



Special Attention Of:

Public Housing Agencies
Public Housing Agencies that
Administer the Housing Choice
Voucher Program; Owners;
Other Grantees

Notice PIH 2020-19

Issued: August 21, 2020

Expires: This notice remains in
effect until amended, superseded, or
rescinded

Supersedes: Notice 2011-46

Subject: Rent Reasonableness – Defining Assisted Units for the Housing Choice Voucher and Project-Based Voucher Programs¹

I. Purpose

This notice supersedes Notice PIH 2011-46,² and updates guidance concerning what is considered an assisted unit under Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) for the purpose of rent reasonableness requirements. This notice does not provide comprehensive guidance concerning rent reasonableness requirements, but focuses on specific rent reasonableness issues. For further information on the rent reasonableness requirements, see HUD regulations 24 CFR 982.507 and 24 CFR 983.303, and the Rent Reasonableness Chapter in the Housing Choice Voucher Guidebook, available at

https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Rent_Reasonableness.pdf.

II. Background

As required by Section 8(o) of the U.S. Housing Act of 1937 (the 1937 Act),³ prior to and during the term of an HCV or PBV Housing Assistance Payments (HAP) contract, the rent to owner for a contract unit must be reasonable. In determining whether rents are reasonable, a Public Housing Agency (PHA)⁴ must always ensure that the rent to owner for a unit in which an HCV-assisted or PBV-assisted family will reside does not exceed the rent to owner for comparable unassisted units on the premises.⁵ By accepting each

¹ The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

² Notice PIH 2011-46, titled “PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program — Replacement of PIH Notices 2009-51 and 2010-18”.

³ 42 U.S.C. §§ 1437f(o)(10) and 1437f(o)(13)(H).

⁴ An independent entity must perform rent reasonableness determinations for units that are PHA-owned, in accordance with 24 CFR §§ 982.352(b)(1)(iv)(A)(1) and 983.303(f)(1).

⁵ HUD regulation requirement for HCV- and PBV-assisted units at 24 CFR §§ 982.507 and 983.303, respectively.

monthly housing assistance payment, the owner certifies that the contract rent is not more than the rent charged by the owner for comparable unassisted units in the premises.⁶

Generally, units for which the owner has decided to charge rents that are below what other families are charged, or market-rate rents, are considered unassisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered when determining whether rent charged by an owner on an HCV- or PBV-assisted unit is reasonable. However, sometimes owners choose to charge below market rents to protect families from a rent increase that results solely from a conversion action impacting the property and the family. These families are often longtime families who had been paying below market rents prior to the conversion action, and, in many cases, elderly families. Under these specific circumstances, and as further described in Section IV.A below, such units would be considered assisted and therefore excluded from a PHAs determination of rent reasonableness and from an owner's certification.

III. Summary of Changes

- **Units in converted properties.** In Notice PIH 2011-46, units in a property undergoing certain Housing Conversion Actions were considered assisted if the unit was occupied by a family on the date of the eligibility event who did not receive a voucher and the owner chose to charge below market rent to the family by offering lower rents, rent concessions, or other assistance. This notice extends the assisted unit standard in PIH Notice 2011-46 to all projects undergoing any conversion action that triggers eligibility for an award of tenant protection vouchers (TPVs), as further described in Section IV.A of this notice. This change will result in consistent application of policy concerning rent reasonableness determinations across all conversion actions that trigger TPVs. It also supports local efforts to protect families from a rent increase due solely to a conversion action.
- **Units with restricted rents.** This notice clarifies that units considered assisted due to a rent restriction remain excluded from rent reasonableness determinations until the PHA is notified by the owner or otherwise determines that the rent restriction has expired, or the restricted rents are no longer below market.
- **Unassisted units.** The policy concerning unassisted units has not changed. However, HUD has refined the language to provide more clarity and has included an example to assist in understanding the policy (see section V.A. of this notice).

IV. Assisted Unit Types and Notice Requirements

Assisted units are typically those units that are assisted under a Federal, State, or local government program. In addition to units assisted under a Federal, State, or local government program, the following units are considered to be assisted and are therefore

⁶ Moving-To-Work (MTW) PHAs may modify the rent reasonable requirements pursuant to the authority of their MTW Standard Agreement or MTW Operations Notice, as applicable.

excluded from consideration when a PHA determines rent reasonableness:

