



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention:

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

NOTICE PIH-2017-23 (HA)

Issued: November 15, 2017

Expires: Effective until amended, superseded, or rescinded

Cross References: 24 CFR Part 960, 24 CFR Part 903, Notice PIH 2014-12, Notices PIH 2015-13

Subject: Updates to Flat Rent Requirements

1. PURPOSE

This Notice supersedes and replaces the guidance provided in Notice PIH 2015-13 and clarifies HUD's interpretation of the statutory amendment related to flat rents. This Notice also serves as supplemental guidance to the final rule on Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs (81 FR 12354, published on March 8, 2016), codified at 24 CFR 960.253.

2. APPLICABILITY

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 and establish alternative requirements, in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA's Annual MTW Plan does not include alternative policies regarding flat rent requirements, then the policies set forth in this Notice will apply to the MTW PHA.

3. BACKGROUND

The FY 2014 Appropriations Act required PHAs to establish flat rents at no less than 80 percent of the applicable Fair Market Rent (FMR), and established rent increase phase-in

requirements to prevent family rental payments from increasing by more than 35 percent. HUD implemented these requirements through Notice PIH 2014-12. Through FAQs accompanying Notice PIH 2014-12, HUD provided flexibility to PHAs to phase-in all flat rent increases over a 3-year period, including those increases that were 35 percent or less.

The FY 2015 Appropriations Act maintained the FY 2014 rent increase phase-in requirements and amended the 2014 Act to require that flat rents be set at no less than the lower of:

1. 80 percent of the applicable FMR established under Section 8(c) of this Act; or
2. At the discretion of the Secretary, such other applicable FMR 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 FMR under Section 8(c) of this Act (such as the applicable Small Area Fair Market Rent, or SAFMR).

A PHA may apply for a flat rent amount that is lower than the two options outlined above if:

- The PHA demonstrates, through the submission of a market analysis, that those rent options are not reflective of the unit's market value; and
- HUD agrees with the PHA's market analysis determination (see Section 5 of this Notice).

In accordance with 42 U.S.C. 1437a(a)(2)(A)(ii), PHAs that established and were administering ceiling rents prior to October 1, 1999 are authorized to continue to administer ceiling rents in lieu of flat rents, provided such ceiling rents are set at the level required for flat rents as required by 24 CFR 960.253(d). Further, such PHAs must follow the requirements for calculating, adjusting, and reporting flat rents when calculating and adjusting ceiling rents. To improve transparency and accuracy of reporting, PHAs administering ceiling rents may no longer use line 10c (income-based ceiling rent) on the HUD Form-50058 to report ceiling rents for any household. Instead, PHAs must use line 10b (flat rent) to report the applicable maximum rental amount.

4. SMALLER GEOGRAPHICAL AREA FMRS

If a PHA does not believe the 80 percent FMR is reflective of its local market conditions (flat rent setting option #1), it may use a HUD-established FMR that is based on an area geographically smaller than the effective FMR published in the Federal Register to determine the minimum flat rent amount (flat rent setting option #2).

To satisfy option #2, PHAs may use the applicable 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 100 percent of the unadjusted rent to satisfy option #2, which HUD will publish annually on its website.¹ While 100 percent of the unadjusted rent will always be lower than 100 percent of the FMR, it may or may not be lower than 80 percent of the FMR. Therefore, PHAs should assess all available options when setting its flat rent rates:

1. 80 percent of the FMR; or
2. 80 percent of the SAFMR (or if a SAFMR is not available, 100 percent of the unadjusted rent).

PHAs are not permitted to establish any other smaller geographical FMRs, different from these two 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 5 of this Notice.

5. EXCEPTION FLAT RENTS

5a. When a Flat Rent Exception is Required.

HUD only requires flat rent exception requests when PHAs are setting flat rents at an amount that is lower than the lesser of the following (less utility allowances, if applicable):

1. 80 percent of the FMR, or
2. 80 percent of the SAFMR (or if a SAFMR is not available, 100 percent of the unadjusted rent).

PHAs do not need to submit exception requests to set flat rents at or above 80 percent of the FMR or SAFMR, or at or above 100 percent of the unadjusted rent.

The flat rent exception request process is for a PHA that wishes to base its flat rents on specific market conditions supported by a market analysis. PHAs do not need to submit a request to HUD in order to use the FMR, SAFMR, or unadjusted rent to set flat rents in accordance with Sections 3 and 4 of this Notice.

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 the Housing Choice Voucher (HCV) program 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.

PHAs with previously approved flat rent exception requests may submit a written request to extend their approved flat rent rates for up to 2 additional years, provided local market conditions remain unchanged (see Section 5d of this Notice).

5b. Flat Rent Exception Request Timeframes and Key Dates.

