

1                   **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

2                                   **24 CFR Part 982**

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

4                                   **RIN 2577-AB96**

5                           **Renewal of Expiring Annual Contributions Contracts**

6                                   **in the Tenant-Based Section 8 Program;**

7                                   **Formula for Allocation of Housing Assistance**

8  
9    **AGENCY:** Office of Public and Indian Housing, HUD.

10 **ACTION:** Final rule.

11 **SUMMARY:** This rule specifies the method HUD will use in allocating housing assistance  
12 available to renew expiring contracts for Section 8 tenant-based housing assistance with owners.

13 As required by statute, this rule is the product of a negotiated rulemaking, following  
14 implementation, as further required by statute, of a HUD notice on this subject.

15 **EFFECTIVE DATE:** [Insert date 30 days following date of publication in FEDERAL

16 REGISTER.]

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

22 **SUPPLEMENTARY INFORMATION:**

23 **I. Background**

1           The statutory provision that provides the foundation for this rule is section 8(dd) of the  
2 United States Housing Act of 1997 (the 1937 Housing Act)(42 U.S.C. 1437(dd)), as added by  
3 section 556(a) of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105-  
4 276, 112 Stat. 2461, approved October 21, 1998) (“Public Housing Reform Act”). The new  
5 section 8(dd) directs HUD to establish an allocation baseline amount of assistance (budget  
6 authority) to cover the renewals, and to apply an inflation factor (based on local or regional  
7 factors) to the baseline. The new provision states as follows:

8           (dd) Tenant-Based Contract Renewals. --Subject to amounts provided in  
9 appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all  
10 expiring tenant-based annual contribution contracts under this section by applying  
11 an inflation factor based on local or regional factors to an allocation baseline. The  
12 allocation baseline shall be calculated by including, at a minimum, amounts  
13 sufficient to ensure continued assistance for the actual number of families assisted  
14 as of October 1, 1997, with appropriate upward adjustments for incremental  
15 assistance and additional families authorized subsequent to that date.

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

21           On December 30, 1998, the Department issued HUD Notice 98-65 to implement the  
22 provision, satisfying the requirement of section 556(b) to implement the new provision through  
23 Notice not later than December 31, 1998. The Department published a notice in the **Federal**  
24 **Register** on February 18, 1999, advising the public of the provisions of HUD Notice 98-65. The  
25 Department has developed this final rule implementing the requirements of section 8(dd) of the  
26 1937 Housing Act through a negotiated rulemaking process, in accordance with the statutory

1 requirements of section 556.

## 2 **II. Negotiated Rulemaking**

3 HUD convened a negotiated rulemaking advisory committee to assist in developing this final  
4 rule – the Section 8 Housing Certificate Fund Negotiated Rulemaking Committee. (See  
5 publication of notice of establishment of the committee on April 26, 1999, 64 FR 20232.) The  
6 charter for the committee stated: "The purpose of the Committee is to discuss and negotiate a  
7 rule that would change the current method of distributing funds to public housing agencies  
8 (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program.  
9 The committee will consist of persons representing stakeholder interests in the outcome of the  
10 rule." Records of the advisory committee's deliberations can be found at **[insert Web site**  
11 **address here]**.

12 The members of the advisory committee were as follows:

### 13 **Housing Agencies**

- 14 1. Massachusetts Department of Housing and Community Development, Boston, MA
- 15 2. New Jersey Department of Community Affairs, Trenton, NJ
- 16 3. Southeastern Minnesota Multi-County Housing and Redevelopment Authority, Wabasha, MN
- 17 4. Oklahoma Housing Finance Agency, Oklahoma City, OK
- 18 5. Fort Worth Housing Authority, Fort Worth TX
- 19 6. Minneapolis Metropolitan Council Housing and Redevelopment Agency, Saint Paul, MN
- 20 7. Santa Cruz County Housing Authority, Santa Cruz, CA
- 21 8. Burlington Housing Authority, Burlington, VT
- 22 9. Michigan State Housing Development Authority, Lansing, MI
- 23 10. New York City Housing Authority, NY, NY

