



# Office of Multifamily Housing Programs, Washington, DC

## Section 8 Housing Assistance Payments Program



**To:** Robert G. Iber, Acting Deputy Assistant Secretary for Multifamily Housing, HT

*//signed//*

**From:** Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

**Subject:** Owners of Cooperative Housing Properties Generally Charged More for Their Section 8 Units Than for Their Non-Section 8 Units

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 Office of Multifamily Housing Programs' administration of the Section 8 rents charged at cooperative housing properties.

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 website. 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: 2017-KC-0005**

**Date: June 12, 2017**

**Owners of Cooperative Housing Properties Generally Charged More for Their Section 8 Units Than for Their Non-Section 8 Units**

## Highlights

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### What We Audited and Why

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We audited the U.S. Department of Housing and Urban Development's (HUD) Office of Multifamily Housing Programs' administration of the Section 8 rents charged at cooperative housing properties. We selected this audit because of a previous audit of a cooperative housing property, which charged more for its Section 8 units than for its non-Section 8 units. Our concern was that HUD may have been effectively subsidizing all units in the properties. Our objective was to determine whether owners of cooperative housing properties charged more for their Section 8 units than for their non-Section 8 units.

### What We Found

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Owners of cooperative housing properties generally charged more for their Section 8 units than for their non-Section 8 units. We reviewed the rents for 27 of the 95 cooperative housing properties that had Section 8 units. Of the 27 properties, 25 charged more for their Section 8 units than for their comparable non-Section 8 units. When Section 8 units were charged more, the differences in rents ranged from \$2 to nearly \$2,900 per unit per month. As a result, in 2016, these 25 properties received a taxpayer-funded windfall of more than \$3.1 million for their unsubsidized members.

### What We Recommend

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We recommend that the Deputy Assistant Secretary for Multifamily Housing create and implement policies and procedures or change program regulations to prevent multifamily housing properties from charging more for Section 8 units than for comparable non-Section 8 units. For the 25 properties reviewed, this measure would prevent as much as \$3.1 million of Section 8 funds from subsidizing non-Section 8 units in the next year.

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# Background and Objective

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## Section 8 Housing Assistance Payments Program

The project-based Section 8 housing assistance payments program provides rental assistance to low-income individuals and families, enabling them to live in affordable, decent, safe, and sanitary housing. The U.S. Department of Housing and Urban Development (HUD) makes the assistance payment to the owner of an assisted unit on behalf of an eligible family, defined as having income at or below 80 percent of the area median income, adjusted for family size. Families pay a portion of the rent based on their income, and HUD's assistance payments fulfill the remainder of the rent amount.

Project-based rental assistance is provided through contracts between HUD and owners of multifamily rental housing. If a tenant moves, the assistance stays with the housing development rather than with the tenant. This program serves approximately 1.2 million low-income and very low-income households, which are primarily seniors, families with children, and persons with disabilities. The table below shows the number of contract units under the Office of Multifamily Housing Programs' Section 8 program, the average monthly subsidy per unit, and the average utilization rate between 2011 and 2015.

HUD fiscal year	Contract units	Average monthly subsidy per unit	Average utilization rate
2011	1,249,790	\$ 665	94.9%
2012	1,243,562	676	95.1%
2013	1,230,119	680	95.2%
2014	1,220,664	696	95.2%
2015	1,224,779	717	94.7%

Eligible owners include for-profit organizations, cooperatives, limited liability corporations, limited partnerships, or other types of joint ownership structures organized to develop and operate affordable rental housing. HUD requested more than \$10 billion to meet Multifamily's Section 8 project-based rental assistance program needs for fiscal year 2017. The program's portfolio includes 17,200 housing assistance payments contracts.

## Cooperatives

A cooperative is a form of property ownership in which the tenants occupy and operate the property. These tenants are known as "members," and each member buys a share of the cooperative when that member moves in. As shareholders in the cooperative, members receive a lease for a specific unit and must pay a monthly maintenance charge. This charge represents the member's proportional share of the cooperative's operating expenses and any mortgage payments the cooperative owes on the property. The proportional share is based on the member's proportion of the total stock owned in the cooperative. Multifamily provides

assistance to 320 cooperatives nationwide, and 170 of them participate in the Section 8 program. However, only 95 cooperatives have comparable Section 8 and non-Section 8 units.

Our objective was to determine whether owners of cooperative housing properties charged more for their Section 8 units than for their non-Section 8 units.