HUD updates and posts new FMRs annually. Typically, the final FMR rates for the current fiscal year are effective on or around October 1. PHAs may access FMR rates here: <https://www.huduser.gov/portal/datasets/fmr.html>

From the effective date of the current fiscal year's FMRs, PHAs have 90 days to either implement new FMR-based flat rents or submit an exception request. In a typical year, this would mean that a PHA will have until December 31 to either update its flat rents based on the new FMRs, or submit an exception request.²

In the event that a PHA submits an incomplete flat rent exception request and/or incomplete supporting market analysis, HUD will provide that PHA with two opportunities to cure deficiencies before disapproving the request.

While HUD is reviewing a PHA's flat rent exception request or any supplemental information, the PHA may continue to utilize its current flat rent schedule. PHAs must receive written HUD approval to utilize an exception flat rent prior to implementing the new exception flat rent rates.

An approved exception request will remain in effect until the end of the 90-day period commencing upon the effective date of HUD's Final Fiscal Year FMRs or the date on which a PHA updates and makes effective its flat rent schedule based on that fiscal year's FMRs, whichever comes first.

The PHA must update its flat rents to the approved flat rent exception amount after the date of HUD's approval. Thereafter, the PHA may immediately apply the exception flat rent amount to intakes and reexaminations. However, the PHA must apply the approved exception flat rent amount to all intakes and reexaminations that take effect 60 days or more after HUD's approval date.

5c. Process to Submit a New Flat Rent Exception Request.

PHAs may request an exception flat rent by sending an email to flatrentexceptionrequests@hud.gov with the following information attached:

² A PHA or other interested party may request a HUD reevaluation of its FMRs, as provided for under Section 8(c)(1)(B) of the U.S. Housing Act, as amended by the Housing Opportunity Through Modernization Act (HOTMA). HUD will review FMR reevaluation requests and supporting data, and following the reevaluation, will post revised FMRs with an accompanying Federal Register notice stating the revised FMRs are available. For areas affected by a request for an FMR reevaluation, the 90-day flat rent implementation timeframe described in Section 7 of this Notice will commence upon the effective date of the revised FMRs.

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

5d. Process to Extend a Previously Approved Flat Rent Exception Request.

If HUD approved a PHA's flat rent exception request from a previous fiscal year, the PHA may request an extension of this approval under the following circumstances:

- The market study accompanying the previously approved request is no more than 2 years old;
- Market conditions remain unchanged; and
- The PHA submits the extension request to HUD no later than 90 days after the effective date of the final FMRs published by HUD (typically December 31st of that calendar year).

PHAs may request an exception flat rent extension by sending an email 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 extension;
- The flat rent schedule to be extended; and
- The date of the previous market study.

If during the 2-year renewal period the PHA becomes aware of a change in local market conditions that would impact the market (e.g., a major employer enters or leaves the area, significant private sector redevelopment), the PHA must either:

1. Discontinue the use of the current flat rent exception and implement a flat rent that is at least equal to the lower of 80 percent of the FMR or 80 percent of the SAFMR (or if no SAFMR is available, 100 percent of the unadjusted rent), or
2. Conduct a new market analysis and submit a new flat rent exception request to HUD for approval (if the PHA selects this option, it may continue to use the current flat rent exception amounts until HUD issues its decision).

One resource for PHAs to make this market continuity determination is the U.S. Housing Market Conditions Market-at-a-Glance report. The Market-at-a-Glance for the counties and metropolitan areas are based on data from the Bureau of Labor Statistics and American Community Survey data from the U.S. Census Bureau. Some adjustments are made by HUD field economists based on regional information. The Market-at-a-Glance reports can be found here: <https://www.huduser.gov/portal/ushmc/mag.html>

5e. Required Market Analysis Content.

In order to demonstrate the need for an exception flat rent, PHAs are required to submit a market analysis that demonstrates the value of the unit. The PHA may not request an exception flat rent that is lower than the demonstrated market value of the unit.³ A market analysis must:

1. Explain the methodology used to compare the Public Housing unit to unassisted units in the area using the following factors:
 - a) Location, quality, size, unit type, age of the unit;
 - b) Amenities, housing services, maintenance; and
 - c) Utilities the PHA and/or landlord (for comparable units in the market study) will pay under the applicable lease.
2. Provide a corresponding key explaining the calculations used for determining the valuation of each factor.

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. To the extent possible, rent valuation should be based on rents paid for similar units in the same general location that are similar in terms of the overall quality of housing services provided. Any procedures or documentation used should reflect this approach.

5f. Disapproved Flat Rent Exception Requests.

After HUD receives and reviews a flat rent exception request, HUD will respond with the results of its review and provide PHAs two opportunities to cure deficiencies or provide additional information. A PHA must respond in writing no later than 30 days after receiving HUD's notification of the insufficient submission. The response should include any new information the PHA believes is necessary to supplement the original submission. While awaiting the results of HUD's review of the additional information, the PHA may continue to utilize its current flat rent schedule.

If the PHA cannot provide sufficient information to justify the exception after two requests for additional information, HUD will deny the flat rent exception request. If the PHA's exception request is denied, the PHA must immediately revise its flat rent rates using an applicable FMR product (per Section 3 and 4 of this Notice) and the updated flat rent rates must be applied to any intake or reexamination that takes effect 60 days after the denial date.

