



To: Housing Justice Network

From: NHLP Staff

Re: Quick Reference Guide to Implementation of Title I of the Housing Opportunity Through Modernization Act (HOTMA)

Date: November 19, 2024

President Obama signed into law the Housing Opportunity Through Modernization Act (HOTMA), Pub. L. 114-201, 130 Stat. 782 (2016). HOTMA is the first major federal housing legislation in almost two decades; virtually all other legislative measures in recent years have been riders to the annual appropriations acts.

The major topics of primary interest to legal services attorneys and tenant advocates include the following (summarized below):

- Inspections (Section 8 Housing Choice Voucher program)
- Income and recertification (public housing and Section 8 programs)
- Over-income tenants (public housing)
- Asset limits (public housing and Section 8 programs)
- Project-based vouchers (Section 8)
- Family Unification Program (Section 8 Housing Choice Voucher program)
- Reasonable accommodations for an exception payment standard (Section 8 Housing Choice Voucher program)

Many of HOTMA's provisions required HUD to implement regulations although five sections were self-implementing and became effective immediately. The chart below describes the changes made by HOTMA, the impacted HUD program, the citation to the statutes at large, and where the changes will be placed in the U.S. Code. In some cases, it also notes whether the change has been implemented and if so, when and through what notice in the federal register. NHLP will be updating this chart as HUD proposes additional rules under HOTMA.

For questions, please contact NHLP Staff Attorney Lila Gitesatani (lgitesatani@nhlp.org)

Location in HOTMA	Revises 42 U.S.C.	Relevant Housing Programs	Topic/ Issue	Statutory Change	Effective
Sec. 101 [130 Stat. 783.]	§1437f(o)(8)(A)(i)-(ii)	Section 8 Housing Choice Voucher Program	Inspections	HCV tenants are now permitted to move into a unit, and assistance payments may be made, prior to the unit passing the housing quality standards (HQS) inspection if the defect is a non-life-threatening defect. Under prior law, tenants could not move into a unit that failed a HQS inspection, irrespective of the severity of the defect. The PHA must withhold assistance payments if the HQS defect has not been corrected within 30 days. Prior to the expiration of the 30 days, PHAs have the discretion to withhold payments for a unit out of compliance.	<i>See</i> 24 C.F.R. § 982.405(j).
Sec. 101 [130 Stat. 183-84.]	§1437f(o)(8)(A)(iii)	Section 8 Housing Choice Voucher Program	Inspections	PHAs now have the discretion to allow a family to move into a unit prior to an HQS inspection if within the last 24 months the unit has passed a qualified alternative inspection. The PHA may make retroactive assistance payments back to the beginning of the lease term after the unit passes the HQS inspection.	<i>See</i> 24 C.F.R. § 982.406.
Sec. 101 [130 Stat. 184-86.]	§1437f(o)(8)(G)-(H)	Section 8 Housing Choice Voucher Program	Inspections	Codifies in the statute the time periods for correcting HQS defects (24 hours for life-threatening violations and 30 days for non-life threatening violations). If an HQS defect is not cured within the required time, PHAs must abate assistance for a further 60 days (or for a reasonable time as determined by the PHA). Discusses the notice requirements before PHA abates assistance. Tenants are explicitly protected from eviction due to the abatement. If the PHA terminates the HAP contract, the voucher tenant will be given at least 90 days to lease a new unit with the voucher, which can be extended if deemed necessary by the PHA. Family may elect to receive preference for the next available public housing unit. PHAs are authorized to assist families with relocation costs, using up to two months of the abated assistance.	<i>See</i> 24 C.F.R. § 982.404.

