



To: Housing Justice Network  
From: NHLP  
Re: New voucher inspection and payment standard regulations pursuant to HOTMA  
Date: November 21, 2024

The Housing Opportunity Through Modernization Act of 2016<sup>1</sup> was signed into law by President Obama in July 2016. HOTMA made important changes to the existing federal housing programs, including the Section 8 Housing Choice Voucher program, the Public Housing program, and the Section 8 Project- Based Rental Assistance program. Some of HOTMA’s provisions were self-implementing, meaning they went into effect right away. Other sections required HUD to implement regulations. HUD has slowly published implementation notices in the past several years for various sections of HOTMA. NHLP recently updated a HOTMA quick reference guide for advocates that summarizes the changes made by each section of HOTMA.<sup>2</sup>

In May 2024, HUD published final regulations pursuant to Section 101 of HOTMA, which provides new flexibilities to PHAs in the inspection process.<sup>3</sup> The final rule also included new payment standard regulations to streamline voucher administration. HUD already requires compliance with many of the new regulations discussed below, but please reference HUD Notice PIH 2024-19 to confirm compliance deadlines, which vary based on individual regulations.

Below is an analysis of key revisions to HUD regulations most relevant to tenants’ rights and legal services attorneys, made pursuant to HOTMA Section 101 and HUD’s streamlining regulations. Note that HUD’s final rule also covers significant changes to the PBV program pursuant to section 106 of HOTMA. Those regulations are currently not included in NHLP’s analysis. For a resource on project-based vouchers and particularly, the new rules related to the PBV cap, see *Project-Based Vouchers: Lessons from the Past to Guide Future Policy*.<sup>4</sup>

It is important that legal services attorneys understand the new regulations to successfully advocate with local PHAs to adopt changes in their Administrative Plan (“Admin Plan”), Admissions and Continued Occupancy Policy (“ACOP”), and other planning documents that should reflect the new rules. NHLP, in its analysis below, has noted discretionary PHA policies that tenants and their advocates can push for on a local level to benefit residents. HJN members are always welcome to reach out to NHLP staff with questions about PHA and related plans.

Please note that all the CFR citations in this analysis are to the updated and revised regulations pursuant to the HUD notice.

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<sup>1</sup> Housing Opportunity Through Modernization Act of 2016, Pub. L. No. 114-201, 130 Stat. 782 (2016).

<sup>2</sup> NHLP, Quick Reference Guide to Implementation of Title I of the Housing Opportunity Through Modernization Act (HOTMA) (Updated Nov 2024).

<sup>3</sup> Housing Opportunity Through Modernization Act of 2016 – Housing Choice Voucher and Project-Based Voucher Implementation; Additional Streamlining Changes, 89 Fed. Reg. 38224 (May 7, 2024).

<sup>4</sup> Barbara Sard, Center on Budget and Policy Priorities, *Project-based vouchers: Lessons from the past to guide future policy* (2024), available at <https://www.cbpp.org/research/housing/project-based-vouchers-lessons-from-the-past-to-guide-future-policy>.

## Voucher Inspection Regulations Pursuant to HOTMA

HOTMA made important changes to the voucher inspection process. PHAs have new options for handling inspections. However, many of the policies are discretionary (meaning, a PHA can choose to adopt them). Therefore, HJN members should consider advocating with their local PHA to implement inspection policies that will benefit tenants. Under the new regulations:

- Voucher families may move into a unit if it fails an inspection for non-life-threatening conditions.
- For existing voucher tenants, a PHA can withhold or abate rent if a unit does not come into compliance within key time periods (24 hours for life-threatening violations and 30 days for non-life-threatening violations).
- A PHA can use up to two months withheld or abated rent to assist families with relocation, including security deposits.
- PHAs can replace HQS/NSPIRE inspections with other, similar inspections such as LIHTC, HOME, and other HUD inspections.

Below, we detail new HUD regulations most relevant to HJN members and in particular, where HUD made revisions to HUD's proposed rules (in many cases, per NHLP and HJN suggestions).

### I. Initial Inspections

HOTMA made important changes to the initial voucher inspection process (pre move-in).<sup>5</sup> HOTMA allows PHAs to enter into a HAP contract if the unit fails an HQS inspection but only for non-life-threatening (NLT) conditions.<sup>6</sup> If a unit fails an inspection due to life-threatening deficiencies, the issues must be resolved before the PHA enters into a HAP contract and before the family moves into the unit. The PHA must adopt this policy in its Admin plan.

