

Rental Policies for State-Owned Housing

(Date 2.9.2022)

I. PURPOSE

The purpose of this document is to set forth a system of rental policies for state-owned, employee occupied housing administered by State of Wisconsin agencies and the University of Wisconsin pursuant to section 16.004(8) of the Wisconsin Statutes.

II. HISTORY

The State-Owned Housing Rental program originated with the Laws of 1975 – Chapter 39 – Section 716(5), which required the Department of Administration (DOA) Secretary, in conjunction with other state agencies, to develop a plan for improving the efficiency in the utilization of staff housing. The plan called for criteria for the designation of housing for mandatory and optional housing; uniform policies for rental rates for each of the categories of mandatory and optional occupancy; procedures related to the phase-out and disposition of unnecessary state-owned employee housing; and procedures for reviewing and updating approved rental rates. Later that year the legislature added subsection (8) to Wisconsin Statutes section 16.004, which required the DOA Secretary to establish and maintain a system relating to the rentals charged for state-owned housing, review the system for possible changes every two years, and submit such recommendations to the Joint Committee on Finance (JCF) every two years. Subsection (8) required DOA to include in its system a procedure for review of the need to retain state-owned housing units and possible disposition of such units.

Subsection (8) was revised in the 1981-82 and 1987-88 biennia. The 1981 revision specified that JCF's review of DOA's biennial recommendations had to include approval of a rental rate structure for the following two-year period. The 1987 revision clarified that the reports to JCF were to include proposed changes to rental rates and added passive approval if a meeting to review the recommendations was not scheduled within 14 working days after submission by DOA.

Subsection (8) was revised again during the 1991-1992 biennium. The requirement for DOA to submit a biennial report of changes to the rental rates and/or policies to JCF was removed and replaced with a requirement to submit such proposed changes (other than changes to rental rates) to JCF only when the DOA Secretary determines that such changes are necessary. The changes also removed the requirement for DOA to submit proposed rental rate changes to JCF for review and approval and replaced it with statutory procedures for adjusting rents. Under this statutory framework rents are adjusted in three ways (explained in more detail in IV.A.1. of this policy):

- 1) Once every ten years based on appraisals of the fair market value of the housing units.
- 2) From time-to-time as is necessary, based on appraisal of the fair market value when a housing unit undergoes major renovation; and
- 3) Every two years (excluding those years where an adjustment is made based on the 10-year appraisal) based on changes to the consumer price index.

III. DEFINITIONS

In this policy the following terms, when capitalized, have the meanings set forth in this section unless otherwise specified:

- A. **“Adjusted Rental Rate”** means the monthly rental rate for a Housing Rental Unit as determined by applying the adjustments set forth in section IV.A.3. to the Housing Rental Unit's Base Rental Rate.
- B. **“Base Rental Rate”** means the monthly rental rate for a Housing Rental Unit as determined pursuant to section IV.A.1. before adjusting thereto under to section IV.A.3. & 4.

- C. **“Fair Market Rental Rate”** means the amount of money that a Housing Rental Unit would rent for per month as determined pursuant to section IV.A.2.
- D. **“Fair Market Resale Value”** means the amount of money that a Housing Rental Unit would sell for as determined pursuant to section IV.A.2.
- E. **“Housing Rental Unit”** means a residential dwelling, including a single-family house, a single-family unit in a duplex, multi-family or multi-purpose property, a condominium or cooperative housing unit, a sleeping room, a mobile home, or other residential unit, whether furnished or unfurnished, that is owned by a state agency or the University for the purpose of providing a primary place of residence to state agency or university officers or employees.
- F. **“Mandatory Housing Rental Unit”** means a Housing Rental Unit that meets all the following conditions:
 - 1) Is leased by an agency to an employee-tenant who is required to accept such lodging as a condition of his/her employment; and
 - 2) Is located on property owned by the agency leasing the Housing Rental Unit; and
 - 3) Is provided to the employee-tenant for the convenience of the agency.

