



**Special Attention of:**

All Secretary’s Representatives  
All Regional Directors for CPD  
All CPD Division Directors  
HOPWA Program Grantees and Project  
Sponsors

**Notice: CPD-22-10**

**Issued: 06-29-2022**

**Expires:** This Notice is effective until it is amended, superseded, or rescinded.

**Cross Reference:** 24 CFR 574.320(a)(2),  
Rent Standard

**Subject:** Clarification of Rent Standard Requirement for the Housing Opportunities for Persons With AIDS (HOPWA) Program

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**I. Purpose**

24 CFR part 574 contains the requirements for the Housing Opportunities for Persons With AIDS (HOPWA) program, which is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 *et seq.*) The purpose of this Notice is to clarify HUD’s guidance on applying the program rent standard requirements at 24 CFR 574.320(a)(2), while HUD considers potential rulemaking to update HOPWA rental assistance requirements.

**II. Background**

24 CFR 574.320(a)(2) requires HOPWA grantees to establish rent standards for their rental assistance programs. The rent standard is used in conjunction with “rent reasonableness” and the “resident rent payment” to determine the maximum subsidy for a family receiving HOPWA

rental assistance. Per 24 CFR 574.320(a)(2), the rent standard shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. In addition, on a unit-by-unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

Section 859(a)(1) of the AIDS Housing Opportunity Act requires that HOPWA rental assistance activities be provided to the extent practicable in the manner provided for under section 8 of the United States Housing Act of 1937 (section 8). Because of this statutory requirement, when HOPWA regulations were originally issued in 1992, the rent standard requirements were modeled on the section 8 rental assistance requirements in effect at the time. Section 8 program regulations no longer utilize the term “HUD-approved community-wide exception rents”, and HUD is considering potential rulemaking to update HOPWA rental assistance requirements. While the current HOPWA regulation remains in effect, HUD acknowledges the need for clear HUD guidance on the application of HOPWA rent standard requirements in the absence of HUD-approved community-wide exception rents under the section 8 program. HUD also recognizes a CPD notice on this subject is necessary to mitigate inconsistent grantee implementation of the HOPWA rent standard requirement.

### **III. Establishing the Rent Standard**

#### **A. General**

Each HOPWA grantee that utilizes grant funding to provide rental assistance must have a rent standard that sets the limit for housing costs for each unit size—from efficiency to six-bedroom units. When establishing the rent standard, HOPWA grantees should strive for a balance between efficient use of HOPWA rental assistance dollars and increasing affordable housing options available to low-income people living with HIV and their families. If the rent standard is too low, families may have a hard time finding acceptable units or units in neighborhoods close to medical care, transportation, employment, schools, and other resources. If rent standards are too high, it can limit the number of eligible families HOPWA grantees are able to serve. Rent standards should allow eligible families a reasonable selection of decent, safe, and sanitary units in a range of neighborhoods in the grantee’s service area.

#### **B. Fair Market Rent**

One of the two regulatory caps a HOPWA grantee may utilize to set the rent standard for their rental assistance program is the published FMR. FMRs are estimates of 40th percentile gross rents for standard quality units within a designated area. The calculated FMR amount for each unit size includes the unit rent plus the cost of all tenant-paid utilities, excluding cable, television, or internet services. FMRs are calculated annually by HUD’s Office of Policy Development and Research (PD&R) and made available through the HUD User Web site at <https://www.huduser.gov/portal/datasets/fmr.html>.

### C. HUD-Approved Community-Wide Exception Rent

The other regulatory cap a HOPWA grantee may utilize to set the rent standard for their rental assistance program is a HUD-approved community-wide exception rent. HUD acknowledges the need for clear HUD guidance on how to apply the HOPWA rule in the absence of HUD-approved community-wide exception rents under the section 8 program. HUD interprets the HUD-approved community-wide exception rent to mean one of the following:

1. Adopting the Housing Choice Voucher (HCV) payment standard set by local Public Housing Agencies (PHAs) as the HOPWA rent standard, meaning either the basic range, or the exception payment standard. Per 24 CFR § 982.503, PHAs may set their payment standard within the “basic range,” which is between 90 percent to 110 percent of the FMR without HUD approval. A PHA may also set exception payment standards below 90 percent, or above 110 percent, of the FMR, for designated parts of the FMR area with HUD’s approval. The options for adopting the HCV payment standard detailed in this paragraph do not include the use of Small-Area Fair Market Rents (SAFMRs). However, SAFMRs may be considered by grantees when developing and justifying a rent standard proposal as described under option 2 below.

HOPWA grantees may set the rent standard for their service area based on the payment standard (basic range or exception payment standard) adopted by each of the local PHAs operating within the grantee’s service area. This rent standard applies in assisting families residing or seeking to reside in a PHA’s area regardless of the project sponsor implementing the rental assistance program in that area.

