

To: Steven Durham, HUD  
From: Deborah Thrope, Marcos Segura, Bridgett Simmons, and Jim Grow, NHLP  
Philip Tegeler, PRRAC  
Re: Rent Reasonableness Recommendations  
Date: April 28, 2022

Thank you for the opportunity to highlight NHLP and PRRAC's concerns and recommendations related to the rent reasonableness analysis as currently conducted by PHAs. Our suggestions stem from decades of experience working with the Housing Justice Network, a vast field network of over 2,000 legal services and other housing advocates working in the field, directly representing tenants.

- I. HUD should improve and streamline the comparability analysis required by 24 CFR § 982.507(b) by further defining the comparability factors and expanding the rent data that can be used.

The comparability analysis required by HUD regulations is flawed and often inconsistent across PHAs. NHLP is often contacted by advocates who question the results of a rent reasonableness analysis and the comparable units used by the PHA. One common scenario is when a landlord's rent increase request is denied because it is too high, and the advocate believes that the proposed rent is reasonable compared to unassisted units in the neighborhood. This can put the tenant at risk because the landlord, in most jurisdictions, can choose to leave the voucher program and compete instead in the private rental market. When approached with these cases, the first thing we recommend is to ask the PHA for a copy of the analysis and specifications of the comparable units.

Many PHAs use rental housing platforms like AffordableHousing.com to identify units with similar factors such as location, quality, size, etc. and available amenities. However, sometimes these websites are inaccurate or not representative of the private market as a whole. The data on these websites can lag, which leads to inaccurate comparability studies especially in heated housing markets. HUD should define the factors that go into a comparability analysis and also expand the type of data that can be used, beyond what is currently in the voucher guidebook. For example, HUD could clarify when Zillow data can and should be used. Specificity with respect to the factors and data sources would also contribute to more consistent comparability studies within and across jurisdictions.

There is also an issue with comparability studies that is related to PHA staffing and culture. At many PHAs, a staff person charged with enforcing rent reasonableness becomes committed to negotiating lower rents and saving money for the PHA such that these goals may take precedence over the goal of providing families with meaningful choices in high opportunity areas. Thus, landlords in Section 8 submarkets may be very willing to negotiate a lower rent to secure a voucher tenant, whereas landlords in popular neighborhoods have very little incentive to "negotiate." If HUD is contemplating guidance on rent reasonableness, one approach to this problem may be to remind PHAs that "saving money" is not the goal of rent reasonableness - rather, the goal is to ensure that the rent is consistent with the local market, including the market for units in similar high opportunity neighborhoods. Especially in these neighborhoods, PHA staff should be encouraged to find comparable rents that support the requested rent.

- II. HUD should provide special guidance for rent reasonableness determinations in high opportunity areas.

In high opportunity areas with lower numbers of rental units (especially in larger unit sizes), PHA staff may find it difficult to locate three comparable units, and if they expand their search radius they will likely be leaving the specific opportunity neighborhood of the initial unit, often verging into a distinctly different nearby neighborhood with lower rents and a correspondingly lower performing elementary school. In this situation, we would recommend that HUD give PHAs flexibility to use two comparable units to establish rent reasonableness, and if the search radius is expanded, that the PHA focus on finding listings in similar high opportunity neighborhoods (for example, in the same elementary school zone).

The problem of appropriately valuing comparable rents is particularly challenging in determining rent reasonableness for single family rentals in high opportunity areas, which are precious rental opportunities for larger families, but are often spaced few and far between. Consistent with HUD's Affirmatively Furthering Fair Housing obligations, we suggest that PHAs be reminded of their obligations to fairly assess rent reasonableness in all of these situations, to align their rent reasonableness policies in their PHA plans with AFFH, and to prioritize families' access to low poverty, high opportunity areas by presuming that the rents that are advertised to private renters in those neighborhoods are reasonable (consistent with the PHA's payment standards).

- III. HUD should clarify the process after a proper rent reasonableness analysis through guidance or in the HCV program guidebook because PHAs often don't allow tenants an opportunity to request a higher payment standard, negotiate the rent with the landlord, or move before the rent increase goes into effect.

The voucher statute provides a process whereby the housing authority can aid the tenant in negotiating a new rent if the housing authority determines that the rent increase requested by the landlord is reasonable.<sup>1</sup> HUD should outline this process in its rent reasonableness guidance or voucher guidebook, particularly when the rent increase is above the tenant's payment standard. Ideally, the process looks like this:

Step 1: The landlord/owner notifies the housing authority and the tenant of the proposed rent increase and the PHA undergoes a rent reasonableness analysis.

Step 2: The PHA determines whether the rent is reasonable and if not, what it will pay and then

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<sup>1</sup> 42 USCA § 1437f(o)(10)(B) *Negotiations: A public housing agency (or other entity, as provided in paragraph (11)) shall, at the request of a family receiving tenant-based assistance under this subsection, assist that family in negotiating a reasonable rent with a dwelling unit owner. A public housing agency (or such other entity) shall review the rent for a unit under consideration by the family (and all rent increases for units under lease by the family) to determine whether the rent (or rent increase) requested by the owner is reasonable. If a public housing agency (or other such entity) determines that the rent (or rent increase) for a dwelling unit is not reasonable, the public housing agency (or other such entity) shall not make housing assistance payments to the owner under this subsection with respect to that unit (emphasis added).*

advises tenant. The tenant can agree to pay it or the tenant can decide that they cannot afford the new rent. If the rent increase is above the tenant's payment standard, the tenant should be advised that (1) they can request a reasonable accommodation for a higher payment standard, if appropriate under the circumstances (2) the tenant can move because they can't afford the rent or (3) the PHA can help the tenant negotiate a lower rent, within the payment standard or closer to it (there may be reasons why this is appealing to a landlord).

