

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 982

[Docket No. FR-4459-F-03]

RIN 2577-AB96

### Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule specifies the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, this rule is the product of a negotiated rulemaking, following implementation, as further required by statute, of a HUD notice on this subject.

**EFFECTIVE DATE:** November 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708-1380. (This is not a toll-free number.) Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The statutory provision that provides the foundation for this rule is section 8(dd) of the United States Housing Act of 1937 (the 1937 Housing Act)(42 U.S.C. 1437(dd)), as added by section 556(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) ("Public Housing Reform Act"). The new section 8(dd) directs HUD to establish an allocation baseline amount of assistance (budget authority) to cover the renewals, and to apply an inflation factor (based on local or regional factors) to the baseline. The new provision states as follows:

(dd) *Tenant-Based Contract Renewals.*—Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of

families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

Section 556(b) of the Public Housing Reform Act required the Department to implement section 8(dd) of the 1937 Housing Act through notice not later than December 31, 1998, and to issue final regulations on the allocation of tenant-based Section 8 annual contributions contract renewal funding that are developed through the negotiated rulemaking process no later than October 21, 1999.

On December 30, 1998, the Department issued HUD Notice 98-65 to implement the provision, satisfying the requirement of section 556(b) to implement the new provision through Notice not later than December 31, 1998. The Department published a notice in the **Federal Register** on February 18, 1999, advising the public of the provisions of HUD Notice 98-65. The Department has developed this final rule implementing the requirements of section 8(dd) of the 1937 Housing Act through a negotiated rulemaking process, in accordance with the statutory requirements of section 556.

#### II. Negotiated Rulemaking

HUD convened a negotiated rulemaking advisory committee to assist in developing this final rule—the Section 8 Housing Certificate Fund Negotiated Rulemaking Committee. (See publication of notice of establishment of the Committee on April 26, 1999, 64 FR 20232.) The charter for the Committee stated: "The purpose of the Committee is to discuss and negotiate a rule that would change the current method of distributing funds to public housing agencies (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program. The committee will consist of persons representing stakeholder interests in the outcome of the rule." Records of the advisory committee's deliberations can be found at <http://www.hud.gov/pih/pih.html>.

The members of the advisory committee were as follows:

##### Housing Agencies

Massachusetts Department of Housing and Community Development, Boston, MA  
New Jersey Department of Community Affairs, Trenton, NJ  
Southeastern Minnesota Multi-County Housing and Redevelopment Authority, Wabasha, MN  
Oklahoma Housing Finance Agency, Oklahoma City, OK  
Fort Worth Housing Authority, Fort Worth TX

Minneapolis Metropolitan Council Housing and Redevelopment Agency, Saint Paul, MN  
Santa Cruz County Housing Authority, Santa Cruz, CA  
Burlington Housing Authority, Burlington, VT  
Michigan State Housing Development Authority, Lansing, MI  
New York City Housing Authority, NY, NY  
Atlanta Housing Authority, Atlanta, GA  
Cincinnati Metropolitan Housing Authority, Cincinnati, OH  
Housing Authority of the City of Los Angeles, Los Angeles, CA  
Stillwater Housing Authority, Stillwater, OK  
Spokane Housing Authority, Spokane, WA  
Jacksonville Housing Authority, Jacksonville, FL  
Panama City Housing Authority, Bay County, FL  
Alameda County Housing Authority, Hayward, CA  
Housing Authority of New Orleans, New Orleans, LA  
Stustman County Housing Authority, Stustman County, ND

##### Public Interest Groups

Center on Budget and Policy Priorities, Washington, DC  
New Community Corporation, Newark, NJ  
Disability Rights Action Coalition for Housing  
Section 8 Resident Council of New Orleans, Inc., New Orleans, LA

##### Independent Accounting and Consulting Firms

Fenton, Ewald & Associates, PC  
IMRglobal—Orion Consulting, Inc.

