

**§ 983.254 Annual adjustment of rent to owner.**

(a) *Owner request for adjustment and compliance with contract.* At each annual anniversary date of the HAP contract, the HA must adjust the rent to owner in accordance with the following requirements:

(1) The owner must request a rent increase (including a comparability study to determine the amount of such increase) by written notice to the HA at least 120 days before the HAP contract anniversary. The request must be submitted in the form and manner required by the HA.

(2) The HA may not increase the rent at the annual anniversary unless:

(i) The owner requested the increase by the 120 day deadline; and

(ii) During the year before the contract anniversary, the owner complied with all requirements of the HAP contract, including compliance with the HQS for all contract units.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor published by HUD in the FEDERAL REGISTER;

(ii) The reasonable rent as determined by the HA in accordance with § 983.256; or

(iii) The rent requested by owner.

(2) For a HAP contract under an Agreement executed on or after June 1, 1998, the applicable factor is the published annual adjustment factor in effect 60 days before the HAP contract anniversary. For a HAP contract under an Agreement executed before June 1, 1998, the applicable factor is the published annual adjustment factor in effect on the contract anniversary date.

(3) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(4) The rent to owner may be adjusted up or down in accordance with this section.

(c) *Rent adjustments for HA-owned units.* For HA-owned PBC units, the HA must request HUD approval of the annual adjustment. The HA may not increase the rent at the annual anniversary until and unless HUD has reviewed

the HA comparability study, and has approved the adjustment.

(d) *Initial rent.* Except as necessary to correct errors in establishing the initial rent in accordance with HUD requirements, the adjusted rent to owner must not be less than the initial rent.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

**§ 983.255 Special adjustment of rent to owner.**

(a) *HUD discretion.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner. An HA may only make a special adjustment of the rent to owner if the adjustment has been approved by HUD.

(2) The owner does not have any right to receive a special adjustment.

(b) *Purpose of special adjustment.* A special adjustment may only be approved to reflect increases in the actual and necessary costs of owning and maintaining the contract units because of substantial and general increases in:

(1) Real property taxes;

(2) Special governmental assessments;

(3) Utility rates; or

(4) Costs of utilities not covered by regulated rates.

(c) *Limits on special adjustment.* (1) A special adjustment may only be approved if and to the extent the owner demonstrates that cost increases are not adequately compensated by application of the published annual adjustment factor at the contract anniversary (see § 983.254). The owner must demonstrate that the rent to owner is not sufficient for proper operation of the housing.

(2) The adjusted rent may not exceed the reasonable rent as determined by a comparability study in accordance with § 983.256.

(d) *Financial information.* The owner must submit financial information, as requested by the HA, that supports the grant or continuance of a special adjustment. For HAP contracts of more than twenty units, such financial information must be audited.

(e) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

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(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

(Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577-0169.)

**§ 983.256 Reasonable rent.**

(a) *Requirement.* (1) The HA may not enter an agreement to enter into housing assistance payments contract until the HA determines that the initial rent to owner under the HAP contract is a reasonable rent.

(2) During the term of a HAP contract, the rent to owner may not exceed the reasonable rent as determined by the HA.

(3) At least annually during the HAP contract term, the HA must redetermine that the current rent to owner does not exceed a reasonable rent.

(b) *Comparability.* The HA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the HA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Appraisal—(1) Determining initial rent.* (i) To determine that the initial rent to owner is reasonable, the HA must use a qualified State-certified appraiser who has no direct or indirect interest in the property or otherwise.

(ii) For each unit type, the appraiser must submit a completed comparability analysis on Form HUD-92273 (Estimates of Market Rent by Comparison—the form is available at the Department of Housing and Urban Development, HUD Custom Service Center, 451 7th Street, SW, Room B-100, Washington, DC 20410) for HA review and approval. The appraisal must use at least three comparable units in the private unassisted market.

(iii) The HA must certify to HUD that the initial rent to owner for a unit does not exceed the reasonable rent.

(2) *Annual Adjustment: Comparability study.* (i) In determining the annual adjustment of rent to owner (in accordance with §983.254), the adjusted rent to owner must not exceed a reasonable rent as determined by an HA “comparability study.”

(ii) The comparability study is an analysis of rents charged for comparable units. The HA comparability study must determine the reasonable rent for the contract units as compared with rents for comparable unassisted units. The adjusted rent for a contract unit may not exceed the reasonable rent as shown by the comparability study.

(iii) The comparability study must include a completed comparability analysis for each unit type on Form HUD-92273 (Estimates of Market Rent by Comparison). The comparability study may be prepared by HA staff or by another qualified appraiser. The appraiser may not have any direct or indirect interest in the property or otherwise.

(iv) The comparability study must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(v) If the owner requests a rent increase by the 120 day deadline (in accordance with §983.254(a)), the HA must submit a comparability study to the owner at least 60 days before the HAP contract anniversary. If the HA does not submit the comparability study to the owner by this deadline, an increase of rent by application of the annual adjustment factor (in accordance with §983.254(b)) is not subject to the reasonable rent limit.

(d) *Owner certification of rents charged for other units.* By accepting each monthly housing assistance payment from the HA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the HA information requested by the HA on rents charged by the owner for other units in the premises or elsewhere.

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