

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6189-N-01]

Section 8 Housing Assistance Payments Program—Annual Adjustment Factors, Fiscal Year 2020

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2020 Annual Adjustment Factors (AAFs).

SUMMARY: The United States Housing Act of 1937 requires that certain assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2020 AAFs for adjustment of contract rents on the anniversary of those assistance contracts. The factors are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) survey. The FY 2020 AAFs are the first to use the revised BLS area definitions for local area CPI. A separate **Federal Register** notice, to be published following the finalization of the FY 2020 federal appropriations, will be used in the calculation of the calendar year (CY) 2020 Housing Choice Voucher (HCV) renewal funding for public housing agencies (PHAs)

DATES: December 10, 2019.

FOR FURTHER INFORMATION CONTACT: Contact Becky Primeaux, Director, Management and Operations Division, Office of Housing Voucher Programs, Office of Public and Indian Housing, 202-708-1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (not the Single Room Occupancy program); Norman A. Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202-402-5015, for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Katherine Nzive, Director, OAMPO Program Administration Office, Office of Multifamily Housing, 202-402-3440, for questions relating to all other Section 8 programs; and Marie Lihn, Economist, Program Parameters and Research Division, Office of Policy Development and Research, 202-402-5866, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing

address for these individuals is: Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Relay Service at 800-877-8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: This notice announces FY 2020 AAFs for adjustment of contract rents on the anniversary of those assistance contracts. The factors for adjustment are based on a formula using residential rent and utility cost changes from the most recent annual Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) survey. The FY 2020 AAFs are the first to use the revised BLS area definitions for local area CPI. There are now only 70 metropolitan areas covered by local CPI data; previously there were 123 metropolitan and nonmetropolitan areas. The AAFs are applied at the anniversary of Housing Assistance Payment (HAP) contracts for which rents are to be adjusted using the AAF for those calendar months commencing after the effective date of this notice. AAFs are distinct from, and do not apply to the same properties as, Operating Cost Adjustment Factors (OCAFs). OCAFs are annual factors used to adjust rents for project-based rental assistance contracts issued under Section 8 of the United States Housing Act of 1937 and renewed under section 515 or section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). A separate **Federal Register** notice, to be published following the finalization of the FY 2020 federal appropriations, will be used in the calculation of the calendar year (CY) 2020 Housing Choice Voucher (HCV) renewal funding for public housing agencies (PHAs).

Tables showing AAFs will be available electronically from the HUD data information page at <http://www.huduser.gov/portal/datasets/aaf.html>.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payment programs during the initial (*i.e.*, pre-renewal) term of the HAP contract. There are two categories of Section 8 programs that use the AAFs:

Category 1: The Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation programs;

Category 2: The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are established in accordance with the statutory provision in MAHRA, as amended, under which the HAP is renewed. After renewal, annual rent adjustments will be provided in accordance with MAHRA.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most Section 8/202 projects.

Housing Choice Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002-10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97-57 (Moderate Rehabilitation and Project-Based Certificates). Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the two program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular

program and the single room occupancy program) the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.*, unless the contract rent is reduced by comparability):

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: Section 8 Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

Category 2 programs are not currently subject to comparability. Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).

The applicable AAF is determined as follows:

- Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

In Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract

provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

Legislative history for this statutory provision states that “the rationale [for lower AAFs for non-turnover units] that operating costs are less if tenant turnover is less . . .” (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate program, HUD should expect to benefit from this ‘tenure discount.’ Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Table 1 and Table 2. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

AAF Table 1 and Table 2 are posted on the HUD User website at <http://www.huduser.gov/portal/datasets/aaf.html>. There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, *i.e.*, where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.*, where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for “Highest Cost Utility Included.” If highest cost utility is not included, select the AAF from the column for “Highest Cost Utility Excluded.”

V. Methodology

AAF's are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence but does not reflect any change in the cost of utilities. The gross rent inflation factor is designated as “Highest Cost Utility Included” and the shelter rent inflation factor is designated as “Highest Cost Utility Excluded.”

AAF's are calculated using CPI data on “rent of primary residence” and “fuels and utilities.”¹ The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the “contract rent” which includes units with all utilities included in the rent, units with some utilities included in the rent, and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and, also, American Community Survey (ACS) data on the ratio of utilities to rents. For Puerto Rico, the Puerto Rico Community Survey (PRCS) is used to determine the ratio of utilities to rents, resulting in different AAFs for some metropolitan areas in Puerto Rico.²

¹ CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

² The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at www.HUDUSER.gov.