##### National/Regional PHA Associations

National Leased Housing Association (NLHA)  
National Association of Housing and Redevelopment Officials (NAHRO)  
Council of Large Public Housing Authorities (CLPHA)  
Public Housing Authority Directors Association (PHADA)

(Note that 1. Fenton, Ewald & Associates, PC was made an alternate due to its representative's time constraints and that the Southeast Regional Section Eight Housing Association (SERSHA) was added as a member of the Committee)

##### Federal Government

U.S. Department of Housing and Urban Development

The Committee met in Washington, DC, on April 27 and 28, 1999, on June 2 and 3, 1999, on June 21 and 22, 1999, on July 19 and 20, 1999, on August 19 and 20, 1999 and on September 28 and 29th, 1999. (See notices of meetings: 64 FR 26923, May 18, 1999 and 64 FR 30450, June 8, 1999.) These Committee meetings were led by Larry Susskind and David Fairman of the Consensus Building Institute ("CBI"), as facilitators/mediators. Tom Fee and Michael Lewis, also of CBI, assisted in the facilitation/mediation. Kelly

Davenport of CBI provided further assistance, taking minutes of the meetings.

HUD appreciates the active participation in this negotiated rulemaking process by such knowledgeable groups. The participants spent many days reviewing materials, working with others in small groups to prepare draft position papers, attended meetings of the Committee, and participated in teleconferences. Ultimately, the members reached consensus on the content of this rule. During the course of their deliberations, they provided valuable advice to the Department on broader issues, not reflected in this rule.

### III. Discussion of Comments

#### A. General

This section provides a brief overview of the most important issues discussed in the meetings of the Committee over the course of its deliberations. This overview of the issues is not a detailed recitation of the more than 12 days of meetings or the multiple additional work group meetings/conference calls that took place during the term of the Committee's charter but rather highlights the significant issues considered by the Committee. In addition to providing HUD with recommendations related to this regulation on the methodology for allocating Section 8 renewal funding, the Committee also provided recommendations on related issues (including policy on ACC reserves) that HUD intends to implement through a **Federal Register** Notice. This overview of the discussion of the Committee focuses only on the issues related to the regulation itself and not on the issues discussed in conjunction with developing separate Notice(s).

#### B. Establishing the Baseline

To initiate discussion of housing assistance allocation methods, HUD staff provided background information to the Committee regarding the various methods used over time to calculate renewals. An explanation of the current renewal funding Notice, PIH 98-65 (HA), including the process for setting the baseline and awarding renewal funding for Fiscal Year 1998, was reviewed by HUD staff.

*Issue.* The Committee discussed specific details regarding accounting rules and anomalies of the current method of calculating the allocation of renewal funding. Several members expressed concern that there was the possibility of discrepancies between historical documented unit counts and

the unit counts in HUD's data systems. Members questioned whether a crosscheck of the data in the HUDCAPS system against their own data was possible. Some members felt that the October 1, 1997 baseline data were somewhat arbitrary and could adversely impact agencies. Members suggested alternative ways to setting the baseline units, such as choosing dates other than October 1, 1997. Concerns about using October 1, 1997 included that this date "freezes" many inequities among PHAs (e.g., rewarding those who continued leasing during the 90-day freeze period declared by HUD). A suggestion was made to use October 1, 1998 as the baseline date, because at this time all PHAs would have had time to adjust to HUD interim rules and guidelines on baseline accounting and renewal funding.

*Response.* HUD noted that it had confidence that data discrepancies in HUDCAPS are minor, and that most of the discrepancies between HUDCAPS and PHA data would be attributable to data entry problems, or differences in interpretations of unit or project classifications. HUD representatives stated that they would check the kinds of information that could be shared and how this information could be shared. HUD representatives stated that they had revised the baseline determination method to ensure that each PHA would receive the higher of the number contracted or the number leased on October 1, 1997. HUD indicated that the statute required a focus on the state of housing authorities as of October 1, 1997 and that using other dates would not satisfy the statutory mandate.

*Conclusion:* The Committee reached consensus that the baseline number of units should be the higher of the number of units leased as of October 1, 1997 or the number of units reserved by HUD as of October 1, 1997. The Department has added approximately 19,000 units to its previously reserved number of units as a result of the comparison. This increase in the number of units as well as transactions that have taken place since October 1, 1997 will be reflected in the baseline established as of December 31, 1999, in accordance with the rule. In response to the Committee's recommendation, HUD will establish a mechanism for PHAs to request an adjustment of the baseline unit number assigned to them if they can demonstrate that the number in HUD's system is inaccurate.

