

# **Affordable Rental Housing Policy for Project Rent Increase Requests**

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DRAFT

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## Purpose of the Policy

The purpose of this Project Rent Increase Request Policy is twofold:

- To ensure that tenants in affordable rental housing projects are protected from extreme increases to rents. Though affordable rental housing is protected by statewide Oregon Renter Protections, affordable housing populations are vulnerable to increases at the upper end of the allowable state protection limits. Therefore, Oregon Housing and Community Services has established a threshold of increases that may waive the pre-approval process to incentivize lower increases and established a pre-approval process to assure that higher increases are necessary for the long-term viability of the project and/or will not cause undue harm to current residents.
- To provide affordable rental housing owners with a predictable, clear path forward for requesting and implementing rent increases, within applicable program limits, necessary to sustain the ongoing operations of their affordable housing projects. Ongoing financial viability for an affordable housing project requires regular and reasonable increases to rents.

## Applicability of the Policy

Oregon Housing and Community Services (OHCS) has established, for most OHCS funded properties with rent restrictions, a requirement that OHCS approve the property's rent structure at lease-up and **pre-approve** all rent increases throughout the affordability period as required per the funding source. **The June 2022 version of the Project Rent Increase policy waives pre-approval requirements for increases at or below 5% annually** for affordable housing projects provided these increases do not exceed program maximums and notice is sent to OHCS at the time of resident notification. Projects with HOME and Housing Trust Fund (HTF) regulatory requirements are still mandated to request approval for any rental increase under federal rule, regardless of percentage increase.

Increases above 5% (up to 7% + Consumer Price Index) to the state annual cap set by SB 608 (2019) and applicable to affordable rental housing in HB 3113 (2021) will require a staff review and approval prior to implementation. This includes increases in rent during the first year of occupancy and during acquisition / rehabilitation of rental housing. Funding sources that may require rent increase approval include, but may not be limited to:

- The Low Income Tax Credit Program (LIHTC) both 9% and 4% (after issuance of 8609),
- The General Housing Assistance Program (GHAP)
- The Housing Development Grant Program (HDGP)
- The Local Innovation & Fast Track Program (LIFT)
- Risk Share Loan Program

- Elderly/Disabled Bond Program
- Oregon Affordable Housing Tax Credit (OAHTC) Program
- HOME Investment Partnership (HOME) Program\*
- Housing Trust Fund (HTF)\*
- Operating Agreements such as those extending affordability

\*HOME & HTF require rent increase pre-approval for any tenant rent increase – streamline documentation may be applicable for increase at or below 5%.

## Pre-Approval for Rent Increases at or Below 5%

OHCS hereby provides pre-approval for all affordable housing properties establishing rental increases for tenants at or below 5% from the previous rental amount. Affordable housing properties that are bound by this policy are required to **notify** OHCS of the increase at the time of tenant notification. Properties with HOME and HTF regulatory requirements must request OHCS approval regardless of rental increase amounts (a streamlined process may be available for increase at or below 5%). All state and local requirements are still applicable including limits to rental increases on an annual basis and tenant notification requirements. It's important that property management understand new requirements established by HB 3113 (2021).

To meet notification requirements, an e-mail outlining the following may be sent to [MFRent.Request@hcs.oregon.gov](mailto:MFRent.Request@hcs.oregon.gov) and should include the following information:

- Property Name
- Property Address
- Property Contact Information
- Increase percent per bedroom size
- Date the increases will go into effect

**Note:** Increases determined to be above 5% during OHCS compliance reviews will be subject to the correction process found under **Unapproved Rent Increases** as outlined in this document. OHCS may also refer residents to legal aid services to access protections outlined in HB 3113 (2021).

## Rent Increases above 5%

For rent increase requests seeking rent changes on existing tenants above 5% and up to 7% + CPI, OHCS will require a review and approval process. Owners will be able to implement this rent increase as soon as they receive approval from OHCS (consistent with the State of Oregon notice requirements). In no case will OHCS approve a rent increase that exceeds maximum allowable programmatic rents or that exceed state rent increase limitations.

## Rent Increases Above 5% - Assessment Criteria

Rent increase requests of more than 5% are considered risk adverse for both the tenant (for affordability reasons) and the property (risking the ability to lease units) demanding additional review and approval measures. Specific information related to operational needs, replacement reserves, capital plans, resident impact, etc. and specific to the property needs justifying the request, will be required with this submittal.

