



**The Housing Conference**  
2017  
AUGUST 21-22, 2017 • BOSTON, MA

## Legislative Update

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Nan McKay  
Annie Stevenson



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## HCV Funding Update

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FY 2017 Renewal Funding  
2018 Budget

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## 2017 Funding

- Until the 2017 Appropriations Act passed 5/5/17, the HCV program was operating under a continuing resolution which meant we were funded based on 2016 funding.
- January-June payments had already been sent by the time the 2017 appropriation Act was passed.

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### FY 2017 Appropriation

FY 2017 Appropriation	
HAP Renewal Funding	\$18,355,000,000
Tenant Protection Vouchers	110,000,000
Administrative Fees	1,650,000,000
Mainstream 5 Year Program	120,000,000
VASH	40,000,000
Tribal VASH	7,000,000
Family Unification Program	<u>10,000,000</u>
<b>Total</b>	<b>\$20,292,000,000</b>

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- ### 2017 Funding
- PHA renewal allocations were calculated:
    - (1) Funding was based on actual HAP costs for CY 2016, per VMS reporting and HUD review, not to exceed costs for baseline units
    - (2) Renewal Inflation Factor applied
    - (3) Initial funding was inflated using renewal inflation factors for new increments that span 2016 and 2017
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- ### FY Proration
- Renewal award notifications sent to PHAs in June
    - - HAP Proration at 97%
    - - Estimated Admin Fee Proration at 76%
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### HAP Set-Aside

- Up to \$75,000,000 of renewal appropriations may be used to augment renewal allocations for the following purposes:
  - Prevention of terminations due to insufficient funding
  - Unforeseen circumstances
  - Portability cost increases
  - Project-Based Vouchers
  - HUD-VASH
- Due to FY 2017 funding levels, all of the HAP Set-aside will be necessary for Category 1, Prevention of Terminations Due to Insufficient Funding (Shortfall Funding).

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### Admin Fee Set-Aside

- FY 2017 Admin Fee Funding: \$1,650,000,000
- HUD will use up to \$10,000,000 of FY 2017 Admin Fee funding as a set-aside for housing conversion special fees, fees for portability and homeownership fees, and others set in the notice, etc.

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### Admin Fees

- Admin fee funds are advanced monthly, based on latest reconciled eligibility
- Admin fees are reconciled quarterly
- PHAs must take actions to reduce costs if fees and UNP (formerly know as UNA) are insufficient
  - Notice PIH 2012-15 discusses streamlining administrative practices to reduce costs
- HAP funds may not be used for admin costs

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### Cash Management

- It is absolutely critical that the Finance and HCV Director work together using the 2-year tool each month!
- It has been enhanced and now has a Payment Standard Tool built into it.

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### President's 2018 Budget Highlights

- 15% budget reduction
- Eliminates CDBG, HOME & Choice Neighborhoods
- Increases tenant rents to 35% gross
- Sets mandatory minimum rents
- Does this track with Congress's priorities?

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### FY18 HCV Budget

HUD Programs (in millions)	FY 2018 President	FY 2018 House	FY 2018 Senate
Tenant Based Rental Assistance	19,318	20,487	21,365
Contract Renewals	17,584	18,710	19,370
Tenant Protection Vouchers	60	60	75
Administrative Fees	1,550	1,550	1,725
Mainstream Vouchers	107	150	130
Veterans Affairs Supportive Housing Vouchers	0	577*	40
Public Housing Capital Fund	628	1,850	1,945
Public Housing Operating Fund	3,900	4,400	4,500

\*The House FY18 bill calls for separate accounting of previously funded VASH vouchers. This amount does not reflect any new VASH vouchers.

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Housing Opportunity Through Modernization Act of 2016 (HOTMA)

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### Overview

- Signed into law 7-29-16
- Mainly affects HCV and public housing
- HOTMA is a revised version of unsuccessful housing reform bills presented to Congress over the past decade
- Some HOTMA provisions are effective immediately, some can be implemented by notice, and others require rulemaking

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### HOTMA Implementation to Date

- HUD has published three FR notices related to HOTMA:
  1. FR notice 10-24-16 on self-implementing provisions
    - Preceded by 9-26-16 letter to EDs
  2. FR notice 11-29-16 sought comment on new income limit in public housing
  3. FR notice 1-18-17 implemented various provisions related to HCV and PBV

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### HOTMA Implementation to Date

- Only those HOTMA provisions covered by these notices can be implemented at this time
  - HUD will implement remaining provisions via future formal rulemaking
    - Proposed rule, public comment, final rule
  - Must comply with regulatory reform requirements

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### Self-Implementing Provisions

- 10-24-16 FR notice announced five provisions effective immediately:
  - PHAs may establish payment standard up to 120% of FMR without HUD approval as a reasonable accommodation
  - New procedures for establishing and publishing FMRs
  - Changes to length of term and eligibility requirement related to FUP for children aging out of foster care.
  - Two provisions that apply only to specific PHAs

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### 1-18-17 FR Notice

- Implements and seeks comment on HOTMA provisions in four areas:
  - Inspections
    - Two alternatives for initial HQS inspections
  - Definition of PHA-owned units
  - Project based vouchers
  - Manufactured housing
- Provisions took effect 4-18-17

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### Guidance on 1-18-17 FR Notice

- HUD plans to issue guidance on the provisions implemented by the 1-18-17 FR notice:
  - HQS inspections
  - PBV (including new definition of PHA-owned)
  - Manufactured housing
- Guidance will include PIH notices, webinars, and FAQs

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### HOTMA Provisions Not Yet Implemented

- Changes to calculation of annual income, asset income, and adjusted income
- Changes to requirements for interim reexams
- Minimum rent hardship enforcement
- Alternatives for "over-income" families in public housing

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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
  - Notification requirements
- 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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**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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### 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

- 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 PIH 2017-08

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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
- See Notice PIH 2017-02 on VAWA self-petitioners who may qualify for assistance

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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 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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### 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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### Good Standing Requirements

- Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements

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### VAWA 2013 Policies

- PIH 2017-08 includes a 5-page list of policies required for annual plan, ACOP, 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 & 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-5380

- Must add information on the housing program, PHA name, and any additional information that would make it more meaningful
- May not change core protections and confidentiality rights

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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-5382

- If PHA requests documentation of victim status, must make the request in writing
  - Simply providing the victim the 5382 doesn't constitute a written request

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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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### Use of Criminal Records

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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)
  - 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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### 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
- 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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**What Does All of This Mean?**

- PHA needs to review admission and termination policies in the ACOP & 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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### What Does All of This Mean?

- How can the PHA “prove” that its policies distinguish between criminal history that creates a risk and history that does not?
- HUD’s sample admissions policy states that the PHA will perform “an investigation”

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### What Does All of This Mean?

- How does the concept of protecting health/safety/property of other residents apply in the HCV program?

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### Summary

- Questions?
- Comments?



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