# Results of Audit

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## **Finding: Owners of Cooperative Housing Properties Generally Charged More for Their Section 8 Units Than for Their Non-Section 8 Units**

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Owners of cooperative housing properties generally charged more for their Section 8 units than for their non-Section 8 units. This condition occurred because HUD’s policies and regulations do not prohibit multifamily property owners from doing this. As a result, in 2016, 25 cooperative housing properties received a taxpayer-funded windfall of more than \$3.1 million for their unsubsidized members.

### **Higher Rents for Section 8 Units**

Owners of cooperative housing properties generally charged more for their Section 8 units than for their comparable non-Section 8 units. We reviewed the rents for 27 of the 95 cooperative housing properties that had comparable Section 8 units. Of the 27 properties, 25 charged more for their Section 8 units than their comparable non-Section 8 units. When Section 8 units were charged more, the differences in rents ranged from \$2 to nearly \$2,900 per unit per month. The table below shows an example of the monthly differences found between comparable units at one property.

Unit type	January-September 2016			October-December 2016		
	Section 8	Non-Section 8	Monthly difference	Section 8	Non-Section 8	Monthly difference
1 bedroom	\$ 1,613	\$ 1,038	\$ 575	\$ 1,736	\$ 1,038	\$ 698
2 bedroom	2,207	1,209	998	2,173	1,209	964
3 bedroom	2,960	1,342	1,618	3,152	1,342	1,810
4 bedroom	3,475	1,459	2,016	3,605	1,459	2,146
5 bedroom	4,012	1,540	2,472	4,429	1,540	2,889

### **Lack of Policies and Regulations**

HUD policies and regulations do not generally prohibit multifamily property owners from charging higher rents for Section 8 units than for non-Section 8 units. Although the Multifamily Assisted Housing Reform and Affordability Act of 1997 requires a property’s Section 8 rents to generally be comparable to unsubsidized rents in the area, it does not specify that the Section 8 rents have to be comparable to unsubsidized rents within the same property.

HUD’s Office of Public and Indian Housing (PIH) Section 8 program, however, does not let owners charge more for Section 8 units than for their unassisted units. PIH’s Section 8 tenant-based housing assistance payments contracts and regulations at 24 CFR (Code of Federal Regulations) 982.507(d) require the owner to certify that Section 8 rents do not exceed the rents

charged by the owner for comparable unassisted units. These policies make it clear that Section 8 units should not be charged more than comparable non-Section 8 units in the same property.

### **Taxpayer-Funded Windfall**

In 2016, these 25 cooperative housing properties received a taxpayer-funded windfall of more than \$3.1 million for their unsubsidized members. Since a Section 8 family’s portion of rent is based on its income, HUD ends up paying the excess rent through higher housing assistance payments. The more assistance HUD provides a property, the less the property needs from its non-Section 8 members to cover its operating expenses. Therefore, by paying more in assistance and allowing non-Section 8 households to pay less, HUD, and ultimately the taxpayer, is subsidizing the non-Section 8 households.

The following table shows how the differences in rents contributed to the taxpayer-funded windfall in 2016 for the one property identified above.

Unit type	Section 8 unit count	January-September 2016			October-December 2016		
		Months	Monthly difference	Windfall	Months	Monthly difference	Windfall
1 bedroom	10	9	\$ 575	\$ 51,750	3	\$ 698	\$ 20,940
2 bedroom	28		998	251,496		964	80,976
3 bedroom	28		1,618	407,736		1,810	152,040
4 bedroom	21		2,016	381,024		2,146	135,198
5 bedroom	3		2,472	66,744		2,889	26,001
<b>Totals</b>	<b>90</b>		<b>1,158,750</b>		<b>415,155</b>		

Appendix D shows the total rent each of the 25 cooperative housing properties collected for its Section 8 units and what it would have collected had its Section 8 rents not exceeded its non-Section 8 rents. The windfall each property received is the difference between these two numbers. The windfall for the 25 properties totaled more than \$3.1 million.

### **Conclusion**

Of 27 owners of cooperative housing properties, 25 charged more for their Section 8 units than their comparable non-Section 8 units and received a windfall of more than \$3.1 million. Multifamily’s Section 8 policies and regulations allow this to happen regardless of the property’s ownership, meaning that this issue is not limited to cooperative housing properties. Therefore, HUD will need to improve its policies and procedures for all multifamily properties to adequately address the issue.