OHCS will do an assessment that may include, but is not limited to, the following to determine the need for the requested rent increase:

- A review of current rents and utility allowance, subsidy information and household income.
- A comparison of the request to the maximum allowable programmatic rent.
- A review of the property's vacancy history. OHCS will place particular weight on those properties with occupancy rates lower than 90% and properties with extended vacancies (units vacant for longer than 90 days).
- Consideration of property needs including, but not limited to, capital repair needs, maintenance, services, and staffing
- An analysis of reasonableness to area market comparable rents
- An assessment of resources including replacement reserve
- A review of unresolved compliance issues determined by OHCS to be of a severe nature. Examples include but are not limited to:
  - unapproved rent increases
  - unresolved health and safety issues - as outlined in your most recent compliance audit
  - unresponsiveness to reporting requirements such as a history of not reporting timely or unaddressed compliance issues
- An analysis of the rent burden of current residents
- A Replacement Reserve Analysis on the property

## Rent Increases Above 5% - Documentation

OHCS will require the following documentation to be submitted with rent increase requests above 5%:

- OHCS Rent Increase Request Form
- 12-month Occupancy Report
- Current utility allowance documentation, with calculations
- Most recent financial statements (Income Statement & Balance Sheet)
- Current Rent Rolls
- Rent Burden Worksheet that includes unit level restrictions and data adequate to calculate unit level rent burden.
- Detailed information on capital needs which may include any of the following:
  -

- Third party reports documenting the property needs and estimated timing of repair/replacement.
- CNA when available
- Updated replacement schedule clearly assessing property needs including estimated replacement costs and estimated remaining life.
- Other information supporting request for a higher increase such as health and safety issues, increase staffing costs, etc.
- HOME Monitoring Report (if applicable)

## Rent Increases Above 5% - Process

Due to the risk associated with increases of this nature, all Rent Increase Requests above 5% will go through an internal approval process involving a recommendation from the OHCS Housing Finance Committee and approval from the Executive Director.

General standards that would indicate property or portfolio need or would be looked upon favorably when determining a rent increase request include, but are not limited to:

- Analysis of cash flow trends; cash flow before obligations.
- Clear explanation and documented need for additional resources.
- Limited impact to existing residents. Specifically, OHCS tracks the percentage of families that are considered severely rent burdened (over 50% of income toward housing costs). Projects with a high percentage of families severely rent burdened are more likely to displace residents with large rental increases.
- Clear demonstration of capital needs and a subsequent explanation of how rental increase will be utilized to resolve those capital needs.
- Projects that have maintained an occupancy rate of 97% or higher for over 12 months or projects that can clearly articulate why a rental increase would have limited impact on vacancy rates (example: the rental increase corresponds with capital investments in the property).

Rent increase requests utilizing a portfolio approach should provide a clear explanation of the portfolio plan and the significance associated with the rental increase request(s) in that plan.

Generally, a response will be given within 30 days of the submittal receipt but additional time may be necessary for circumstances beyond OHCS control (for example requests for additional information that are not timely responded to). OHCS will endeavor to keep additional informational requests as limited as possible. OHCS expects a five business day turnaround on informational requests, if additional information is required. If additional time is needed to gather information, OHCS expects this to be communicated and negotiated. Properties wishing to request an increase of more than 5% should follow the submittal instructions found here ([website](#)).

## **Increases at Unit Turnover**

OHCS does not limit rent increases at time of turnover beyond the maximum allowable program rent level. Rental increases made at unit turnover do not need to be reported to OHCS prior to the change. **Note: Per ORS 90.427 Section 4, a landlord may only terminate a fixed term tenancy “for cause”.**

## **Terms of Rent Increases**

OHCS will not approve, and landlords may not enact more than one rent increases during a 12-month period. Subsequent approved rent increase requests may take place 12 months from

the effective date of the previous increase as outlined in the approval letter and subject to other implementation rules and regulations.

Retroactive rent increase requests will not be considered (see Unapproved Rent Increases Section of this policy for more information).

Rent increase requests submitted in compliance with the applicable submittal criteria outlined above must be received no sooner than 150 days and/or no later than 120 days prior to the eligible effective date and/or the intended implementation date. OHCS cannot begin its review until all required information has been received. Landlord is required to provide tenant 90-day notice of rental increase per HB 3113 (2021) and should not provide increase to residents until approved by OHCS if the increase is over 5%.

## **Unapproved Rent Increases**

If OHCS determines that a project is not compliant with this policy and/or State of Oregon tenant protection laws, OHCS may, at its sole discretion, require the owner to refund the excess rent collected by the project to the tenants and/or local housing authority where determined as appropriate.

