



c/o National Housing Law Project
703 Market Street, Suite 2000
San Francisco, CA 94103
(415) 546-7000; Fax: (415) 546-7007

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Regulations Division
Office of General Counsel
451 7th Street SW, Room 10276
Department of Housing and Urban Development
Washington, DC 20410-0500
Submitted electronically through www.regulations.gov

Re: Docket No. FR 5976-N-03: "Housing Opportunity Through Modernization Act of 2016:
Implementation of Various Section 8 Voucher Provisions"

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the implementation and request for comment published on Wednesday, January 18, 2017, "Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions."¹ NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for traditionally marginalized groups. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 1,000 community-level housing advocates and tenant leaders. HJN member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. Meaningful tenant involvement is fundamental to all supported and public housing decisions, and the following comments draw on NHLP and HJN's extensive experience working for decades with advocates, residents, and Public Housing Authorities (PHAs).

The comments below focus on the HOTMA implementation guidance related to Section 8 Voucher inspections. NHLP also submitted comments on the implementation of HOTMA's Project-Based Voucher sections in partnership with the Preservation Working Group (PWG). Please refer to PWG's submission for our response to the proposed PBV rules.

A. Inspections of Dwelling Units (42 U.S.C. § 1437f(o)(8)(A))

¹ Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions, 82 Fed. Reg. 5,458 (Jan. 18, 2017).

HUD’s definition of life-threatening condition correctly includes the failure to provide a working carbon monoxide detector and the presence of deteriorated paint.

HUD requests comments on the definition of life-threatening conditions. We applaud HUD for including the failure to provide a functioning carbon monoxide detector in its definition of life-threatening condition. Inferior air quality poses a serious health and safety risk to families and is a condition that can be easily and affordably maintained by a landlord.

In addition, HUD includes deteriorated paint in a unit built before 1978 that is to be occupied by a family with a child less than six years of age as a life-threatening condition. Given the documented dangers of lead paint exposure to early childhood development, it is critical that HUD bar families from moving into units that may contain lead hazards.

Public health weighs in favor of including poor air quality and lead paint exposure as part of the definition of life-threatening conditions in HUD housing programs.

We agree with HUD’s initial guidance that the maximum time to allow an owner to make repairs should be 180 days.

HUD specifically requests comments on the time limit to correct HQS violations. HUD proposes a 180-day time limit in which landlords are allowed to make repairs before a HAP contract is terminated for non-life-threatening HQS violations. HUD should maintain the 180-day limit, which allows PHAs sufficient discretion to set a time limit based on local conditions.

The tenant’s lease will be terminated when the HAP contract ends and the tenant will be forced to move. Tenants will thus benefit if HUD allows PHAs to set a ceiling of up to 180 days to correct repairs because it will reduce the possibility that tenants will be penalized directly by their landlords’ inaction or negligence. A 180-day limit also protects tenants’ rights to a decent, safe, and habitable home. Even though the violations are non-life-threatening, they are important to the family’s health and stability.

HOTMA requires that the time limit be “reasonable.”² In determining what is reasonable, HUD must balance the interests of the tenants in having deficiencies repaired with those of the landlord and PHA, which often involve administrative and financial considerations. A 180-day limit strikes a balance between these two interests.

Changes to the inspection rules in a PHA’s Administrative Plan should constitute a significant amendment to a PHA Plan.

Any revisions to the definition of non-life threatening conditions and policies surrounding inspections should constitute a significant amendment to a PHA’s Plan, triggering the public participation process. Section 8 participants know the housing conditions in their surrounding community best. There may be hazards in the community that present a specific problem to tenants that are not captured on HUD’s list of non-life-threatening conditions, which would cause tenants to advocate for a PHA not to amend its HQS inspection policy. Requiring resident participation will advance HUD’s goal of providing decent and safe housing to low-income families.

² 42 U.S.C. § 1437f (o)(8)(G)(i)(III)(bb).

HUD should make publicly available the list of PHAs that adopt § 8(o)(8)(A)(ii).

In its guidance, HUD requires PHAs to notify HUD that it plans to adopt § 8(o)(8)(A)(ii) and implement new rules on the correction of non-life threatening HQS violations. HUD should make the list of PHAs publicly available so that a range of stakeholders can track usage of this HOTMA provision. Along with housing advocates, public health professionals may be interested in tracking how PHAs are balancing the need to provide habitable homes to low-income families with the health impacts of prolonged housing searches and periods of homelessness.