#### C. Unit-Based vs. Dollar Based Funding Allocation

*Issue.* The Committee discussed moving from the current "unit-based"

funding system (using units multiplied by an adjusted per unit cost as the basis for determining annual funding amounts) to a "dollar-based" system: A dollar-based system would fund PHAs by adjusting their previous year's dollar grant amount to account for changes in local rental costs, without considering how many units were rented through the program in the previous year. Initially there appeared to be a preference for a dollar-based system, for reasons of administrative simplicity and ability to serve more households if costs are contained. Some Committee members raised concerns regarding switching to a dollar-based system, because it might lead to significant swings in the number of families assisted year-to-year.

The Committee extensively explored possible adjustment factors that would be applied to PHA's previous year grant amount in a dollar-based system. The Committee reviewed data analysis from Andersen Consulting Corporation that compared the accuracy of different adjustment factors against the actual experience of approximately 400 housing authorities over the course of 3 years (1995-1997) for which reliable historical data was available. The most reliable predictor of future costs proved to be changes in a housing authority's most recent year's actual costs in HUDCAPS. The analysis uncovered significant problems in using MTCS data for the purpose of calculating renewals at this time.

*Response.* HUD indicated that it is cognizant of its obligation to protect existing assisted families from losing their assistance due to a shortfall in funding. In addition a number of the reasons why per unit costs might vary would not be related to the PHA's discretionary actions (e.g., the need to meet new income targeting requirements).

*Conclusion:* After much discussion, the Committee and HUD reached consensus that the Department should have authority to use the current unit-based method for the next several years. Given the limitations of current data systems and adjustment factors, the unit-based system has the best potential to predict fluctuations in per unit costs and to ensure reasonably adequate funding to support the reserved number of units in a housing authority's inventory.

*Issue.* Some members of the Committee, including HUD, expressed concern that the current method creates a disincentive for PHAs to contain per-unit costs, because the higher a PHA's per-unit costs, the higher its funding for the next year. Additionally, the current

system creates a disincentive for PHAs to lease more than their contracted number of units, because their funding allocations are determined based on the number of reserved units, not the leased number of units.

Other members of the Committee asserted that costs are largely outside of the control of a PHA. Rents are set by the local market and the size of the family. The PHA does not control the local rental market and has little control over the family size, because it has to follow the waiting list. Tenant contributions are affected for the most part by tenant incomes. Again, this factor is largely controlled by residents themselves, as well as the local job market. However, in some important instances, a PHA can influence the per-unit cost. These instances include, but are not limited to, rent reasonableness, subsidy standards, and payment standards. (For this purpose, "subsidy standards" refer to a PHA's policy for determining the appropriate unit size for a particular household.)

Committee members also made the point that PHAs themselves do not benefit from an increase in the grant amount for renewals, because their administrative fee is not tied to the grant amount used to subsidize families. The administrative fee formula actually provides an incentive for cost containment, because a PHA would benefit from being able to lease more units—which could only be accomplished by lower per-unit costs.

Members of the Committee also emphasized how difficult it would be to isolate how much of a change in per-unit costs was attributable to actions taken by a PHA as opposed to market/demographic changes totally outside the control of the PHA.

*Response.* HUD is concerned that the regulation's methodology not create an incentive or bias toward higher per-unit costs as a result of PHA policies that can affect per-unit costs. Such a bias can result both from the current rule's characteristic of adapting to higher costs over time without penalty and from its subtraction of funding to support additional units that a PHA is able to put under lease because of cost saving measures. HUD acknowledged that there are very significant difficulties administratively in isolating the effects of PHA policies on cost per unit. HUD proposed that the rule give it flexibility to put in place checks and balances that would offset the impact of PHA policies on per-unit costs and ultimately the allocation amount.

*Conclusion.* HUD's proposed mechanism for addressing cost containment is embodied in paragraph

(g) of the rule. Paragraph (g)(1) permits HUD to put in place mechanisms to step in to prevent a PHA from becoming overextended and exceeding its allocated funding. Paragraph (g)(2) gives HUD the ability to act on either a case-by-case or a systemic basis. If the Department's analysis of the program costs and related factors determines that systemic adjustments, including cost containment and other cost adjustments, to the program are necessary because of threats to the future availability of funding, HUD has agreed that it would consult with PHA representatives and other relevant stakeholders before putting such a policy in place. HUD further indicated that any such cost adjustment would be consistent with the legitimate program goals. These goals are:

- (1) Deconcentration of poverty and expanding housing opportunities;
- (2) Not imposing unreasonable rent burdens on residents;
- (3) Compliance with the income targeting requirements of the Public Housing Reform Act;
- (4) Consistency with applicable consolidated plan(s);
- (5) Assuring rent reasonableness;
- (6) Maintaining program efficiency and economy;
- (7) Providing service to additional households within budgetary limitations; and
- (8) Providing service to the adjusted baseline number of families.