Survey Data Used To Produce AAFs

The rent inflation factor and fuel and utilities inflation factor for each large metropolitan area and Census region are based, respectively, on changes in the CPI index for rent of primary residence and the CPI index for fuels and utilities from 2017 to 2018. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2018 CEX survey data produced for HUD. The utility-to-rent ratio used to produce AAFs comes from 2017 ACS median rent and utility costs.

Geographic Areas

Beginning with the data collection for 2018, BLS revised the sample for the CPI to be based on Core Based Statistical Areas (CBSAs). Previously the sample was based on Metropolitan Statistical Areas (MSAs) as defined in 1998. In addition, the population required to be designated a Class A CPI city was increased from 1.5 million to 2.5 million. The following major metropolitan areas were eliminated under the new sample design: Pittsburgh PA, Cincinnati-Hamilton OH-KY-IN, Cleveland-Akron OH, Milwaukee-Racine WI, Kansas City MO-KS, and Portland-Salem OR-WA. There are now 23 major metropolitan areas (excluding Puerto Rico, which is unchanged) with local CPI data, down from 28 last year (Riverside-San Bernardino has been split off from the Los Angeles survey area). This decline has resulted in fewer metropolitan component areas receiving local CPI adjustments, down to 70 metropolitan areas and subareas (HUD Metro FMR Areas) from 124 metropolitan and nonmetropolitan areas. There are no longer any nonmetropolitan areas using local CPI inflation factors (except for Puerto Rico).

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables and each HUD Metro FMR Area (HMFA) is listed alphabetically within its respective CBSA. Each AAF applies to a specific geographic area and to units of all bedroom sizes. AAFs are provided:

- For metropolitan areas at the MSA or HMFA level.
- For the four Census Regions (to be used for those metropolitan areas that are not covered by a CPI city-survey and non-metropolitan areas).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2020 FMRs.

Area Definitions

To make certain that they are using the correct AAFs, users should refer to

the Area Definitions Table section at <http://www.huduser.gov/portal/datasets/aaf.html>. The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not separately listed in the Area Definitions Table at <http://www.huduser.gov/portal/datasets/aaf.html>.

Puerto Rico uses its own AAFs calculated from the Puerto Rico CPI as adjusted by the PRCS, the Virgin Islands uses the South Region AAFs and the Pacific Islands uses the West Region AAFs.

Dated: November 26, 2019.

Seth D. Appleton,

Assistant Secretary for Policy Development and Research.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-ES-2014-0050;
FXES111X0500000-XXX-FF05E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Indiana Bat (*Myotis Sodalis*) and Northern Long-Eared Bat (*Myotis Septentrionalis*) at the Copenhagen Wind Farm, Jefferson and Lewis Counties, New York; and Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application from Copenhagen Wind Farm, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act (ESA). The applicant requests the ITP for take of the federally endangered Indiana bat and threatened northern long-eared bat incidental to otherwise lawful activities associated with operation of its Copenhagen Wind Farm,

a 40-turbine wind farm that has been constructed in Jefferson and Lewis Counties, New York. The applicant proposes a conservation program to minimize and mitigate for the unavoidable incidental take as described in its Indiana Bat and Northern Long-eared Bat Habitat Conservation Plan for the Copenhagen Wind Farm, Lewis and Jefferson Counties, New York (HCP). We request public comment on the application, which includes the applicant's proposed HCP, and the Service's draft environmental assessment, prepared pursuant to the National Environmental Policy Act. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before January 9, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Standard Time on the closing date.

ADDRESSES: *Obtaining documents:*

- *Internet:* You may obtain copies of the application including the HCP and draft environmental assessment (EA) on the internet at the New York Ecological Services Field Office's website at <https://www.fws.gov/northeast/nyfo/> or at <http://www.regulations.gov> at Docket No. FWS-R5-ES-2014-0050.

- *In-person:* Documents are available for public inspection by appointment during regular business hours at the New York Ecological Services Field Office, 3817 Luker Road, Cortland, NY 13045. Call 607-753-49334 to make an appointment.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so by one of the following methods. Please reference Docket Number FWS-R5-ES-2014-0050 in all comments. For additional guidance on submitting comments, please see Public Comments under **SUPPLEMENTARY INFORMATION.**

- *Electronically:* Go to the Federal eRulemaking Portal website at: <http://www.regulations.gov>. In the Search box, enter FWS-R5-2014-0050, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.

- *By hard copy:* You may submit by mail or hand-delivery to Public Comments Processing, Attn: Docket No. FWS-R5-ES-2014-0050, New York Ecological Services Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, NY 13045. We request that you send comments by only the methods described above.