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Sec. 102 [130 Stat. 786-87.]	§1437a(a)(6)	Public Housing and Section 8 Programs	Income and Recertification	<p>Establishes when a family's income must be recertified.</p> <ol style="list-style-type: none"> 1. Upon initial lease up of a unit; 2. Annually, except for families with fixed-incomes (families with fixed income every three years); 3. Interim recertification upon tenant's request when adjusted income decreases 10% or more; 4. At any time an annual income increase is 10% or more (not required if increase occurs in the last 3 months of certification period). Tenant's rent cannot be increased based on earning if the family has not previously received an interim reduction during the year. <p>For the interim recertification for a decrease in the family's adjusted income, the decrease can be below 10% if HUD permits PHA or owner to establish a lower threshold.</p>	<p>Note that both streamlining and the FAST Act implemented the change.</p> <p><i>See</i> C.F.R. §§ 5.657(c), 574.310(e)(4), 960.257(b), 882.515(b), and 982.516(c).</p>
Sec. 102 [130 Stat. 787-88.]	§1437a(a)(7)	Public Housing and Section 8 Programs	Income and Recertification	<p>Describes which year's income should be used when reviewing a family's income.</p> <ul style="list-style-type: none"> • Current Year Income—Initial leasing of a unit, or when a family's annual adjusted income changes by 10% or more. • Prior Year Income—Regular Recertification, taking redeterminations of income in the prior year into consideration. • Other Income—PHA or owner can make other adjustments as it considers appropriate to reflect current income. <p>A PHA or owner can use a family's income determination made for purposes of other Federal means-tested assistance programs. Additionally, HUD must develop an electronic</p>	<i>See</i> C.F.R. §5.609

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				<p>income verification system to allow PHAs access to information regarding family's employment and income and information contained in the "Do Not Pay" system. PHAs and owners will be considered to be in compliance despite any de minimis errors in calculating a family's income.</p> <p>Struck former subsections (d) and (e, and redesignated former subsection (f) as new subsection (d).</p>	
Sec. 102 [130 Stat. 788.]	§1437a(a)(3)(B)(i)	Public Housing and Section 8 Programs	Income and Recertification	*No new language added to the Federal Code* HUD must submit to Congress certification that hardship and tenant protection are being and will continue to be enforced.	See letter from HUD to Rep. Maxine Waters (Feb. 15, 2019)
Sec. 102 [130 Stat. 788-90.]	§§1437a(b)(4)-(5)	Public Housing and Section 8 Programs	Income and Recertification	<p>HOTMA made changes to what is excluded from income and income deductions.</p> <ul style="list-style-type: none"> • For Veterans, excludes from income any expense related to "aid and attendance" received under Title 38 Veteran's benefits to Veterans who are in regular needed. • Dependent deduction remained at \$480, but will be adjusted for inflation in future years. • Increased standard deductions for elderly/disabled families (from \$400/year to \$525/year; will be adjusted for inflation). • Limits certain medical-related deductions to expenses exceeding 10% of income. • PHAs are authorized to establish additional deductions, with the caveat HUD must establish procedures to ensure that PHA-created deduction do not increase federal expenditure. 	See 24 C.F.R. § 5.611;

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				HUD is directed to provide hardship exemptions for families unable to pay rent calculated with new deductions. HUD's regulations on providing hardship exemption must include a requirement to notify tenants when the family's claim of hardship prompts a change in the determination of adjusted income. Annually, HUD must calculate the total deductions due to the dependent deduction and the elderly/disabled deduction.	
Sec. 102 [130 Stat. 790-91.]	§1437f(o)(1)(D)	Housing Choice Voucher Program	Setting Payment Standards	HOTMA provides statutory authority for PHAs to grant an exception payment standard of up to 120% FMR as a reasonable accommodation for a tenant with a disability, without HUD approval. A payment standard over 120% as a reasonable accommodation will still require HUD approval. HUD's final "Streamlining Rule" gave PHAs the same authority so HOTMA will have little practical effect, except to codify this important change in the statute.	<i>See</i> 24 C.F.R. § 982.503(d)(3).
Sec. 102 [130 Stat. 791-92]		Public Housing	Operation Costs	Allows HUD to make adjustments in the PH operating funding formula for specific PHAs experiencing a reduction in rent revenue due to HOTMA's new rent provisions during the first year of implementation. HUD must submit a report to Congress the second and third year of implementation on the impact on revenues and operating cost of PH, HCV, PBS8 due to implementation of HOTMA § 102(a)-(e) and § 104. HUD also was required to submit to Congress a study on the impact of decreased deductions on the elderly and disabled families.	
Sec. 103	§1437n(a)(5)	Public Housing	Eligibility— Over-income Tenants	Inserted a new paragraph establishing procedure for over-income tenants living in PH. If a public housing family's income has exceeded 120% of the area median income for	Effective July 26, 2018