If the PHA adopts the "NLT" policy, here are the steps for an initial inspection:

- A PHA can approve a unit if it has non-life-threatening (NLT) violations (only).<sup>7</sup>
- The PHA may enter into a HAP contract with the owner and begin making payments.<sup>8</sup>
- The PHA must inform the owner they have 30 days to repair NLT violations.<sup>9</sup>
- If the owner does not make the repairs in the 30-day cure period, the PHA must withhold HAP.<sup>10</sup>
- The owner has a maximum of 180 days in which to make the repairs. The PHA can decide how long it will withhold HAP before it abates HAP (this policy must be in the Admin plan).<sup>11</sup>

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<sup>5</sup> HOTMA Section 101(a)(1)(A)(i) and (ii).

<sup>6</sup> HOTMA Sec. 101(a)(1)(A)(ii); 24 C.F.R. § 982.405(j).

<sup>7</sup> 24 C.F.R. § 982.405(j)(1).

<sup>8</sup> 24 C.F.R. § 982.405(j)(1).

<sup>9</sup> 24 C.F.R. § 982.405(j)(2).

<sup>10</sup> 24 C.F.R. § 982.405(j)(4).

<sup>11</sup> 24 C.F.R. § 982.405(j)(2).

- If the owner eventually makes repairs, the PHA can use withheld HAP to pay the owner for the months of non-payment.<sup>12</sup>
- If the owner fails to make repairs, the PHA must terminate the HAP. In that case, the lease will terminate as well.<sup>13</sup> The family will have to move but the PHA can use 2-months of withheld and abated HAP to pay the family's relocation expenses, including a security deposit.<sup>14</sup>

What is a life-threatening (versus NLT) HQS violation? HUD has published a list of life-threatening conditions in several prior guidance documents that includes severe habitability issues like electrical damage and obstructed egress.<sup>15</sup> In response to each document, NHLP and HJN provided comments to HUD about expanding the list of life-threatening HQS violations to include additional items to ensure the health and safety of residents (such as mold, infestations, and asbestos). Since the publication of those documents, HUD finalized the NSPIRE standards, which will ultimately replace the voucher HQS inspection standards. HUD ultimately added visible mold to the list of life-threatening conditions in the NSPIRE standards. For the most updated list of life-threatening violations, advocates should carefully review the NSPIRE standards.<sup>16</sup>

In our comments on the proposed rule, NHLP and HJN also recommended that HUD immediately update its HQS (NSPIRE) inspector checklists to accurately reflect what HUD considers life-threatening conditions. NHLP is pleased that a lack of a carbon monoxide alarm is now on the checklist and listed as a life-threatening deficiency.

## II. Alternative Inspections

HOTMA allows replacing HQS/NSPIRE with alternative inspections if done within the previous 24 months.<sup>17</sup> PHAs have flexibility in how they apply the rule (for initial and/or interim inspections and may limit use of alternative inspections to certain units, per their PHA plan).<sup>18</sup> PHAs may use HOME inspections, LIHTC inspections, or HUD inspections and can seek HUD approval for other, similar inspections that meet the same health and safety standards as HQS/NSPIRE.<sup>19</sup> Using alternative inspections is an important tool to expedite voucher tenants' lease-up times, especially in areas where lags in PHA inspections present a barrier to voucher success and landlord participation. We suggest that advocates urge local PHAs to adopt this policy.

## III. Ongoing Inspections (Inspections other than initial inspections)

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<sup>12</sup> 24 C.F.R. § 982.405(j)(4).

<sup>13</sup> 24 C.F.R. § 982.405(j)(2).

<sup>14</sup> 24 C.F.R. § 982.406(f)(6).

<sup>15</sup> HUD, Housing Opportunity Through Modernization Act of 2016 (HOTMA) - Housing Quality Standards (HQS) Implementation Guidance, Notice PIH 2017-20 (October 27, 2017); Proposed 24 C.F.R. § 401(o); 85 Fed. Reg. 63,699 (Oct. 8, 2020).

