



**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 2014-12 (HA)

Issued: May 19, 2014

Expires: Effective until amended,
superseded, or rescinded

Cross References: 24 CFR Part 960
and 24 CFR Part 903.

Subject: Changes to Flat Rent Requirements – 2014 Appropriations Act

1. PURPOSE

This notice implements Sections 210 and 243 of Title II of P.L. 113-76, the Consolidated Appropriations Act of 2014. Specifically, this guidance clarifies HUD's interpretation of the statutory amendment related to flat rents and the requirement that PHAs comply with the amendments by June 1, 2014.

This notice serves as interim guidance. Section 243 requires HUD to commence rulemaking no later than six months after this notice is issued. The policy will be finalized through the rulemaking and public comment procedures. At that time, the Department will be very interested in feedback from PHAs and other stakeholders about how best to implement the policies. HUD is particularly interested in the burden created by the new policies, impact on PHA budgets, and impact on residents.

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 applicants 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.

Currently, PHAs are required to establish flat rents based on the market rent of comparable units in the private, unassisted rental market. Paragraph (2)(B)(i) of Section 3(a) of the United States Housing Act of 1937 (the Act), as amended by Section 210, establishes new parameters that PHAs must use when determining the flat rent amounts. Specifically, flat rents must now be:

- set at no less than 80 percent of the applicable Fair Market Rent (FMR); and

Section 210 also establishes that PHAs may, but are not required to lower flat rents to 80% of the applicable FMR in years when the FMR decreases from the previous year. This provision applies to the FMRs published for fiscal year 2015 and beyond. If a PHA must increase their flat rents to comply with the statutory changes, the increase shall be considered a significant amendment to the PHA Annual Plan. Please review Section 8 of this Notice which provides a detailed explanation regarding significant amendments for flat rent changes.

PHAs shall comply with the new flat rent requirements by June 1, 2014. 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 should begin applying the new flat rent schedules to households they are recertifying and new applicants by October 31, 2014.

If a new flat rent amount for a unit will increase a family's existing rental payment by more than 35 percent, then the new flat rent amount shall be phased in as necessary to ensure that the family's existing rental payment does not increase by more than 35 percent annually. For more information, see Section 6 of this notice.

3. FMRs AND UTILITY PAYMENTS

Fair Market Rents (FMRs) are gross rent estimates that cover the shelter 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 shelter 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., shelter 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 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, then the resulting rent after a reasonable utilities reduction of \$50 per month 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.

4. FLAT RENT POLICIES – HOW TO COMPLY WITH THE NEW REQUIREMENTS IN THE INITIAL YEAR

In order to comply with the statutory requirements, PHAs must do the following:

- 1) Compare the current flat rent amount as determined by the PHA to the applicable FMR;
- 2) If the existing flat rent amount is at least 80 percent of the FMR, the PHA is in compliance with the law, and no further steps are necessary;
- 3) If the existing flat rent amount is less than 80 percent of FMR, PHAs must revise their flat rents to no less than 80 percent of FMR, subject to the utilities adjustment in section 3 of this notice;
- 4) If changes to flat rents are necessary, include a description of the changes to the flat rent policies in a significant amendment to the PHA Annual Plan. Section 8 of this notice provides for a streamlined process for completing this requirement;
- 5) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP);
- 6) The PHA 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; and
- 7) 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 to families that are currently paying the flat rent amount, at the family's 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 6 of this notice.

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

In order to comply with the flat rent requirements annually, PHAs must:

- 1) Calculate flat rents using a rent reasonableness methodology,¹ as defined in 24 CFR Part 960.253(b), for determining the flat rent based on the market rent of comparable units in the private, unassisted rental market. Such a reasonable method should consider the location, quality, size, unit type, unit age, and any amenities;
- 2) If the flat rent, as determined by the rent reasonableness study, is at least 80 percent of the FMR, PHAs must set flat rents at the amount determined by the rent reasonableness study;
- 3) If the flat rent, as determined by the rent reasonableness study, is less than 80 percent of the FMR, PHAs must set flat rents at no less than 80 percent of the FMR, subject to the utilities adjustment in section 3 of this notice;
- 4) If the FMR falls from the previous year, PHAs, may, but are not required to lower the flat rent amount to 80 percent of the FMR;
- 5) Include a description of flat rent policies in the PHA annual plan or in documents available for a public hearing as applicable;
- 6) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP) as necessary;
- 7) At all new admissions, permit the family to choose between the flat rent amount and the income-based rent;
- 8) For families that are already paying the flat rent amount, PHAs must offer any changes to 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 6 of this notice; and
- 9) Upon issuance of new FMRs by HUD, the PHA must:
 - Determine if the current flat rent is at least 80% of the new FMR;
 - Update the flat rent amounts² if necessary to meet the 80% requirement within a reasonable time but no later than 90 days of HUD publishing new FMRs;
 - Apply the new flat rents to all new admissions and to existing families at the next annual rent option, subject to Section 6 of this notice.

6. FLAT RENT INCREASE PHASE-IN REQUIREMENTS

Section 210 of the FY 14 Appropriations Act requires that if an existing tenant's rental payment would be increased by 35 percent or more as a result of changes to the flat rent

¹ The Department recognizes the burden placed on PHAs by the requirement to complete rent reasonableness studies annually, particularly in jurisdictions where market rents are substantially below the applicable FMR. PHAs that determine through their rent reasonableness methodology that their reasonable rents would be less than 60 percent of the applicable FMR may choose to complete a rent reasonableness study once every three years, rather than annually.