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[130 Stat. 792-93.]				<p>two consecutive years, HOTMA states that the PHA must either:</p> <ul style="list-style-type: none"> • terminate the family's tenancy within six months of the second income recertification; or • charge the tenant family a monthly rent in an amount equal to the greater of: <ul style="list-style-type: none"> ○ the applicable fair market rent for a dwelling unit in the same market area of the same size; ○ or the amount of the monthly operating and capital subsidy provided for the unit. <p>PHAs must provide written notice to families who are over-income after the first year of being over-income. The notice is to give over-income tenants a one-year notice before the PHA either terminates the family's tenancy or changes the family's rent. Note also that HUD may establish income limitations higher or lower than 120% of AMI because of local construction costs or unusually high or low family incomes, vacancy rates, or rental costs.</p> <p>Also, PHAs must submit an annual report to HUD Secretary, and make publically available, about the number of families residing in public housing who are over-income tenants and number of families on the waiting list for admission into public housing. This portion of the provision is not effective until HUD issues its guidance on reporting.</p>	See 83 Fed. Reg. 35490; 81 Fed. Reg. 85,996.
Sec. 104	§1437n(e)(1)	Public Housing and	Eligibility-- Family Assets	Families cannot be assisted if the family's assets exceed \$100,000 (inflationary factor is applied as appropriate) or if they have a present ownership interest in, and with a legal	See 24 C.F.R. § 5.618.

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[130 Stat. 793.]		Section 8 Programs		authority to sell, real property that is suitable for occupancy by the family. The last condition does not apply to any property for which the family is using a voucher to purchase the property, any person who is a victim of domestic violence, or any family that is offering the property for sale. This applies to all families newly admitted to the program, however the PHA has discretion to apply this rule to existing families.	
Sec. 104 [130 Stat. 793-94.]	§1437n(e)(2)	Public Housing and Section 8 Programs	Eligibility-- Family Assets	Defines net family assets. The following is excluded from the net family assets calculations: <ul style="list-style-type: none"> • Certain inaccessible trust funds, retirement accounts, settlements or awards due to actions that resulted in the serious disability of a household member; • Equity in homes purchased with a voucher; • Equity accounts in HUD homeownership or FSS programs; • Interests in Indian trust land; • Personal property not of significant value; • Real property that the family does not have legal authority to sell; • The value of any Coverdell education savings account or qualified tuition programs or any § 529 qualified tuition program; • Any other exclusion HUD may establish, and; • Any fund held in a trust that is not revocable by or under the control of any member of the household. 	See 24 C.F.R. § 5.603.
Sec. 104 [130 Stat. 794.]	§1437n(e)(3)	Public Housing and Section 8Program	Eligibility-- Family Assets	A family can self-certify the family's assets do not exceed \$50,000 (adjusted annually using an inflationary factor) and the family does not have any ownership interest in any real property at the time of review. HUD must create standardized forms for the self-certification.	See 24 C.F.R. 5.618(b)(2).

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Sec. 104 [130 Stat. 794-95.]	§§1437n(e)(4)-(5)	Public Housing and Section 8 Programs	Eligibility-- Family Assets	A PHA or owner of a project may choose not to enforce the family asset limitation or may establish exceptions to the net family asset limitation based on eligibility criteria. Exceptions and non-enforcement must be set forth in the PHA's 5 Year plan or the owner's policy. Exception may be provided for based on family type, age, disability, income, the ability of the family to find suitable alternative housing, and whether the family is receiving supportive services.	<i>See</i> 24 C.F.R. 5.618; Notice PIH 2023-27 Implementation Guidance Sections 102 and 104 of the HOTMA (issued Feb. 2, 2024).
Sec. 104 [130 Stat. 795.]	§1437n(e)(6)	Public Housing and Section 8 Programs	Eligibility-- Eviction	If a family who is not in compliance with net family asset limits, the PHA or project owner may delay eviction or termination of the family's assistance for up to 6 months.	<i>See</i> 24 C.F.R. 5.618; Notice PIH 2023-27 Implementation Guidance Sections 102 and 104 of the HOTMA (issued Feb. 2, 2024).
Sec. 104 [130 Stat. 795-96.]	§1437n(e)(7)	Public Housing and Section 8 Programs	Eligibility-- Verifying Income	Beginning in fiscal year 2018, tenants and applicants must provide PHAs with authority to access their financial records whenever the PHA determines such records are needed for income verification. Such authority remains with the PHA for the duration of the applicants' receipt of housing benefits, overriding various provisions of the Right to Financial Privacy Act. Refusal to provide, or revocation of, this authorization is a basis for determining that the applicant or tenant is ineligible for housing benefits.	(See 88 Fed. Reg. 9600 (Feb. 14, 2023))
Sec. 105 [130 Stat. 796]	§1437f(o)(11)	Section 8 Voucher Program	Definition	Defines "units owned by PHA." A dwelling unit is owned by the PHA if the unit is wholly-owned by the PHA, or when the PHA controls an entity or the PHA holds a controlling interest in the managing member or general partner in a limited liability company or limited partnership that owns the unit. A PHA does not own a unit if the PHA holds the ground lease, holds a security interest through a	Effective April 18, 2017 <i>See</i> 82 Fed. Reg. 5458, 5463.

