



# Poplar Bluff Housing Authority, Poplar Bluff, MO

## Public Housing Program



**To:** Daniel W. Sherrod, Director, Office of Public Housing, 7EPH  
*//signed//*  
**From:** Ronald J. Hosking, Regional Inspector General for Audit, 7AGA  
**Subject:** The Poplar Bluff Housing Authority Improperly Phased In Flat Rents

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the Poplar Bluff Housing Authority.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 913-551-5870.



**Audit Report Number: 2016-KC-1002**

**Date: March 9, 2016**

**The Poplar Bluff Housing Authority Improperly Phased In Flat Rents**

# Highlights

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## What We Audited and Why

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We audited the Poplar Bluff Housing Authority because information obtained from the U.S. Department of Housing and Urban Development's (HUD) Public and Indian Housing Information Center indicated that the Authority appeared to have flat rents set at a rate below 80 percent of the fair market rent in that area. Our objective was to determine whether the Authority complied with HUD's flat rent requirements.

## What We Found

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The Authority did not properly implement HUD's flat rent requirements. It improperly phased in flat rent increases for 30 newly admitted tenants, 6 tenants converting to flat rent from an income-based rent, and 7 additional tenants with recertifications since September 2015. As a result, it undercharged flat rent tenants by \$11,853 from October 1, 2014, to December 31, 2015, and it will undercharge these tenants by \$19,679 during the next year if it does not correct this problem. It will also collect increased operating subsidies from HUD in the future.

## What We Recommend

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We recommend that HUD's St. Louis Office of Public Housing (1) monitor the Authority to ensure that it properly implements flat rent requirements, thereby putting \$19,679 to better use over the next year and (2) add the \$11,853 of undercharged flat tenant rent to the appropriate operating subsidy calculations to ensure that it does not overpay operating subsidies in the future.

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# Background and Objective

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The Poplar Bluff Housing Authority is governed by a five-member board of commissioners appointed by the mayor of Poplar Bluff, MO, and approved by the city council. The Authority's administration building and records are located at 302 North E Street, Poplar Bluff, MO. The Authority operates a 575-unit low-rent public housing program, consisting of 289 elderly units (project number MO013000002) and 286 family units (project number MO013000001). The U.S. Department of Housing and Urban Development (HUD) provides funding based on formula distribution to public housing agencies to cover operating and management costs. Funding eligibility is offset by the amount of expected tenant rental revenue.

## Operating subsidy funding - Poplar Bluff Housing Authority

Project number	2014	2015
MO013000001	\$839,481	\$1,011,528
MO013000002	\$461,363	550,302
<b>Totals</b>	<b>\$1,300,844</b>	<b>\$1,561,830</b>

Once each year, public housing agencies must offer families the choice between a flat rent or an income-based rent. Flat rents are intended to reflect market values. When a family's income-based rent is above market value, the family may elect to pay a flat rent instead. According to HUD guidance, higher flat rent levels will ensure that families with higher income pay an appropriate market-based rent. Lower rents are a disincentive for tenants to become self-sufficient and move into unassisted housing, which helps to allow public housing resources to go to those most in need of assistance. HUD encourages public housing agencies to provide a balance between the important goals of supporting the sustained self-sufficiency of families with the increasing demand for affordable housing units among families on their waiting lists.

On May 19, 2014, HUD's Office of Public and Indian Housing (PIH) issued Notice PIH 2014-12(HA). This notice introduced the requirement that flat rents be at least equal to 80 percent of the applicable fair market rent. Fair market rents are gross rent estimates that cover the shelter rent plus the cost of all necessary utilities. The notice also provided the discretion to public housing agencies to phase in rent increases of 35 percent or less over a 3-year period. HUD published questions and answers under this notice clarifying that any flat rent increase phase-ins should be on a case-by-case basis for existing flat rent tenants.

