

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Public and Indian Housing**

24 CFR Parts 950 and 990

[Docket No. FR-3747-F-02]

RIN 2577-AB49

**Performance Funding System: Unit
Months Available**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The Department is revising the Performance Funding System to permit payment of operating subsidies for scattered-site units as they become occupied.

EFFECTIVE DATE: December 14, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Comerford, Director, Financial Management Division, Office of Management Operations, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-1872; or with respect to the Indian Housing programs, Ms. Joann A. Teiken, Financial Management Specialist, Office of Native American Programs, Public and Indian Housing, Room B-133, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2980. Hearing or speech impaired individuals may call HUD's TDD number, (202) 708-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On May 9, 1995 (60 FR 24597), the Department published a proposed rule which would revise the definition of unit months available (§§ 950.102 and 990.102) and provide an explanation of the alternate method for calculating unit months available upon acquisition of units in a scattered-site project (§§ 950.705 and 990.104(b)). The change in procedure would be applicable to scattered-site developments acquired by Indian Housing Authorities.

Only five public comments were received. All supported the Department's proposed rule. However, one commenter requested a clarification of the regulatory reference to amending the Development Cost Budget to reflect units occupied in the previous six months. The commenter asked: "Does the PHA claim the unit months available through an amendment every six months until all units are occupied,

do we project the occupancy when the annual budget is proposed or can this be a year-end adjustment item?"

The Department will not permit revisions to the Department Cost Budget or to the calculation of operating subsidy based on projections. The regulations state that the development budget revision will reflect the number of units that were occupied and that subsidy shall be revised to include units that are actually occupied. The reference to previous six months in the regulations is intended to ensure that revisions are not processed more often than once every six months. The rule does not require housing authorities to request these revisions and the Department would certainly allow housing agencies to submit a revision that reflects activity for the previous twelve months at the end of the year.

Findings and Certifications

Environmental Impact

The subject matter of this final rule is categorically excluded from HUD's environmental clearance procedures under 24 CFR 50.20(k). It relates to internal administrative procedures whose content does not constitute a development decision or affect the physical condition of project areas or building sites.

Executive Order 12866

The Office of Management and Budget reviewed this final rule under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection at the Office of General Counsel, room 10276, Department and Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this final rule does not have a significant economic impact on substantial number of small entities. The final rule will recognize that homes that are part of scattered-site developments become ready for occupancy at varying times, and removes a potential penalty to housing authorities who would otherwise have to wait for all units in a scattered-site development to be occupied before they can receive subsidy.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of

Executive Order 12612, Federalism, has determined that the policies contained in this final rule would not have federalism implications and, thus, are not subject to review under the Order. The final rule refines an established formula under which HUD calculates operating subsidies for low-income housing developments, but contains no requirement for explicit action by local officials and does not interfere with State or local governmental functions.

Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

The Catalog of Federal Domestic Assistance number is 14.850.

List of Subjects

24 CFR Part 950

Aged, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, parts 950 and 990 are amended, as follows:

PART 950—INDIAN HOUSING PROGRAMS

1. The authority citation for part 950 continues to read as follows:

Authority: 25 U.S.C. 450e(b), 1437aa-1437ee, and 3535(d).

2. Section 950.102 is amended by revising the definition of "Unit months available" to read as follows:

§ 950.102 Definitions.

* * * * *

Unit months available. Units multiplied by the number of months the project units are available for occupancy during a given IHA fiscal year. See also § 950.705(b).

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3. The existing text in § 950.705 is redesignated as paragraph (a), and a new paragraph (b) is added, to read as follows:

§ 950.705 Determination of amount of operating subsidy under PFS.

* * * * *

(b) For purposes of this part, a unit is considered available for occupancy from the date on which the End of Initial Operating Period (EIOP) is established for the project with which it is associated until the time it is approved by HUD for deprogramming and is vacated or is approved for non-dwelling use, except that, on or after July 1, 1991, a unit shall not be considered available for occupancy in any IHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined to be nonviable. In the case of an IHA development involving the acquisition of scattered site housing, the IHA may submit, and HUD shall review and can approve, a revised Development Cost Budget reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy

eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

4. The authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

5. Section 990.102 is amended by revising the definition of “*Unit Months Available*”, to read as follows:

§ 990.102 Definitions.

* * * * *

Unit months available. Units multiplied by the number of months the project units are available for occupancy during a given PHA fiscal year. See also § 990.104(b).

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6. In § 990.104, paragraph (b) is revised, to read as follows:

§ 990.104 Determination of amount of operating subsidy under PFS.

* * * * *

(b) For purposes of this part, a unit is considered available for occupancy from the date on which the End of Initial

Operating Period (EIOP) is established for the project with which it is associated until the time it is approved by HUD for deprogramming and is vacated or is approved for non-dwelling use, except that, on or after July 1, 1991, a unit shall not be considered available for occupancy in any PHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined to be nonviable. In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and can approve, a revised Development Cost Budget reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

Dated: August 30, 1995.

Joseph Shuldiner,
Assistant Secretary for Public and Indian Housing.

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