

## Chapter 11

### OWNER RENTS, RENT REASONABLENESS, AND PAYMENT STANDARDS

[24 CFR 982.505, 982.503, 982.504, 982.505]

#### **INTRODUCTION**

The policies in this chapter reflect the amendments to the HUD regulations, which were implemented by the Quality Housing and Work Responsibility Act of 1998 for the Section 8 Tenant-Based Assistance Program. These amendments became effective on October 1, 1999, which is referred to as the “merger date”. These amendments complete the merging of the Section 8 Certificate and Voucher Programs into one program, called the Housing Choice Voucher Program.

In accordance with the regulations, for those Section 8 participant families where there is a HAP Contract in effect entered into prior to October 1, 1999, the PHA will continue to uphold the rent calculation methods of the pre-merger Regular Certificate, OFTO, and Voucher tenancies until the 2nd regular reexamination of family income and composition following the “merger date”. However, all new leases, moves and new admissions taking effect on or after October 1, 1999 will be subject to the regulations of the new Housing Choice Voucher Program.

The PHA will determine rent reasonableness in accordance with 24 CFR 982.507(a). It is the PHA's responsibility to ensure that the rents charged by owners are reasonable based upon unassisted comparables in the rental market, using the criteria specified in 24 CFR 982.507(b).

This Chapter explains the PHA's procedures for determination of rent-reasonableness, payments to owners, adjustments to the Payment Standards, and rent adjustments.

#### **A. RENT TO OWNER IN THE HOUSING CHOICE VOUCHER PROGRAM**

The Rent to Owner is limited only by rent reasonableness. The PHA must demonstrate that the Rent to Owner is reasonable in comparison to rent for other comparable unassisted units.

The only other limitation on rent to owner is the maximum rent standard at initial occupancy (24 CFR 982.508). At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, whether it is a new admission or a move to a different unit, the family share may not exceed 40 percent of the family's monthly adjusted income if gross rent exceeds the payment standard.

During the initial term of the lease, the owner may not raise the rent.

#### **B. MAKING PAYMENTS TO OWNERS [24 CFR 982.451]**

Once the HAP Contract is executed, the PHA begins processing payments to the landlord. A HAP Register will be used as a basis for monitoring the accuracy and timeliness of payments.

Changes are made automatically to the HAP Register for the following month. Checks are disbursed by Finance Division to the owner each month. Checks will only be disbursed by the first day of the month. Checks that are not received will not be replaced until a written request has been received from the payee and a stop payment has been put on the check.

### **Excess Payments**

The total of rent paid by the tenant plus the PHA housing assistance payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the PHA.

Owners who do not return excess payments will be subject to penalties as outlined in the "Owner or Family Debts to the PHA" chapter of this Administrative Plan.

### **Late Payments to Owners**

It is a local business practice in Montgomery County for property managers and owners to charge tenants a reasonable late fee for rents not received by the owner or property manager by the due date, notwithstanding any grace period which is typically 10 days past the first of the month.

Therefore, in keeping with generally accepted practices in the local housing market, the PHA must make housing assistance payments to the owner promptly and in accordance with the HAP contract.

The PHA will pay, upon written request of the owner, a five percent late fee to the owner for housing assistance payments that are not mailed to the owner by the first day of the month.

Proof of "Mailed to" date will be the date the HAP Register was run

The PHA will not be obligated to pay any late payment penalty if HUD determines that late payment is due to factors beyond the PHA's control, such as a delay in the receipt of program funds from HUD. The PHA will use administrative fee income or the administrative fee reserve as its only source for late payment penalty.

The PHA will not use any program funds for the payment of late fee penalties to the owner.