For purposes of this definition requiring an employee-tenant to accept lodging as a condition of his/her employment is only a satisfying condition if the employee-tenant must live in the Housing Rental Unit to be able to properly perform his/her duties.

For purposes of this definition the provision of housing to an employee-tenant is for the convenience of an agency if the agency has a substantial business reason other than to provide the employee-tenant with additional compensation.

- G. **“Non-Mandatory Housing Rental Unit”** means a Housing Rental Unit that is not a Mandatory Housing Rental Unit.
- H. **“Rental Rate”** means the monthly rental rate for a Housing Rental Unit as determined by section IV.A.4.
- I. **“Wage-Based Rental Cap”** means the maximum amount of monthly rent an agency or the University can charge an employee-tenant when leasing a Mandatory Housing Rental Unit. An employee-tenant’s Wage-Based Rental Cap is determined by taking the employee’s annual salary, dividing it by 12 and then multiplying it by 25%. The wages of Employee-tenants occupying Mandatory Housing Rental Units Wage shall be reviewed annually in July prior to receiving the CPI adjustment rate increases that occurs August 15.

IV. UNIFORM RENTAL RATE STRUCTURE POLICY

A. Establishment and Adjustment of Rental Rates

Rental Rates are determined by first establishing a Base Rental Rate and then applying certain adjustments as applicable to determine an Adjusted Rental Rate. For Non-Mandatory Housing Rental Units, the Rental Rate shall be the Adjusted Rental Rate. For Mandatory Housing Rental Units agencies must take the additional step of determining the employee-tenant’s Wage-Based Rental Cap. For Mandatory Housing Rental Units, the Rental Rate shall be the lesser of the Adjusted Rental Rate and the Wage-Based Rental Cap.

1. Determining Base Rental Rates

Section 16.004(8) of the Wisconsin Statutes sets forth three ways for establishing and updating Base Rental Rates for state-owned housing.

i. Appraisal-Based Rental Rate Adjustments Every Ten Years

No later than July 1 of the 2nd year following each federal decennial census DOA must obtain appraisals of the fair market value of all Housing Rental Units. DOA is required to determine and fix Rental Rates for such units based on those appraisals, with the new rates taking effect on the following August 15.

DOA shall provide a written reminder to all agencies that own Housing Rental Units that DOA will be conducting appraisals on such units and that Rental Rates will be adjusted accordingly. Once the appraisals have been completed DOA shall determine the applicable Base Rental Rate for each unit and notify each agency of such determination. DOA and the agencies will then work collaboratively to determine if any adjustments to the Base Rental Rates should be made in accordance with section IV.A.3-4. The agency shall be responsible for notifying its employee-tenants of any applicable changes to their Rental Rates.

ii. Appraisal-Based Rental Rate Adjustments for Major Renovations

If DOA determines that a Housing Rental Unit has been affected by a major renovation DOA **may** obtain an appraisal of the fair market value of the renovated unit, and if it does so **must** determine and fix a new Rental Rate based on the appraisal. If the appraisal is obtained prior to July 1 of any year, the rate shall take effect on August 15 of that year; otherwise, it shall take effect on August 15 of the following year.

Agencies that own Housing Rental Units shall notify DOA in writing of any renovations to such units upon completion thereof. DOA will then determine whether to appraise the unit for the purpose of adjusting the Rental Rate. DOA shall notify the agency in writing of its determination. If DOA chooses not to appraise the unit, then no rent adjustment will be made. If DOA chooses to appraise the unit, then the new Base Rental Rate shall be determined as set forth in this section, and DOA shall notify the agency of such determination. DOA and the agency will then work collaboratively to determine if any adjustments to the Base Rental Rate should be made in accordance with section IV.A.3-4. The agency shall be responsible for notifying its employee-tenants of any applicable changes to their Rental Rates.

iii. Biennial Rental Rate Adjustments Based on Cost-of-Living Adjustments

If no appraisal of a Housing Rental Unit is made during the 24-month period ending on July 1st of any even-numbered year, the current Rental Rate for the unit must be subject to a biennial cost-of-living adjustment. Six months prior to notifying agencies of the applicable cost-of-living adjustments DOA shall request an updated list of all Housing Rental Units. Agencies shall provide responses within 60 days using the State-Owned Housing Rental Unit Inventory Worksheet attached hereto as **Attachment A**. In addition to completing the worksheet agencies that have made any modifications to leases since the last 24-month period shall provide copies of such leases to DOA.