Paragraph (g)(3) gives HUD the flexibility to keep PHAs with declining per unit costs from losing funding under the regulation and to allow additional households to be served if costs are contained. Many factors are intersecting to influence per unit costs at this time (including the merger of the certificate and voucher program, the requirement for income targeting, the requirement that payment standards not impose unreasonable rent burdens, the flexibility of housing authorities to set payment standards between 90% and 110% of FMR on their own as well as the continued implementation of this rule's methodology that indexes funding closely to per unit costs). HUD will gain program experience as it monitors program costs and analyzes the reasons for fluctuations in costs.

#### *D. Inflation Factors*

*Issue.* The Committee considered other more up-to-date measurement of rents, or weighting the Annual Adjustment Factor so that the most recent inflation data count for more than older data. Additionally, the Committee recommended that inflation factors be more closely attuned to individual

PHAs' housing markets: examples included local rents, and the use of local government or real estate agency data on rents.

*Response.* Based on its program experience, HUD staff advised that some of these options could work, but that the smaller the sample area, the higher the cost to obtain statistically valid data on costs. Sometimes the more accurate the Annual Adjustment Factors (AAFs) could produce lower rather than higher inflation factors for some PHAs. A review and comparison of the Annual Adjustment Factor and the National Inflation Factor were presented.

*Conclusion.* The Committee agreed to keep the AAF as it exists in the rule for the time being. HUD will examine whether it can get better data and more predictable information in the future. At the Committee's request, HUD added a provision that will allow it to consider requests from PHAs on a case-by-case basis in instances where because of special circumstances the AAF is not accurately predicting per unit cost.

#### **IV. Renewal Funding Level Consideration**

The renewal formula included in this regulation assumes continuation of the current system, in which the Department allocates sufficient funds to renew 100 percent of the units reserved for a PHA, even though many PHAs do not use all of the allocated funds. The Department subsequently recaptures funds that PHAs do not use after the end of their fiscal years. This system of initially overfunding on a national basis and then recapturing, has the advantage of assuring that each PHA will have the necessary renewal funds, but it also has created some confusion in Congress and elsewhere.

At the end of the fiscal year 2000 appropriations process, the Senate Appropriations Committee raised substantial concerns about the tenant-based assistance program that appear to be partly related to this system. The Administration is exploring the feasibility and desirability of an approach that would minimize overfunding and subsequent recapture, while still meeting the basic requirement that each PHA have the necessary funding for timely renewals. The evaluation and any Administration proposals will be mindful of the consensus reached by the negotiated rulemaking committee.

#### **V. Explanation of Rule Text**

##### *Renewal Units*

This rule revises part 982, governing tenant-based assistance. It adds a new

defined term, "renewal units" to the definitions found at § 982.4. This rule also adds a new § 982.102 to outline a multi-step process for calculating the number of units that constitute "renewal units." The total number of renewal units will be assigned to one or more (if applicable) of a housing agency's funding increments. Ultimately, the Department will multiply the number of renewal units times the adjusted per unit cost to calculate the amount of funding a housing agency will receive to renew a given funding increment.

#### *Applicability*

This rule will apply to the renewal of funding increments that expire in calendar year 2000 and thereafter (the initial increments covered by the regulation would be those that expire on January 31, 2000). The Department adjusted to a calendar year basis for allocating renewal funding in the first quarter of 1999. The Department adjusted to a calendar year basis to ensure that it would have adequate time to process renewal funding in advance of expirations even if appropriations are not finalized until late in a given fiscal year or early in a subsequent fiscal year. The regulation also makes it clear that it applies to units that a housing agency project bases pursuant to regulatory flexibility to project base up to 15% of the tenant-based units that are reserved for it.