### **Recommendation**

We recommend that the Deputy Assistant Secretary for Multifamily Housing require the Office of Asset Management and Portfolio Oversight

- 1A. Create and implement policies and procedures or change program regulations to prevent multifamily housing properties from charging more for Section 8 units than for comparable non-Section 8 units. For the 25 properties reviewed, this measure would



prevent as much as \$3,144,894 of Section 8 funds from subsidizing non-Section 8 units in the next year.

# Scope and Methodology

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We performed our audit work from February through April 2017 at HUD's headquarters in Washington, DC, and our office in Seattle, WA. The audit period was January 1 through December 31, 2016.

To accomplish our objective, we

- Reviewed applicable requirements.
- Interviewed HUD personnel.
- Drew a random sample of properties to review.
- Obtained and analyzed rent schedules and other documents from the sampled properties.
- Collected and reviewed rent and unit information in HUD's Integrated Real Estate Management System (iREMS).
- Calculated the difference in amounts charged between Section 8 units and comparable non-Section 8 units.

## Sample Selection

Our audit universe had 95 partially assisted multifamily cooperative housing properties with comparable unit sizes that were both assisted and unassisted units. These properties had 7,594 Section 8 units and 16,747 non-Section 8 units. We randomly selected 30 of these properties for review to ensure that the sample was representative of the universe, but we did not project the sample results to the universe. Two of the sampled properties had only one non-Section 8 unit, neither of which was a revenue-producing unit, so we removed the two properties from our sample. We also removed the property that did not provide the information we requested. The remaining 27 properties had 1,966 Section 8 units and 4,065 non-Section 8 units.

We reviewed the form HUD-92458, Rent Schedule Low Rent Housing, and other documents from these properties and compared the rents charged for the Section 8 units to those for non-Section 8 units. We based our conclusions on our review of this source documentation. Although we did not rely on computer-processed data to support these conclusions, we used HUD's Multifamily Data Mart and iREMS to identify our universe. We also used iREMS data to verify some of the information we received from the properties. The data in these systems are used for widely accepted purposes and are obtained from a source generally recognized as appropriate. Therefore, we concluded that the data used were sufficiently reliable to meet our audit objective.

Appendix C shows the criteria discussed in our finding.

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. 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:

- Controls to ensure the effectiveness and efficiency of Multifamily's operations.

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:

- Although not a requirement, Multifamily lacked policies, procedures, and regulations to prevent multifamily property owners from charging more for their Section 8 units than for their comparable non-Section 8 units (finding).

# Appendixes

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## Appendix A

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

Recommendation number	Funds to be put to better use 1/
1A	\$3,144,894
<b>Totals</b>	<b>3,144,894</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. If HUD implements our recommendation, it would use funds more efficiently and reduce its outlays by preventing owners from charging more for Section 8 units than for comparable non-Section 8 units.

## **Appendix B**

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### **Auditee Comments**

HUD agreed with our finding and recommendation and chose not to provide a written response.

## Appendix C

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### Criteria

#### **Section 8 Renewal Policy, Guidance for the Renewal of Project-Based Section 8 HAP [housing assistance payments] Contracts**

##### 2-1 INTRODUCTION

The \*enactment\* of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) by Congress signaled an important shift in the Section 8 program: In general, Section 8 rents must be comparable to unsubsidized rents in the area where the project is located. In some cases, this requirement meant the rents could be adjusted upward. Congress also recognized that the rents at some Section 8 projects needed to be reduced.

##### 2-12 DISTRIBUTIONS

###### A. Limitations on Distributions.

2. The new regulation Section 8 contracts for new construction or substantial rehabilitation limits an owner's right to distributions.
  - d. Owner Distributions for Partially-assisted Projects that qualify for increased distributions under Section 2-12 D.
    - 1) For partially-assisted projects that are not insured under Section 236, 221(d)(3) BMIR [below market interest rate], or do not have mortgages under Rural Housing Service's (RHS) Section 515/8:
    - b) The Section 8 rents must not exceed the rents on the unassisted units.

#### **Form HUD-52641, Housing Assistance Payments Contract (HAP Contract) for [PIH] Section 8 Tenant-Based Assistance under the Housing Choice Voucher program**

The instructions for the HAP Contract states it "...is used to provide Section 8 tenant-based assistance under the housing choice voucher program (voucher program) of the U.S. Department of Housing and Urban Development (HUD). The main regulation for this program is 24 Code of Federal Regulations Part 982" [Section 8 Tenant-based Assistance: Housing Choice Voucher Program].

"The local voucher program is administered by a public housing agency (PHA). The HAP contract is an agreement between the PHA and the owner of a unit occupied by an assisted family."