<sup>16</sup> HUD, NSPIRE Final Standards, Table 65 – HOTMA Life-Threatening Conditions, available at [https://www.hud.gov/sites/dfiles/PIH/documents/6092-N-05nspire\\_final\\_standards.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/6092-N-05nspire_final_standards.pdf).

<sup>17</sup> HOTMA Section 101(a)(1)(A)(iii); 24 C.F.R. § 982.406.

<sup>18</sup> 24 C.F.R. § 982.406(a).

<sup>19</sup> 24 C.F.R. § 982.406(c).

Pursuant to HOTMA, HUD also allows PHAs to implement a new process for annual, interim and other inspections. The steps for these inspections have similar timelines to initial inspection and are as follows:

- A PHA may withhold HAPs for units that have HQS deficiencies once it notifies the owner in writing.<sup>20</sup>
- If the owner comes into compliance during the cure period (24 hours for life-threatening violations and within 30 days or other reasonable time, per the PHA plan, for non-life-threatening violations) the PHA must resume payments and provide assistance for the withheld months.<sup>21</sup>
- If the owner fails to make corrections within the cure period, the PHA must abate assistance.<sup>22</sup>
- If the PHA abates assistance, the PHA must notify the owner and family that if the unit does not meet HQS within 60 days (or another reasonable time period, per the PHA plan) the PHA will terminate the HAP contract.<sup>23</sup>
- The PHA must issue a transfer voucher at least 30 days prior to the termination of HAP.<sup>24</sup>
- If the family terminates its tenancy, the PHA must promptly issue a transfer voucher to the family.<sup>25</sup>

In sum, the regulations allow a PHA to withhold rent if a unit fails an HQS inspection.<sup>26</sup> HUD also requires a PHA to abate rent if the defects are not cured by the end of the cure period.<sup>27</sup> Unlike withheld rent, abated rent cannot be paid to the landlord retroactively. Importantly, during the period of withholding or abatement, the tenant is protected from eviction due to the PHA's failure to pay under the HAP.<sup>28</sup>

The final regulation still leaves tenants somewhat unprotected from evictions in the event their unit fails an HQS inspection. NHLP and HJN noted in their comments that the failure of HUD to protect tenants from eviction for failure to pay their portion of the rent (not just protections from eviction for the PHA's failure to pay the HAP) will lead many tenants vulnerable, despite the clear intent of HOTMA to protect tenants from eviction as a result of substandard property conditions caused by the landlord, and despite any tenant liability discrepancies in state or local law.

Still, HUD made several important changes to the final regulations that will benefit families. First, HUD requires PHAs to issue a family a voucher at least 30 days prior to termination of a HAP contract for failure to comply with HQS. And, if the family terminates the tenancy during the period of abatement or withholding of rent, the PHA must *promptly* issue the family a voucher.<sup>29</sup>

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<sup>20</sup> 24 C.F.R. § 982.404(d)(1).

<sup>21</sup> 24 C.F.R. § 982.404(d)(1).

<sup>22</sup> 24 C.F.R. § 982.404(d)(2)(i).

<sup>23</sup> 24 C.F.R. § 982.404(d)(2)(ii).

<sup>24</sup> 24 C.F.R. § 982.404(d)(2)(ii).

<sup>25</sup> 24 C.F.R. § 982.404(d)(3).

<sup>26</sup> HOTMA § 101(a)(3)(G)(ii).

<sup>27</sup> HOTMA §101(a)(3)(G)(iii).

<sup>28</sup> HOTMA § 101(a)(3)(G)(v); See 24 C.F.R. § 982. 404(d)(3).

<sup>29</sup> 982.404(d)(2) and (3).

#### IV. Additional Tenant Relocation Protections

HOTMA, and its final implementing regulations, provides some additional relocation protections for tenants residing in units that fail HQS/NSPIRE inspections.<sup>30</sup> First, a PHA must give a family at least 90 days to move following the termination of the HAP contract *or more time if needed to lease a new unit*.<sup>31</sup> HUD, in its final rule, added the requirement that PHAs provide more than 90 days if necessary per NHLP and HJN's recommendation in our comments on the proposed rule.<sup>32</sup>