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				mortgage or deed of trust, or a non-controlling interest in the entity which owns the unit.	
Sec. 106 [130 Stat. 796-97]	§1437f(o)(13)(B)	Project- Based Vouchers Program	Supply of Units; use as preservation tool	Limits a PHA's use of project-based assistance to 20% of authorized number of vouchers (previously it was capped at 20% of budget authority). Additionally, PHAs may use an additional 10% of authorized number of vouchers to provide housing to homeless individuals/families, veterans, supportive housing for the disabled and elderly, or for use in areas where the use of a voucher is difficult (as defined in § 1437f(o)(13)(D)(ii)(II)). Units previously subject to federally required rent restrictions or receive another long-term housing subsidy do not count towards the cap. PBV units under the RAD demonstration and HUD-VASH PBV also are not subject to the PBV unit calculation. HUD was given the discretion to establish other exceptions to the cap.	Effective April 18, 2017 <i>See</i> 82 Fed Reg. 5458, 5463.
Sec. 106 [130 Stat. 797-98]	§1437f(o)(13)(D)	Project- Based Vouchers Program	Supply of Units; use as preservation tool	Limits project-based voucher assistance for a single project to the greater of 25 units or 25% of the dwelling units in the project. The cap for PBV vat a single property excludes: <ol style="list-style-type: none"> 1. Assisted units made exclusively available for elderly families or households eligible for supportive services (and supportive services must only be available, not accepted and received); 2. In areas where HCV are difficult to use, as determined by HUD, the census tract has a 20% or less poverty rate, and any other additional conditions set by HUD, a project can receive up to 40% or 25 units subsidized; 3. Projects with a greater percentage of subsidized units by PBS8 on the date HOTMA was enacted, and; 	Effective April 18, 2017 <i>See</i> 82 Fed. Reg. 5458, 5463.

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				<p>4. Units subject to rent restrictions of other federal PBRA programs.</p> <p>HUD can establish additional requirements for monitoring and oversight of projects where there is 40% of assisted units at a single project. The new limitation is not retroactive.</p>	
Sec. 106 [130 Stat. 798-99]	§1437f(o)(13)(F)	Project-Based Vouchers Program	Supply of Units	<p>HAP contracts, new and renewed, can be made for up to 20 years (was 15-year maximum) subject to the availability of appropriated funds for renewing expiring contracts, the ACC, and inspection requirements. The PHA and owner of a project may add eligible units from the project, subject to the 20% or exception limitation, without having to endure any additional competitive selection procedures at any time during the HAP contract.</p> <p>PHAs can also enter into a HAP contract with owners of housing under construction or recently constructed as long as the owner demonstrates compliance with applicable requirements prior to the execution of the HAP contract. The HAP contract can contain additional conditions regarding continuation, termination, or expiration of the HAP contract. Following HAP termination or expiration, tenants have the right to choose to remain in their units (not an Enhanced Voucher). Unlike with enhanced vouchers, these tenants will still be required to pay any amount “by which the unit rent ... exceeds the applicable payment standard.”</p>	<p>Changes to term of Initial PBV Contracts became effective April 18, 2017 (See 89 Fed. Reg. 38224, 38325 (May 7, 2024))</p> <p>Changes to allow entering into HAP Contract for under construction units requires additional HUD regulations (See 89 Fed. Reg. 38224, 38321 (May 7, 2024))</p>
Sec. 106 [130 Stat. 799]	§1437f(o)(13)(G)	Project-Based Vouchers Program	Supply of Units	PHAs and owners of projects can extend a current HAP contract for 20 years. The extension shall be contingent upon future availability of appropriate funds.	<p>Effective April 18, 2017</p> <p>See 82 Fed. Reg. 5458, 5463.</p>

