



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

Special Attention:

Public Housing Agencies (PHA)
Public Housing Hub Office Directors
Public Housing Program Center Directors
Regional Directors
Field Office Directors
Resident Management Corporations

NOTICE
PIH-2015-13 (HA)

Issued: September 8, 2015

Expires: Effective until
amended, superseded, or
rescinded

Cross References: 24 CFR
Part 960, 24 CFR Part 903,
and Notice PIH 2014-12

Subject: Changes to Flat Rent Requirements – FY 2015 Appropriations Act

1. PURPOSE

This notice implements Section 238 of Title II of P.L. 113-235, the Department of Housing and Urban Development Appropriations Act of 2015 (FY 2015 Appropriations Act). The FY 2015 Appropriations Act amended Section 210 of Title II of P.L. 113-76, the Department of Housing and Urban Development Appropriations Act of 2014. This Notice supersedes and replaces the guidance provided in Notice PIH 2014-12 and clarifies HUD's interpretation of the statutory amendment related to flat rents. This notice also serves as supplemental guidance to the interim rule published on September 8, 2015 with an effective date of October 8, 2015.

2. APPLICABILITY, BACKGROUND, AND HUD INTERPRETATION OF NEW STATUTORY REQUIREMENTS

This notice applies to PHAs that operate a public housing program. It also applies to families residing in, or applying to, the public housing program.

Moving to Work (MTW) PHAs operating a public housing program can exercise flexibility in regards to establishing flat rents, in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA has not

exercised flexibility via the Annual MTW Plan, then the policies set forth in this Notice will apply to the MTW PHA.

The FY 2014 Appropriations Act required PHAs to establish flat rents at no less than 80 percent of the applicable Fair Market Rent (FMR). However, if a new flat rent amount for a unit increased a family's existing rental payment by more than 35 percent, then the new flat rent amount was required to be phased in as necessary to ensure that the family's existing rental payment did not increase by more than 35 percent annually. HUD implemented these requirements through Notice PIH 2014-12, which outlined the changes in the FY 2014 Appropriations Act and provided guidance to PHAs on how to implement the new changes. Through FAQs accompanying Notice PIH 2014-12, HUD provided flexibility to PHAs to phase in all flat rent increases over a three year period, including those increases that were 35 percent or less.

The FY 2015 Appropriations Act further amended the public housing rent requirements for flat rents. Specifically, the statute was amended to require that flat rents must be set at no less than the lower of 80 percent of:

1. the applicable fair market rental established under section 8(c) of this Act;
or
2. at the discretion of the Secretary, such other applicable fair market rental established by the Secretary that the Secretary determines more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used for purposes of the applicable fair market rental under section 8(c);

A PHA may apply for an exception waiver allowing for a flat rental amount for a property that is lower than the amount outlined in the options above. The Secretary may grant such an exception if HUD determines that the fair market rent for the applicable market area does not reflect the market value of the property and the proposed lower flat rental amount is based on a market analysis of the applicable market.

The FY 2015 Appropriations Act maintained the protection that any rent increase of more than 35 percent due to the flat rent changes must be phased in as necessary.

As flat rents are fully implemented, the higher rent levels will ensure that families with higher incomes pay an appropriate market-based rent. It is an important policy goal to provide scarce public resources to those most in need of deeply affordable housing. PHAs are therefore reminded that they have the discretion, in accordance with federal law and regulations (24 CFR 960.261; FR-4824-F-02), to establish occupancy policies that include the eviction of public housing tenants who are above the income limits for eligibility to participate in public housing programs. HUD encourages PHAs to provide a balance between the important goals of supporting the sustained self-sufficiency of families with the ever increasing demand for affordable housing units among families on their waiting lists.

3. SMALLER GEOGRAPHICAL AREA FMRs

PHAs may use a HUD-established FMR that is based on an area geographically smaller than the effective FMR published in the Federal Register. To satisfy this option, PHAs may use the applicable Small Area Fair Market Rent (SAFMR), which HUD will publish annually on its website (available at:

<http://www.huduser.org/portal/datasets/fmr/smallarea/index.html>). For some areas for which HUD does not publish a SAFMR, HUD will permit PHAs to use the unadjusted rent¹, which HUD will publish annually on its website. PHAs are not permitted to establish smaller geographical FMRs, different from these options. For areas where HUD has not determined a SAFMR or an unadjusted rent, PHAs must set rents at no less than 80 percent of the FMR, or apply for an exception flat rent pursuant to the requirements of Section 4 of this notice.