Second, the HOTMA statute and proposed regulations require a PHA to provide a public housing unit to the family if one is available and the tenant can't find a unit that will accept a voucher within 90 days.<sup>33</sup> Despite our comments to broaden relocation to include RAD and other converted units (not just public housing units), HUD declined to revise the rule. HOTMA's statutory language supports the position that public housing refers to any property owned or operated by a PHA that receives HUD rental assistance:

If the family is unable to lease such a new residence during such period, the public housing agency shall, at the option of the family, provide such family a preference for occupancy *in a dwelling unit of public housing that is owned or operated by the agency* that first becomes available for occupancy after the expiration of such period. (emphasis added)<sup>34</sup>

Congress did not specify *section 9 public housing* as it could have when drafting the statute. Given the number of public housing units converting through RAD nationwide as well as HUD's broad repositioning goals for public housing, it will only be possible to implement Congress' intent that PHAs provide other available housing options, if needed, by requiring PHAs to offer any dwelling unit that is owned, operated, or within the control of the public housing authority that provides an equivalent level of subsidy and tenant protections to families who are relocating due to housing conditions (e.g. RAD, PH, PBV or PBRA units). Advocates should argue that tenants are entitled to relocation to any PHA-owned unit, per HOTMA, in cases of involuntary relocation due to conditions.

Third, per NHLP and HJN's recommendations, HUD revised the final regulation on the use of withheld or abated HAP so that the regulation conforms to HOTMA. The statute requires that if a PHA uses withheld or abated HAP funds to assist tenants with relocation, the PHA *must* provide security deposit assistance.<sup>35</sup> The proposed regulation made security deposits an *eligible* use of the funds. The

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<sup>30</sup> HOTMA § 101(a)(3)(G)(vii); See Proposed 24 C.F.R. § 982. 404(e).

<sup>31</sup> 24 C.F.R. § 982.404(e)(1).

<sup>32</sup> HOTMA § 101(a)(3)(G)(vii)(II) (referring to "the family," and clarifying that these policies are supposed to be tailored to the circumstances of particular families as well as particular markets).

<sup>33</sup> HOTMA § 101(a)(3)(G)(vii)(2); See Proposed 24 C.F.R. § 982. 404(e)(2).

<sup>34</sup> HOTMA § 101(a)(3)(G)(vii)(2).

<sup>35</sup> HOTMA § 101(a)(3)(G)(vii)(3) ("The public housing agency may provide assistance to the family... for costs directly associated with relocation of the family to a new residence, which *shall* include security deposits as necessary and may include reimbursements for reasonable moving expenses incurred by the household, as established by the Secretary") (emphasis added).

final regulation makes it mandatory to use withheld or abated funds for security deposits. PHAs must include rules about security deposits and withheld and abated rent in their Administrative Plan.<sup>36</sup>

These changes to the final regulations should expedite moves of voucher families due to habitability issues and provide some level of protection against subsidy terminations and evictions due to poor conditions.

#### V. Tenant-caused damage

Pursuant to HOTMA, the revised regulations include a new procedure for HQS violations that result from tenant-caused damage.<sup>37</sup> In the case of an HQS deficiency that is caused by an assisted family, the tenant is not automatically responsible for the repairs that caused the damage. Rather, the PHA must first explicitly waive the owner's obligation to correct the HQS deficiencies.<sup>38</sup> If the owner's responsibility has been waived, the PHA cannot withhold or abate HAP. In other words, the burden to make the repairs is shifted to the tenant only after the owner requests, and the PHA grants, a waiver to the landlord.

Where state and local law allow it,<sup>39</sup> the family will have 24 hours to correct a life-threatening condition and 30-days (where allowed by state and local law) to remedy a non-life-threatening condition. Despite NHLP and HJN comments, the final regulations explicitly allow the PHA to terminate assistance for causing damage to the unit, without requiring the landlord to work with the tenant to make the repairs during the term of the HAP contract.<sup>40</sup>

### **Revised Regulations on Rents and Payment Standards**

In addition to implementing the HOTMA statute, HUD finalized new regulations to "better clarify or revise existing regulatory requirements."<sup>41</sup> The regulations below govern voucher families' rents and PHA payment standards and many of them provide new and useful flexibilities to PHAs when setting rents including:

- Allows all PHAs to set exception payment standards up to 110% Small Area Fair Market Rent ("SAFMR") without HUD approval and in some cases, PHAs can set payment standards up to 120% SAFMR by noticing HUD.
- Requires that PHAs apply increased payment standards to families' current rent payments when it will benefit the family.
- Although it didn't revise the regulations, HUD notes in the preamble that families should not be required to pay more than 30% of their income in rent as a reasonable accommodation when

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<sup>36</sup> 24 C.F.R. § 982.404(e)(3).