## **C. RENT REASONABLENESS DETERMINATIONS [24 CFR 982.507]**

HOC must ensure that rents charged by owners to Housing Choice Voucher clients are reasonable. This determination involves two comparisons. First, HOC must compare rent for the unit to rent for similar unassisted units in the marketplace. Second, HOC must compare the rent to rent for similar units on the premises. (982.507)

HOC must determine rent reasonableness in all of the following four instances:

- Before entering a HAP contract. The PHA must not execute a HAP contract until it has documented that the rent charged is reasonable.
- Before any increase in the rent to owner. Before approving a rent increase, the PHA must determine and document whether the proposed rent is reasonable compared to similar units in the marketplace and not higher than those paid by unassisted tenants.
- If there is a five percent decrease in the published FMR (for the unit size rented by the family) in effect 60 days before the contract anniversary date as compared with the FMR in effect one year before the contract anniversary date. This provision is designed to ensure that when the market goes down by a significant amount the PHA must reexamine rent reasonableness.
- If directed by HUD. If HUD has reason to question the PHA's system or accuracy of the determinations, it may require the PHA to conduct rent reasonableness reviews on all or a portion of its units.

In determining comparability, the PHA must consider the following nine elements:

1. Location
2. Quality
3. Size
4. Unit type
5. Age of unit
6. Amenities
7. Housing services
8. Maintenance
9. Utilities the owner must provide under the lease

HOC will obtain data for other unassisted units through the information provided by a third-party contractor. If this is unavailable, HOC will access the data through MRIS (Metropolitan Regional Information System), internet real estate searches, newspapers, realtors, professional associations, inquiries with owners, market surveys, and other available sources.

In general, the market areas for rent reasonableness are neighborhoods. Subject units within the neighborhood will be compared to similar units within the same area.

The owner certifies that the rent to owner is not more than the rent charged by the owner for comparable unassisted units on the premises. This certification is stated as a requirement in the contract and occurs by acceptance of each housing assistance payment.

The PHA will document all rent reasonableness decisions and the basis for the decision. The documentation will identify who conducted the rent reasonableness determination and when.

The PHA will complete a sample quality control review of the rent reasonableness determinations.

#### **D. PAYMENT STANDARDS FOR THE VOUCHER PROGRAM** [24 CFR 982.503]

The Payment Standard is used to calculate the housing assistance payment (HAP) for a family. In accordance with HUD regulations, and at HOC's discretion, the Voucher Payment Standard (VPS) amount is set by HOC between 90 percent and 110 percent of the HUD published Small Area Fair Market Rents (SAFMR). This is considered the basic range. HOC reviews the appropriateness of the VPS annually when the SAFMRs are published. In determining whether a change is needed, HOC will ensure that the VPS is always within the range of 90 percent to 110 percent of the new SAFMR, unless an exception payment standard has been approved by HUD.

HOC will establish a single Voucher Payment Standard amount for each SAFMR zip code area in the Agency's jurisdiction, or in any groupings of SAFMR zip code areas as may be determined by HOC. For each SAFMR zip code area, HOC will establish VPS amounts for each "unit size". HOC may provide a higher VPS within the Agency's jurisdiction if needed to expand housing opportunities outside areas of minority and/or poverty concentration, as long as the higher VPS is within the 90-110 percent of SAFMR range.

In situations where the adoption of new Voucher Payment Standards (VPS) based on HUD's Small Area Fair Market Rents (SAFMR) will cause a decrease in the VPS amount during the existing Housing Assistance Payments (HAP) contract term, HOC will take the following action:

HOC will change to the lower VPS based on the SAFMRs to calculate the family's Housing Assistance Payments (HAP). This change will begin at the effective date of the family's second regular reexamination following the effective date of the decrease in the VPS.

HOC may approve a higher Voucher Payment Standard within the basic range, if required as a reasonable accommodation for a family that includes a person with disabilities.

#### **E. ADJUSTMENTS TO PAYMENT STANDARDS** [24 CFR 982.503]

Payment Standards may be adjusted, within HUD regulatory limitations, to increase Housing Assistance Payments in order to keep families' rents affordable. The PHA will not raise Payment Standards solely to make "high end" units available to Voucher holders. The PHA may use some or all of the measures below in making its determination whether an adjustment should be made to the Payment Standards.

