



Housing Opportunity Through Modernization Act of 2016 (HOTMA)

By Chris Hornig

Last week the U.S. Senate unanimously passed the [Housing Opportunity Through Modernization Act of 2016 \(HOTMA\)](#), which is expected to be signed into law by the President shortly.

We at Klein Hornig are writing to highlight certain provisions of HOTMA that will be of particular interest to developers, lenders and investors who regularly rely on HUD's project-based voucher ("PBV") program for development projects. Please be advised, however, that HOTMA indicates that its provisions relating to PBV will not take effect until HUD issues a notice or regulations to implement such provisions. Given that the President has not yet signed HOTMA, and HUD still needs to issue the above-referenced notice or regulations, it remains unclear how quickly HOTMA's provisions will actually become effective.

We have identified below some changes under HOTMA that, once implemented, may have a significant impact on your development projects:

- **Funding Cap:** While the existing Section 8 statute permits a PHA to use up to 20% of its voucher funding for PBV assistance, HOTMA indicates that:
 - A PHA will be able to project base up to 20% of its *authorized number of vouchers* (the "20% Voucher Limit"), plus *an additional 10% of its vouchers* to provide: (i) units that house homeless persons or veterans, (ii) units that provide supportive services to persons with disabilities or elderly persons, and/or (iii) units that are located in areas where vouchers are difficult to use (as determined by HUD).
 - Units previously subject to federally required rent restrictions or receiving another type of long-term housing subsidy provided by HUD shall *not* count toward the 20% Voucher Limit.
- **Unit Cap:** HOTMA modifies the 25% Limitation on PBV assistance to a project:
 - Under HOTMA, vouchers may be project-based on the *greater* of 25 dwelling units or 25% of the units in a project (the "25%/25 Unit Cap" or "Unit Cap"). Therefore, for example, HOTMA will permit projects with 25 units or less to be 100% PBV-assisted.
 - Within the 25%/25 Unit Cap, units may be added to an existing PBV contract at any time without any additional competitive selection procurement.

- The 25%/25 Unit Cap no longer applies to units made available to households “*eligible*” for available supportive services. Under the current law, households are required to actually receive the supportive services. The Unit Cap also does not apply to units under a contract that are exclusively made available to elderly households.
- Units occupied by disabled households are no longer a specific exception to the Unit Cap.
- The 25% limit rises to 40% for projects in census tracts with a poverty rate of 20% or less.
- Any units of PBV assistance that are attached to units previously subject to federally required rent restrictions or receiving other project-based assistance provided by HUD shall not count toward the Unit Cap.
- PBV Contract Terms: HOTMA changes certain PBV HAP contract terms, including the following:
 - Under HOTMA, the PBV HAP Contract can have a term up to 20 years, subject to annual appropriations (the existing law limited PBV HAP contracts to 15 year terms, with an option for extensions).
 - The owner and the PHA may agree that the PBV HAP contract shall provide for annual OCAF rent increases (which shall not result in negative adjustments), and may also provide for additional adjustment periodically up to the reasonable rent (capped at the PHA’s applicable payment standard).
- Projects Under Construction: Under HOTMA, a PBV HAP Contract may be issued to a project that is under construction or not yet in service so long as the project complies with the applicable HUD requirements prior to execution of the HAP Contract.
- PBV for Public Housing Redevelopment: HOTMA indicates that PBV HAP Contracts may be awarded noncompetitively in the context of public housing redevelopment (subject to specified HUD requirements).
- Site-Based Waiting Lists: HOTMA enables PHAs to permit owners to select PBV applicants from owner-maintained, site-based waiting lists. It also allows owners/PHAs to establish preferences and selection criteria consistent with the PHA’s agency plan for families that qualify for certain services (e.g., disability-specific services).
- Housing Choice Vouchers (“HCVs”): HOTMA gives PHAs authority to establish payment standards up to 120% of FMR, *without* the need for HUD approval, where necessary as a reasonable accommodation for persons with disabilities (and even higher than 120% of FMR *with* HUD approval).

Should you have questions about HOTMA, please call Chris Hornig (D. 202.495.4088), Stephen Niles (D. 202.495.7210), Ben Funk (D. 202.495.7209) or another Klein Hornig attorney.