



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

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

**Notice** PIH 2010- 18 (HA)

Issued: May 10, 2010

Expires: May 31, 2011

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Cross References: Notice PIH 2009-51

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**Subject:** Revision to HUD Notice PIH 2009-51 PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program – Comparable Unassisted Units in the Premises

- 1. Purpose.** This Notice revises and supersedes certain guidance put forth in HUD Notice PIH 2009-51, regarding rent reasonableness requirements in the Housing Choice Voucher (HCV) program.

This Notice expressly provides that the definition of “assisted unit” includes certain units where the rent and rent increases are restricted by law or court action. In addition, this Notice supersedes HUD Notice PIH 2009-51 with regard to rent reasonableness determinations for units in properties undergoing Housing Conversion Actions.<sup>1</sup> 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 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. Consequently, those units are not taken into consideration for purposes of rent reasonableness determinations.

- 2. Background.** HUD 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

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<sup>1</sup> 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.

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.

assisted unit. HUD 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.

HUD has revisited the restriction regarding Housing Conversion Actions as the result of concerns raised by a number of HUD stakeholder groups. The non-voucher families in a Housing Conversion Action are often long-time tenants, many of whom are elderly, who have been paying below market rents prior to the Housing Conversion Action.

In addition, HUD is aware of certain jurisdictions where laws prohibit the owner from increasing the rent of non-voucher tenants following prepayments and opt-outs, and that there are situations where owners may also be prohibited from increasing the rents for certain non-voucher tenants as the result of a court order. Units where rents and rent increases are restricted by law or court order (assuming those same restrictions do not also apply to voucher families) are also “assisted” for purposes of rent reasonableness determinations.

- 3. Assisted Units on the Premises.** As noted in HUD Notice PIH 2009-51, 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 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 property must be considered to establish if an HVC rent to owner is reasonable.

However, 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 this Notice 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. **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.

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Sandra B. Henriquez, Assistant Secretary for  
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