On September 8, 2015, HUD issued Notice PIH 2015-13(HA). This notice continued the provision that flat rents must be at least equal to 80 percent of the applicable fair market rent but removed the ability for public housing agencies to phase in flat rent increases of 35 percent or less over a 3-year period.

Our objective was to determine whether the Authority complied with HUD's flat rent requirements.

# Results of Audit

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## **Finding: The Authority Improperly Phased In Flat Rents**

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The Authority did not properly implement HUD’s flat rent requirements. It misunderstood the provisions for phasing in flat rent in Notices PIH 2014-12(HA) and PIH 2015-13(HA). As a result, it undercharged flat rent tenants by \$11,853 from October 1, 2014, to December 31, 2015, it will undercharge these tenants by \$19,679 during the next year if it does not correct this problem, and it will collect increased operating subsidies from HUD in the future.

### **Flat Rent Increases Improperly Phased In**

The Authority did not properly implement HUD’s flat rent requirements. Of the Authority’s 101 total flat rent tenants, it improperly phased in flat rent increases for 30 newly admitted tenants, 6 tenants converting to flat rent from an income-based rent, and 7 additional tenants with reexaminations since September 2015.

### Improperly Phased-In Rent Increases for New Flat Rent Tenants

The Authority improperly phased in flat rent increases for 30 newly admitted tenants and 6 tenants converting to flat rent from an income-based rent. Notice PIH 2014-12(HA) required public housing agencies to set flat rent at no less than 80 percent of the local fair market rent. It also allowed agencies the discretion to phase in flat rent increases over a 3-year period on a case-by-case basis for existing flat rent tenants whose rental payments would be increased by 35 percent or less. The Authority updated its flat rent schedules by globally phasing in the increase over a 3-year period as shown in figures 1 and 2.

**Figure 1: Poplar Bluff Housing Authority flat rent schedule for family units**

Unit	Prior flat rent	Year 1 phase-in 10/01/2014	Year 2 phase-in 10/01/2015	Year 3 phase-in 10/01/2016
1 bedroom project 1	\$282	\$274		
1 bedroom project 5		\$272		
2 bedroom project 1	\$339	\$352	\$365	\$378
2 bedroom project 5		\$353	\$367	\$379
3 bedroom project 1	\$424	\$443	\$462	\$481
3 bedroom project 5		\$443	\$462	\$480
3 bedroom project 7		\$444	\$464	\$482
4 bedroom project 1	\$500	\$505	\$510	\$515
4 bedroom project 5		\$504	\$508	\$511

**Figure 2: Poplar Bluff Housing Authority flat rent schedule for elderly units**

Unit	Prior flat rent	Year 1 phase-in 10/01/2014	Year 2 phase-in 10/01/2015	Year 3 phase-in 10/01/2016
1 bedroom	\$282	\$310	\$338	\$366
2 bedroom	\$339	\$388	\$437	\$484
3 bedroom	\$424	\$484	\$544	\$602
4 bedroom	\$500	\$550	\$600	\$650

HUD published questions and answers related to Notice PIH 2014-12(HA) further clarifying that public housing agencies were permitted to phase in flat rent increases only on a case-by-case basis for families that were paying flat rent at the time the new flat rents were implemented. New admission tenants and tenants switching to flat rent from an income-based rent were required to pay the full flat rent amount and were not allowed to pay the lower phased-in rent. Since the Authority phased in applicable flat rent increases for its flat rent schedules instead of phasing in increases on a case-by-case basis, new flat rent tenants were offered a phased-in flat rent amount based on when they began paying flat rent. The Authority improperly allowed 30 new admission tenants and 6 tenants switching from an income-based rent to flat rent since October 1, 2014, to pay the lower phased-in flat rents.