Proof of rent credit or refund will be required by OHCS. When a refund or credit is required, OHCS will not consider new rent increase requests and/or may enact other penalties as determined appropriate until repayment or credit is made, and proof is provided to OHCS' satisfaction. Refunding of rents does not satisfy other non-compliance reporting requirements (for example 8823's will still be required to be filed with the IRS if rents exceeded program limits).

## **Oregon Affordable Housing Tax Credit (OAHTC) Program**

Upon OAHTC expiration OHCS anticipates rental increase requests may exceed policy norms. OHCS will consider expiring OAHTC when reviewing rental increase requests.

Please consult your Reservation and Extended Use Agreement (REUA) for additional information on OAHTC requirements.

## Units with Project-Based Rent Assistance

Project-Based Rent Assistance is defined as a residential home with rent assistance tied to the unit. The assistance can come from any source including the federal, state or local government but the resident generally pays no more than 30% of their adjusted income towards rent costs when living in the project-based unit (with some exceptions). Because resident rent payments are capped by the program itself, this policy does not apply to project-based rent assistance properties when 100% of the units receive project-based rent assistance.

### HOME Project Based Units:

An owner may set rents in a HOME-funded unit with a Project-Based Voucher (PBV) in a designated **Low-HOME** unit occupied by a very low-income household up to the maximum PBV level (even if above FMR/HOME maximum): 24 C.F.R. 92.252(b)(2). This does NOT apply to designated High-HOME units. Designated **High-HOME units must cap rents at the High HOME rent amount**. Rent increases for these project-based units are exempt from the review criteria of this policy.

HOME units monitored by other Participating Jurisdictions (PJ's) may utilize rent approval documents from the PJ. OHCS will require proof of the approved rent such as a letter from the PJ. HOME rents may not exceed LIHTC max or HOME max (unless PBV as outlined above).

### Rural Development Units with LIHTC:

Rural Development project-based units are exempt from this rent increase policy. Gross rent does not include any rent payment to the owner of the unit to the extent such owner pays an equivalent amount to the USDA Rural Housing Service under Section 515 of the Housing Act of 1949. See IRC §42(g)(2)(B)(iv). As long as the owner pays Rural Development the rent amount over the limit (all of the overage) that unit is considered to be in compliance.

Non-USDA units with OHCS rent increase restrictions are bound by this policy.

### Over Income Tenants in Project Based Units:

When a household's income increases above maximum program income eligibility and/or the household is no longer eligible to receive project-based assistance, the rent charged must be adjusted to be at or below the property funding requirements based on the most restrictive funding source for the specific unit. Because the tenant is no longer receiving subsidy, **this rent increase policy is applicable to these tenants**.



## **Housing Choice Vouchers (Section 8) and Program Rents**

**This policy is applicable to these programs** but there are additional restrictions. OHCS does not approve the tenant share of rent for Housing Choice Vouchers (Section 8) utilized within OHCS affordable housing units. However, unit rents must be capped at or below the required housing authority payment standard, minus the utility allowance, per unit type to ensure the tenant portion of the rent is not increased above the applicable housing authority affordability calculation (to ensure the tenant is not rent burdened). This protection is not extended to households renting a unit size that does not align with housing authority's determination of unit size based on household composition.

Housing Choice Voucher (Section 8) rents in HOME funded units cannot exceed the applicable HIGH or Low HOME rent for the designated HOME unit. The Subsidy, Total Tenant Payment (TTP) and Utility Allowance (UA) must calculate to at or below the HOME rent.

## **Request Approval**

If a property rent increase request received approval at the level requested, that decision is final. No additional reviews for the property will take place until the next eligible increase date (see Terms of Rent Increase).

## **Request for Decision Review**

In the event that a rent increase request has been denied or was approved at a level different than the requested amount (modified), a Request For Decision Review may be submitted within 30 days of the denial or modification should the requestor wish to challenge the determination. To submit this request, the entity that made the rent increase request must submit a written Request for Decision Review explaining the following:

- The basis for the decision review request
- The resolution sought
- Supplemental documentation to support the decision review request
- Any addition documentation or information that is pertinent to why the requesting entity feels a decision review is appropriate.

Any Requests for Decision Review should be sent to the same electronic location as the original request. Generally, OHCS will not request additional information, but will rely solely on the appeal information submitted. Though OHCS does retain to right to gather additional information, specifically in regard to clarifications or questions that arise from the decision review request.

All Decision for Review requests, after information is gathered by OHCS staff, will be submitted to the OHCS Finance Committee for a recommendation. The OHCS Executive Director will make the final determination. It is important to note that the OHCS Executive Director retains the

right to modify the approval or denial as they deem appropriate. Decision Review determinations are final and considered in effect for the 12 month period.

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