A. Units in converted properties.

1. If all of the following conditions apply, a unit is assisted under this category:
 - a. The unit is in a property undergoing any of the following conversion actions:
 - i. Housing conversion actions that occur in the Multifamily Housing Portfolios and include an owner decision to opt-out of or not renew a Section 8 project-based contract (opt-out); a prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); a HUD enforcement action against an owner that involves termination or non-renewal of a Section 8 project-based housing assistance payments; or a HUD property disposition activity;
 - ii. Any of the conversion actions covered by Notice PIH 2019-01/H 2019-02, or successor notices, for which the property has received an award of set-aside TPVs; and
 - iii. A public housing conversion action including demolitions and/or dispositions approved under Section 18 of the 1937 Act (including demolitions authorized under de minimis authority of such Act); required conversions approved under Section 33 of the 1937 Act; voluntary conversions approved under Section 22 of the 1937 Act; and removals initiated under an awarded Choice Neighborhood Initiative and/or HOPE VI grant;
 - b. The unit is occupied by a family who was residing in the unit on the following date (as applicable) and did not receive a TPV as a result of the conversion action:⁷
 - i. The date of the eligibility event of the housing conversion action;
 - ii. The later of: (a) the date that the TPV funding application is submitted to HUD by the PHA or (b) the date of the triggering event, for set-aside TPV actions; or
 - iii. The date of PIH approval of the Public Housing Conversion or the Choice Neighborhood Initiative award date; and
 - c. The owner chooses to offer a below market rent or other rent concession (e.g., rent backs or rent credits, free month(s) rent) at the property to the family who does not receive a TPV.
2. For the unit to be considered “assisted,” the owner must provide written notice to the PHA. The owner-provided notice must include a list of the covered families,

⁷ For example, because the family is ineligible for the voucher. Another example is where the owner accommodates a family’s request to remain in the unit unassisted paying the same amount they were paying prior to the conversion, instead of being issued the HCV, because the conversion action causes a family’s share of the rent to be more under the HCV/PBV programs (e.g. a family was paying a flat rent under the public housing program and the requirements of the HCV/PBV program would cause the family’s share of the rent to increase).

by unit number; a description of the concession; the duration of the lower rents or concessions; and any additional information that the PHA deems necessary to verify the applicability of this section. This notification serves as the owner's certification that all of the conditions described in this section are met.

3. Upon verification of the information submitted by the owner, the PHA must exclude such units from rent reasonableness determinations until notified by the owner that either a covered family has moved from the unit or the rent paid by the family is no longer below market or subject to a rent concession, at which point the unit is no longer excluded from the rent reasonableness determination.
4. An owner of a property that underwent a conversion action prior to the issuance of this notice, and that was not previously covered under PIH Notice 2011-46, may notify the PHA, at the time of a subsequent rent increase for voucher families, of units in the converted property that are considered assisted under this notice. All requirements of this section IV.A must be met, but the owner must also include evidence that the covered families resided in the property on the date of the eligibility event. Once the PHA determines that such units are considered assisted under this notice, the PHA must exclude such units from future rent reasonableness determinations for the duration of the lower rents or concessions or until such time that the family vacates the unit.

B. Units with restricted rents. Units that are restricted by a rent restriction (e.g., a use restriction, law, or court order) that caps rents at a below-market level are considered to be assisted for purposes of rent reasonableness determinations.

The PHA is responsible for verifying the existence and applicability of the rent restriction prior to excluding from the rent reasonableness determination. Such units are excluded from rent reasonableness determinations until the PHA is notified by the owner, or unless the PHA otherwise determines, that the rent restriction has expired, or the restricted rents are no longer below market.

V. Other Rent Reasonableness Requirements. This section addresses rent reasonableness requirements that apply to all HCV and PBV assisted properties, regardless of whether the property underwent a conversion action as described in Section IV of this notice.

A. Unassisted units on the property. An owner who offers a rent concession for *unassisted* units at the property (those not qualifying under Section IV of this notice) must also offer them to HCV/PBV participants.⁸ The PHA must use the actual amount of the rent for such unassisted units (that is, the rent with the concession) in determining the reasonable rent amount. For example, an HCV family is looking to rent a unit in Property A. The rent to owner is generally \$800, but the owner offers a rent credit (a rent concession) of \$100 during the first two months of occupancy. During the initial lease term, the rent amount that the PHA must use for determining the reasonable rent is \$700 for two months (\$1,400) and \$800 for the remaining ten months (\$8,000) in a 12-month

⁸ 24 CFR §§ 982.507 and 983.303.

period, or \$783 (($\$1,400 + \$8,000$)/12) per month for 12 months.

B. Units occupied by certain employees of the property management company. In some rental markets it is common practice for certain employees of the property management company (e.g., a resident manager) to reside in the property rent-free or at a significantly reduced rent as part of their employment compensation. Under such limited circumstances, the rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit and the PHA must not take them into account in making rent reasonableness determinations.

C. Using recent rentals in multifamily properties. In the case of a family moving into a multifamily property, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new families routinely pay higher rents than the rents that longer time families in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing families).

D. Rent increases. In determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher HAP contracts, the PHA must take into consideration any rent-setting policies by the owner for existing families. Any increases in rent over time for HCV/PBV-assisted families must be similar to increases charged to unassisted families who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV/PBV-assisted families may not exceed the rents charged to unassisted families in comparable units who have been in a property for approximately the same amount of time.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements of this notice were assigned OMB Control Number 2577–0169.

_____/s/
R. Hunter Kurtz, Assistant Secretary
for Public and Indian Housing