- 1 11. Atlanta Housing Authority, Atlanta, GA
- 2 12. Cincinnati Metropolitan Housing Authority, Cincinnati, OH
- 3 13. Housing Authority of the City of Los Angeles, Los Angeles, CA
- 4 14. Stillwater Housing Authority, Stillwater, OK
- 5 15. Spokane Housing Authority, Spokane, WA
- 6 16. Jacksonville Housing Authority, Jacksonville, FL
- 7 17. Panama City Housing Authority, Bay County FL
- 8 18. Alameda County Housing Authority, Hayward, CA
- 9 19. Housing Authority of New Orleans, New Orleans, LA
- 10 20. Stustman County Housing Authority, Stustman County, ND

11 **Public Interest Groups**

- 12 1. Center on Budget and Policy Priorities, Washington, DC
- 13 2. New Community Corporation, Newark, NJ
- 14 3. Disability Rights Action Coalition for Housing
- 15 4. Section 8 Resident Council of New Orleans, Inc., New Orleans, LA

16 **Independent Accounting and Consulting Firms**

- 17 1. Fenton, Ewald & Associates, PC
- 18 2. IMRglobal - Orion Consulting, Inc.

19 **National/Regional PHA Associations**

- 20 1. National Leased Housing Association (NLHA)
- 21 2. National Association of Housing and Redevelopment Officials (NAHRO)
- 22 3. Council of Large Public Housing Authorities (CLPHA)
- 23 4. Public Housing Authority Directors Association (PHADA)

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

#### 4 **Federal Government**

##### 5 1. U.S. Department of Housing and Urban Development

6 The committee met in Washington, DC, on April 27 and 28, 1999, on June 2 and 3, 1999,  
7 on June 21 and 22, 1999, on July 19 and 20, 1999, on August 19 and 20, 1999 and on September  
8 28 and 29<sup>th</sup>, 1999. (See notices of meetings: 64 FR 26923, May 18, 1999 and 64 FR 30450, June  
9 8, 1999.) These committee meetings were led by Larry Susskind and David Fairman of the  
10 Consensus Building Institute ("CBI"), as facilitators/mediators. Tom Fee and Michael Lewis also  
11 of CBI assisted in the facilitation/mediation. Kelly Davenport of CBI provided further assistance,  
12 taking minutes of the meetings.

### 13 **III. Discussion of Comments**

#### 14 **A. General**

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

1 the issues discussed in conjunction with developing separate Notice(s).

2 **B. Establishing the Baseline**

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

8 Issue. The committee discussed specific details regarding accounting rules and anomalies of the  
9 current method of calculating the allocation of renewal funding. Several members expressed  
10 concern that there was the possibility of discrepancies between historical documented unit counts  
11 and the unit counts in HUD’s data systems. Members questioned whether a crosscheck of the  
12 data in the HUDCAPS system against their own data was possible. Some members felt that the  
13 October 1, 1997 baseline data was somewhat arbitrary and could adversely impact agencies.  
14 Members suggested alternative ways to setting the baseline units such as choosing dates other than  
15 October 1, 1997. Concerns about using October 1, 1997 included that this date “freezes” many  
16 inequities among PHAs (e.g. rewarding those who continued leasing during the 90-day freeze  
17 period declared by HUD). A suggestion was made to use October 1, 1998 as the baseline date,  
18 because at this time all PHAs would have had time to adjust to HUD interim rules and guidelines  
19 on baseline accounting and renewal funding.

20 Response. HUD noted that it had confidence that data discrepancies in HUDCAPS are minor, and  
21 that most of the discrepancies between HUDCAPS and PHA-data would be attributable to data  
22 entry problems, or differences in interpretations of unit or project classifications. HUD  
23 representatives stated that they would check the kinds of information that could be shared and

1 how this information could be shared. HUD stated that they had revised the baseline  
2 determination method to ensure that each PHA would receive the higher of the number contracted  
3 or the number leased on October 1, 1997. HUD indicated that the statute required a focus on the  
4 state of housing authorities as of 10/1/97 and that using other dates would not satisfy the  
5 statutory mandate.