#### *Renewal Methodology*

The new § 982.102 outlines the method for calculating renewal funding. The Department does have the ability to adjust the amounts allocated if the Department's appropriation is not sufficient to fully fund all housing agencies pursuant to the regulation.

#### *Determining the Amount of Budget Authority Allocated for Renewal of an Expiring Funding Increment*

The basic calculation the Department performs to determine the renewal funding for an expiring increment is multiplication of the number of renewal units assigned to the increment by the adjusted per unit cost.

For example, the Department calculated the adjusted baseline number of units for the Main Street Housing Authority to be 115 for the year 2000. It then multiplied the adjusted baseline number of units (115) by the final per unit cost (\$4979) to calculate the gross amount of renewal funding for the housing authority, \$572,585.

#### *Determining the Number of Renewal Units*

The Department will determine the number of renewal units for each calendar year as of the last day of the previous calendar year through a 3-step process.

*Step 1*—The Department will calculate the initial baseline. It will be set at the reserved number of units (the number of units awarded to the housing agency during the history of the program) as of December 31, 1999. The statute requires that the Department ensure, at a minimum, sufficient funding for the number of families assisted as of October 1, 1997. The Department has already compared the number of reserved units as of October 1, 1997 with the number of program families assisted as of that date. In instances in which the number of program families exceeded the reserved units as of October 1, 1997, the Department reserved additional units to account for the difference. These additional units were awarded to housing agencies in or before September of 1999. Because of the actions the Department has taken to account for the October 1, 1997 statutory minimum, it believes the number of reserved units will already have taken into account the statutory October 1, 1997 requirement when it sets the initial baseline as of December 31, 1999. In the event the Department has made an error in its analysis to ensure adherence to the statutory minimum, the Department has the ability to correct for such an error in 982.102(d)(3).

For example, on December 31, 1999, the Department's records indicated that it had reserved 110 units for the housing authority. The Department would set the initial baseline at 110 units.

*Step 2*—Each calendar year, the Department will review all of the transactions that have altered the number of reserved units since it set the initial baseline. The Department will make adjustments to add to the initial baseline any additional units awarded to the housing authority by the Department supported from additional funding reserved since setting of the initial baseline. Adjustments to the baseline number of units will include units supported by incremental funding as well as other funding such as that awarded to provide continued assistance to assisted families pursuant to the conversion of project based assistance to tenant-based assistance. The Department also will include adjustments for budget authority reallocated from one housing authority to others. In this case, the adjusted

baseline of the PHA whose budget authority is being reallocated would decrease, reflecting the decrease in budget authority, and the adjusted baseline of PHAs to which the budget authority is being reallocated would increase.

For example, in calendar year 2000, the Main Street Housing Authority received 10 incremental units in the Family Unification Program. In 2000, the authority also had 10 units added to its inventory as a result of the conversion of a property from project based to tenant-based assistance. All 20 of these additional units would be added to the initial baseline to calculate the adjusted baseline number of units, 130 for the year 2001.

*Step 3*—In its final step in determining the number of renewal units that will be used to calculate renewal funding, the Department will further adjust the baseline number by subtracting the number of units supported by contracts that are not scheduled to expire until after the end of the calendar year. The baseline number of units includes such non-expiring units; however, the Department has previously allocated sufficient budget authority to support such units beyond the time period for which it is allocating renewal funding.

For example, the Department's records indicate that the Main Street Housing Authority has 15 units in its Initial Baseline number of units that are not scheduled to expire until 2002. The Department would then subtract 15 units from the Main Street Housing Authority's 130 units to revise the Adjusted Baseline Number of Units to 115. Similarly, in the event that the Department awarded budget authority for 50 incremental units for Welfare to Work in 2000 that would not expire until 2001, the Department would subtract the 50 units from the baseline in 2000 because they would not expire during that year.

#### *Determining the Adjusted per Unit Cost*

The Department will derive an annual actual per unit cost using a 3 step process.

*Step 1*—The Department will extract the total expenditures for all of the housing authority's Section 8 tenant-based assistance programs and the unit months leased information from the most recent approved year end statement (Form HUD-52681) that each housing authority has filed with the Department. The Department will divide the total expenditures for all of the housing authority's Section 8 tenant-based assistance programs by the unit

months leased to derive an average monthly per unit cost.