To determine the adjustment, DOA will reference the 12-month change in the consumer price index for all items, U.S. city average, from the U.S. Bureau of Labor Statistics for December of the preceding year, multiply the current rental rate by that percentage, then add the product to the current rental rate and round to the nearest whole dollar. DOA will then notify the agencies in writing of the applicable cost of living adjustment to rent for each affected Housing Rental Unit. The new rental rate must take effect on August 15th.

Cost-of-living rental rate adjustments made pursuant to this section shall not be subject to section IV.A.3 adjustments, provided, however, that in the case of Mandatory Housing the CPI-based rental rate adjustments shall not result in a rental rate that exceeds the Wage-Based Rent Cap. The agency shall be responsible for notifying its employee-tenants of any applicable changes to their Rental Rates.

2. Determining Fair Market Value of Housing Rental Units

A Housing Rental Unit's Fair Market Rental Rate shall be determined by appraisal. For the decennial appraisal of all Housing Rental Units DOA shall request an updated list of such units from agencies. Once DOA has verified the inventory, or in the case of an appraisal arising from a major renovation of a unit, once DOA has determined that a rent adjustment is necessary, DOA shall be responsible for procuring a qualified appraiser or appraisers to

perform an appraisal or appraisals of such unit(s). DOA shall charge the cost of such appraisals to the appropriation specified in section 16.40(19) of the Wisconsin Statutes or, if there is no such appropriation, to the appropriation or appropriations which fund the program in connection with which the housing is utilized.

DOA will provide instructions to appraisers that the purpose of the appraisal is to determine the Fair Market Rental Rate of the unit(s) being appraised, and that the preferred method for making such determination is an economic approach that examines the rental rate of comparable housing rental units in the community.

Under certain circumstances an appraiser may advise DOA that this economic approach may not be a suitable method for determining fair rental value (e.g., when a housing unit is in a remote location, or when a housing unit is so unique that there are no other comparable units in the community). In such instances DOA may advise the appraiser to determine the Fair Market Resale Value of the unit using whatever methodology, in the appraiser's professional judgment, will most accurately reflect the unit's resale value. DOA will then multiply the unit's Fair Market Resale Value by the State of Wisconsin Investment Board's expected nominal rate of return on real estate investments as reported in the Department of Employee Trust Funds' most recent Wisconsin Retirement System Financial Report. The result will be determinative of the annual fair market value rental rate of the unit, which shall be divided by 12 to determine the monthly Fair Market Rental Rate.

Agencies shall be responsible for notifying their employee-tenants who occupy Housing Rental Units that an appraisal will be taking place and shall coordinate with the appraiser(s) and employee(s) to schedule any necessary appraisal appointments once DOA has procured such services.

3. Adjustments to Base Rental Rates

Once the Base Rental Rates for Housing Rental Units have been determined DOA and the agencies will then work collaboratively to determine if any adjustments to such rates should be made.

i. Permissible Factors to Consider in Adjusting Base Rental Rates (All Housing rental units)

The following factors may be taken into consideration by DOA and the agencies in adjusting applicable Base Rental Rates for all Housing Rental Units:

- a) A reduction to the Base Rental Rate if a portion of the unit is included in the demised premises but is not accessible or usable to the employee-tenant for dwelling purposes or is required by the agency to be used to conduct agency business. Any portion of the demised premises to which this section applies must be specifically designated in the lease agreement. Reductions must be calculated by dividing the gross square footage of the portion of the demised premises to which this section applies by the total gross square footage of the entire demised premises.
- b) An adjustment to the Base Rental Rate may be permitted if the employee-tenant performs work or services related to the agency's ownership of the rental unit (e.g.: exterior painting) and the reduction in rent is intended to compensate the employee-tenant for such work in lieu of wages. The agency shall be responsible for compliance with any applicable IRS and DOR rules regarding the treatment of such rent reduction as income to the employee and shall provide DOA with documentation showing the work or services to be performed by the employee-tenant, the expected number of hours the employee-tenant will spend each month performing such work or services, and the hourly wage rate the agency is using to determine the rental rate adjustment.

ii. Permissible Factors to Consider in Adjusting Base Rental Rates for Mandatory Housing

In addition to the factors enumerated in section IV.A.3.i. DOA and the agencies may take into consideration the following factors when adjusting applicable Base Rental Rates for Mandatory Housing Units:

- a) An inconvenience to the employee and benefit to the State where the employee lives in mandatory housing. *Occupants performing additional duties beyond normal working hours that may cause a*

lack of privacy or disruption related to providing services required of their employment (e.g., a park ranger who has visitors stopping at his/her residence during non-working hours.).

- b) An adjustment to the rental rate may be permitted if the dwelling is poorly insulated or weatherized and the employee incurs unreasonable heating or cooling costs.

4. Application of Rental Rate Adjustment Factors

Once DOA and the agency have determined which section IV.A.3. factors are applicable to a Housing Rental Unit and the extent to which such factors impact the Base Rental Rate the agency shall adjust the Base Rental Rate for the unit.

- i. **As applied to Non-Mandatory Housing Rental Units**, such adjustments shall not result in Rental Rate that is less than 50% of the Base Rental Rate.
- ii. **As applied to Mandatory Housing Units**, the agency shall first make the applicable adjustments to the Base Rental Rate to determine the Adjusted Rental Rate, which shall not be less than 50% of the Base Rental Rate. The agency shall then determine the employee-tenant's gross monthly wages, multiplied by 25%, to determine the Wage-Based Rent Cap. The Rental Rate shall be the lesser of the Adjusted Rental Rate and the Wage-Based Rent Cap.

The new Rental Rate shall go into effect as set forth in section IV.A.1.

B. Charges for Provided Amenities

The following costs shall be charged by the agency to its employee-tenants, as applicable, in addition to rent:

1. Utility services, including telephone, should be furnished by a third-party provider, and billed directly to the employee-tenant wherever possible. If direct billing from and payment to the provider is not possible, then the agency shall determine the housing rental unit's actual usage and bill the employee-tenant. If a utility service is provided to a Housing Rental Unit and the employee-tenant uses the utility service for both personal and business use the agency may prorate the amount it charges to the employee-tenant based on the agency's determination of the extent to which such utilities are used for business-related purposes, and in a manner consistent with any applicable guidance from the IRS and DOR relating to the treatment of such payments as income for tax purposes.
2. Convenience maintenance services, such as lawn mowing, trash removal, snow removal or gardening, that are provided to a Housing Rental Unit shall be paid by or charged to the employee-tenant. Agencies may prorate such charges where the services are provided to a multi-tenant facility, or where the Housing Rental Unit is part of a facility for which such services must be provided for all or part of the remainder of the facility. Prorations shall be calculated based on gross square footage.
3. To the extent that an agency provides certain amenities to an employee-tenant in connection with occupancy of a Housing Rental Unit, such as meals or cleaning service, the agency shall charge the employee-tenant for such amenities separately from rent.

C. Rental Rate Changes Due to Changes in Circumstances

In addition to any other information agencies are required to provide to DOA as set forth in this policy, agencies must provide an update upon request on any change in circumstances that may affect Housing Rental Units, including the following:

1. Change in status of occupancy (mandatory to non-mandatory or vice versa);

2. Damage to a Housing Rental Unit rendering all or a portion of it untenable;
3. Lease termination/expiration;
4. Change in tenant;
5. Change, improvement, or renovation, that may impact a unit's fair market value;
6. Change in use of a unit to a non-residential use; and
7. Any other change that may potentially result in an adjustment to a unit's Rental Rate.