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Sec. 106 [130 Stat. 799]	§1437f(o)(13)(I)	Project- Based Vouchers Program	Rent Calculation	Rent for subsidized units can be adjusted upon the request of the owner, except where the HAP contract includes an annual operating cost adjustment factor under the provisions of MAHRAA. This provision seeks to clarify existing policies.	<i>See</i> 89 Fed. Reg. 38224, 38337 (May 7, 2024)
Sec. 106 [130 Stat. 799-800]	§1437f(o)(13)(J)	Project- Based Vouchers Program	Waiting Lists	<p>Allows owners to establish site-based waiting lists that are consistent with the local PHA plan. Applicants for Section 8 project-based units can be chosen off a PHA waiting list or a site-based waiting list. All eligible applicants who are on the PHA's project-based waiting list have the right to add their names to these site-based waiting lists. Importantly, applicants retain the right to keep their place on the PHA's waiting list should the applicant reject an offer of project-based assistance or be rejected for admission to a project by the owner or manager of a project-based assisted unit.</p> <p>PHAs and owners can establish preferences for selecting families, but the preferences must be consistent with the PHA's 5A plan for the agency. Waiting list must comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and other applicable civil rights laws. Applicants should receive notice of all selection options for the desired project.</p>	<p>Establishing preferences became effective April 18, 2017 (<i>See</i> 82 Fed. Reg. 5458, 5463-64)</p> <p>Remaining portions require additional HUD regulation (<i>See</i> 89 Fed. Reg. 38224 (May 7, 2024))</p>
Sec. 106 [130 Stat. 800]	§1437f(o)(13)(N)	Project- Based Voucher Program	Supply of Units	<p>PHAs can attach PBV to existing, newly constructed, or rehabilitated structures in which the agency has an ownership interest in without using a competitive process.</p> <p>The PHA must have notified the public of its intent to use project-based assistance for this type of project through its public housing agency plan and is subject to limitations.</p>	<p>Attachment to PHA-owned projects became Effective Apr. 18, 2017 (<i>See</i> 82 Fed. Reg. 5458, 5463)</p> <p><i>See</i> 89 Fed. Reg. 38224, 38310 (May 7, 2024)</p>

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Sec. 106 [130 Stat. 800]	§1437f(o)(13)(O)	Project-Based Vouchers Program	Supply of Units	PHAs that issue PBVs under the VASH program and Family Unification Program must do so in accordance with the limitations and requirements of the paragraph without additional requirements for approval by HUD.	Effective April 18, 2017 82 Fed. Reg. 5458, 5463
Sec. 107 [130 Stat. 800-01]	§1437f(c)(1)(B)	Section 8 Programs	Rent-- Establishing FMRs	Eliminates requirement that proposed FMRs be published for comment. HUD must publish FMRs annually on HUD's website and in other manners specified by the Secretary. Notices for the FMRs must be published in the Federal Register and become effective thirty days after the date of publication in the Federal Register. HUD Secretary establishes the procedure for PHAs and other parties to comment on FMRs. If there is a proposed material change in the method for calculating FMRs a notice in the Federal Register must be published for comment.	Effective July 29, 2016 <i>See</i> 81 Fed. Reg. 73030, 73031.
Sec. 107 [130 Stat. 801]	§1437f(c)(1)(A)(b)	Section 8 Vouchers	Rent	PHAs must set payment standards between 90-110% of applicable FMR. HUD's previous rules have required that when FMR decreases PHAs must lower non-conforming payment standards and must reduce subsidy for current tenants by second annual recertification after change. PHAs now have the discretion to continue to use the pre-reduction FMR for families who continue to reside in the same unit.	Effective July 29, 2016 <i>See</i> 81 Fed. Reg. 73030, 73031. 24 C.F.R. 982.503.
Sec. 108 [130 Stat. 801]	§1437f(o)(20)	Section 8 Voucher Program	Utilities	HUD shall publish data regarding the utility use in local area to assist PHAs with establishing allowances for tenant-paid utilities. The data should not unnecessarily administratively burden PHAs and protect families in various unit sizes and building types.	NHLP was unable to confirm that this section has been implemented.
Sec. 109	§1437g(j)(7) and §1437g(n)	Public Housing	Capital and Operating Fund	Describes how PHAs establish replacement reserves to fund capital activities. The replacement reserves may hold in that	HUD, Guidance on the Use of Operating Subsidy for Capital Fund Purposes for Subsidy