##### **Assisted Families' Rent Burdens**

The PHA will review its voucher payment standard amounts at least annually to determine whether more than 40 percent of families in a particular unit size are paying more than 30% of their annual adjusted income for rent.

If it is determined that particular unit sizes in the PHA's jurisdiction have payment standard amounts that are creating rent burdens for families, the PHA may modify its payment standards for those particular unit sizes.

The PHA may increase its payment standard within the basic range for those particular unit sizes to help reduce the percentage of annual income that participant families in the PHA's jurisdiction are paying.

The PHA may establish a separate voucher payment standard, within the basic range, for designated parts its jurisdiction if it determines that a higher payment standard is needed in these designated areas to provide families with quality housing choices and to give families an opportunity to move outside areas of high poverty and low income.

### **Quality of Units Selected**

The PHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that Payment Standard increases are only made when needed to reach the mid-range of the market.

### **PHA Decision Point**

The PHA will review the average percent of income that families on the program are paying for rent. If more than 40 percent of families are paying more than 30% of monthly adjusted income for a particular unit size, the PHA will determine whether families are renting units larger than their voucher size, and whether families are renting units which exceed HUD's HQS and any additional standards added by the PHA in this Administrative Plan.

If families are paying more than 30% of their income for rent due to the selection of larger bedroom size units or luxury units, the PHA may decline to increase the payment standard. If these are not the primary factors for families paying higher rents, the PHA will continue increasing the payment standard.

### **Rent to Owner Increases**

The PHA may review a sample of the units to determine how often owners are increasing rents and the average percent of increase by bedroom size.

### **Time to Locate Housing**

The PHA may consider the average time period for families to lease up under the Voucher program. If more than 25 percent of Voucher holders are unable to locate suitable housing within the term of the voucher and the PHA determines that this is due to 10 percent of rents in the jurisdiction being unaffordable for families even with the presence of a voucher, the Payment Standard may be adjusted.

## **Lowering of the Payment Standard**

Lowering of the FMR may require an adjustment of the Payment Standard. Additionally, statistical analysis may reveal that the Payment Standard should be lowered. In any case, the Payment Standard will not be set below 90 percent of the FMR without authorization from HUD.

## **Financial Feasibility**

Before increasing the Payment Standard, the PHA may review the budget to determine the impact projected subsidy increases would have on funding available for the program and number of families served.

For this purpose, the PHA will compare the number of families who could be served under a higher Payment Standard with the number assisted under current Payment Standards.

## **File Documentation**

A file will be retained by the PHA for at least three years to document the analysis and findings to justify whether or not the Payment Standard was changed.

## **F. EXCEPTION PAYMENT STANDARDS**

If the dwelling unit is located in an exception area, the PHA must use the appropriate payment standard amount established by the PHA for the exception area in accordance with regulation 24 CFR 982.503.

## **G. OWNER PAYMENT IN THE PREMERGER REGULAR CERTIFICATE PROGRAM** [24 CFR 982.502(d)]

The HUD regulations relating to owner rent adjustments applicable to the Regular Tenancy Program will be used until the HAP Contract is no longer effective which will be no later than the second regular reexamination of the family after the merger date.

The PHA will notify owners of their right to request a rent adjustment.

Owners must request the rent increase in writing. Any increase will be effective the later of (1) the anniversary date of the Contract, or (2) at least 60 days after the owner's request is received.

The approval or disapproval decision regarding the adjustment will be based on HUD-required calculations and a rent reasonableness determination. The adjustment may be an increase or a decrease.

The notice of rent change does not affect the automatic renewal of the lease and does not require a new lease or contract or even an executed amendment.

For terminations of Pre-merger Regular Certificate HAPS, see "Contract Terminations" chapter.