHAs use the EIV System for initial, annual, and interim examinations or only for initial and annual examinations.***

We support HUD giving PHAs the option of using EIV for interim examinations and only requiring EIV at initial and annual examinations. This will save administrative hours spent accessing outdated information from EIV.

- 4) ***HUD seeks comment on allowing PHAs to use income determinations from public assistance programs, such as TANF, Medicaid, and the EITC, and asks whether HUD should create requirements for which income determination to use when there is income available from more than one program.***

CLPHA supports allowing PHAs to use income determinations from other public assistance programs as a safe harbor, including TANF, Medicaid, and SNAP. Using EITC data is impractical given barriers to accessing federal tax data and that tax data will be at least one year out of date. When income determinations from multiple programs are available, PHAs should be given discretion in deciding which program’s income information to use.

While this safe harbor may have value for PHAs to reduce administrative burden, using income determinations from other public assistance programs rests solely on a PHA’s ability to have data sharing agreements with state or local agencies and the appropriate data sharing infrastructure. We suspect that a minority of PHAs have these arrangements already in place, and HUD will need to do more to ensure that this provision can be widely used by PHAs across the country.

The HOTMA language states that the “Secretary shall, in consultation with other appropriate Federal agencies, develop electronic procedures to enable public housing agencies and owners to have access to such benefit determinations made by other means-tested Federal programs that the Secretary determines to have comparable reliability.” Consistent with this language, HUD should not only develop capacity for these kinds of data sharing agreements but also provide technical assistance to PHAs on data sharing practices and creating formal data sharing agreements.

- 5) ***HUD seeks comment on whether there are other public assistance types that could be used for income determinations beyond those listed, and whether HUD should limit the number of programs that can be used.***

We support allowing PHAs to use income determinations from TANF, Medicaid, and SNAP, as well as those from the HOME and LIHTC programs. HUD should not limit the number of

programs that PHAs can use for income determinations. There are significant barriers to PHAs creating data sharing arrangements that would allow for PHAs to use income determinations from other programs, and PHAs will be able to most effectively use this safe harbor if they have the freedom to create data sharing partnerships with as many programs as possible.

- 6) ***HUD seeks comment on the definition of a “de minimis error” for the purposes of income calculations.***

CLPHA proposes that *de minimis* errors be calculated as less than five percent of all income determinations made during the year, rather than five percent of individual income determinations.

- 7) ***HUD seeks comment on whether households using the earned income disallowance (EID) should be grandfathered out of this benefit, allowing them to continue using it up to two years from the effective date of the final rule implementing Section 102.***

CLPHA supports HUD’s proposal to allow PHAs to phase out the EID for those households currently using it.

- 8) ***HUD seeks comment on the impact of redefining annual income and whether its description of annual income aids in understanding what is included in annual income.***

We support the new definition of income and would also propose continuing to exclude temporary, nonrecurring, or sporadic income given the administrative challenges that PHAs will face in tracking such income sources.

- 9) ***HUD seeks comment on what inflationary index the Department should use to adjust imputed return on assets for annual inflation.***

We propose using the Consumer Price Index (CPI) for adjusting imputed return on assets for inflation given its use in calculating other HUD data such as Annual Adjustment Factors.

- 10) ***HUD seeks comment on whether withdrawals from an insurance settlement for personal or property losses should be considered income.***

Income from an insurance settlement resulting from a personal or property loss is intended to help the recipient financially recover from a significant loss. Therefore, CLPHA would support excluding this source and subsequent withdrawals from the income calculation.

- 11) ***HUD seeks comment on any other income sources that should be excluded as income.***

In addition to continuing the exclusion of temporary, nonrecurring, or sporadic income, we suggest that HUD exclude income for all veteran’s disability benefits, income received for participation in a research study, and any amounts the household pays in formal child support payments.

- 12) HUD seeks comment on the implementation of hardship exemptions for health, medical, and childcare deductions, and what guidance HUD should provide PHAs for how to determine that a household is unable to pay rent due to one (or more) of these hardships.**

Our members typically define hardships in their Admissions and Continued Occupancy Policy (ACOP) and describe how residents should go about documenting their hardship to receive a rent reduction or to pay minimum rent. We propose that defining hardship should be left to individual PHAs so that hardship exemptions for deductions can be consistent with how the PHA is defining hardships in other circumstances.

- 13) HUD seeks comment on any unintended consequences of permissive deductions, whether they might be used as an employment incentive, and how HUD should define “material” in ensuring that permissive deductions are allowed as long as they do not materially increase Federal expenditures.**

While most PHAs do not use permissive deductions for their public housing program because of the increased administrative burden, the requirement that the costs of any permissive deduction will have to be covered by the PHA will result in minimal use of permissive deductions across programs. The HOTMA language requiring PHAs to ensure that any deductions do not “materially” increase federal expenditures represents a missed opportunity for PHAs to have the option of using permissive deductions as an effective employment incentive.

For a resident currently paying minimum rent who begins a full-time, minimum-wage job, the consequences of a rent increase combined with reductions in other public benefits, primarily SNAP and childcare assistance, serve as a strong disincentive for employment. Reducing this disincentive through, for example, a \$5000 earned income deduction that offsets that loss in benefits could result in significant federal cost savings for other programs.

Results from previous evaluations of the Family Self-Sufficiency and Jobs Plus Programs support the idea that disregarding a portion of earned income can lead to a reduction in public assistance use more broadly and increased employment stability. We encourage HUD to consider defining “material” more broadly if the permissive deduction provision is to have any potential as a true employment incentive. Given the administrative burdens associated with permissive deductions, PHAs will only consider their implementation if the increased costs of such initiatives are covered by the relevant program subsidy.

- 14) HUD seeks comment on circumstances in which a household may not have a present ownership interest in, legal right to reside in, or have effective legal authority to sell property in the jurisdiction where the property is located, and how a household could demonstrate this.**

It is HUD's responsibility to release guidance listing what documents families can present to the PHA in order to demonstrate that one or more of these conditions is met (for example, a deed, a lease agreement, a report documenting housing quality issues, etc).

- 15) HUD seeks comment on the exemption for victims of domestic violence, dating violence, sexual assault, or stalking to demonstrate that they do not have a present ownership interest in, legal right to reside in, or have effective legal authority to sell property in the jurisdiction where the property is located, and the implementation and operation of this exemption.**

Victims of domestic violence, dating violence, sexual assault, or stalking should be able to self-certify as such, which should satisfy the exemption for the purposes of the real property restriction. To comply with the Violence Against Women Act (VAWA), PHAs outline their requirements for certifying status as a victim of domestic violence in their ACOP. PHAs should be allowed to use this existing process for certification to maintain consistency with current policies.

- 16) HUD seeks comment on whether the Department should exclude personal property items valued at \$50,000 or less from the asset calculation, and what items should be excluded.**

CLPHA supports the exclusion of items such as a car and medical equipment, in addition to any other items that could be considered essential for successful daily living and employment.

In sum,

Thank you for the opportunity to submit these comments.

Sincerely,



Sunia Zaterman  
Executive Director