B. Alternative Inspections (§ 8(o)(8)(A)(iii))

HUD should remove the requirement that PHAs inspect within 15 days of receiving the RTFA.

By allowing for alternative inspections in HOTMA, Congress improved the speed at which voucher tenants can move into a unit. PHA inspections of voucher units are often delayed due to no fault of a voucher family. This has a widespread negative impact on tenants because it can cut into the tenant's limited search time and prolong periods of homelessness or housing instability. In addition, it results in fewer landlords willing to participate in the voucher program.

In its guidance, however, HUD greatly reduced the potential impact of the HOTMA provisions that are aimed to expedite moves with continued assistance. HUD's notice requires that PHAs complete an initial HQS inspection within 15 days of receiving an RTFA, even when an alternative inspection was completed and the tenant moved into the unit. The 15 day requirement applies regardless of the size of the program (large PHAs were already required to inspect within 15 days and for small PHAs the requirement is within a reasonable time).

This 15-day requirement undermines the purpose of the statute and disincentivizes PHAs from implementing the discretionary alternative inspection policy. PHAs will be less likely to opt-in given the requirement to inspect within 15-days (despite an alternative inspection). For larger PHAs, the 15-day requirement is a continued obligation and for smaller PHAs, it is more restrictive than the current policy. The requirement does nothing to reduce PHAs' administrative burden and in some cases increases it.

HUD should provide incentives for PHAs to implement alternative inspection policies given the potentially positive impact on tenants. Enforcing a 15-day requirement to inspect will discourage PHAs from implementing an alternative inspection rule and HUD should therefore eliminate this requirement from its guidance.

C. Additional Comments

HUD should implement other HOTMA provisions related to voucher inspections immediately.

HOTMA includes important tenant protections and other provisions that will help families obtain and maintain safe and stable housing. For example, HOTMA bars a landlord from terminating a tenancy because the PHA is withholding HAP payments due to failure to comply with the HQS inspection.³

³ 42 U.S.C. 1437f(o)(8)(G)(v).

HOTMA also (1) implements a minimum time period for families to relocate if the HAP is terminated for failure to fix HQS violations⁴ (2) requires a PHA to provide a preference for other PHA housing to a family forced to move⁵ and (3) allows a PHA the flexibility to use withheld HAP funds to assist tenants with relocation.⁶ HUD should issue implementation guidance on these important provisions as soon as possible.

HUD should expand the protections available to tenants when a PHA determines landlord noncompliance under § 1437f(o)(8)(A).

As explained above, HOTMA bars a landlord from evicting a tenant after the HAP has been withheld or abated for failure to comply with an ongoing HQS inspection,⁷ providing an important tenant protection. HUD's guidance should expand that protection to tenants when a landlord fails to correct a non-life threatening violation after the time allowed by the PHA (up to 180 days as proposed by HUD). During the time that the PHA is withholding HAP payments, the tenant faces a heightened risk of eviction for nonpayment of rent (even when the family continues to pay their portion). HUD should include an express prohibition in its guidance to protect tenants from eviction in this situation, clarifying that it is illegal to evict a tenant for a reason related to a landlord's noncompliance with an initial HQS inspection, even for non-life-threatening violations. In other words, in its guidance, HUD should expand the protections in Section (G) of HOTMA to Section (A) to apply to initial HQS inspections.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Deborah Thrope (dthrope@nhlp.org) should you wish to talk with NHLP and/or HJN members to clarify our position on these important issues.

Sincerely,

Deborah Thrope, National Housing Law Project

On behalf of HJN:

Jeffrey Hearne, Legal Services of Greater Miami, Inc.
Emily Benfer, Health Justice Project, Loyola University Chicago School of Law
Ed Gramlich, National Low Income Housing Coalition
Madeline Howard, Western Center on Law and Poverty
Michelle Gilbert, LAF Chicago
Mac McCreight, Greater Boston Legal Services

⁴ 42 U.S.C. 1437f(o)(8)(G)(vii)(I).

⁵ *Id.* at 1437f(o)(8)(G)(vii)(II)

⁶ *Id.* at 1437f(o)(8)(G)(vii)(III).

⁷ *Id.* at 1437f(o)(8)(G)(vii)(I).