4. EXCEPTION FLAT RENTS

The FY 2015 Appropriations Act permits PHAs to request an exception flat rent that is lower than either 80 percent of the lower of the FMR or SAFMR/unadjusted rent if the PHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.

In order to demonstrate the need for an exception flat rent, PHAs are required to submit a market analysis methodology that demonstrates the value for the unit. While HUD does not prescribe a particular formula for determining the market analysis, PHAs must compare the public housing unit to unassisted units in the area using the following factors:

- Location, quality, size, unit type, age of the unit, and
- Amenities, housing services, maintenance, and utilities the PHA will provide under the lease.

These criteria are meant to assist PHAs in developing a common sense approach to valuing a unit. It remains important to note that the Department places a high priority on accurate rent determinations and requires that such determinations be performed in a documented, reasonable, and consistent manner. It is not, however, necessary or cost-effective to try to quantifiably document or separately evaluate each of these criteria. To the extent possible, rent valuation should be based on rents paid for similar units in the

¹ The unadjusted rent is the FMR estimated directly from the American Community Survey (ACS) source data that HUD uses to calculate FMRs before HUD applies its state non-metropolitan minimum rent policy. HUD maintains a minimum FMR policy within Housing Choice Voucher program (HCV) in response to numerous public concerns that FMRs in rural areas were too low to operate the HCV program successfully. The policy establishes the FMRs at the higher of the local FMR or the State-wide average FMR of non-metropolitan counties, subject to a ceiling rent cap. The rationale for having a state minimum FMR is that some low-income, low-rent non-metropolitan counties have ACS-based FMR estimates that appear to be below long-term operating costs for standard quality rental units and raise concerns about housing quality. State minimum FMRs have been set at the respective state-wide population weighted median non-metropolitan rent level, but are not allowed to exceed the U.S. median non-metropolitan rent level.

same general location that are also generally similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

PHAs may request an exception flat rent by sending an e-mail to flatrentexceptionrequests@HUD.GOV with the following information attached:

- The address, including unit number(s) of the unit or property for which the PHA is seeking an exception flat rent;
- The market analysis; and
- The proposed flat rent schedule.

PHAs must receive written HUD approval to utilize an exception flat rent prior to implementing the exception flat rent. PHAs that utilize exception flat rents must conduct a new market analysis, and obtain HUD approval, annually².

If HUD denies an exception flat rent request, HUD will provide a detailed written response regarding the reasons for the denial. If, after reviewing HUD's written denial, a PHA believes that HUD's decision was in error, a PHA may appeal the decision in writing to their local HUD field office no later than 30 days after receiving notification of the denial. The appeal should include any new information the PHA believes is necessary to supplement the original submission. If HUD denies the appeal, PHAs must immediately set flat rents at no less than the lower of 80 percent of the FMR or SAFMR pursuant to paragraph 6 of this Notice. While awaiting HUD response for any exception request or the appeal for an exception request, flat rents must be set at no less than 80 percent of the lower of the FMR or SAFMR, or at the exception flat rent level previously approved by HUD.

5. FMRs AND UTILITY PAYMENTS

Fair Market Rents (FMRs) are gross rent estimates that cover the rent plus the cost of all necessary utilities regardless of who actually pays the utilities. Although the inclusion of utilities in the FMR is an accurate estimate of the cost of renting a unit in a particular area, their inclusion for purposes of setting Public Housing flat rents may lead to families paying more in gross rent if the rent is not adjusted to reflect utility payments. Specifically, families that pay a flat rent for public housing units and that pay their own utilities would pay more in gross rent (i.e., rent plus utilities) than a family in a similarly situated unit where the PHA pays the utilities.

For example, if an agency sets the flat rent for 1-BR units at exactly 80 percent of the FMR, (totaling \$400), a family renting a unit where the PHA pays the utilities would pay \$400, and a family that rents a unit where they are responsible for paying utilities would

² PHAs that submit an exception request prior to the publishing of final FY 2016 FMRs (likely in October 2015) will not be required to submit another exception request until HUD publishes final FY 2017 FMRs (likely in October 2016).

pay \$400 plus the cost of utilities. In this case, the family paying for utilities directly pays more because they are renting a unit where they are responsible for their own utility payments.