2. A rent standard proposed and justified by the grantee and approved by the local HUD field office. This option allows HOPWA grantees to propose and receive HUD approval for a rent standard outside of FMR or the HCV payment standard (basic range or the exception payment standard) set by the local PHA(s). This option allows: (a) a rent standard based on the documented housing costs and the housing needs of low-income people living with HIV in the grantee’s service area or a defined subset of that area; or (b) adopting the HCV payment standard (basic range or exception payment standard) of one of multiple PHAs in the grantee’s service area to apply as the payment standard throughout the service area (e.g., one standard for the eligible metropolitan statistical area or eligible state’s service area). HOPWA grantees should note that such rent standards will only be approved in circumstances where grantees are able to document that other allowable options for establishing the rent standard do not provide eligible families a reasonable selection of decent, safe, and sanitary units. Grantees should direct such requests to the Community Planning and Development (CPD) Director of the HUD Field Office serving the grantee. CPD Field Office contact information is available online at: [https://www.hud.gov/program\\_offices/comm\\_planning/staff](https://www.hud.gov/program_offices/comm_planning/staff).

This Notice provides conditional HUD approval of the use of the PHA payment standard or the PHA exception payment standard as the community-wide exception rent at 24 CFR

574.320(a)(2), if and when the grantee has determined and documented in their records that use of the FMR would not allow eligible families a reasonable selection of decent, safe, and sanitary units in a range of neighborhoods in the grantee's service area. If the PHA is not currently using a payment standard or an exception payment standard that is different than the FMR, grantees that wish to use a rent standard higher than the FMR must use option two above and apply to the field office for an exception.

Due to the prior lack of clear and consistent HUD guidance regarding "HUD-approved community-wide exception rent" in 24 CFR 574.320, HUD will not make findings (and discourages auditors from making findings) against grantees that on or before the date of this CPD Notice, or during the 120 days following this publication of this Notice, applied rent standards as advised by either the [Housing Opportunities for Persons With AIDS \(HOPWA\) Grantee Oversight Resource Guide](#) or the [Housing Opportunities for Persons With AIDS \(HOPWA\) Rental Assistance Guidebook](#). However, over the next 120 days following publication of this Notice, HUD will expect grantees to update their policies for determining rent standards and be able to support their use of any rent standard above FMR as provided by this Notice.

#### **D. Unit-By-Unit Increase to the Rent Standard**

HOPWA regulations at 24 CFR 574.320(a)(2) allow, on a unit-by-unit basis, a grantee to increase the amount of the established rent standard by 10% for up to 20% of the units assisted by the grantee. Such increases may be implemented regardless of the method utilized for establishing the rent standard. Grantees may grant authority to their project sponsors to authorize such increases; however, it is the grantee's responsibility to monitor project sponsors for compliance to ensure that no more than 20% of assisted units are benefitting from an increased rent standard amount.

#### **E. Documentation**

HOPWA grantees must document the rent standard in program policies and procedures and have available for HUD review the method used to establish the rent standard. Grantees must identify the rent standard in project sponsor agreements and monitor project sponsors to ensure compliance with the rent standard for assisted units throughout the service area. As noted above, if the grantee is using the PHA payment standard, exception standard, or a field office approved exception rent, the grantee must maintain documentation supporting the grantee's determination that the use of the FMR would not provide families a reasonable selection of decent, safe, and sanitary units in a range of neighborhoods in the grantee's service area.

### **IV. Adjusting the Rent Standard**

A grantee's rent standard should be reassessed annually and adjusted if necessary to correspond with HUD's annual updates to FMRs. If a change in the FMR requires a change in the rent standard, the rent standard should be changed within 90 days following the release of the new FMRs. Grantees should have written policies and procedures that detail the process and timing

for implementing rent standard adjustments, including for families in HOPWA-assisted units under existing leases at the time of the adjustment.

## **V. Rent Reasonableness**

24 CFR 574.320(a) provides that the total amount of grant funds that may be used to subsidize a unit is the difference between the rent standard or reasonable rent for a unit, whichever is lower, and the family's calculated resident rent contribution. In addition to establishing a rent standard, HOPWA grantees must ensure that each unit assisted with rental assistance is rent reasonable. To this end, the grantee must have established policies and procedures regarding how rent reasonableness will be determined and documented as consistent with 24 CFR 574.320 (a)(3).

Grantee and project sponsor staff must document the decision-making process for determining the rent reasonableness of a unit and the decision in each assisted family's file. Grantee and project sponsor staff should not assume that if the rent of an assisted unit is within the grantee's established rent standard that the rent being charged for the unit is reasonable. It is possible that a unit may be within the rent standard established by the grantee and still not considered reasonable. Grantee and project sponsor staff must document for each unit that a reasonable rent is being charged compared to other units in the private market and must verify, if applicable, that the rent charged for the unit is reasonable compared to the rent of other comparable unassisted units owned by the same landlord.

## **VI. Contact Information**

Questions regarding the content of this Notice may be directed to the Office of HIV/AIDS Housing's email box at [HOPWA@hud.gov](mailto:HOPWA@hud.gov).