<sup>37</sup> HOTMA § 101(a)(3)(G)(viii); 24 C.F.R. § 982.404(a)(4).

<sup>38</sup> 24 C.F.R. § 982.404(a)(4).

<sup>39</sup> This is a revision made in response to a NHLP and HJN comment that in many states tenants are prohibited from carrying out their own repairs. Tenants often lack the skills to do the repairs and the wherewithal to arrange for hiring of an appropriate contractor. Even those states that allow tenant "repair and deduct" for owner failure to remedy defects only do so after notice to owner and a reasonable opportunity for the owner to repair (see, for example, Mass. G.L. c. 111, sec. 127L).

<sup>40</sup> 24 C.F.R. § 982.404(b)(3).

<sup>41</sup> 89 Fed. Reg. 38225.

requesting an exception payment standard. HUD also states that additional guidance on exception payment standards is forthcoming.

For a more detailed analysis, see below. In addition, HUD published guidance that clarifies these new payment standard rules.<sup>42</sup>

#### I. Fair Market Rents for Existing Housing

The new regulations revise how FMRs are calculated and provide new flexibilities to PHAs in setting Small Area Fair Market Rents (SAFMRs).

First, the final rule states that FMR calculations will include newly built units.<sup>43</sup> The FMRs calculated under § 888.113 should be reflective of the entire rental market, which includes newly built units. This change will allow FMR calculations to be more reflective of the actual rental market.

Second, the final rule clarifies that where a PHA elects to use SAFMRs in one metro or nonmetropolitan area, it is not required to use SAFMRs in other areas.<sup>44</sup> In a welcomed move, HUD will allow PHAs to notify HUD when opting-in to use SAFMRs, rather than require HUD's approval.<sup>45</sup>

Third, there are several revisions that provide clarity, improve readability and update cross references with respect to the application of SAFMRs to PBVs. Under § 888.113(h)(1), HUD clarifies that the PHA and owner may mutually agree to apply the SAFMR to a PBV project where the project was selected before "either or both" the SAFMR designation and the PHA administrative policy.<sup>46</sup> This means a PHA that has a policy in their Admin plan to apply SAFMRs to all future PBV projects can also create a policy permitting the application of SAFMRs to current PBV projects, provided the owner mutually agrees to do so.<sup>47</sup> The changes provide some clarity and guidance on the application of SAFMR to project based vouchers, which are not automatically covered by SAFMR.

#### II. Payment Standard Areas, Schedules, and Amounts

##### a. Exception payment standards (24 C.F.R. § 982.503(d))

HUD revised the rules for exception payment standards above 110% of FMR. First, exception payment standards can apply to all units or units of a particular size, the exception payment standard can apply to a designated part of the FMR area or the entire area, and an exception payment standard area can be no smaller than a census tract block group.<sup>48</sup> NHELP supported the use of census tract blocks because census tract block groups are the smallest area of geography for which HUD has available rental

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<sup>42</sup> HUD, Updated and Consolidated Policy Guidance on Housing Choice Voucher (HCV) Program Payment Standards, Notice PIH 2024-34 (Sept. 30, 2024).

<sup>43</sup> Basis for setting fair market rents, 89 Fed. Reg. at 38291 (May 7, 2024); 24 C.F.R. § 888.113(a).

<sup>44</sup> Setting small area FMRs, 89 Fed. Reg. at 38291 (May 7, 2024); 24 C.F.R. § 888.113(c)(3).

<sup>45</sup> Setting small area FMRs, 89 Fed. Reg. at 38291 (May 7, 2024); 24 C.F.R. § 888.113(c)(3).

<sup>46</sup> Small area FMRs and project-based vouchers, 89 Fed. Reg. at 38291 (May 7, 2024); 24 C.F.R. § 888.113(h)(1).

<sup>47</sup> See Small area FMRs and project-based vouchers, 89 Fed. Reg. at 38291 (May 7, 2024); 24 C.F.R. § 888.113(h)(1).