Improperly Phased-In Flat Rent Increases for Annual Recertification Tenants

The Authority had improperly phased in flat rent increases for seven additional tenants since September 8, 2015. Notice PIH 2015-13(HA) removed the option for public housing agencies to phase in flat rent increases of 35 percent or less. The notice further specified that for any tenants paying a phased-in flat rent amount under the previous notice, public housing agencies did not need to take immediate action to increase rent but were required to offer the full flat rent amount at the tenant’s next annual rent option. The Authority updated its flat rent schedule under the notice to remove the phase-in periods, but its updated schedule was not set to go into effect until April 1, 2016. The Authority improperly allowed seven tenants that had annually recertified since HUD issued the notice on September 8, 2015, to continue paying the phased-in flat rent amounts identified in figures 1 and 2.

**Requirements Misunderstood**

The Authority misunderstood the provisions in the notices for phasing in flat rent increases. It was not aware of the questions and answers for Notice PIH 2014-12(HA) and thought it needed to wait for HUD to publish updated fair market rents before implementing Notice PIH 2015-13(HA).

The Authority stated that it was not clear from Notice PIH 2014-12(HA) that phased-in flat rent increases should be applied only on a case-by-case basis and that phased-in rent increases were not available for new admissions or tenants switching to flat rent from an income-based rent. The Authority was unaware of the questions and answers HUD published for Notice PIH 2014-12(HA), which clarified the requirement.

The Authority did not realize from Notice PIH 2015-13(HA) that it needed to stop using phased-in flat rent increases for annual recertifications completed since HUD issued the notice on

September 8, 2015. The Authority thought that it needed to wait for HUD to publish updated fair market rents before updating its flat rents. Because the Authority improperly applied the previous phase-ins across its entire schedule rather than on a case-by-case basis, it continued to offer phased-in flat rents to tenants annually recertifying while it was preparing a new schedule based on 2016 fair market rents.

### **Flat Rent Tenants Undercharged**

The Authority undercharged flat rent tenants and will collect increased operating subsidies from HUD in the future.

The Authority undercharged flat rent tenants by \$11,853 from October 1, 2014, to December 31, 2015. We calculated the undercharged rent by comparing the difference between the actual amount the Authority charged and the amount the Authority should have charged over our review period. It will undercharge flat rent tenants by \$19,679 during the next year if it does not correct this problem. Tenants were admitted, converted to flat rent, or annually recertified at different times during this period. Therefore, we calculated the future amount of undercharged rent by projecting the amount undercharged during the most recent month of our review period, December 2015 (\$1,640), over a 12-month period.

The Authority will collect increased operating subsidies from HUD in the future. HUD's operating subsidy calculation is based on rental income received from tenants during prior years. The undercharged flat rent during our review period will cause HUD to calculate the Authority's calendar years 2017 and 2018 operating subsidies based on lower rental income amounts than if the Authority had properly set its flat rents. HUD's operating subsidies will be increased to make up for lower rental income amounts. We are not able to calculate the actual amount that subsidy will be overpaid because some factors of the calendar year 2017 and 2018 calculations are not yet determined, however, if HUD adds the amount of undercharged tenant rent to the rental income received portion of the applicable operating subsidy calculations, it will ensure it does not overpay operating subsidies in the future.

### **Conclusion**

The Authority undercharged flat rent tenants by \$11,853, it will undercharge these tenants by \$19,679 during the next year if it does not correct this problem, and it will collect increased operating subsidies from HUD in the future because it misunderstood the provisions for phasing in flat rent outlined in Notices PIH 2014-12(HA) and PIH 2015-13(HA).

### **Recommendations**

We recommend that the Director of HUD's St. Louis Office of Public Housing

- 1A. Monitor the Authority to ensure that it properly implements flat rent requirements, thereby putting \$19,679 to better use over the next year.
- 1B. Include the \$11,853 in undercharged flat tenant rent to the appropriate operating subsidy calculations to ensure that it does not overpay operating subsidies in the future.

# Scope and Methodology

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Our audit period generally covered October 1, 2014, through December 31, 2015. We performed our audit work from December 2015 through February 2016. We conducted onsite work at the Authority's administrative offices located at 302 North E Street, Poplar Bluff, MO.