To address this issue when establishing flat rents, PHAs must consider who is responsible for direct utility payments to the utility company, and adjust the flat rent accordingly. Specifically, if an agency is responsible for paying for utilities to the utility company, no adjustment is necessary when setting flat rents. However, if the family is responsible for making direct utility payments to the utility company, the PHA must adjust the flat rent amount downward, using a utility allowance, to account for reasonable utility costs of an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. For flat rents that are set at 80 percent of FMR, PHAs must first determine 80 percent of FMR for each bedroom-size, and then reduce that amount by the utility allowance. For example, if 80 percent of FMR for a 1-BR unit is \$400 and the estimated cost of the utilities is \$50 per month, then the resulting rent after utilities reduction would be \$350. PHAs should also consider utility payments where flat rents are set above 80 percent of FMR and incorporate such adjustments as necessary.

6. FLAT RENT POLICIES – HOW TO COMPLY ON AN ANNUAL BASIS

In order to comply with the flat rent requirements annually, no later than 90 days after issuance of new FMRs or SAFMRs by HUD, the PHA must:

- 1) Compare the current flat rent amount to the applicable FMR and SAFMR/unadjusted rent:
 - a) If the flat rent is at least 80 percent of the lower of the FMR or SAFMR/unadjusted rent, the PHA is in compliance with the law, and no further steps are necessary;
 - b) If the flat rent is less than 80 percent of the lower of the FMR and SAFMR, the PHA must set flat rents at no less than 80 percent of the lower of the FMR or SAFMR/unadjusted rent, subject to the utilities adjustment in section 5 of this notice, or the PHA may request an exception flat rent pursuant to the requirements of Section 4 of this notice;
- 2) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP) as necessary;
- 3) At all new admissions, permit the family to choose between the flat rent amount and the income-based rent; and
- 4) For families that are current public housing residents, offer the updated flat rent amount at the next annual rent option, and permit the family to choose between the flat rent amount and the income-based rent, subject to the requirements of Section 7 of this notice.

7. FLAT RENT INCREASE PHASE-IN REQUIREMENTS

In compliance with the FY 2014 Appropriations Act, Notice PIH 2014-12 required that if an existing tenant's rental payment would be increased by more than 35 percent as a result of changes to the flat rent amount, the increase must be phased-in such that a family would not experience an increase in their rental payment of more than 35 percent in any one year. Through Notice PIH 2014-12, HUD provided additional flexibility that would permit PHAs to phase in all rent increases resulting from the new flat rent requirements over a three year period. However, the FY 2015 Appropriations Act provides PHAs additional flexibility to establish flat rents at lower amounts, thereby eliminating the need for the three-year phase-in of all flat rent increases. Therefore, pursuant to this Notice, the only flat rent increases that may be phased-in are those where a family's rent will increase by more than 35 percent. PHAs that began phase-ins for families with rent increases at 35 percent or less do not need to take any immediate action to update the flat rents for such families, but at the family's next annual rent option, the requirements outlined below shall apply.

In order to determine how to phase-in increases in rental payments, PHAs must:

- 1) On a case-by-case basis, at the family's next annual rent option, compare the updated flat rent amount applicable to the unit to the rent that was being paid by the family immediately prior to the annual rent option;
 - a. If the new flat rent amount would not increase a family's rental payment by more than 35 percent, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;
 - b. If the PHA determines that the updated flat rent amount would increase a household's rental payment by more than 35 percent, the family may choose to pay the phased-in flat rent amount resulting from the flat rent impact analysis or the previously calculated income-based rent.

Example 1 – Flat Rent Increase Does Not Require Phase-In

The Gordon family is currently paying the flat rent amount of \$350 per month, rather than the income-based rent of \$500. When the Gordon family meets with the PHA to discuss rent options for the upcoming year, the PHA informs the Gordon family that the flat rent amount has increased to \$450 per month. Because the increase in the flat rent amount does not represent an increase of more than 35 percent from the Gordon's previous rental payment amount, they have the option to pay the new flat rent amount of \$450, or pay the income based rent based of \$500. The Gordon family chooses to pay the new flat rent amount of \$450.

Initial Flat Rent: \$350

New Flat Rent: \$450

Family Rent Increase Impact Analysis:

Initial Household Rent	New Flat Rental amount	Impact Analysis (HRx1.35)	Income-Based Rent	New Household Rent
\$350	\$450	\$472.5	\$500	\$450

Example 2 – Flat Rent Increase Requires Phase-In

The Jones family is currently paying the flat rent amount of \$500 per month. When the Jones family meets with the PHA to discuss rent options, the PHA tells the family that the flat rent amount has increased to \$700. However, the PHA tells the family that the family's flat rent payment would only increase to \$675 because flat rent changes must be phased-in as necessary to ensure that the family's existing rental payment does not increase by 35 percent or more annually. The family has the option to pay either the \$675 per month, or an income-based rent of \$800 per month based on the most recent examination of the Jones' family income. The Jones family chooses to pay the flat rent amount of \$675.