<sup>48</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(1).

data.<sup>49</sup> Previously, there was no minimum physical size for exception areas but they were instead limited by other considerations.<sup>50</sup>

In addition, the changes under § 982.503(d)(2) create parity between metro and nonmetro areas and allow more flexibility for payment standards to better reflect the market.<sup>51</sup> PHAs that are not in a mandatory or voluntary SAFMR jurisdiction are allowed to set exception payment standards up to 110% of the SAFMR for the applicable ZIP code.<sup>52</sup> If an exception payment standard area crosses more than one FMR boundary, the lowest SAFMR would apply.<sup>53</sup> HUD did not address issues of concern from NHLP and HJN's comment letter. Namely, we asked HUD to clarify its reference to "FMR boundaries."<sup>54</sup> In addition, NHLP asked HUD to use its current guidance for setting SAFMR payment standards for grouped zip codes rather than limiting exception payment standards to 110 percent of the lowest SAFMR where the exception area crosses one or more FMR boundaries. While HUD did not address these comments, the changes under this regulation are an improvement that allows increased flexibility for PHAs to set higher exception payment standards.

Next, the revised regulations provide for situations in which PHAs have the discretion to set exception payment standards without HUD approval up to 120% FMR and SAFMR, and would only require notification to HUD.<sup>55</sup> PHAs have this discretion if they meet at least one of the following criteria: (i) fewer than 75 percent of the families to whom the PHA issued tenant-based rental vouchers during the most recent 12-month period for which there is success rate data available have become participants in the voucher program; (ii) more than 40 percent of families with tenant-based rental assistance administered by the agency pay more than 30 percent of adjusted income as the family share; or (iii) such other criteria as the Secretary establishes by notice.<sup>56</sup> This will provide PHAs flexibility to set exception payment standards without waiting for HUD approval. PHAs will be able to more quickly respond to changing rental market conditions, which will help them better manage program utilization, success rates, and rent burdens.

In some cases (outside of the conditions outlined above), PHAs must request approval from HUD to establish exception payment standards above 110% FMR.<sup>57</sup> In these circumstances, the PHA must provide rental market data demonstrating the request is needed for families to access rental units. Further, HUD revised paragraph (d)(4) to explain the application of the exception payment standard to the entire fair market rent area and the use of rental market data, specifically allowing the use of local rental market data. HUD intends to issue a PIH notice with further clarification regarding data that must be submitted in support of an exception payment standard request.<sup>58</sup>

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<sup>49</sup> Housing Opportunity Through Modernization Act of 2016—Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes, 85 Fed. Reg. 63664, 63670 (Oct. 8, 2020).

<sup>50</sup> See 24 C.F.R. § 982.503(c) (2020).

<sup>51</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(2).

<sup>52</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(2).

<sup>53</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(2).

<sup>54</sup> NHLP & HJN, Letter to HUD re Docket No. FR 6092-P-01: "Housing Opportunity Through Modernization Act of 2016: Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes" at 11 (Jan. 6, 2021).

<sup>55</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(3).

<sup>56</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(3).

<sup>57</sup> Exception payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(d)(4).

<sup>58</sup> Exception Payment Standards (§ 982.503(d)): Rental Market Data, 89 Fed. Reg. at 38252.



Last, under § 982.503(d)(5), HUD clarifies the existing policy that PHAs may establish an exception payment standard of up to 120 percent of the applicable FMR without prior notification to HUD if they are seeking a reasonable accommodation for a person with a disability. Unfortunately, HUD did not make it clear in the regulations, as provided in Section 102(d)(1) of HOTMA, that tenants who request a reasonable accommodation for an increase in the payment standard are not required to pay more than 30% of their income in rent to see the benefits of the accommodation. HUD issued PIH notices starting in 2010, prior to HOTMA, that appeared to require that tenants pay at least 40% of their income before HUD would grant a higher payment standard.<sup>59</sup> In this final notice, in response to NHLP and HJN comments, HUD stated in the preamble that “[t]enants who request exception payment standards as reasonable accommodations are not required to pay 40 percent of their income in order to benefit from the accommodation, so no change to this rule is needed in order to achieve that result.”<sup>60</sup> Further, the notice states that HUD will issue additional guidance to clarify this important tenant protection.<sup>61</sup>

