



Congress of the United States
House of Representatives
Washington, DC 20515

December 9, 2022

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20024

The Honorable Shalanda D. Young
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Madam Secretary and Director Young:

I am writing to urge you to publish a Final Rule for the Housing Opportunity Through Modernization Act of 2016 (HOTMA – P.L. 114-201) to exclude veteran disability benefits from income calculations.

Permanent supportive housing (PSH) capital funding opportunities often reward applications that earmark units for extremely low and/or low income tenants. While this practice benefits people who are homeless and generating no or limited income who might apply to these units, it serves to limit access to quality, subsidized housing for high-needs, service-connected veterans. Veterans who are homeless are often on the street not as a result of extremely limited income, but severe trauma, often directly related to their military service. The resulting disabilities qualify veterans for benefits including monthly compensation. These service-connected veterans are the very people for whom HUD-VASH project-based housing is built. However, given the structure of the capital funding, this target population is often rendered ineligible. In the state of California, for instance, funders such as the Tax Credit Allocation Committee and the Veteran Housing and Homelessness Prevention program both often set income caps of 30% Area Median Income (AMI) on projects that they finance.

A unique aspect of the project-based voucher program under HUD-VASH is the ability to project base HUD-VASH units on the grounds of a medical facility, which is prohibited under the traditional project-based voucher program.¹ A public housing agency (PHA) may partner with its local VA medical center (VAMC) to utilize the VA Enhanced-Use Lease Program (EUL) program to out-lease underutilized real estate under its jurisdiction or control to the private sector for the purpose of developing supportive housing for homeless veterans and their families, including HUD-VASH participants. Through this program, veterans are provided with an expanded range of services that would not otherwise be available on medical center campuses.

¹ 24 CFR 983.53(a)(2)

Los Angeles is the epicenter of veteran homelessness. Nearly 10% of the nation’s homeless veterans reside in Los Angeles County, and veterans account for one in 18 people experiencing homelessness in the area.² The West Los Angeles VAMC is exercising its EUL authority to develop underutilized campus land to build housing for area veterans at risk of or experiencing homelessness. After years of litigation and development delays, construction on the campus is near completion for three buildings that will house nearly 180 veterans. Buildings 205 and 208 will provide permanent supportive housing to veterans experiencing homelessness in the Los Angeles area. Building 207 was designed to house veterans aged 62 or older who require proximity to the VAMC to conveniently and quickly access the care they need. However, many of the area veterans who meet the age and need threshold to qualify for housing in Building 207 are ineligible because their VA disability compensation puts them over the 30% AMI requirement for the 59 units in that building. Of the units available in Buildings 205 and 208, 49 have caps at 50% of the AMI, and 71 units have caps at the 60% AMI level.

In Los Angeles, a veteran who has a disability rating of 100% exceeds the income threshold for eligibility for housing units that are capped at 30% AMI. The annual income derived from VA disability benefits for a veteran with a 100% service connection rating is \$39,984.72. “Extremely low-income”, or 30% of the AMI, for a 1-person family in the Los Angeles metro area is \$25,050.³ “Very low-income”, or 50% of the AMI, is \$41,700.⁴ If a veteran with a 100% service-connected disability supplements their income by less than \$2,000, they would be over the 50% AMI cap. A veteran with significant, severe service-connected disabilities would therefore likely not meet the income requirements to access a unit in one of the new buildings opening on the West LA VA campus. VA has indicated there are 31 veterans currently residing in its Care, Treatment, and Rehabilitative Services (CTRS) program awaiting permanent housing placements that have 100% service-connected disability ratings and would be ineligible to receive a project-based voucher for the units coming available in Building 207 on the West LA VAMC, and may not qualify for the units in Buildings 205 or 208 either. The acuity and nature of these veterans’ disabilities warrant close proximity to care and treatment options, but due to AMI restrictions, they may be ineligible to obtain permanent supportive housing on campus.

The issue of VA disability compensation exceeding AMI limits is not limited to Los Angeles. This issue affects veterans experiencing homelessness in all areas of the country. In San Diego County, “extremely low income” for a one-person family is \$27,350⁵. In Seattle, Washington, the 30% AMI threshold is \$27,200 for an individual.⁶ In Chicago, it’s \$21,900.⁷ In Nashville, Tennessee, veterans with disability ratings of 80% would not meet the \$19,850 AMI limit for extremely low-income, and those with 100% service connection would neither qualify at the 30% nor the 50% AMI threshold.⁸

² <https://www.lahsa.org/documents?id=6515-lacounty-hc22-data-summary>

³ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

⁴ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

⁵ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

⁶ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

⁷ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

⁸ <https://www.huduser.gov/portal/datasets/il/il2022/2022summary.odn>

When HUD submitted the proposed rule (84 FR 48820) on September 9, 2019, for implementation of HOTMA Sections 102, 103, and 104 for comment, HUD solicited feedback from the public as to whether removal of veteran disability benefits from income eligibility calculations was advisable.⁹ HUD received 12 letters from organizations indicating support of this proposal.¹⁰