*Step 2*—The Department will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

*Step 3*—The Department will then multiply the result of step 2 above by the Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factors (table 1 amount with the highest cost utility included) for the applicable intervening Federal Fiscal Years between the time of the last year end statement and the time of the renewal to generate an adjusted annual per unit cost.

For example, the Main Street Housing Authority's 1998 Year End Statement (the most recent one approved) indicated that it expended \$120,000 in its tenant-based Section 8 assistance programs and that it achieved 300 unit months leased. The Department would take the total expenditure (\$120,000) and divide it by the unit months leased (300) to calculate the monthly per unit cost (\$400) and then multiply the result by 12 months to obtain an actual annual per unit cost (\$4,800).

To continue the example, the Annual Adjustment Factors for the Main Street Housing Authority were 1.5% in 1999 and 2.2% for 2000. The Department would take the original annual per unit cost (\$4,800) and adjust it by 1.5% (\$4,872) and then again by 2.2% to obtain the resulting adjusted per unit cost (\$4,979).

Many housing agencies have jurisdictions that cover multiple rental markets with separate AAFs. In such instances, the Department will use the highest AAF that applies to a portion of the housing agency's units and use it as the adjustment factor.

For example, the Main Street Housing Authority is a regional agency that covers a metropolitan area with an AAF for 1999 set at 2.1% and for 2000 set at 1.9%. The housing authority's jurisdiction also covers several non-metropolitan counties outside of the metropolitan area assigned an AAF for 1999 of 1.5% and for 2000 set at 2.0%. In this instance, the Department will use the higher metropolitan area AAF for 1999 (2.1%) and the higher non-metropolitan area AAF for 2000 (2.0%).

#### CACC Amendment To Add Renewal Funding

The Department intends to process renewal funding if possible at least a month before a given funding increment is due to expire. A normal renewal will extend the expiration date for one year.

#### Modification of Allocation of Budget Authority

The regulation permits HUD to address the issue of cost containment through this provision. Paragraph (g)(1) permits HUD to put in place mechanisms to step in to prevent a PHA from becoming overextended and exceeding its allocated funding. Paragraph (g)(2) gives HUD the ability to act on either a case-by-case or a systemic basis. If the Department's analysis of the program costs and related factors determines that systemic adjustments to the program, including cost containment and other cost adjustments, are necessary because of threats to the future availability of funding, HUD has agreed that it would consult with PHA representatives and other relevant stakeholders before putting such a policy in place. Paragraph (g)(3) gives HUD the flexibility to keep PHAs with declining per unit costs from losing funding under the regulation and to allow additional households to be served if costs are contained.

#### Ability To Prorate and Synchronize Contract Funding Increments

Notwithstanding the formula amount that HUD derives pursuant to the regulation, the Department is permitted to prorate the renewal of units that expire on different dates throughout the year in order to have their expiration date match the expiration of other units within the housing authority's inventory and/or a given point in time in relation to the housing authority's fiscal year. The Department will consider using this flexibility in order to merge the multiple sets of units for the purpose of allocating renewal funding in the future. The Department desires to consolidate increments as much as possible in order to reduce the tracking required for thousands of separate increments. The Department will endeavor to synchronize and/or merge all increments so as to expire 6 months after the housing agency's fiscal year. Such a schedule would permit the Department to use a year end statement that is less than a year old to calculate current per unit costs at the time of the renewal.

For example, the Main Street Housing Authority has 115 units that require renewal on April 1, 2000 and also has 20 units that were awarded to it on August 1, 1999 that would require renewal on August 1, 2000. If the Department decided to merge the two sets of units for future renewals, it would have the ability to prorate the renewal of the 20 units so that they

would expire on April 1, 2001, simultaneously with the expiration of the other 115 units. The Department would be able to merge the two sets of units into one set of 135 units for the purpose of calculating future renewal funding.

#### Reallocation of Renewal Units

This provision gives HUD the ability by **Federal Register** notice to permanently de-reserve units and their associated budget authority from a PHA with performance deficiencies (particularly underleasing) and to reallocate the budget authority to other PHAs. The reallocation would not preclude a PHA from being awarded new units in the future.

## VI. Findings and Certifications

### *Impact on Small Entities*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. Most small PHAs do not qualify as “small governmental entities” under the Act. However, this rule, developed in consultation with a negotiated rulemaking committee including representatives of small PHAs, will not be likely to have a significant impact on a substantial number of small PHAs or on the few of them that qualify as “small governmental entities.” Therefore, no further analysis is required under the Act.