b. Payment standard amount below 90% of the applicable FMR

PHAs will continue to need HUD approval to set payment standards below 90 percent of the FMR or SAFMR.<sup>62</sup> HUD will consider “appropriate factors” to make their determination, which includes the rent burden of assisted families. HUD will not approve a lower payment standard if it would cause the tenant rent portion to exceed 30% of income for more than 40% of the participants, unless it is necessary to prevent termination of program participants.<sup>63</sup>

c. Phaseout of success rate payment standard amounts

HUD amends § 982.503(f) to eliminate success rate payment standards.<sup>64</sup> HUD determined that the new flexibility provided in the rule to set payment standards up to 120 percent of the FMR makes this option unnecessary.

d. HUD review of PHA payment standard schedules

HUD will monitor rent burdens only of families assisted with tenant-based rental assistance and will review the PHA’s payment standard when 40 percent or more of families pay more than 30 percent of income for rent.<sup>65</sup> HUD has discretion in such cases to modify the payment standards. In NHLP’s comments we requested that HUD revise the regulation to require PHAs to raise their payment standard and reduce minimum rents whenever more than 40 percent of families pay more than 30 percent of

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<sup>59</sup> HUD PIH Notice 2010-11 (Apr. 13, 2010), as extended and revised by PIH Notices 2011-19 and 2013-18.

<sup>60</sup> Exception Payment Standards (§ 982.503(d)): Reasonable Accommodation (§ 982.503(d)(4)), 89 Fed. Reg. at 38253.

<sup>61</sup> Exception Payment Standards (§ 982.503(d)): Reasonable Accommodation (§ 982.503(d)(4)), 89 Fed. Reg. at 38253.

<sup>62</sup> Payment standard amount below 90 percent of the applicable FMR, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(e).

<sup>63</sup> Payment standard amount below 90 percent of the applicable FMR, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(e).

<sup>64</sup> Phaseout of success rate payment standard amounts, 89 Fed. Reg. at 38301 (May 7, 2024); 24 C.F.R. § 982.503(f).

<sup>65</sup> HUD review of PHA payment standard schedules, 89 Fed. Reg. at 38302 (May 7, 2024); 24 C.F.R. § 982.503(h).

their adjusted income or when success rates fall below a certain percentage.<sup>66</sup> Per NHLP and HJN comments, HUD maintained the 40 percent measure with no modifications.

### III. How to Calculate Housing Assistance Payment

HUD revised 24 C.F.R. § 982.505 to allow PHAs more flexibility in applying changes to payment standards. These changes provide participating families with the benefit of payment standard increases more consistently, which helps ensure that tenant rent portions remain affordable.

#### a. Payment standard for family- Increase in the payment standard amount during the HAP contract term

In its final rule, HUD incorporated important revisions to 982.505(c)(4), which require PHAs to apply the increased payment standard when calculating housing assistance payments at the earliest of (i) the effective date of an increase in rent which would increase the tenant's rent portion, (ii) the family's next regular reexamination or interim recertification, or (iii) one year following the effective date of the payment standard increase.<sup>67</sup> HUD believes these changes sufficiently balance participants receiving the benefit of a payment standard increase and the PHA administrative burden caused by applying those increases.<sup>68</sup> The change brings the regulation more in line with statute, 42 U.S.C. § 1437f(o)(2)(A), which provides that when contract rent does not exceed the payment standard, the tenant pays up to 30% of his or her income in rent.<sup>69</sup> The statute does not authorize a delay between the increase in the contract rent and an increase in the payment standard as applied to the family, when the contract rent was within the payment standard at all times.<sup>70</sup> The removal of the lag time that many tenants experience when a payment standard increases will benefit voucher families.

The new regulations read:

*If the payment standard amount is increased during the term of the HAP contract, the PHA must use the increased payment standard amount to calculate the monthly housing assistance payment for the family beginning no later than the earliest of:*

- (i) The effective date of an increase in the gross rent that would result in an increase in the family share;*
- (ii) The family's first regular or interim reexamination; or*
- (iii) One year following the effective date of the increase in the payment standard.<sup>71</sup>*

This is an important update to the voucher regulations that HJN and NHLP have consistently advocated for with HUD. Advocates should help ensure that voucher families are seeing the benefit of payment standard increases immediately.