6 **Conclusion:** The rule establishes the initial baseline as of the day before its effective date of  
7 January 1, 2000. The Committee reached consensus that the baseline number of units should be  
8 the higher of the number of units leased as of 10/1/97 or the number of units reserved by HUD as  
9 of 10/1/97. The Department has added approximately 19,000 units to its previously reserved  
10 number of units as a result of the comparison. This increase in the number of units as well as  
11 transactions that have taken place since 10/1/97 will be reflected in the baseline established on  
12 December 31, 1999. In response to the committee's recommendation, HUD will establish a  
13 mechanism for PHAs to request an adjustment of the baseline unit number assigned to them if  
14 they can demonstrate that the number in HUD's system is inaccurate.

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

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

1 families assisted year-to-year. The Committee extensively explored possible adjustment factors  
2 that would be applied to PHA's previous year grant amount in a dollar-based system. The  
3 committee reviewed data analysis from Andersen Consulting Corporation that compared the  
4 accuracy of different adjustment factors against the actual experience of approximately 400  
5 housing authorities over the course of 3 years (1995-1997) for which reliable historical data was  
6 available. The most reliable predictor of future costs proved to be changes in a housing  
7 authority's most recent year's actual costs in HUDCAPS. The analysis uncovered significant  
8 problems in using MTCS data including the difficulty of determining the time period over which  
9 to apply MTCS data (it is unclear from the data from an individual Form HUD 50058 submission  
10 whether it applies for a specific time period in the future or past).

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

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

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

1 disincentive for PHAs to lease more than their contracted number of units, because their funding  
2 allocations are determined based on the reserved, not the leased number of units. Other members  
3 of the Committee asserted that costs are largely outside of the control of a PHA. Rents are set by  
4 the local market and the size of the family: the PHA does not control the local rental market and  
5 has little control over family size because it has to follow the waiting list. Tenant contributions  
6 are affected for the most part by tenant incomes: again this factor is largely controlled by residents  
7 themselves as well as the local job market. However, in some important instances a PHA can  
8 influence the per unit cost. These instances may include but not be limited to rent reasonableness,  
9 subsidy and payment standards. Committee members also made the point that PHAs  
10 themselves do not benefit from an increase in the grant amount for renewals because their  
11 administrative fee is not tied to the grant amount used to subsidize families. The administrative  
12 fee formula actually provides an incentive for cost containment because a PHA would benefit  
13 from being able to lease more units which could only be accomplished by lower per unit costs.

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

17 Response. HUD is concerned that the regulation's methodology not create an incentive or bias  
18 toward higher per unit costs as a result of PHA policies that can affect per unit costs. Such a bias  
19 can result both from the current rule's characteristic of adapting to higher costs over time without  
20 penalty and from its subtraction of funding to support additional units that a PHA is able to put  
21 under lease because of cost savings measures. HUD acknowledged that there are very significant  
22 difficulties administratively in isolating the effects of PHA policies on cost per unit. HUD

1 proposed that the rule give it flexibility to put in place checks and balances that would offset the  
2 impact of PHA policies on per unit costs and ultimately the allocation amount.

3 **Conclusion:** HUD’s proposed mechanism for addressing cost containment is embodied in  
4 Section “g” of the rule. Section (g)(1) permits HUD to put in place mechanisms to step in to  
5 prevent a PHA from becoming overextended and exceeding its allocated funding. Section (g)(2)  
6 gives HUD the ability to act on either a case-by-case or a systemic basis. If the department’s  
7 analysis of the program costs and related factors determines that systemic adjustments, including  
8 cost containment and other cost adjustments, to the program are necessary because of threats to  
9 the future availability of funding HUD has agreed that it would consult with PHA representatives  
10 and other relevant stakeholders before putting such a policy in place. HUD further indicated that  
11 any such cost adjustment would be consistent with the legitimate program goals of  
12 deconcentration of poverty, not imposing unreasonable rent burdens on residents, compliance  
13 with the income targeting requirements of the Public Housing Reform Act, consistency with  
14 applicable consolidated plan(s), maintaining program efficiency and economy, providing service to  
15 additional households within budgetary limitations and providing service to the adjusted baseline  
16 number of families. Section (g)(3) gives HUD the flexibility to keep PHAs with declining per unit  
17 costs from losing funding under the regulation and to allow additional households to be served if  
18 costs are contained. Many factors are intersecting to influence per unit costs at this time  
19 (including the merger of the certificate and voucher program, the requirement for income  
20 targeting, the requirement that payment standards not impose unreasonable rent burdens, the  
21 flexibility of housing authorities to set payment standards between 90% and 110% of FMR on  
22 their own as well as the continued implementation of this rule’s methodology that indexes funding

1 closely to per unit costs). HUD will gain program experience as it monitors program costs and  
2 analyzes the reasons for fluctuations in costs.