### *Environmental Impact*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction. This rule also does not establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under HUD regulations (24 CFR 50.19(c)(1)), this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and is not subject to environmental review under related laws and authorities (24 CFR 50.4).

### *Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political

subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

#### Catalog

The Catalog of Federal Domestic Assistance numbers for these programs are 14.855 and 14.857.

#### List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies.

Accordingly, HUD amends part 982 of title 24 of the Code of Federal Regulations as follows:

#### PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

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

2. Amend § 982.4(b) by adding the definition of *Renewal units*, in alphabetical order, to read as follows:

#### § 982.4 Definitions.

\* \* \* \* \*

(b) \* \* \*

*Renewal units.* The number of units, as determined by HUD, for which funding is reserved on HUD books for a

PHA's program. This number is used in calculating renewal budget authority in accordance with § 982.102.

\* \* \* \* \*

#### §§ 982.102 and 982.103 [Redesignated as §§ 982.103 and 982.104]

3. Redesignate §§ 982.102 and 982.103 as §§ 982.103 and 982.104, respectively.

4. Add a new § 982.102 to read as follows:

#### § 982.102 Allocation of budget authority for renewal of expiring CACC funding increments.

(a) *Applicability.* This section applies to the renewal of CACC funding increments in the program (as described in § 982.151(a)(2)) that expire after December 31, 1999 (including any assistance that the PHA has attached to units for project based assistance under part 983 of this title). This section implements section 8(dd) of the 1937 Act (42 U.S.C. 1437f(dd)),

(b) *Renewal Methodology.* HUD will use the following methodology to determine the amount of budget authority to be allocated to a PHA for the renewal of expiring CACC funding increments in the program, subject to the availability of appropriated funds. If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding.

(c) *Determining the amount of budget authority allocated for renewal of an expiring funding increment.* Subject to availability of appropriated funds, as determined by HUD, the amount of budget authority allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

(1) *Number of renewal units.* The number of renewal units assigned to the funding increment (as determined by HUD pursuant to paragraph (d) of this section); multiplied by

(2) *Adjusted annual per unit cost.* The adjusted annual per unit cost (as determined by HUD pursuant to paragraph (e) of this section).

(d) *Determining the number of renewal units.*—(1) *Number of renewal units.* HUD will determine the total number of renewal units for a PHA's program as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated. The number of renewal units for a PHA's program will be determined as follows:

(i) *Step 1: Establishing the initial baseline.* HUD will establish a baseline number of units ("baseline") for each

PHA program. The initial baseline equals the number of units reserved by HUD for the PHA program as of December 31, 1999.

(ii) *Step 2: Establishing the adjusted baseline.* The adjusted baseline equals the initial baseline with the following adjustments from the initial baseline as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated:

(A) *Additional units.* HUD will add to the initial baseline any additional units reserved for the PHA after December 31, 1999.

(B) *Units removed.* HUD will subtract from the initial baseline any units de-reserved by HUD from the PHA program after December 31, 1999.

(iii) *Step 3: Determining the number of renewal units.* The number of renewal units equals the adjusted baseline minus the number of units supported by contract funding increments that expire after the end of the calendar year.

(2) *Funding increments.* HUD will assign all units reserved for a PHA program to one or more funding increment(s).

(3) *Correction of errors.* HUD may adjust the number of renewal units to correct errors.

(e) *Determining the adjusted per unit cost.* HUD will determine the PHA's adjusted per unit cost when HUD processes the allocation of renewal funding for an expiring contract funding increment. The adjusted per unit cost calculated will be determined as follows:

(1) *Step 1: Determining monthly program expenditure.*—(i) *Use of most recent HUD-approved year end statement.* HUD will determine the PHA's monthly per unit program expenditure for the PHA certificate and voucher programs (including project-based assistance under such programs) under the CACC with HUD using data from the PHA's most recent HUD-approved year end statement.

(ii) *Monthly program expenditure.* The monthly program expenditure equals:

(A) *Total program expenditure.* The PHA's total program expenditure (the total of housing assistance payments and administrative costs) for the PHA fiscal year covered by the approved year end statement; divided by

(B) *Total unit months leased.* The total of unit months leased for the PHA fiscal year covered by the approved year end statement.