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<sup>66</sup> NHLP & HJN, Letter to HUD re Docket No. FR 6092-P-01: "Housing Opportunity Through Modernization Act of 2016: Housing Choice Voucher (HCV) and Project-Based Voucher Implementation; Additional Streamlining Changes" at 14 (Jan. 6, 2021).

<sup>67</sup> Payment standard for family, 89 Fed. Reg. at 38302 (May 7, 2024); 24 C.F.R. § 982.505(c)(4).

<sup>68</sup> How to Calculate Housing Assistance Payment (§ 982.505): Payment Standard Timeline, 89 Fed. Reg. at 38255.

<sup>69</sup> 42 U.S.C. § 1437f(o)(2)(A) (2024).

<sup>70</sup> 42 U.S.C. § 1437f(o)(2)(A) (2024).

<sup>71</sup> Payment standard for family, 89 Fed. Reg. at 38302 (May 7, 2024); 24 C.F.R. § 982.505(c)(4).

b. Payment standard for family (24 C.F.R. §§ 982.505(c)(5)-(6))

Under § 982.505(c)(5) PHAs have the flexibility to apply increases in the payment standard earlier than required.<sup>72</sup> Similarly, HUD revised paragraph (c)(6) to clarify that if the family unit size either increases or decreases during the HAP contract term, the PHA must apply the payment standard for the new unit size in its recalculation of tenant rent by the first regular reexamination following the change. The PHA also has the option to apply the payment standard for the new unit size immediately.<sup>73</sup>

**Revised Regulations on Administrative Plans**

HUD updated the regulations related to Admin plans. These changes are to streamline PHA plans pursuant to other HOTMA changes.

I. Administrative Plan (24 C.F.R. § 982.54)

HUD made some changes to the occupancy policies that must be covered in the Admin plan.<sup>74</sup> PHAs must establish standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with §§ 982.552, 982.554, and 982.555.<sup>75</sup> HUD had previously issued guidance prohibiting PHAs from adopting policies that discriminate against members of a protected class.<sup>76</sup> Further, under (d)(4)(iv), PHAs are required to include in their plans all policies regarding residency for foster children and adults.<sup>77</sup>

Consistent with the NSPIRE final rule, HUD also modified § 982.54(d)(21)(i) to require that PHAs include in their Admin plans a list of any PHA designated life-threatening deficiencies that, in addition to all HUD-required life-threatening deficiencies, will be applied by the PHA. This change is consistent with the NSPIRE final rule and will eliminate confusion as to what types of deficiencies are considered life-threatening on a local level.<sup>78</sup>

Under (d)(22), PHAs must specify in their Admin plan their policy for withholding HAPs for units that do not meet HQS.<sup>79</sup> Lastly, under (d)(23) PHAs must include their policy on assisting families with relocation and finding a new unit.<sup>80</sup>

II. PBV provisions in the Admin Plan (24 C.F.R. § 983.10)

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<sup>72</sup> PHA policy on payment standard increases, 89 Fed. Reg. at 38302 (May 7, 2024); 24 C.F.R. § 982.505(c)(5).

<sup>73</sup> Changes in family unit size during the HAP contract term, 89 Fed. Reg. at 38302 (May 7, 2024); 24 C.F.R. § 982.505(c)(6).

<sup>74</sup> 24 C.F.R. § 982.54(d)(4).

<sup>75</sup> 24 C.F.R. § 982.54(d)(4)(iii).

<sup>76</sup> See PIH Notice 2015–19, Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions; HUD, 2016 Office of General Counsel’s Guidance on the Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions (Apr. 4, 2016).

<sup>77</sup> 24 C.F.R. § 982.54(d)(4)(iv).

<sup>78</sup> 24 C.F.R. § 982.54(d)(21)(i).

<sup>79</sup> 24 C.F.R. § 982.54(d)(22).

<sup>80</sup> 24 C.F.R. § 982.54(d)(23).

HUD outlined where PHAs have discretion in administering a PBV program and requires PHAs to include all discretionary PBV policies in the Admin plan.<sup>81</sup> The regulation includes cross-references to other regulations that provide more complete information about the contents of, and requirements for, each PHA policy.

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<sup>81</sup> 24 C.F.R. § 983.10.