### 3 **E. Inflation Factors**

4 **Issue:** The committee considered other more up-to-date measurement of rents, or weighting the  
5 Annual Adjustment Factor so that the most recent inflation data count for more than older date.  
6 Additionally, the committee recommended that inflation factors be more closely attuned to  
7 individual PHAs' housing markets: examples included local rents, and the use of local government  
8 or real estate agency data on rents.

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

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

### 19 **IV. Explanation of Rule Text**

#### 20 Renewal Units

21 The regulation adds a new defined term, "renewal units" to the definitions found at 982.4.  
22 The regulation outlines a multistep process in 982.102(d) for calculating the number of units that  
23 constitute "renewal units." The total number of renewal units will be assigned to one or more (if

1 applicable) of a housing agency’s funding increments. Ultimately, the Department will multiply  
2 the number of renewal units times the adjusted per unit cost to calculate the amount of funding a  
3 housing agency will receive to renew a given funding increment.

4 Applicability

5 This regulation will apply to the renewal of funding increments that expire in calendar year  
6 2000 and thereafter (the initial increments covered by the regulation would be those that expire on  
7 January 31, 2000). The Department adjusted to a calendar year basis for allocating renewal  
8 funding in the first quarter of 1999. The Department adjusted to a calendar year basis to ensure  
9 that it would have adequate time to process renewal funding in advance of expirations even if  
10 appropriations are not finalized until late in a given fiscal year or early in a subsequent fiscal year.

11 The regulation also makes it clear that it applies to units that a housing agency project bases  
12 pursuant to regulatory flexibility to project base up to 15% of the tenant based units that are  
13 reserved for it.

14 Renewal Methodology

15 The regulation outlines the method for calculating renewal funding. The Department does  
16 have the ability to adjust the amounts allocated if the Department’s appropriation is not sufficient  
17 to fully fund all housing agencies pursuant to the regulation.

18 Determining the amount of budget authority allocated for renewal of an expiring funding  
19 increment

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

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

5 Determining the number of Renewal Units

6 On the first day of each calendar year, the Department will determine the number of renewal  
7 units for the calendar year through a 3-step process.

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

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

1 units. Step 2 – Each calendar year, the Department will review all of the transactions that have  
2 altered the number of reserved units since it set the initial baseline. The Department will make  
3 adjustments to add to the baseline any additional units awarded to the housing authority by the  
4 Department from additional funding provided in the time period that has elapsed since setting the  
5 initial baseline. Adjustments to the baseline number of units will include incremental funding as  
6 well as other funding such as that awarded to provide continued assistance to assisted families  
7 pursuant to the conversion of project based assistance to tenant based assistance. The  
8 Department will also include adjustments for assistance transferred from one housing authority to  
9 another.<sup>1</sup>

10 In order to avoid double counting, the Department would subtract units added to the  
11 baseline because the number of families assisted o October 1, 1997 exceeded the number of  
12 reserved units on December 31, 1999 for a given housing agency. To add the units in its  
13 accounting system, the Department would have to award a new increment after December 31,  
14 1999. Normally such a new increment would be added to the baseline; however, in this instance,  
15 the baseline would already include such additional units since it was set at the October 1, 1997  
16 number.

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

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<sup>1</sup> In this case the receiving housing agency's adjusted baseline would increase and the transferring housing authority's adjusted baseline would decrease in an amount equal to the number of units transferred. The Department would de-reserve the units transferred units from the transferring housing agency.

