



**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 2009- 51 (HA)

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Cross References:

Subject: PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program – Comparable Unassisted Units in the Premises

1. Purpose. This Notice provides guidance on rent reasonableness requirements in the Housing Choice Voucher (HCV) program, including what constitutes an unassisted as opposed to an assisted unit. An assisted unit is a unit that is assisted under a Federal, State, or local government program.
2. Background. 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 redetermine 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.

It has recently been brought to HUD's attention that in the case of a few properties undergoing Housing conversion actions,¹ the owner implemented a "landlord assistance program" for certain residents who were either not income eligible for HCV assistance or declined the HCV assistance. The owner decided to 'subsidize' the rent for these families and as a result the actual rents for the units occupied by these non-voucher residents were significantly less than the rents approved by the PHAs for units leased by HCV participants. In several cases, the administering PHA approved the HCV rents as reasonable even though rents charged to the non-HCV families (who were not assisted under a Federal, state, or local program) were lower.

HUD understands that the PHA in this and similar cases misunderstood the meaning of assisted unit in the HCV regulations and a reduction in HCV rents at this time might threaten the financial viability of the projects. Since previous HUD guidance has not expressly addressed this particular issue, if a PHA determined HCV rents in a property are reasonable after excluding certain units on the basis that those units were 'assisted' by the owner, the PHA may continue to consider those rents reasonable for current HCV tenants in those specific properties without needing to recalculate the reasonableness using the landlord assisted units as comparables.

In addition, the PHA in those instances may continue to accept the owner certification that the rent to owner is not more than the rent charged by the owner for comparable unassisted units in the premises.

However, these exceptions do not apply to any rent reasonableness determinations for new HCV tenants at these properties or any future rent reasonableness determinations at any other properties (including properties undergoing future Housing conversion actions).

- 3. 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.

Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the premises must be considered in determining if an HVC rent to owner is reasonable.

¹ HUD provides tenant-based rental assistance in order to assist eligible residents that are affected by several different types of owner or HUD actions in HUD's Office of Multifamily Housing programs (collectively referred to as "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, 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.

Similarly, in the case of a multifamily property undergoing a Housing conversion action, the families receiving vouchers as result of the action are existing tenants of the property, and the rents charged 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 do not accept the HCV assistance, even if the owner intends to eventually charge new tenants higher rents.

4. **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.

5. **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