

FAQs – Flat Rents

1. Q: What must a PHA do to demonstrate compliance by June 1, 2014?

A: Section 2 of Notice PIH 2014-12 stipulates that “The Department will consider PHAs to be in compliance with the new requirements if non-qualified agencies have initiated the process to amend their PHA Annual Plan, and qualified agencies have initiated the public hearing process by no later than June 1, 2014.” PHAs are considered to have initiated these processes by posting a public notice before June 1, 2014 of the forthcoming hearing.

2. Q: What steps must a PHA take in order to formally adopt the new flat rent requirements?

A: Section 4 of Notice PIH 2014-12 requires that PHAs formally adopt new flat rent requirements before offering the new flat rents to families. The Department will consider formal adoption to be met once a PHA has completed all of the following:

- A public hearing;
- For Non-qualified agencies only, a significant amendment to the PHA Plan;
- Board approval of the new flat rent policies; and
- Update of the PHA’s Admissions and Continued Occupancy Policies.

3. Q: Do qualified agencies need to complete a significant amendment to the 5-year plan and submit a civil rights certification in order to update their flat rent policies?

A: No. Qualified agencies only need to hold a public hearing to notify residents and the public about the changes to flat rent policies, obtain board approval of the new flat rent policies, and update their Admissions and Continued Occupancy Policies in order to implement the new flat rent requirements.

4. Q: What if a PHA already amended its flat rents to become compliant with the new requirements before HUD published the implementation notice?

A: PHAs that began implementing the new flat rent requirements, or that took steps to implement the new requirements before HUD published Notice 2014-12 may need to cease the use of updated flat rent amounts if they did not complete the required steps, or establish flat rents as required in Notice 2014-12. If an agency completed all of the required steps, and has adopted policies that are consistent with Notice 2014-12, then they do not need to take additional steps to implement the flat rent changes. However, if an agency did not complete all of the required steps, or if they have adopted policies that are not consistent with Notice 2014-12, they will need to complete the steps and adopt acceptable policies before continuing with the use of the updated flat rent amounts. For example, if a non-qualified PHA began implementing updated flat rents without undertaking a Significant Amendment to the PHA Plan,

or if an agency did not establish rent increase phase-ins as outlined in the notice, these agencies must halt the use of updated flat rents until such time as they have completed all of the implementation steps required in Notice 2014-12, including revising policies to be consistent with the flat rent requirements established in Notice 2014-12. If an agency raised a family's flat rent payment by more than 35%, the PHA must repay the family for any rent overcharges.

5. Q: When must PHAs begin charging the new flat rents to new program admissions?

A: PHAs must offer the new flat rent and the applicable income-based rent to all new admissions to the program within 90 days of formally adopting the new flat rents, but not later than October 31, 2014. The Department will consider a PHA to have formally adopted the new requirements after it has completed all of the steps included in question 2 above, and the 90 day clock will commence on the day that the PHA has completed all of these steps.

6. Q: When must PHAs begin charging the new, or phased-in flat rent to current program participants?

A: Within 90 days after a PHA has formally adopted the new flat rents, but not later than October 31, 2014, the PHA must begin to offer the new flat rent, adjusted to reflect any phase-in, to families that are currently paying the flat rent amount, at the family's next annual rent option. The Department will consider a PHA to have formally adopted the new requirements after it has completed all of the steps included in question 2 above, and the 90 day clock will commence on the day that the PHA has completed all of these steps.

7. Q: A PHA already has flat rents that are set at 80% or greater of the applicable FMR. What must this PHA do to demonstrate compliance with the new flat rent requirements in the first year?

A: Any PHA that already has the flat rent set at or above 80% of the applicable FMR is considered to be in compliance with the new flat rent requirements, and does not need to take any further steps.

8. Q: The notice requires PHAs to establish flat rents at no less than 80% of the applicable Fair Market Rent (FMR). May a PHA request a waiver to establish flat rents at less than 80% of the applicable FMR?

A: No. The requirement to establish rents at 80% of the applicable FMR is statutory; statute cannot be waived.

9. Q: Notice PIH 2014-12 requires PHAs to phase in flat rent changes that will increase a family's existing rental payment by more than 35%. Does this mean that all families – program participants and new admissions – will pay the same flat rent?

