



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

Special Attention of: Section 8 Public
Housing Agencies; HUD Office of
Public Housing Directors; Section 8
Financial Management Center;

Notice PIH 2011-46 (HA)

Issued: August 17, 2011

Expires: Effective until Amended,
Superseded, or Rescinded

Cross References: Notice PIH 2009-51, PIH
Notice 2010-18

Subject: PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program—Replacement of PIH Notices 2009-51 and 2010-18

- 1. Purpose.** This Notice combines current relevant policy of PIH Notices 2009-51 and 2010-18 concerning rent reasonableness requirements in the Housing Choice Voucher (HCV) program and removes obsolete provisions of PIH Notice 2009-51 relative to the definition of assisted and unassisted housing.
- 2. Background.** Notice PIH 2009-51 was issued on December 11, 2009. The Notice provided guidance on the rent reasonableness requirements in the Housing Choice Voucher (HCV) program, including what constitutes an unassisted as opposed to an assisted unit. Notice PIH 2009-51 provided that an assisted unit is a unit that is assisted under a Federal, State, or local government program. The Notice also provided that in the case of a multifamily property undergoing a Housing Conversion Action, the rents charged to those families that choose to remain at the property with their HCV assistance must not exceed the rents charged for those existing tenants that do not qualify or choose not to accept the HCV assistance, even if the owner is charging new tenants higher rents. Notice PIH 2010-18 superseded certain guidance contained within Notice PIH 2009-51. Specifically, Notice PIH 2010-18 expanded the definition of “assisted unit” to include certain units where the rent and rent increases are restricted by law or court action. Notice PIH 2010-18 also superseded Notice PIH 2009-51 with regard to rent reasonableness determinations for units in properties undergoing Housing Conversion Actions.¹ In cases of a property undergoing a Housing Conversion Action, units

¹ These actions are owner decisions to opt-out of or not renew Section 8 project-based contracts (opt-outs); owner prepayment of the mortgage or voluntary termination of the mortgage insurance of a preservation eligible property (preservation prepayments); HUD enforcement actions against the owner (including termination or non-renewal of a Section 8 project-based housing assistance payments (HAP) contract); and HUD property disposition activities.

occupied by tenants on the date of the eligibility event who do not receive vouchers may be considered assisted units if the owner chooses to continue charging below market rents to those families by offering lower rents, rent concessions, or other assistance to those families. These non-voucher families in a Housing Conversion Action are often long-time tenants, many of whom are elderly and who had been paying below market rents prior to the Housing Conversion Action. Consequently, those units are not taken into consideration for purposes of rent reasonableness determinations.

The HCV program regulations at 24 CFR 982.507 provide that the PHA may not approve a lease until the public housing agency (PHA) determines that the initial rent to owner is a reasonable rent. In order for the rent to be reasonable, the rent may not be more than rent charged for comparable units in the private unassisted market. In addition, the rent may not be more than rent charged by the owner for comparable unassisted units on the premises. In other words, the owner is not permitted to charge the HCV program more for rent than what unassisted tenants in comparable units are paying.

By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

The regulations provide that the PHA must re-determine the reasonable rent:

- (1) before any increase in the rent to owner; (2) if there is a five percent or more decrease in the published Fair Market Rent (FMR) in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary date; or (3) if directed to do so by HUD.

3. Assisted Units on the Premises. In determining rent reasonableness, the PHA must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program. Units for which the owner has simply decided to charge rents that are below what other tenants are charged and what the market might actually bear (with the exception of such units considered assisted units in the case of Housing Conversion Actions) are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered when establishing if an HCV rent to owner is reasonable.

HUD provides tenant-based rental assistance in order to assist eligible residents that are affected by Housing conversion actions. Depending on the Housing conversion action and subject to the availability of appropriations, eligible families receive either regular voucher assistance or enhanced voucher assistance to mitigate the impact of the conversion action on the family's rent.

In addition to units assisted under a Federal, state or local government program, the following units are also considered to be assisted units on the premises and would not be taken into consideration for rent reasonableness determinations:

- (A) Units where the rents and/or rent increases are controlled or restricted by law or a court order, so long as the law or court order does not also apply to voucher participants. The PHA is responsible for verifying the existence and applicability of the law or court order prior to excluding the units from the rent reasonableness determination.
- (B) In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families. If the owner of such a property intends to charge lower rents to the non-voucher tenants living in the property at the time of conversion, the owner must provide written notice to the PHA and a list of the covered families, a description of the concession, the duration of the lower rents or concessions, the units in which the families are residing, and copies of the families' leases.

Owners of multifamily properties that underwent a Housing Conversion Action prior to the issuance of Notice PIH 2010-51 may also provide such a notice to the PHA at the time of a subsequent rent increase for voucher families, identifying families that resided in the property on the date of the eligibility event that did not receive a voucher. The owner must provide the same information and documentation that is required for new conversion actions, including evidence that the covered families resided in the property on the date of the eligibility event. The PHA, upon verifying the information submitted by the owner, must then exclude those units from future rent reasonableness determinations for the duration of the lower rents or concessions.

4. Unassisted Units on the Premises. In determining that the rent to owner does not exceed the rents charged for comparable unassisted units on the premises, the PHA takes into consideration the rents for those units in the premises that are not assisted under a Federal, State, or local government program.

In addition, the PHA must take into consideration the real value of the rents charged by the owner for unassisted comparable units in the premises when determining rent reasonableness. For example, if the rent recorded on the lease for comparable unassisted units on the premises is the same as the rent for an HCV family but an owner is reducing the amount that is actually required to be paid by the unassisted tenants, the PHA takes the actual amount into consideration. For example, unassisted tenants might be receiving a credit each month, or a "rent-back", or free rent some months, or some other type of subsidy from the owner. All of these actions reduce the true value of the charged rent, and the PHA must use these reductions to determine the actual 'rent' the owner is charging for the unassisted units.

Note, however, 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. A PHA should not take the rent or lack of rent for units in which a resident manager or similar type employee resides into consideration in making a rent reasonableness determination. The rent for these units does not represent the rent that is charged or would be charged for a comparable unassisted unit, but rather reflects some or all of the owner's compensation for his or her employee(s).

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 tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying (often due to local rent stabilization programs or ordinances that limit rent increases for existing tenants).

However, in determining if subsequent rent increases result in rents that are reasonable for units occupied by families under voucher Housing Assistance Payments (HAP) contracts, the PHA should take any rent setting policies by the owner for existing tenants into consideration. Any increases in rent for HCV tenants over time should be similar to increases charged to unassisted tenants who have lived in their units for approximately the same amount of time. In other words, rents for existing HCV tenants may not exceed the rents charged to unassisted tenants in comparable units who have been in a property for approximately the same amount of time.

5. **Paperwork Reduction Act.** The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3520). In accordance with the PRA, HUD 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 OMB control number. The following active information collections contained in this notice have been approved under the PRA OMB Control Number 2577-0169.
6. **Questions.** Inquiries about this Notice should be directed to staff in the Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, at (202) 708-0477.

/s/
Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing