

## **CHAPTER 11: OWNER RENTS, RENT REASONABLENESS AND PAYMENT STANDARDS**

### **11. Introduction**

This chapter explains the Housing Authority's policies for determination of rent reasonableness, payments to owners, adjustments to the payment standards, and rent adjustments.

#### **11.1 Housing Authority Payment to Owner in the Housing Services Program**

At all times during the tenancy, the Housing Authority rent to owner may not be more than the most current reasonable rent or the applicable payment standard. During the initial term of the lease, the owner may not raise the rent to owner

#### **11.2 Making Payments to Owners [24 CFR §982.451(c)]**

The Housing Authority will make payments to owners through direct deposit to an electronic bank account. Payments must be made by direct deposit unless a hardship exemption is approved. Payments may not be picked up by owner at the Housing Authority.

##### **11.2.1 Excess Payments**

The total of rent paid by the tenant plus the Housing Authority payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the Housing Authority.

Owners who do not return excess payments will be subject to penalties as outlined in Chapter 18 of this administrative plan.

##### **11.2.2 Late Payments to Owners [24 CFR 982.451(a)(5)]**

The Housing Authority is responsible for making payments promptly when due to the owner in accordance with the terms of the contract. After the first two (2) calendar months of the contract term, the contract provides for penalties if the Housing Authority fails to make the payment on time.

Penalties for late Housing Authority payments can only be imposed if:

- The penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants;
- It is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and
- The owner charges the assisted family for late payment of the family's share of the rent.

The Housing Authority is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the Housing Authority's control. In addition, late penalties are not required if the Housing Authority intentionally delays or denies payment as a remedy for owner breach of the contract.

### **11.3 Rent Reasonableness**

Rent reasonableness determinations are made when units are placed under contract for the first time and when an owner requests a rent increase. The Housing Authority uses the following criteria to determine whether the rent requested by the owner is reasonable:

- 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

If the proposed initial rent is not reasonable, the Housing Authority will attempt to negotiate with the owner to reduce the rent. If the rent can be approved after negotiations with the owner, the Housing Authority will continue processing the RFTA and lease.

#### ***11.3.1 Five Year Lease Assistance, Streamlined Lease Assistance Programs and Transitional Assistance for MTW Families***

The Housing Authority will not approve a lease above the payment standard for the unit size.

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### ***11.3.2 Traditional, Regulatory Assistance for Special Purpose Programs***

The Housing Authority may approve a lease above the payment standard for the unit size.

### ***11.3.3 Appealing a Rent Reasonableness Determination***

If the owner of the property disagrees with the rent reasonable determination, the owner may appeal the decision in writing by submitting an appeal that includes a list of comparable rental units that the owner has identified. The Housing Authority will not approve a contract rent above the applicable payment standard. Before using a list of rental units submitted by the owner, the Housing Authority shall confirm that the units are indeed comparable using the criteria outlined above. If the units are not comparable, the Housing Authority will not use these units in the rent comparability survey and the owner will be notified of the decision.

### ***11.3.4 Rent Reasonableness After Initial Lease-Up***

The owner may request a rent adjustment in accordance with the owner's lease and the contract with the Housing Authority. For rent increase requests after initial lease-up, the Housing Authority may request owners to provide information about the rents charged for other units on the premises, if the premises include more than four (4) units. In evaluating the proposed rents in comparison to other units on the premises the Housing Authority will consider any rent setting policies by the owner for existing tenants, in addition to unit size and length of tenancy in the other units.

The Housing Authority will determine whether the requested increase is reasonable and will notify the owner in writing of the determination. The Housing Authority will not approve a contract rent above the applicable payment standard.

The Housing Authority will also make a redetermination of rent reasonableness at any other time if directed to do so by HUD, or in accordance with the payment standards, or at any other time. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined (either increase or decrease) or redetermined by the Housing Authority.

## **11.4 Payment Acceptance and Certification**

Owners will be advised that by accepting each monthly payment from the Housing Authority s/he will be certifying that the rent to owner is not more than rent charged by owner for comparable unassisted units in the premises. If requested, the owner must provide to the Housing Authority information on rents charged by the owner for other

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units in the premises or elsewhere. The Housing Authority will only request information on the owner's units elsewhere if the Housing Authority has cause to demonstrate that the owner has a tendency to charge higher rents to program participants or if needed for rent reasonableness comparables.

### **11.5 Payment Standards for the Housing Services Program [24 CFR 982.4]**

The payment standard is used to calculate the housing assistance payment for a family. *Payment standard* is defined as "the maximum monthly assistance payment for a family assisted in the program (before deducting the total tenant payment by the family)."

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the Housing Authority's subsidy standards or (2) the payment standard for the size of the dwelling unit rented by the family. The payment standard for space rent is calculated by using forty percent (40%) of the 2 bedroom fair market rent with utilities.

#### **11.5.1 Five Year Lease Assistance, Streamlined Lease Assistance and Transitional Assistance for MTW Families Programs**

The Housing Authority has established a comprehensive payment standard schedule that is based on rental submarkets in the County of San Bernardino.<sup>1</sup>

On an annual basis the Housing Authority will review the local payment standards. The agency may subsequently increase or decrease the payment standards. Adjustments to the payment standards will generally be applied at the participant's first recertification which occurs after the Housing Authority adjustment. For operational or fiscal purposes the Housing Authority may apply the redetermined payment standards prior to the next recertification.

Before increasing the payment standard, the Housing Authority may review the budget to determine the impact projected subsidy increases would have on funding available for the program and the number of families served. For this purpose, the Housing Authority will compare the number of families who could be served under a higher payment standard with the number assisted under current payment standards.

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<sup>1</sup> The FY 2009 Moving to Work Annual Plan including Activity 12: Local Payment Standards which authorized the creation of local payment standards for the County of San Bernardino.

### ***11.5.2 Traditional, Regulatory Assistance for Special Purpose Programs***

For participants in Traditional, Regulatory Assistance for Special Purpose Programs the payment standard schedule is based on HUD's Fair Market Rents. The payment standard schedule is updated annually. Increases in the payment standard will be applied at the participant's next annual recertification. Decreases in the payment standard will be applied at the participant's second annual recertification after the effective date of the decrease.

### **11.6 Rent to Owner Increases**

As stated in the Tenancy Addendum, the owner must notify the Housing Authority at least sixty (60) days before the proposed effective date of any intended rent increase. The tenant must be notified in writing, and a copy of the written notice to the tenant must be submitted to the Housing Authority.

As authorized by the contract between the Housing Authority and the owner, the Housing Authority will not approve a rent increase if the contract is in abatement for owner-related inspection deficiencies. In accordance with the Tenancy Addendum and the contract, the Housing Authority will disapprove requests made during the initial term of a lease.

The Housing Authority will use the payment standards criteria as defined in 11.3 and rent reasonableness to determine the approval of a request for a rent increase. If the new rent is not approved, the Housing Authority will advise both the owner and the family if a partial rent increase/decrease is identified and approved, the Housing Authority will notify the owner, and process the partial adjustment.

An owner who disagrees with the determination may exercise any of the following options:

- Appeal the rent comparability determination;
- Adjust his/her request for a rent increase; and/or
- Serve the family with a proper Notice to Quit in compliance with local and state laws.

The Housing Authority may review a sample of the units to determine how often owners are increasing rents and the average percent of increase by bedroom size.

### ***11.6.1 Five Year Lease Assistance Program***

An increase in rent will not result in an increase in the flat subsidy amount paid to the owner by the Housing Authority. The family will be responsible for the difference between the contract rent and the Housing Authority subsidy payment to the owner.