Initial Household Rent: \$500

New Flat Rent: \$700

New Household Rent: \$675

At the next annual rent option meeting between the Jones family and the PHA, the PHA informs the Jones family that the flat rent amount has increased to \$750 per month due to an increase in the FMR. Because the new flat rent amount represents less than a 35 percent increase from the previous rental payment, the Jones family has the option to pay the new flat rent amount of \$750 or the income-based rent amount of \$800 based on the most recent examination of family income and composition. The Jones family chooses to pay the new flat rent amount of \$750.

Initial Household Rent: \$700

New Flat Rent: \$750

New Household Rent: \$750

Family Rent Increase Impact Analysis:

Year	Initial Household Rent	New Flat Rental amount	Impact Analysis (HR x 1.35)	Income-Based Rent	New Household Rent
1	\$500	\$700	\$675	\$800	\$675
2	\$675	\$750	\$911.25	\$800	\$750

8. CONDUCTING ANNUAL RENT OPTIONS

HUD regulations at 24 CFR 960.253(a) requires PHAs to annually give families the option to choose between paying the flat rent or the income-based rent, and stipulates that PHAs may not give families the option more than once per year, except in the case that the family has chosen the flat rent and experiences a financial hardship. Further, 24 CFR 960.253(e) stipulates that PHAs provide sufficient information to allow a family to make an informed choice regarding rent options. PHAs must provide at least the following information:

- The PHA's policies on switching the type of rent due to financial hardship;
- The dollar amount of the flat rent and the income-based rent.

For families who choose to pay flat rents, PHAs are provided the flexibility not to conduct income re-examinations annually. HUD regulations at 24 CFR §960.253(e)(2) and §960.257(a)(2) provide that for families that chose to pay flat rents PHAs must conduct re-examinations of family income at least once every three years, not annually. In years when a PHA does not conduct a full re-examination of family income, PHAs are not released from the requirement to give the family the option of paying the flat rent or the income-based rent as calculated from the most recent examination of family income and composition.

In order for PHAs to comply with the requirements to conduct an annual rent option, and to provide families with sufficient information to make an informed choice, PHAs must do the following:

At initial occupancy, or in any year where a current program participating family is paying the income-based rent:

- 1) Conduct a full examination of family income and composition at the first annual rent option (Year 1);
- 2) Inform the family of the flat rent amount and the rent amount determined by the examination of family income and composition;
- 3) Inform the family of the PHA's policies on switching rent types due to financial hardship; and
- 4) Apply the family's rent decision at the next lease renewal.

At the second and third annual rent options, for families that choose to switch from income based rent to pay the flat rent:

- 1) PHAs may, but are not required to conduct a full examination of family income and composition for the second and third annual rent options. If a PHA chooses not to conduct an examination of family income for these annual rent options, PHAs must use the income information from the examination of family income and composition from the first annual rent option;

- 2) PHAs must inform the family of the updated flat rent amount, and the rent amount determined by the most recent examination of family income and composition;
- 3) PHAs must inform the family of the PHA's policies on switching rent types due to financial hardship; and
- 4) PHAs must apply the family's rent decision at the next lease renewal.

For the purpose of conducting the rent option meeting for a family that has paid the flat rent for the previous three years, and for which the PHA has not conducted a re-examination of family income and composition in the last three years, the PHA must complete a full re-examination of family income and composition in order to update the income-based rent amount.

PHAs are reminded that the flat rent amount a family pays is not locked in for the three year period. Instead, the PHA must revise the flat rent amount from year to year based on changes to the FMR. Families currently paying the flat rent amount must be offered the choice between the updated flat rent amount, and the previously calculated income-based rent.

9. CONTACT INFORMATION

If you have questions regarding this Notice, please contact your local HUD Field Office.

10. PAPERWORK REDUCTION ACT

The information collections referenced in this Notice have been approved by OMB pursuant to the Paperwork Reduction Act under, OMB# 2577-0220 and OMB# 2577-0226.

/s/

Lourdes Castro Ramirez
Principal Deputy Assistant Secretary for
Public and Indian Housing