6. FMRs AND UTILITY PAYMENTS

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

³ For example, if the market analysis determines that the value of the PHA unit is \$500, then the flat rent exception request for that unit should be set at \$500 (not 80 percent of \$500).

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 that are the family's responsibility. 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.

To address this issue when establishing flat rents, PHAs must consider who is responsible for direct utility payments to the utility company, and provide for a utility allowance as necessary. Such utility allowances must be established consistent with the requirements of 24 CFR 960.253(b)(4) and 24 CFR 965, Subpart E.

7. 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 the effective date of new FMRs or SAFMRs published by HUD, the PHA must:

1. Compare the current flat rent amount to the applicable FMR and SAFMR/unadjusted rent. If the PHA is in compliance with this the law, no further steps are necessary:
 - a) If the flat rent is at least equal to the lower of:
 - a. 80 percent of the FMR, or
 - b. 80 percent of the SAFMR (or if no SAFMR available, 100 percent of unadjusted rent).
 - b) If the current flat rent is less than the lower of option a or option b above, the PHA must set flat rents at no less than 80 percent of the lower of the 80 percent FMR or 80 percent SAFMR/100 percent unadjusted rent, subject to the utilities adjustment in Section 6 of this Notice, or the PHA may request an exception flat rent pursuant to the requirements of Section 5 of this Notice;
2. Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP) as necessary;
3. Permit the family to choose between the flat rent amount and the income-based rent for all new admissions; and
4. Offer the updated flat rent amount at the next annual rent option for families that are current Public Housing residents, and permit the family to choose between the flat rent amount and the income-based rent, subject to the phase-in requirements in Section 8 of this Notice.

For those PHAs with an approved flat rent exception request, the PHA must update its flat rents to the approved flat rent exception amount immediately after approval for all intake and reexamination activities. The PHA may apply the approved flat rent exception amount immediately to intakes and reexaminations, and must apply it to any intake or reexamination that takes effect 60 days or more after the approval date.

8. FLAT RENT INCREASE PHASE-IN REQUIREMENTS

If an existing flat rent tenant's rental payment prior to any applicable adjustments for utilities payments increases 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 does not experience an increase in their rental payment of more than 35 percent.

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

1. 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;
2. 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 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: \$675

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

9. ANNUAL REVIEW OF RENT OPTIONS

HUD regulations at 24 CFR 960.253(a) require PHAs to annually give families the option to choose between paying the flat rent or the income-based rent, and stipulate 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 reexaminations 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 reexaminations of family income at least once every 3 years, not annually. In years when a PHA does not conduct a full reexamination 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 review rent options annually with families, 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 3 years, and for which the PHA has not conducted a re-examination of family income and composition in the last 3 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 3-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.

10. FLAT RENT REPORTING

PHAs are required to report the amount of a flat rent and any ceiling rent to be charged to a household on line 10b of the form HUD-50058, as outlined in Section 3 of this Notice. As per the requirements of Section 6 of this Notice, PHAs must consider whether households are responsible for any utility expenses for a unit when establishing the flat rent for a unit. In the case that a household is responsible for paying for utilities, PHAs should report the amount of such utility allowance on line 10e of the form HUD-50058.

11. FLAT RENTS AND LOW-INCOME HOUSING TAX CREDIT PROPERTIES

For Low-Income Housing Tax Credit (LIHTC) Public Housing units, it is possible that the minimum flat rent amount may exceed the LIHTC maximum rent. In other cases, the HUD minimum flat rent may be less than the LIHTC maximum rent. In the event that these amounts conflict, PHAs should set flat rents so as not to exceed the LIHTC maximum rent.

Example 1: LIHTC Maximum Rent is Lower than 80 Percent of HUD's FMR

- 80 percent of HUD's FMR for a one-bedroom unit is \$450
- The LIHTC maximum rent is \$400
- The PHA should set its LIHTC Public Housing flat rents at \$400

Example 2: 80 Percent of HUD's FMR is Lower than LIHTC Maximum Rent

- 80 percent of HUD's FMR for a one-bedroom unit is \$400
- The LIHTC maximum rent is \$450
- The PHA should set its LIHTC Public Housing flat rents at no less than \$400 and no greater than \$450

Example 3: Exception Flat Rent is Lower than LIHTC Maximum Rent and 80 Percent of HUD's FMR

- 80 percent of HUD's FMR for a one-bedroom unit is \$400
- The LIHTC maximum rent is \$450
- The PHA has a HUD-approved flat rent exception request of \$375
- The PHA should set its LIHTC Public Housing flat rents at \$375

12. CONTACT INFORMATION

If you have questions regarding this Notice, please contact the Public Housing Management and Occupancy Division Flat Rent Review Team at:
flatrentexceptionrequests@hud.gov.

13. 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/

Dominique Blom
General Deputy Assistant Secretary for
Public and Indian Housing