² Updating flat rents based on changes to the FMR by HUD does not constitute a significant amendment to the annual plan.

amount, that 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. Although Section 210 permits PHAs to increase flat rents by up to 35 percent annually, PHAs may consider any limitations on annual rent increases pursuant to state and local law. For example, some states have established annual rent increase limits of no more than 10 percent. Further, PHAs have discretion to phase-in rent increases 35 percent or less over a three-year period. For example, for a family that will experience a rent increase of 10 percent due to the new flat rent requirements, a PHA could choose to phase in the total rent increase over three years.

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 for which a family is currently paying the flat rent to the flat 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, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;
 - b. If the updated flat rent amount would increase a family's rental payment, PHAs must conduct a flat rent impact analysis by multiplying the existing flat rent amount by 35 percent (or a lesser amount pursuant to state/local law) and adding that product to the flat rent amount ($FR \times 35\% = X + FR$). This calculation can be done by simply multiplying the current flat rent amount by 1.35. PHAs must then compare the product of the calculation to the updated flat rent amount; and
- 2) The PHA must offer and the family may choose to pay, either the lower of the flat rents that were compared in 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 due to the FY 2014 appropriations law, the flat rent amount has increased to \$450 per month. Because the increase in the flat rent amount represents an increase of less 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:

Current Flat Rent	New Flat Rent	Impact Analysis (FRx1.35)	Income-Based Rent	New Family 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 resulting from 2014 appropriations law. 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 more than 35 percent 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.

At the next 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 is less than a 35 percent increase from the previous rental payment, the Jones family has the option to pay the 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 Flat Rent: \$500

New Flat Rent: \$700

Family Rent Increase Impact Analysis:

Year	Current Flat Rent	New Flat Rent	Impact Analysis (FR x 1.35)	Income-Based Rent	New Family Rent
1	\$500	\$700	\$675	\$800	\$675
2	\$675	\$750	\$911.25	\$800	\$750

7. CONDUCTING ANNUAL RENT OPTIONS

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. 24 CFR 960.253(e) stipulates that in order for 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.

24 CFR 960.253(e)(2) permits PHAs the flexibility to conduct reexaminations of family income once every three years instead of annually for families that choose to pay the flat rent. In years when a PHA does not conduct a full reexamination of family income, PHAs must 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 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 reexamination of family income and composition in the last three years, the PHA must complete a full reexamination 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 the findings of the PHA's rent reasonableness analysis and 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.

8. PHA PLANS AND SIGNIFICANT AMENDMENTS

All non-qualified PHAs are required by 24 CFR 903.7(d) to include a statement about policies, including flat rents, in their annual plan. Further, 24 CFR 903.7(r) provides flexibility to PHAs to define the criteria for changes to the PHA Plan that would trigger a significant amendment. HUD understands that PHAs have different definitions of what changes constitute a significant amendment to the PHA plan. HUD also recognizes that the statements about rent policies that are included in PHA plans vary significantly from one agency to the next. However, because changes to flat rents may have a significant impact on family rent payments, PHAs that must update their flat rent schedules to comply with the new flat rent requirements must undertake a significant amendment to the PHA Annual Plan. Qualified agencies that must update their flat rent schedules to comply with the new flat rent requirements must hold a public hearing regarding the flat rent changes.

To expedite the significant amendment process, HUD is providing HUD-approved Significant Amendment language (See Appendix A) that PHAs may utilize for the purpose of conducting public hearings and submitting the significant amendment to HUD to update HUD's records of flat rent policies. PHAs are not required to use the language. HUD will deem approved all significant amendments that utilize the HUD-approved language, and do not include other changes to the PHA Annual Plan. PHAs that use the language should not expect a written approval from HUD, and may enact the new flat rents within 90 days of submission of the significant amendment to HUD. PHAs that do not use the HUD-approved significant amendment language must wait for HUD approval before implementing the new flat rents. PHAs must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method as required by 24 CFR 960.253(b)(5).

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/

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

Appendix A

Flat Rent Significant Amendment

The [INSERT PHA NAME HERE] hereby amends its flat rent policies to comply with the statutory changes contained within, Public Law 113 – 76, the Fiscal Year 2014 Appropriation Act.

The [INSERT PHA NAME HERE] will set the flat rental amount for each public housing unit that complies with the requirement that all flat rents be set at no less than 80 percent of the applicable Fair Market Rent (FMR) adjusted, if necessary, to account for reasonable utilities costs. The new flat rental amount will apply to all new program admissions effective [INSERT DATE HERE]. For current program participants that pay the flat rental amount, the new flat rental amount will be offered, as well as the income-based rental amount, at the next annual rental option.

The [INSERT PHA NAME HERE] will place a cap on any increase in a family's rental payment that exceeds 35 percent, and is a result of changes to the flat rental amount as follows:

- Multiply the existing flat rental payment by 1.35 and compare that to the updated flat rental amount;
- The PHA will present two rent options to the family as follows:
 - the lower of the product of the calculation and the updated flat rental amount; and
 - the income-based rent.