To accomplish our objective, we

- Reviewed applicable HUD requirements and Authority policies;
- Reviewed the audited financial statements;
- Reviewed board minutes;
- Reviewed physical records maintained by the Authority, including flat rent schedules, utility allowance schedules, and relevant documents in the tenants' files;
- Interviewed Authority employees; and
- Interviewed HUD staff responsible for overseeing the Authority.

We identified a total of 101 flat rent tenants. The Authority phased in increased flat rents for its entire flat rent schedule instead of on a case-by-case basis, so new admissions and tenants switching to flat rent were improperly allowed to pay lower rents. Using HUD's Public and Indian Housing Information Center data, we determined that there were 30 tenants that were new admissions and 6 tenants that had switched from an income-based rent to flat rent since the Authority implemented rent updates under Notice 2014-12(HA) on October 1, 2014. In addition, the Authority did not plan to implement rent updates from Notice PIH 2015-13(HA) until April 1, 2016, so any annual recertifications since the notice was issued on September 8, 2015, were improperly allowed to pay phased-in flat rent increases. We identified 12 tenants that had annual recertifications since September 8, 2015. We conducted a 100 percent review of these 48 tenants.

We did not use a statistical sample to select tenant files for review because we were looking for specific examples of noncompliance and taking a representative statistical sample from the entire universe of flat rent tenants would have included items that we believed to have a lower risk of noncompliance. The results of our review sample apply only to the items reviewed and cannot be projected to the entire universe.

We estimated the amount the Authority will undercharge tenants over the next 12-month period. The amount that we project will be undercharged is an illustration of the impact of the error. The actual amount may be less, but because we were not able to verify any future adjustments the Authority may make to a tenant's rent or the continued tenancy of any given tenant, we used the most recent month of underpayment to project the impact over the next 12-month period.

We used computer-processed data from HUD's Public and Indian Housing Information Center for sample selection. We verified instances of noncompliance using supporting documentation in the sampled tenant files. We determined that the data were sufficiently reliable for the purposes of this report.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

# Internal Controls

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Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

## **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objective:

- Policies and procedures that have been implemented to reasonably ensure that public housing flat rents comply with applicable laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## **Significant Deficiency**

Based on our review, we believe that the following item is a significant deficiency:

- The Authority did not have adequate controls in place to ensure that flat rents complied with applicable laws and regulations.

# Appendixes

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## Appendix A

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**Schedule of Funds To Be Put to Better Use**

<b>Recommendation number</b>	<b>Funds to be put to better use 1/</b>
1A	\$19,679
1B	\$11,853
<b>Totals</b>	<b>\$31,532</b>

- 1/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this case, if the Authority properly implements flat rent requirements, it will ensure that it puts \$19,679 to better use over the next year, and if HUD adds \$11,853 in underpaid rent to the appropriate operating subsidy calculations, it will ensure that it does not overpay operating subsidies in the future.

## Appendix B

### Auditee Comments and OIG's Evaluation

#### Ref to OIG Evaluation

#### Auditee Comments

#### Comment 1



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March 3, 2016

Mr. Ronald J. Hosking  
Regional Inspector General for Audit  
400 State Avenue, Suite 501  
Kansas City, KS 66101

In light of the HUD regulation brought to our attention by the Inspector General Auditor, we concur with the findings. Since then, we have implemented the 2016 flat rate rents and as indicated in the regulations with no phase in period. Enclosed are our Flat Rent schedules for family and elderly units

  
Kenneth R. King  
Executive Director  
Poplar Bluff Housing Authority  
302 North E Street  
P.O. Box 1009  
Poplar Bluff, MO 63902-1009