To the extent that DOA approval is needed prior to implementing a Rental Rate change the proposed change shall be deemed approved if DOA does not respond within 30 days. Changes that do not require DOA approval may be implemented at the agency's discretion and in accordance with the circumstances giving rise to the change. Agencies may not implement any change in Rental Rates that are not consistent with this policy.

D. Future Acquisitions

If an agency adds Housing Rental Units to its inventory, either by acquisition or by converting existing facilities to housing, the agency must promptly notify DOA. DOA will hire a qualified appraiser to perform an appraisal of any new Housing Rental Units to determine the Base Rental Rate for the unit. DOA and the agency will then establish the applicable Rental Rate for the unit as set forth in section IV.A.

V. INCOME REPORTING RESPONSIBILITIES

A. Employees of Agencies Other than the University of Wisconsin

The Internal Revenue Service requires employers to report as income the provision of lodging to employees under certain circumstances. This section provides a general summary of IRS guidance. However, agencies are responsible for familiarizing themselves and complying with all applicable IRS rules.

DOA Central Payroll is responsible for withholding taxes on executive branch agency employees' paychecks and reporting income on employees' W-2s. The provision of Mandatory Housing to employees is not reportable as income, but it is the responsibility of the agencies to provide the following documentation to DOA Central Payroll demonstrating that the housing provided qualifies as Mandatory Housing:

1. Documentation that the employee was required to accept such housing as a condition of his/her employment. Such documentation must include an explanation as to why the employee must live in the provided housing to be able to properly perform his/her duties.
2. Documentation that the housing is provided to the employee for the convenience of the agency. Such documentation must include an explanation as to what substantial business reason the agency has for providing housing to the employee.

Agencies shall supply such documentation to DOA Central Payroll no later than thirty (30) days from the date of the employee's occupancy of Mandatory Housing.

The provision of housing to employees that is not Mandatory Housing may result in reportable income and tax withholding to the extent that the Fair Market Rental Rate exceeds the Rental Rate paid by the employee. Within thirty (30) days of any of the following triggering events agencies shall work with DOA Central Payroll to provide information necessary for reporting any income and withholding any taxes resulting from the provision of housing:

1. The employee's occupancy of the housing;
2. Any change in the rental rate charged to the employee;

3. The employee’s vacancy of the housing.

DOA shall ensure that DOA Central Payroll is provided with information about appraisals of Housing Rental Units and biennial rental rate adjustments based on cost-of-living adjustments in a timely manner so that DOA Central Payroll can accurately determine, for each Housing Rental Unit occupied by an executive branch agency employee, what the unit’s fair market rental rate is.

B. Employees of the University of Wisconsin

The provision of housing to university employees is subject to IRS income reporting and tax withholding requirements. However, DOA Central Payroll is not responsible for income reporting for or tax withholding of university employees. It is the University’s responsibility to ensure that it complies with applicable IRS rules on incoming reporting and tax withholding related to the provision of housing for its employees.

VI. UNIFORM LEASE POLICY

DOA recognizes that each Housing Rental Unit and employee-tenant presents their own unique set of circumstances, and that agencies will need to tailor each lease agreement to address those circumstances. DOA also recognizes that uniformity and consistency in lease administration ensures equitable outcomes for both agencies and employee-tenants. To ensure consistent administration of state-owned rental housing agencies should, to the extent practicable, use the Standard State-Owned Housing Rental Unit Lease Template attached hereto as **Attachment B** when drafting lease agreements with employee-tenants.

Agencies may incorporate additional terms into leases provided such terms do not conflict with the policies set forth herein. In rare circumstances agencies may need to tailor a lease agreement by modifying or deleting standard terms and conditions set forth in the lease template. Agencies must first notify DOA prior to modifying or deleting such terms and conditions, provide an explanation for the need for such change, and obtain DOA consent prior to entering a lease with such changes.