Part B.6 of the form, Rent to Owner: Reasonable Rent states, "d. During the HAP contract term, the rent to owner may not exceed rent charged by the owner for comparable unassisted units in the premises."

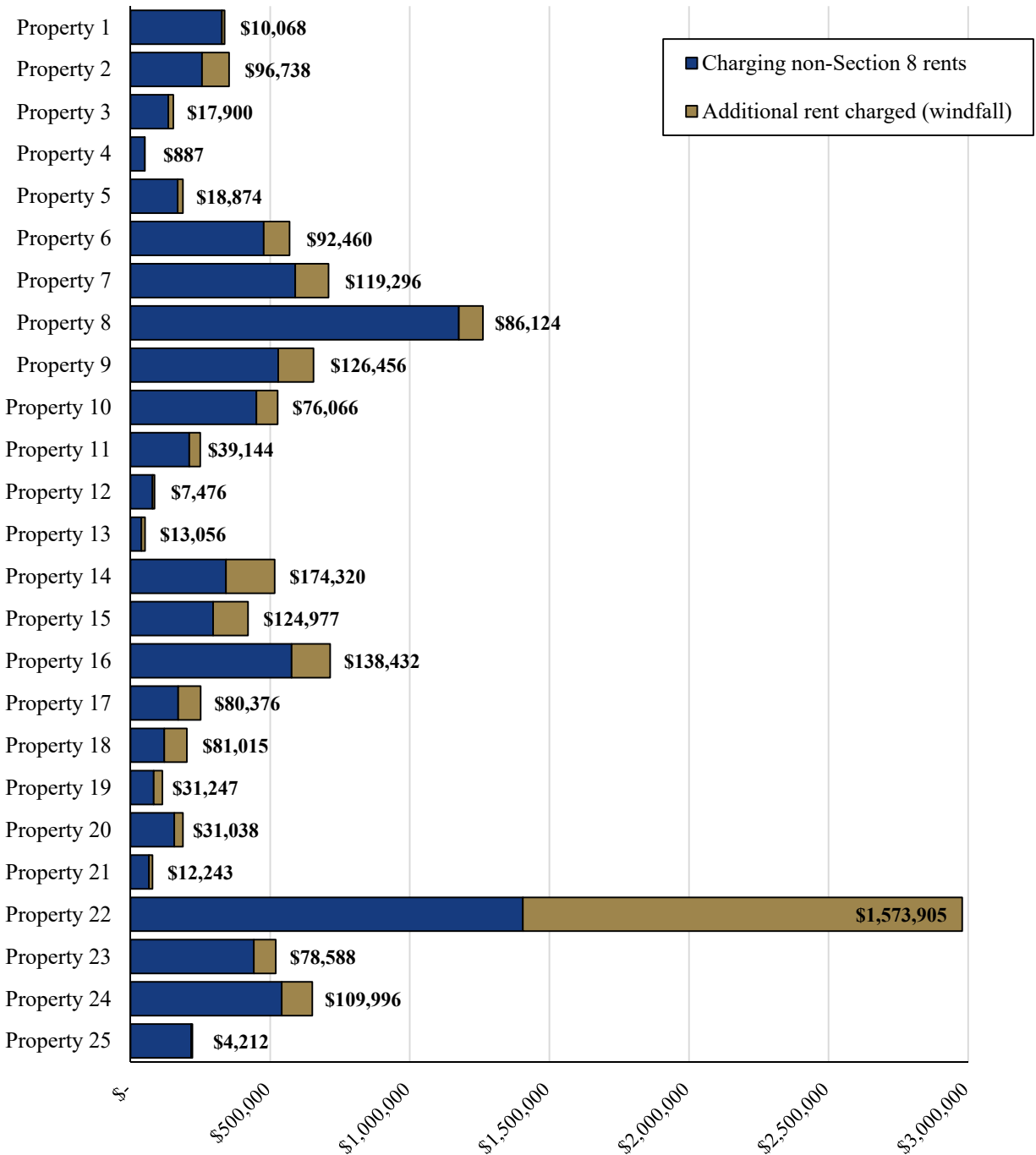
**24 CFR 982 – [PIH] Section 8 Tenant-Based Assistance: Housing Choice Voucher Program**

Paragraph 507(d) Owner certification of rents charged for other units states, “By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises.”

# Appendix D

## Total Rent Collected for Section 8 Units

### Section 8 rents: non-Section 8 rents plus windfall amounts



Total rent each cooperative collected for its Section 8 units in 2016  
(Data labels indicate windfall amounts.)