**Poplar Bluff Housing Authority**

**Flat Rents Family**

**Effective 04/01/2016**

	<b>Current</b>	<b>4/1/2016</b>
<b>1 Bedroom Proj 01</b>	<b>\$ 274.00</b>	<b>\$ 272.00</b>
<b>1 Bedroom Proj 05</b>	<b>\$ 272.00</b>	<b>\$ 269.00</b>
<b>2 Bedroom Proj 01</b>	<b>\$ 365.00</b>	<b>\$ 387.00</b>
<b>2 Bedroom Proj 05</b>	<b>\$ 367.00</b>	<b>\$ 388.00</b>
<b>3 Bedroom Proj 01</b>	<b>\$ 462.00</b>	<b>\$ 496.00</b>
<b>3 Bedroom Proj 05</b>	<b>\$ 462.00</b>	<b>\$ 493.00</b>
<b>3 Bedroom Proj 07</b>	<b>\$ 464.00</b>	<b>\$ 494.00</b>
<b>4 Bedroom Proj 01</b>	<b>\$ 510.00</b>	<b>\$ 612.00</b>
<b>4 Bedroom Proj 05</b>	<b>\$ 508.00</b>	<b>\$ 609.00</b>

**Poplar Bluff Housing Authority**

**Flat Rents Elderly**

**Effective 04/01/2016**

	<b>Current</b>	<b>4/1/2016</b>
<b>1 Bedroom</b>	<b>\$ 338.00</b>	<b>\$ 381.00</b>
<b>2 Bedroom</b>	<b>\$ 437.00</b>	<b>\$ 511.00</b>
<b>3 Bedroom</b>	<b>\$ 544.00</b>	<b>\$ 634.00</b>

## OIG Evaluation of Auditee Comments

Comment 1 The Authority concurred with our finding and revised its flat rent schedules. While we recommend the St. Louis, MO HUD Office conduct monitoring to ensure the Authority properly implements flat rent requirements, the updated flat rent schedules complied with HUD requirements. Proper implementation of this schedule will help to ensure that the Authority does not undercharge flat rent tenants in the future.

We would also like to thank the Authority for its cooperation during the course of our review and its willingness to make changes to address these deficiencies and improve the future of its program.

## Appendix C

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### Criteria

#### HUD Public and Indian Housing Notice 2014-12(HA)

#### **2. APPLICABILITY, BACKGROUND, AND HUD INTERPRETATION OF NEW STATUTORY REQUIREMENTS**

Currently, PHAs [public housing agencies] 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 [HUD] 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.

#### **6. FLAT RENT INCREASE PHASE-IN REQUIREMENTS**

Section 210 of the FY [fiscal year] 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 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.

#### **Notice PIH 2014-12(HA) Question and Answers**

**9. Q: Notice PIH 2014-12 requires PHAs to phase in flat rent changes that will increase a family's existing rental payment by more than 35%. Does this mean that all families – program participants and new admissions – that chose to pay flat rent will pay the same flat rent?**

A: No. The law requires that PHAs establish flat rents at no less than 80% of the applicable FMR. New families that are admitted to the program after a PHA has adopted the new flat rent do not qualify for the phased in flat rent amounts. Therefore, all new families that are admitted to the program after a PHA has implemented the new requirements must be offered the flat rent set at no less than 80% of the applicable FMR.

The phased-in requirement is available for families that are currently paying the flat rent. For those families, PHAs must assess, on a case by case basis, whether the flat rent increase would increase their current rental payment by more than 35%. Specifically, for a family that is currently paying a flat rent that is significantly below 80% of FMR, the PHA must cap the flat rent increase at 35% annually, and the total flat rent increase must be phased in.

**10. Q: Over what time period must PHAs phase in flat rents for families that will experience a rental payment increase by more than 35%?**

A: As described in question 9 above, the law requires PHAs to phase in flat rent increases at no more than 35% for families that were paying the flat rent immediately prior to the implementation of the new flat rent provisions. Through Notice PIH 2014-12, HUD required 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 amount, then 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. HUD made a policy determination to provide PHAs a three-year period to align all flat rents at no less than 80% FMR. If an existing tenant's rental payment would be increased by less than 35%, the PHA may phase-in the flat rent increase by any percentage, provided that the flat rent reaches no less than 80% FMR by the third year. Specifically, a PHA may choose to phase in flat rent increases at 35% or less, provided that the PHA reaches 80% FMR within the three-year period.