Agencies shall be responsible for ensuring that nothing in their lease agreements is inconsistent with this policy. The provisions in agency lease agreements addressing Rental Rates shall be written in such a way as to ensure that agencies may implement any Rental Rate changes mandated by this policy and/or by statute.

VII. AGENCY USE OF RENTAL REVENUE

Under section 16.40(19) of the Wisconsin Statutes agencies that own Housing Rental Units and have program revenue or segregated revenue appropriations for deposit of housing receipts are required to deposit all revenues received from rents into that appropriation or account and to pay all expenses for maintenance of such housing from that account. If an agency does not have a program revenue or segregated revenue appropriation that is specific to deposit of housing receipts the agency must create a separate subaccount within its program revenue or segregated revenue appropriation account for deposit of all revenues received from rents. Where an agency has discretion in determining Adjusted Rental Rates it should take into consideration the cost of maintenance for its units and the cost of periodic appraisals to ensure that deposits into the applicable account or subaccount are sufficient to cover such costs.

VIII. PROCEDURE FOR REVIEW OF RETAINING STATE-OWNED HOUSING UNITS AND DISPOSITION PROCEDURES

Under section 13.48(14)(d) of the Wisconsin Statutes agencies are required to submit to DOA an inventory of all real property under their jurisdiction every two years. Any agency that owns Housing Rental Units is required to include such units in its biennial inventory. Agencies must also specifically identify any underutilized assets in their inventory. As part

of this biennial process agencies that own Housing Rental Units shall review their inventory and determine whether any such unit(s) should be identified as underutilized. For purposes of this policy underutilized may include Housing Rental Units, whether occupied or not, for which an agency has determined that continued ownership is no longer in the state's best interest.

As part of the biennial real property inventory process DOA must obtain appraisals of all properties DOA has identified for potential sale, which would include any Housing Rental Units. DOA must then submit an inventory containing the location, description, and fair market value of each property identified for potential sale to the State Building Commission.

If an agency determines that a Housing Rental Unit should be sold or otherwise disposed of it is not required to wait until it submits its biennial real property inventory to DOA. The agency may inform DOA that it has identified the unit for possible disposition.

Once a Housing Rental Unit has been identified for potential sale the procedures for disposition vary depending on which agency will be responsible for carrying it out. Some agencies have independent statutory authority to dispose of real property under their control. With certain limited exceptions DOA has authority under section 16.848 of the Wisconsin Statutes to dispose of real property owned by the state, regardless of which agency has jurisdiction over it. DOA and the agencies should work cooperatively and should consult with their respective legal counsel to determine the proper procedures for disposing of any housing rental unit.

IX. PROCEDURE FOR PERIODIC REVIEW OF SYSTEM OF POLICIES

DOA is statutorily required to periodically review the state's system of state-owned housing administered by agencies for possible changes. In compliance with this responsibility DOA shall conduct a biennial review of this policy. Not later than June 30 of each even numbered year DOA shall send a written communication to all agencies that own and operate Housing Rental Units requesting such agencies to provide DOA with recommended changes, if any, to this policy. Agencies shall be given thirty days to provide responses. If DOA or any agency proposes a change to this policy DOA shall schedule a meeting, inviting any agency that owns or operates Housing Rental Units to participate. Participation in such meetings shall be at each agency's discretion. Once DOA and the agencies have met to discuss proposed changes DOA shall decide whether to implement them. If DOA chooses to make changes to this policy, it must prepare a report recommending such changes and submit it to the Joint Committee on Finance for passive review pursuant to section 16.004(8)(am) of the Wisconsin Statutes.

X. EXCEPTIONS

This system of rental policies does not apply to the following:

- 1) The Governor's Executive Residence;
- 2) Residences occupied by the President of the UW System, the President-Emeritus of the UW – Madison, or Chancellors within the UW System;
- 3) Graduate student housing where eligibility for residency is not determined by employment status;
- 4) Residences within multi-unit properties open to employees and non-employees alike, where employees are not given preference with respect to occupancy or rental rates, and where the agency can demonstrate that the rental rates are market-based.