

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the HAPGC has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

HAPGC-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a HAPGC-owned unit, the HAPGC must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A HAPGC-owned unit is defined as a unit that is owned by the HAPGC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HAPGC). The independent agency must communicate the results of the rent reasonableness determination to the family and the HAPGC. The independent agency must be approved by HUD, and may be the unit of general local government for the HAPGC jurisdiction (unless the HAPGC is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The HAPGC must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment. HAPGC may temporarily halt rent adjustments in alignment with Public Indian Housing (PIH) Notice PIH 2009- 44 (HA) as a cost saving measure for the HCV program.

HCV Cost Saving Measures for Rent Reasonableness

Thus, In accordance with the HAP contract, the HAPGC must provide written notice to owners before reducing unreasonable rents. Rents may be reduced as early as the first of the following month. If the rent to owner is not reasonable as most recently determined by the PHA, the owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In such cases, the family will be issued a HCV to find a new unit. (Movers, like new participants, are subject to a PHA's current payment and occupancy standards.)

Even if an owner's rent is reasonable, a PHA could request owners to voluntarily agree to a temporary rent reduction or defer rent increases to help the PHA avoid the termination of HAP contracts due to shortfalls in HCV funding. It is the owner's option to agree to such measures.

The owner and family first negotiate the rent for a unit. The HAPGC (or independent agency in the case of HAPGC-owned units) will assist the family with the negotiations upon request. At initial occupancy the HAPGC must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

HAPGC Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the HAPGC may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the HAPGC will consider unit size and length of tenancy in the other units.

The HAPGC will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the HAPGC's receipt of the owner's request or on the date specified by the owner, whichever is later.

HAPGC and HUD-Initiated Rent Reasonableness Determinations

HUD requires the HAPGC to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the HAPGC to make a determination at any other time. The HAPGC may decide that a new determination of rent reasonableness is needed at any time.

HAPGC Policy

In addition to the instances described above, the HAPGC will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the HAPGC determines that the initial rent reasonableness determination was in error or (2) the HAPGC determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the HAPGC must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the HAPGC for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires HAPGCs to take into consideration the factors listed below when determining rent comparability. The HAPGC may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the HAPGC payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the HAPGC information regarding rents charged for other units on the premises.

8-III.D. HAPGC RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

HAPGC Policy

The HAPGC will collect and maintain data on market rents in the HAPGC's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

HAPGC Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The HAPGC will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the HAPGC may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \488 .

The HAPGC will notify the owner of the rent the HAPGC can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The HAPGC will confirm the accuracy of the information provided and consider this additional information when making rent determinations. **The owner must submit any additional information within five business days of the HAPGC's**

request for information or the owner's request to submit information.