Many PHAs skip this second step and assume that tenants want to stay, which subjects them to a rent increase that they may not be able to afford. Tenants should be informed of all options and PHAs should work with both landlords and tenants to make the program work.

IV. HUD should amend the regulations so that deed-restricted units are defined as unassisted for purposes of rent reasonableness, similar to LIHTC and HOME.

Many states and local jurisdictions fund or incentivize the production of affordable housing through a mix of deed-restricted affordable housing units and market rate units. Because these state and local programs often incentivize leasing to voucher households, e.g., by giving preference to voucher holders or prohibiting discrimination on the basis of a person's status as a voucher holder, many of these deed-restricted affordable housing units are occupied by voucher families. These state and local programs are critical to expanding access by low-income voucher families to safe, decent, and affordable housing.

Unfortunately, voucher families living in deed-restricted, unsubsidized units in California and likely other states, are facing significant rent increases due to a flawed rent reasonableness analysis. Specifically, at the behest of profit-driven property owners, PHAs are approving reasonable rents by comparing the rent charged for market rate units in a deed-restricted complex. Rent for a market rate unit in many jurisdictions is hundreds (if not thousands) of dollars above the payment standard, leaving low-income voucher tenants to pay the difference. Logically, low-income tenants cannot afford the increased cost, placing them on the brink of displacement and facing the prospect of a long struggle to find another landlord willing to accept their voucher.

24 C.F.R. § 983.303(c) requires a comparison to "other comparable unassisted units" in determining the reasonable rent. Where a deed-restricted unit is involved, this necessarily means a comparison to the rent charged for a comparable deed-restricted unit. Deed-restricted units are not assisted, since they are affordable per regulation, not as a result of direct government assistance. And comparing one deed-restricted unit to another is a true apples-to-apples comparison between units. This approach also advances the goal of the underlying statutory authority - to ensure that rents remain affordable for voucher tenants - and the approach is in line with the deed restrictions the owner freely assented to in exchange for valuable government incentives. By contrast, a comparison to market unit rent results in the displacement of voucher families more often than not and it allows owners to charge full market rent for a unit they freely agreed to rent at a below market rate, thereby allowing the owner to game the system at the expense of public investment and sound affordable housing public policy.

To address this problem, HUD should amend 24 C.F.R. § 982.507 to clarify that where a deed-restricted unit is involved, the reasonable rent shall be the lower of the rent charged for a comparable unassisted deed-restricted unit or the payment standard. HUD could also advise PHAs that deed restrictions are a

form of rent control under 24 C.F.R. § 982.509 so that rents are subject to the limits imposed by state or local regulation.

HUD currently provides exemptions in its rent reasonableness analysis for LIHTC and HOME properties.<sup>2</sup> This regulatory change was made pursuant to the 2008 HERA amendment to the governing rent reasonableness statute.<sup>3</sup>

V. HUD should issue rent reasonableness guidance specific to Enhanced Vouchers.<sup>4</sup>

Ensuring that owners receive true market rents for units occupied by Enhanced Voucher holders is a critical fair housing tool -- ensuring that tenants can afford to remain in their chosen community, often an opportunity neighborhood with a strong rental market and rising rents. Though enhanced vouchers (EVs) provide tenants a right to remain in their homes and PHAs must provide special enhanced payment standards equal to market rents, EV rents are also subject to the ordinary voucher program's rent reasonableness requirement. HUD should issue specific guidance to ensure that PHAs' application of their reasonable rent policy for all vouchers is consistent with the EV tenant's statutory right to remain, so that tenants may realistically exercise that right.

Ordinary voucher rent reasonableness policy and practice may often be insufficient. For example, some PHAs have refused to recognize as "market reasonable" those rents being collected by owners from unassisted tenants in *comparable units on the very same premises* as the EV unit, instead relying on lower rents being charged for units in the general market area, outside of the property. Such PHA practices directly violate the tenant's statutory right to remain and should be foreclosed by specific guidance.

HUD should affirmatively state that the rental amounts being received for the same-size comparable unassisted units on the property provide at least a rebuttable presumption for reasonableness of rents for EV units, and that the PHA must approve such rents as reasonable, unless vacancies or other circumstances indicate that the requested rents do not accurately reflect the true market rent.

Per the governing statute, EV rent reasonableness guidance should also ensure timely adjustment of the EV payment standard to cover any subsequent gross rent increases legally levied by the owner, contemporaneous with their effective date.

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<sup>2</sup> 24 C.F.R. § 982.509(c)

<sup>3</sup> P.L. 110-289, sec. 2835, 122 STAT. 2872, adding 42 USC 1437f(o)(10)(F),

<sup>4</sup> Note that the Department's forthcoming final rule governing EVs, pending since 2016, will also probably address EV rent reasonableness.