

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

Special Attention of:

Secretary's Representatives;
State/Area Coordinators; Directors,
Public Housing Divisions, Public
Housing Agencies, Resident Manage-
ment Corporations, Resident Councils

Notice PIH 98-41 (HA)

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Cross References:

Subject: Ceiling Rents in Public Housing

Purpose

This Notice reaffirms the current methods public housing agencies (PHAs) may use to establish ceiling rents in the public housing program.

Background

Prior to the enactment of the Balanced Budget Downpayment Act I (Continuing Resolution of January 26, 1996), PHAs were only allowed to establish ceiling rents by obtaining a waiver from HUD of 24 CFR 913.107(a) (now found at 24 CFR 5.613). Provisions for obtaining a waiver are outlined in a Federal Register Notice dated March 15, 1989, "Notice of HUD Policy on Establishment of Ceiling Rents for Public Housing," as amended by a Federal Register Notice dated December 16, 1991 (see PIH Notice 92-8, issued February 7, 1992), and further amended by Section 102 of the Housing and Community Development Act of 1992 (to extend ceiling rents from five years to indefinitely). PHAs may continue to request the establishment of ceiling rents using this policy. If approved, these ceiling rents may be used indefinitely.

The FY '98 Appropriations Act extended ceiling rent provisions contained in the Continuing Resolution through September 30, 1998. The Continuing Resolution included a provision which allows PHAs to adopt ceiling rents that reflect the reasonable market value of the housing, but that are not less than the monthly costs (i) to operate the housing of the agency; and (ii) to make a deposit to a replacement reserve (in the sole

discretion of the public housing agency). The Continuing Resolution further directed that the Secretary of HUD develop, after notice and public comment, regulations to carry out this provision. The Department published a Proposed Rule on Ceiling Rents for Public Housing in the Federal Register on November 25, 1997 (62 FR 62928-62931).

Until such time as the aforementioned regulations have completed final rulemaking, the Continuing Resolution provided the following Transition Rule:

"Prior to the issuance of final regulations...a public housing agency may implement ceiling rents, which shall be not less than the monthly costs to operate the housing of the agency and -

(i) determined in accordance with section 3(a)(2)(A) of the United States Housing Act of 1937, as that section existed on the day before enactment of this Act;

(ii) equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same public housing project or a group of comparable projects totaling 50 units or more; or

(iii) equal to the fair market rent for the area in which the unit is located."

Ceiling rents implemented under the Transition Rule of the Continuing Resolution do not require HUD approval. Any such ceiling rents cannot be used in reexaminations after September 30, 1998, unless the provisions are extended by law.

Until ceiling rent regulations are issued in final, the Department encourages public housing agencies to consider the adoption of ceiling rents using any of the above methods to attract and retain working families or to market vacant units.

Attached are Q&As on the establishment of ceiling rents.

/s/

Deborah Vincent
General Deputy Assistant Secretary

Attachment

QUESTIONS AND ANSWERS ON CEILING RENTS

DEFINITION

Q1: What is a ceiling rent?

A1: A ceiling rent (sometimes called a maximum rent) provides a cap on the amount of rent a family can be charged. The ceiling rent caps the total tenant payment (TTP), the amount the family must pay to cover both shelter and a reasonable amount of utilities.

ADVANTAGES OF CEILING RENTS

Q2: What are the advantages of using ceiling rents?

A2: There are several advantages to using ceiling rents. These include:

- helping to avoid unreasonably high rents;
- allowing a PHA to attract and retain relatively higher income families who might otherwise opt to rent on the private market;
- encouraging residents in the transition from welfare to work;
- aiding working families that get better jobs;
- helping retain relatively higher income residents, who may serve as role models to other residents;
- helping a PHA fill vacancies by improving its ability to market less desirable units, such as efficiencies, or particular developments.

TIMEFRAMES

Q3: How long can ceiling rents be used?

A3: Ceiling rents approved under the provisions outlined in PIH Notice 92-8, issued February 7, 1992, can be used indefinitely. (Section 102 of the Housing and Community Development Act of 1992 removed the five-year limitation.)

