

## FAQs – Flat Rents

### **1. Q: What must a PHA do to demonstrate compliance by June 1, 2014?**

A: Section 2 of Notice PIH 2014-12 stipulates that “The Department 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 are considered to have initiated these processes by posting a public notice before June 1, 2014 of the forthcoming hearing.

### **2. Q: What steps must a PHA take in order to formally adopt the new flat rent requirements?**

A: Section 4 of Notice PIH 2014-12 requires that PHAs formally adopt new flat rent requirements before offering the new flat rents to families. The Department will consider formal adoption to be met once a PHA has completed all of the following:

- A public hearing;
- For Non-qualified agencies only, a significant amendment to the PHA Plan;
- Board approval of the new flat rent policies; and
- Update of the PHA’s Admissions and Continued Occupancy Policies.

### **3. Q: Do qualified agencies need to complete a Significant Amendment to the 5-year plan and submit a civil rights certification in order to update their flat rent policies?**

A: No. Qualified agencies only need to hold a public hearing to notify residents and the public about the changes to flat rent policies, obtain board approval of the new flat rent policies, and update their Admissions and Continued Occupancy Policies in order to implement the new flat rent requirements. However, because changes to flat rents may have a significant impact on family rent payments, PHAs that must update their flat rent schedules to comply with the new flat rent requirements must undertake a Significant Amendment to the PHA Annual Plan.

### **4. Q: What if a PHA already amended its flat rents to become compliant with the new requirements before HUD published the implementation notice?**

A: PHAs that began implementing the new flat rent requirements, or that took steps to implement the new requirements before HUD published Notice 2014-12 may need to cease the use of updated flat rent amounts if they did not complete the required steps, or establish flat rents as required in Notice 2014-12. If a PHA did not complete all of the required steps, or if they have adopted policies that are not consistent with Notice 2014-12, they will need to complete the steps and adopt acceptable policies before continuing with the use of the updated flat rent amounts. For example, if a non-qualified PHA began implementing updated flat rents without

undertaking a Significant Amendment to the PHA Plan, or if a PHA did not establish flat rent increase phase-ins as outlined in Notice 2014-12, these PHAs must halt the use of updated flat rents until such time as they have completed all of the implementation steps required in Notice 2014-12, including revising policies to be consistent with the flat rent requirements established in Notice 2014-12. If a PHA raised a family's flat rent payment by more than 35%, the PHA must repay the family for any rent overcharges.

**5. Q: When must PHAs begin charging the new flat rents to new program admissions?**

A: PHAs must offer the new flat rent and the applicable income-based rent to all new admissions to the program within 90 days of formally adopting the new flat rents, but not later than October 31, 2014. The Department will consider a PHA to have formally adopted the new requirements after it has completed all of the steps included in question 2 above, and the 90 day clock will commence on the day that the PHA has completed all of these steps.

**6. Q: When must PHAs begin charging the new, or phased-in flat rent to current program participants?**

A: Within 90 days after a PHA has formally adopted the new flat rents, but not later than October 31, 2014, the PHA must begin to offer the new flat rent, adjusted to reflect any phase-in, to families that are currently paying the flat rent amount, at the families' next annual rent option. The Department will consider a PHA to have formally adopted the new requirements after it has completed all of the steps included in question 2 above, and the 90 day clock will commence on the day that the PHA has completed all of these steps.

**7. Q: A PHA already has flat rents that are set at 80% or greater of the applicable FMR. What must this PHA do to demonstrate compliance with the new flat rent requirements in the first year?**

A: Any PHA that already has the flat rent set at or above 80% of the applicable FMR is considered to be in compliance with the new flat rent requirements, and does not need to take any further steps, provided they've completed all of the steps included in question 2 above.

**8. Q: The notice requires PHAs to establish flat rents at no less than 80% of the applicable Fair Market Rent (FMR). May a PHA request a waiver to establish flat rents at less than 80% of the applicable FMR?**

A: No. The requirement to establish flat rents at 80% of the applicable FMR is statutory; the statute cannot be waived.

**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.

**11. Q: Do PHAs have to follow local and state rent control laws when determining how to phase in flat rent increases?**

A: To the extent not inconsistent with federal requirements, PHAs may, but are not required by Notice 2014-14 to follow state and local rent control laws. However, if a state or local rent control law sets a rent increase cap at more than 35% annually, PHAs must follow the federal requirement, which limits rent increases to no more than 35% annually.

**12. Q: Section 3 of the notice requires PHAs to reduce the flat rent amount by a reasonable utility allowance if the family is responsible for making utility payments directly to utility providers. How should a PHA establish a utility allowance for flat rent units?**

A: When establishing utility allowances to be applied to flat rents, PHAs should follow the requirements of 24 CFR Part 965, Subpart E regarding the establishment of utility allowances. For more information on the various methodologies available to PHAs when establishing utility allowances, see:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/phecc/resources](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phecc/resources). If PHAs have already established utility allowances for the units that are impacted by the new flat rent requirements, PHAs may use those utility allowances.

**13. Q: For families who choose to pay flat rents, HUD's regulations allow PHAs to conduct family income reexamination at least once every three years. Does this mean that a family that chooses to pay the flat rent is locked into the same flat rent amount for the entire three-year period?**

A: No. Once a year, families are provided the opportunity to choose to pay either the flat rent or an income-based rent. For families who chose flat rents, 24 CFR 960.257 (a)(2) requires PHAs to conduct a reexamination of family income at least once every three years. If a family chooses to pay a flat rent in year 1, during the annual rent option meeting in year 2 and in year 3, that family would still be provided an opportunity to choose between continuing to pay the flat rent amount, which has been updated pursuant to Notice 2014-12, including any necessary phase-ins of rent increases, or switch to an income-based rent in year 2 and in year 3. Families that chose to pay the flat rent after one or more years of paying the income-based rent must pay the flat rent set at no less than 80% of the FMR.