Some veteran benefits are already excluded from income calculations for HUD-VASH voucher eligibility. HOTMA provides an exclusion from income calculations for payments under 38 U.S.C. 1521 to veterans in need of regular aid and attendance. The Housing and Economic Recovery Act of 2008 (HERA) excludes deferred VA disability benefits that are received in a lump sum amount or in prospective monthly amounts.¹¹

By law, VA's disability payments are tax-free and intended to offset the average earnings that veterans would be expected to lose given the severity of their service-connected medical conditions or injuries.¹² A 100% disability rating, or total disability rating, is reserved for veterans with extremely debilitating service-connected conditions that typically make them unable to work or care for themselves. Total disability based on individual unemployment, or TDIU, is a benefit that allows veterans to be compensated at the 100% level, even if their combined rating does not equal 100%. TDIU is awarded when veterans are unable to secure and follow substantially gainful employment as a result of their service-connected conditions. Veterans with 100% service-connected disabilities or those receiving TDIU are those who are most in need of assistance due to the injuries they sustained in defense of our nation, and it is a travesty that many of these veterans experience housing insecurity. The Internal Revenue Service does not treat veteran disability benefits payments as income.¹³ It therefore stands to reason that *all* VA income derived from service-connected disabilities should also be excluded from eligibility calculations for HUD housing programs.

Permanent supportive housing developments often require funding sources beyond that provided by project-based vouchers. That funding may come from programs such as the Low-Income Housing Tax Credit (LIHTC)¹⁴, HOME program¹⁵, National Housing Trust Fund¹⁶, or Housing Opportunities for Persons With AIDS (HOPWA)¹⁷, all of which may have further limitations around income eligibility requirements. It is my interpretation that in the case of HUD programs (HOME, Housing Trust Fund, HOPWA), the same proposed rule that would change the definition of income for the voucher program would also change the definition of income used by the other HUD programs. Further, for the purposes of LIHTC, tenant income is calculated in a manner consistent with the annual income determination under Section 8. As such, I strongly

⁹ <https://www.federalregister.gov/documents/2019/09/17/2019-19774/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104>

¹⁰ <https://www.regulations.gov/docket/HUD-2019-0078/comments?filter=veteran>

¹¹ 24 CFR 5.609(b)

¹² <https://www.irs.gov/forms-pubs/about-publication-525>

¹³ <https://www.irs.gov/forms-pubs/about-publication-525>

¹⁴ https://www.crs.gov/Reports/RS22389#_Toc106881178

¹⁵ 42 U.S.C. 12745; 42 U.S.C. 12744

¹⁶ 12 U.S.C. 4568

¹⁷ <https://www.hudexchange.info/programs/hopwa/hopwa-eligibility-requirements/>

recommend HUD make this regulatory change to the treatment of VA disability payments for its programs (including HCVs) and to also ensure the change applies to LIHTC properties.

I hope to see expanded use of project-based vouchers in the future. Outcomes show that the permanent supportive housing provided by project-based vouchers is effective in reducing recidivism and keeping veterans stably housed. The nature of project-based developments co-locating wraparound support services with housing is critical for those veterans seeking to live independently but who require some level of care to support their success. In addition to the increased access to supportive services that project-based vouchers provide, they also help families and individuals secure housing in areas where units may be scarce. Project-based vouchers may also be more attractive to landlords than tenant-based vouchers because they provide more stable income and may provide higher payments. Project-based vouchers also create more affordable and mixed-income housing and are integral to the financing packages that make constructing or rehabilitating affordable housing attractive.

Buildings 205, 207, and 208 on the West LA VAMC campus are slated to open as early as January 2023. The 8.7% Cost of Living Adjustment (COLA) to veteran benefits will also begin on January 1, 2023, putting veterans further beyond the AMI cap for the buildings.¹⁸ Per HOTMA Section 102(h), the Final Rule on this issue will not go into effect until January 1 of the year following its publication. Thus, I respectfully urge you to publish this Rule before December 31, 2022, so the effective date will be January 1, 2023.

In the event publishing the Final Rule for HOTMA Sections 102-104 in its entirety is unfeasible in this time frame, I respectfully request you exercise your regulatory splitting authority and publish a Final Rule related to excluding veteran disability benefits from income calculations. Finally, in the event these two options are not possible, I respectfully urge Secretary Fudge exercise her authority under 86 FR 53207 “Section 8 Housing Vouchers: Revised Implementation of the HUD-Veterans Affairs Supportive Housing Program” to waive requirements in the connection with the use of funds made available for voucher assistance when that waiver is necessary for the effective delivery and administration of voucher assistance.

Homeless veterans everywhere deserve a place to call home, and we should eliminate barriers to permanent supportive housing for our nation’s heroes.

Sincerely,



Chairman Mike Levin
Subcommittee on Economic Opportunity
House Veterans’ Affairs Committee

¹⁸ <https://www.federaltimes.com/management/budget/2022/10/11/social-security-may-see-biggest-cost-of-living-adjustment-in-4-decades/>