Ceiling rents that are established based on the Transition Rule of the Continuing Resolution (extended until September 30, 1998 by the FY 98 Appropriations Act) cannot be used in reexaminations after September 30, 1998, unless the provisions are extended by law.

Q4: What if a PHA adopts a ceiling rent and subsequently decides it no longer wants to have a ceiling rent?

A4: Ceiling rents are voluntary. A PHA that has adopted a ceiling may do away with them after giving affected residents reasonable notice. PHAs are encouraged to consult with public housing residents prior to adopting or doing away with ceiling rents.

WHERE CAN CEILING RENTS BE APPLIED

Q5: Do ceiling rents have to be applied inventory-wide?

A5: A PHA, after examining its need, may elect to apply ceiling rents inventory-wide, for certain developments, buildings, or to certain size dwelling units (e.g., efficiencies). However, ceiling rents are unit based and cannot be applied to certain families or certain categories of families.

METHODS OF ESTABLISHING CEILING RENTS

Traditional Method

Q6: Can a PHA still request **HUD approval** of a waiver of the regulations (24 CFR 5.613) to establish ceiling rents based on the provisions of the March 15, 1989 Federal Register Notice, "Notice on HUD Policy on Establishment of Ceiling Rents for Public Housing"?

A6: Yes. A PHA may continue to submit waiver requests to the HUD field office (which will forward them to HUD Headquarters for review and approval) using the procedures outlined in the March 15, 1989 Federal Register Notice, as further amended by a December 19, 1991 Federal Register Notice (see PIH Notice 92-8, issued February 7, 1992) and Section 102 of the Housing and Community Development Act of 1992. Ceiling rents approved by HUD under the traditional method can be used indefinitely.

- Q7:** Under this method, can a PHA set the ceiling rent at an amount lower or higher than the Fair Market Rent (FMR)?
- A7:** As outlined in the March 15, 1989 Federal Register Notice, HUD has determined that an equitable ceiling rent would be an amount equal to the current effective FMR for the area, adjusted by number of bedrooms. If a PHA finds that the FMRs substantially exceed or understate the fair rental value of some or all of the PHA's units, the PHA may request that the ceiling rent be set at a lower or higher amount by providing, along with its request for a waiver, a survey based on comparable unassisted rent in the community. Any such survey should look at private rental housing of similar age, location, condition, amenities, design, and size, in the same market area.
- Whether the ceiling rent is set at the FMR or at a lower or higher amount based on a survey, the ceiling rent must at least cover the average monthly imputed debt service and average monthly operating expenses (statutory minimum).
- Q8:** Does the PHA consider the average monthly costs to operate the housing of the agency, even if ceiling rents will be applied to only one project?
- A8:** Yes. The PHA must consider the average monthly costs to operate the housing of the agency, even if ceiling rents will be applied to only one project.
- Q9:** How can a PHA obtain the imputed debt service figure for its agency?
- A9:** A PHA should contact its local HUD office (Public Housing Division) for the imputed debt service figure. If the local HUD office does not have the imputed debt service figure, field office staff may obtain the figure from their Occupancy Desk Officer in Headquarters.

Transition Method

- Q10:** Can a PHA establish ceiling rents **without HUD approval**? If so, how are they to be set?
- A10:** Based on the provisions outlined in the Continuing Resolution (extended by the 1998 Appropriations Act), a PHA can establish ceiling rents without HUD approval in the following ways. They are:

- determined in accordance with Section 3(a)(2)(A) of the United States Housing Act of 1937, as that section existed prior to January 26, 1996;
- equal to the 95th percentile of the rent paid for a unit of comparable size by tenants in the same public housing project or a group of comparable projects totaling 50 units or more (a comparable project would be any project where the rent is generally calculated at 30% of the monthly adjusted income); or
- equal to the fair market rent (FMR) for the area in which the unit is located.

When using any of the above methods, the ceiling rent cannot be set at an amount lower than the costs to operate the housing of the agency.

Q11: What is included in the "monthly costs to operate the housing of the agency"?

A11: The "monthly costs to operate the housing of the agency" can be defined as: one twelfth of the sum of all annual operating expenses reported on the Statement of Operating Receipts and Expenditures as of the end of the most recent fiscal year **and** the aggregate annual utility allowances for all tenant paid utilities; minus the sum of (1) excess utility charges and (2) annual cost, if any, associated with units approved for deprogramming.