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[130 Stat. 802]				<p>reserve funds originating the agency's Capital Fund, subject to:</p> <ol style="list-style-type: none"> 1. At HUD's discretion, PHAs may transfer funds from funds originating from additional sources; 2. No minimum transfer shall be required; 3. The amount in the replacement reserves cannot be more than the amount to satisfy the anticipated capital needs of its properties, and; 4. HUD may set a cap on what is a reasonable reserve. <p>When first establishing the reserve, HUD may allow PHAs to transfer more than 20% of operating funds into the replacement reserve (must provide details in PHA plan). Without permission, PHAs can transfer up to 20% of their Operating Fund. Use of replacement reserves shall be outlined in PHA's 5-year plan. Penalties for slow expenditure do not apply to replacement reserves.</p>	Appropriated and Allocated for Calendar Year 2018 and Subsequent Years (Notice PIH 2018-03), issued Feb 28, 2018.
Sec. 110 [130 Stat. 803]	§1437f(x)(2)(B) and §1437f(x)(4)	Family Unification Program (FUP) Vouchers	Eligibility	<p>Extends the eligibility for former foster youth beyond age 18 to age 24, and participation in the program is extended from 18 to 36 months in duration. FUP will also now include individuals who will leave foster care within 90 days and will be homeless or at risk of becoming homeless; previous law requires applicants to have left foster care.</p> <p>Requires HUD to issue guidance to improve the coordination between PHAs and public child welfare agencies to carry out FUP.</p>	Effective July 29, 2016 <i>See</i> 81 Fed. Reg. 73030, 73031.
Sec. 111 [130 Stat. 803]	42 U.S.C. 1437g	Public Housing	Utilities	HUD must publish model guidelines for minimum heating requirements for public housing.	HUD, Housing Opportunity through Modernization Act of 2016 (HOTMA)-

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					Implementation of Minimum Heating Standards in Public Housing Properties (Notice PIH 2018-19), issued Nov. 2, 2018.
Sec. 112 [130 Stat. 803—04]	§1437f(o)(12)	Section 8 Vouchers Program	Use for Manufactured Homes	<p>If PHA allows vouchers can be used for families who reside in manufactured homes. Rent must include periodic costs of buying and owning the home (e.g. monthly debt service, required insurance and property taxes) along with rent for land where home is placed and the applicable utility allowance (including monthly management and maintenance charges).</p> <p>Regular HCV payment standard and utility allowances apply, based on the lower of family unit size or number of bedrooms.</p>	<p>Effective April 18, 2017</p> <p><i>See</i> 82 Fed. Reg. 5458, 5472.</p>
Sec. 113 [130 Stat. 804]	§1436a(a)(7)	Low-Income Housing Programs	Preferences	Establishes a preference for “any citizen or national of the United States” over lawfully resident migrants from the Republic of the Marshall Islands, Federated States of Micronesia, and the Republic of Palau in receiving financial assistance. Is applicable to Guam only.	<p>Effective July 29, 2016</p> <p><i>See</i> 81 Fed. Reg. 73030, 73031.</p>
Sec. 114 [130 Stat. 804-05]	§1437(b)	Public Housing and Section 8 Voucher Program	Tenant Participation	Creates a new exception for PHA board of directors in certain jurisdictions. Housing Authority of the county of Los Angeles, California, housing authorities of Alaska, Iowa, and Mississippi are not required to include on its board of directors, or a similar governing boards, a member who is directly assisted by the PHA and who is elected by the residents directly assisted by the PHA.	<p>Effective July 29, 2016</p> <p><i>See</i> 81 Fed. Reg. 73030, 73031.</p>

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				This change removes the language from Appropriations into the statute.	