(2) *Step 2: Determining annual per unit cost.* HUD will determine the PHA's annual per unit cost. The annual per unit cost equals the monthly program expenditures (as determined

under paragraph (e)(1)(ii) of this section) multiplied by 12.

(3) *Step 3: Determining adjusted annual per unit cost.* (i) HUD will determine the PHA's adjusted annual per unit cost. The adjusted annual per unit cost equals the annual per unit cost (as determined under paragraph (e)(2) of this section) multiplied cumulatively by the applicable published Section 8 housing assistance payments program annual adjustment factors in effect during the period from the end of the PHA fiscal year covered by the approved year end statement to the time when HUD processes the allocation of renewal funding.

(ii) *Use of annual adjustment factor applicable to PHA jurisdiction.* For this purpose, HUD will use the annual adjustment factor from the notice published annually in the **Federal Register** pursuant to part 888 that is applicable to the jurisdiction of the PHA. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(iii) *Use of annual adjustment factors in effect subsequent to most recent Year End Statement.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent HUD approved Year End Statement and the time of the processing of the contract funding increment to be renewed.

(iii) *Special circumstances.* At its discretion, HUD may modify the adjusted annual per unit cost based on receipt of a modification request from a PHA. The modification request must demonstrate that because of special circumstances application of the annual adjustment factor will not provide an accurate adjusted annual per unit cost.

(4) *Correction of errors.* HUD may correct for errors in the adjusted per unit cost.

(f) *CACC amendment to add renewal funding.* HUD will reserve allocated renewal funding available to the PHA within a reasonable time prior to the expiration of the funding increment to be renewed and establish a new expiration date one-year from the date of such expiration.

(g) *Modification of allocation of budget authority.*—(1) *HUD authority to conform PHA program costs with PHA program finances through Federal Register notice.* In the event that a PHA's costs incurred threaten to exceed budget authority and allowable reserves, HUD reserves the right, through **Federal Register** notice, to bring PHA program costs and the number of families served, in line with PHA program finances.

(2) *HUD authority to limit increases of per unit cost through Federal Register notice.* HUD may, by **Federal Register** notice, limit the amount or percentage of increases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(3) *HUD authority to limit decreases to per unit costs through Federal Register notice.* HUD may, by **Federal Register** notice, limit the amount or percentage of decreases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(4) *Contents of Federal Register notice.* If HUD publishes a **Federal Register** notice pursuant to paragraphs (g)(1), (g)(2) or (g)(3) of this section, it will describe the rationale, circumstances and procedures under which such modifications are implemented. Such circumstances and procedures shall, be consistent with the objective of enabling PHAs and HUD to meet program goals and requirements including but not limited to:

- (i) Deconcentration of poverty and expanding housing opportunities;
- (ii) Reasonable rent burden;
- (iii) Income targeting;
- (iv) Consistency with applicable consolidated plan(s);

- (v) Rent reasonableness;
- (vi) Program efficiency and economy;
- (vii) Service to additional households within budgetary limitations; and
- (viii) Service to the adjusted baseline number of families.

(5) *Public consultation before issuance of Federal Register notice.* HUD will design and undertake informal public consultation prior to issuing **Federal Register** notices pursuant to paragraphs (g)(1) or (g)(2) of this section.

(h) *Ability to prorate and synchronize contract funding increments.* Notwithstanding paragraphs (c) through (g) of this section, HUD may prorate the amount of budget authority allocated for the renewal of funding increments that expire on different dates throughout the calendar year. HUD may use such proration to synchronize the expiration dates of funding increments under the PHA's CACC.

(i) *Reallocation of budget authority.* If a PHA has performance deficiencies, such as a failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. If HUD determines to reallocate budget authority, it will reduce the number of units reserved by HUD for the PHA program of the PHA whose budget authority is being reallocated and increase the number of units reserved by HUD for the PHAs whose programs are receiving the benefit of the reallocation, so that such PHAs can issue vouchers. HUD will publish a notice in the **Federal Register** that will describe the circumstances and procedures for reallocating budget authority pursuant to this paragraph.

Dated: October 15, 1999.

**Deborah Vincent,**  
General Deputy Assistant, Secretary for Public and Indian Housing.

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