Q12: Can a PHA establish a ceiling rent solely by using the monthly cost to operate the housing of the agency?

A12: No. The transition provisions outlined in the Continuing Resolution (extended by the 1998 Appropriations Act) do not allow for a ceiling rent to be set solely by using the monthly cost to operate the housing of the agency. The ceiling rent "shall be not less than the monthly costs to operate the housing of the agency **and** (i) determined in accordance with section 3(a)(2)(A) of the United States Housing Act of 1937, as that section existed on the day before enactment of this Act; (ii) **equal to** the 95th percentile of the rent paid for a unit of comparable size by tenants in the same public housing project or a group of comparable projects totaling 50 units or more; or (iii) **equal to** the fair market rent for the area in which the unit is located." The monthly cost to operate the housing of the agency is simply the floor used when calculating these three methods.

Q13: What was provided by section 3(a)(2)(A) of the United States Housing Act of 1937, prior to the enactment of the Continuing Resolution?

A13: Section 3(a)(2)(A) reads in part: "Any public housing agency may provide that each family residing in a public housing project owned and operated by such agency . . . shall pay as monthly rent an amount determined by such agency to be appropriate that does not exceed a maximum amount that . . . is not less than the average monthly amount of debt service and operating expenses attributable to dwelling units of similar size in public housing projects owned and operated by such agency."

Q14: Does the debt service in 3(a)(2)(A) refer to imputed debt or actual debt?

A14: The Department has determined that for purposes of the first transition provision, a PHA must use imputed debt service.

Q15: Can a PHA use different ceiling rent methods for different projects to reflect varied markets?

A15: A PHA should consider which method is most appropriate for units in its inventory. A PHA may establish ceiling rents under one method (e.g., 95th percentile) for one set of units and under another method (e.g., FMR) for another set. Of course, PHAs may not unlawfully discriminate against a protected class.

Q16: How is the 95th percentile computed?

A16: Appendix H of the Guidebook 7465.7, Restrictions on Assistance to Noncitizens, dated July 1995, contains an explanation of the methodology that PHAs may use to derive the 95th percentile.

One method acceptable to HUD in computing the 95th percentile would be:

- a. Get a project or a group of comparable projects totaling 50 units or more.
- b. Separate the units by bedroom size.
- c. for any size of unit group that has more than 15 units, find the actual 95th percentile by:
 - Ranking the rents (TTP) from lowest to highest, with the lowest being ranked 1.

- Multiplying the number of units in that size of unit by .95.
 - If the number comes out to a decimal, round up at .5 or higher and round down at less than .5.
 - Find the rent at that rank. Check to be sure it covers the costs to operate the housing of the agency. If it does, that can be the ceiling rent for such units.
- d. For any size of unit group that has 15 units or less, find the 95th percentile by:
- Finding the unit size group with the greatest number of units (e.g., 2 bedroom units).
 - Rank the rents from lowest to highest, with the lowest being ranked 1.
 - If the number comes out to a decimal, round up at .5 or higher and round down at less than .5.
 - Apply a unit size adjustment factor to the rent at that rank. (Unit size adjustment factors can be found in the March 15, 1989 Federal Register notice (54 FR 10737) or Appendix H of the Noncitizens Guidebook.
 - Check to be sure it covers the costs to operate the housing of the agency. If it does, that is the ceiling rent.

Q17: When a PHA is establishing ceiling rents for a single development or based on a group of comparable developments totaling 50 units or more, does it have to have 50 units of the same size?

A17: There does not have to be 50 units in each bedroom size-- just 50 total in the project(s).

REPORTING CEILING RENTS TO HUD

Q18: Must a PHA report to HUD ceiling rent information for individual families?

A18: A PHA must enter the correct amount of the ceiling rent for households that pay a ceiling rent in the appropriate place on the Family Report, Form HUD-50058, that deals with ceiling rents.

This Q&A supercedes the ceiling rent Q&As included in guidance issued to HUD Field Office Public Housing Directors on July 26, 1996 (Questions and Answers on the January 26, 1996 Continuing Resolution).