A PHA may phase-in flat rent increases beyond the three-year period when the PHA phases-in the flat rent increase at 35% annually **and** cannot reach 80% of the applicable FMR in three years. For example, if a family is currently paying a flat rent of \$300, but 80 percent of the applicable FMR is \$800, the family's rent would be raised by 35% annually as follows: \$105 increase in year 1, \$142 increase in year 2, and \$191.45 increase in year 3. By year 3, the family would be paying a flat rent of approximately \$739 and the PHA would need another year to reach \$800 or 80% of FMR.

## **HUD Public and Indian Housing Notice 2015-13(HA)**

### **2. APPLICABILITY, BACKGROUND, AND HUD INTERPRETATION OF NEW STATUTORY REQUIREMENTS**

The FY 2014 Appropriations Act required PHAs to establish flat rents at no less than 80 percent of the applicable Fair Market Rent (FMR). However, if a new flat rent amount for a unit increased a family's existing rental payment by more than 35 percent, then the new flat rent amount was required to be phased in as necessary to ensure that the family's existing rental payment did not increase by more than 35 percent annually. HUD implemented these requirements through Notice PIH 2014-12, which outlined the changes in the FY 2014 Appropriations Act and provided guidance to PHAs on how to implement the new changes. Through FAQs [frequently asked questions] accompanying Notice PIH 2014-12, HUD provided flexibility to PHAs to phase in all flat rent increases over a three year period, including those increases that were 35 percent or less.

The FY 2015 Appropriations Act further amended the public housing rent requirements for flat rents. Specifically, the statute was amended to require that flat rents must be set at no less than the lower of 80 percent of:

1. the applicable fair market rental established under section 8(c) of this Act; or
2. at the discretion of the [HUD] Secretary, such other applicable fair market rental 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 fair market rental under section 8(c);

A PHA may apply for an exception waiver allowing for a flat rental amount for a property that is lower than the amount outlined in the options above. The Secretary may grant such an exception if HUD determines that the fair market rent for the applicable market area does not reflect the market value of the property and the proposed lower flat rental amount is based on a market analysis of the applicable market.

The FY 2015 Appropriations Act maintained the protection that any rent increase of more than 35 percent due to the flat rent changes must be phased in as necessary.

As flat rents are fully implemented, the higher rent levels will ensure that families with higher incomes pay an appropriate market-based rent. It is an important policy goal to provide scarce public resources to those most in need of deeply affordable housing. PHAs are therefore reminded that they have the discretion, in accordance with federal law and regulations (24 CFR 960.261; FR-4824-F-02), to establish occupancy policies that include the eviction of public housing tenants who are above the income limits for eligibility to participate in public housing programs. HUD encourages PHAs to provide a balance between the important goals of supporting the sustained self-sufficiency of families with the ever increasing demand for affordable housing units among families on their waiting lists.

## **7. FLAT RENT INCREASE PHASE-IN REQUIREMENTS**

In compliance with the FY 2014 Appropriations Act, Notice PIH 2014-12 required that if an existing tenant's rental payment would be increased 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 would not experience an increase in their rental payment of more than 35 percent in any one year. Through Notice PIH 2014-12, HUD provided additional flexibility that would permit PHAs to phase in all rent increases resulting from the new flat rent requirements over a three year period. However, the FY 2015 Appropriations Act provides PHAs additional flexibility to establish flat rents at lower amounts, thereby eliminating the need for the three-year phase-in of all flat rent increases. Therefore, pursuant to this Notice, the only flat rent increases that may be phased-in are those where a family's rent will increase by more than 35 percent. PHAs that began phase-ins for families with rent increases at 35 percent or less do not need to take any immediate action to update the flat rents for such families, but at the family's next annual rent option, the requirements outlined below shall apply.

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 to the 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 by more than 35 percent, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;
  - b. 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.