A: No. The law requires that PHAs establish flat rents at no less than 80% of the applicable FMR. New families that are admitted to the program after a PHA has implemented the new requirements do not qualify for the phased in flat rent amounts. Therefore, all new families that are admitted to the program after a PHA has implemented the new requirements must be offered the flat rent set at no less than 80% of the applicable FMR.

For families that are currently paying the flat rent, PHAs must address the cap on the increase on a case by case basis, and phase in rent increases accordingly. Specifically, if a family is currently paying a flat rent that is significantly below 80% of FMR, then the increase in the flat rent for that family would be capped at 35% annually, and the total flat rent increase must be phased in. If a family is currently paying the income-based rent, at the family's next annual income recertification, PHAs must offer the family the income-based rent and the updated flat rent (i.e. these families would not have their rents phased in if they opt to start paying the flat rent).

10. Q: Over what time period must PHAs phase in flat rents for families that will experience a flat rent increase?

A: As described in question 7 above, the law requires PHAs to phase in flat rent increases of more than 35% for families that were paying the flat rent immediately prior to the implementation of the new flat rent provisions. Through notice PIH 2014-12, HUD is providing PHAs the flexibility to phase in all flat rent increases for families that are currently paying the flat rent over a three-year period. Specifically, a PHA may choose to phase in flat rent increases evenly over the three-year period, or they may choose to phase in rent increases at the maximum amount annually until the flat rent is fully phased in. If PHAs choose to follow state and/or local law regarding maximum annual rent increases, or if a PHA's new flat rent amount is too substantial to phase in over three years, the full impact may be delayed by more than three years for families that reside in these PHAs' jurisdiction.

11. Q: Do PHAs have to follow local and state rent control laws when determining how to phase in flat rent increases?

A: To the extent not inconsistent with federal requirement, PHAs may, but are not required to follow state and local rent control laws. Therefore, if a state or local rent control law sets a rent increase cap at more than 35% annually, PHAs must follow the federal requirement which limits rent increases to no more than 35% annually.

12. Q: Section 4 of the notice requires PHAs to reduce the flat rent amount by a reasonable utility allowance if the family is responsible for making utility payments directly to utility providers. How should a PHA establish a utility allowance for flat rent units?

A: When establishing utility allowances to be applied to flat rents, PHAs should follow the requirements of 24 CFR Part 965 regarding the establishment of utility allowances. For more information on the various methodologies available to PHAs when establishing utility

allowances, see:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phecc/resources. If PHAs have already established utility allowances for the units that are

impacted by the new flat rent requirements, PHAs may use those utility allowances.

13. Q: PHAs are given the discretion to undertake a certification of family income once every three years for families paying flat rents. Does this mean that a family that chooses to pay the flat rent is locked into the same flat rent amount for the entire three-year period?

A: No. PHAs are given the discretion to certify family income, and calculate a family's income-based rent once every three years, if in the first year of the three year period a family chooses to pay the flat rent, and the family continues to pay the flat rent for the duration of the three year period. For the second and third year of the three-year period, PHAs must provide the family, at the annual rent option meeting, the option to pay the income-based rent that was determined in the first year or the flat rent which has been updated in compliance with the requirements established by Notice 2014-12, including any necessary phase-ins of rent increases. If a family chooses to pay the income-based rent in the second year of the three year period, PHAs must undertake a full income recertification prior to the third year. Should the family decide to revert back to paying the flat rent in year three, this constitutes the commencement of a new three-year period. Families that revert back to the flat rent after one or more years of paying the income-based rent must be offered the income-based rent and the flat rent set at no less than 80% of the FMR.

14. In light of this Notice, how should PHAs determine rents for public housing/ low-income housing tax credits (LIHTC) units in mixed-finance projects?

A: With respect to any unit in a mixed-finance project that is assisted pursuant to the LIHTC under section 42 of the Internal Revenue Code of 1986, the rents charged to the residents must continue to comply with the requirements set forth in Section 42 and may not exceed the amounts allowable under that section. In this context, rents may be charged at a lower amount than is otherwise permitted under this Notice, if such lower amount is necessary to comply with Section 42.