1 Step 3 -In its final step in determining the number of renewal units that will be used to calculate  
2 renewal funding, the Department will further adjust the baseline number by subtracting the  
3 number of units supported by contracts that are not scheduled to expire until after the end of the  
4 calendar year.<sup>2</sup>

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

12 Determining the adjusted per unit cost

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

14 Step 1 - The Department will extract the total expenditures for all of the housing authority's  
15 Section 8 tenant-based assistance programs and the unit months leased information from the most  
16 recent approved year end statement (Form HUD-52681) that each housing authority has filed  
17 with the Department. The Department will divide the total expenditures for all of the housing  
18 authority's Section 8 tenant-based assistance programs by the unit months leased to derive an  
19 average monthly per unit cost.

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

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<sup>2</sup> 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.

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

5 For example, the Main Street Housing Authority's 1998 Year End Statement (the most recent  
6 one approved) indicated that it expended \$120,000 in its tenant-based Section 8 assistance  
7 programs and that it achieved 300 unit months leased. The Department would take the total  
8 expenditure (\$120,000) and divide it by the unit months leased (300) to calculate the monthly per  
9 unit cost (\$400) and then multiply the result by 12 months to obtain an actual annual per unit cost  
10 (\$4,800).

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

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

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

1 metropolitan area AAF for 2000 (2.0%).

2 CACC amendment to add renewal funding

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

6 Modification of allocation of budget authority

7 The regulation permits HUD to address the issue of cost containment through this  
8 provision. Section (g)(1) permits HUD to put in place mechanisms to step in to prevent a PHA  
9 from becoming overextended and exceeding its allocated funding. Section (g)(2) gives HUD the  
10 ability to act on either a case-by-case or a systemic basis. If the department's analysis of the  
11 program costs and related factors determines that systemic adjustments, including cost  
12 containment and other cost adjustments, to the program are necessary because of threats to the  
13 future availability of funding HUD has agreed that it would consult with PHA representatives and  
14 other relevant stakeholders before putting such a policy in place. HUD further indicated that any  
15 such cost adjustment would be consistent with the legitimate program goals of deconcentration of  
16 poverty, not imposing unreasonable rent burdens on residents, compliance with the income  
17 targeting requirements of the Public Housing Reform Act, consistency with applicable  
18 consolidated plan(s), maintaining program efficiency and economy, providing service to additional  
19 households within budgetary limitations and providing service to the adjusted baseline number of  
20 families. Section (g)(3) gives HUD the flexibility to keep PHAs with declining per unit costs from  
21 losing funding under the regulation and to allow additional households to be served if costs are  
22 contained.

1 Ability to prorate and synchronize contract funding increments

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

13 For example, the Main Street Housing Authority has 115 units that require renewal on April  
14 1, 2000 and also has 20 units that were awarded to it in August 1 of 1999 that would require  
15 renewal on August 1<sup>st</sup> of 2000. If the Department decided to merge the two sets of units for  
16 future renewals it would have the ability to prorate the renewal of the 20 units so that they would  
17 expire on April 1, 2001 simultaneously with the expiration of the other 115 units. The  
18 Department would be able to merge the two sets of units into one set of 135 units for the purpose  
19 of calculating future renewal funding.

20 To continue the example, if the contract term for the 20 units was 1 year (365 days) and the  
21 total budget authority for the contract was \$23,031.60, the cost per day would be \$63.10. The  
22 difference in the number of days between the current expiration date and the desired one is 122.

1 The Department would multiply the cost per day (\$63.10) times the number of days (122) to  
2 derive the proration adjustment figure of \$7,698 to be subtracted to accomplish the proration.

3 Reallocation of renewal units

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

8  
9 **PART 982 – SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE**  
10 **VOUCHER PROGRAM**

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12

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

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

15

16 2. Revise § 982.4(b) by adding the definition of "Renewal units", in alphabetical order, to  
17 read as follows:

18

19 **§ 982.4 Definitions.**

20 \* \* \* \* \*

21 (b) \* \* \*

22 Renewal units. The number of units, as determined by HUD, for which funding is  
23 reserved on HUD books for a PHA's program. This number is used in calculating renewal budget  
24 authority in accordance with § 982.102.

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§§ 982.102 and 982.103

[Redesignated as §§ 982.103 and 982.104, respectively]

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

4. Add § 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 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 allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

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

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

5           (d) Determining the number of renewal units. (1) Number of renewal units. HUD will  
6 determine the total number of renewal units for a PHA's program as of the first day of each  
7 calendar year. The number of renewal units for a PHA's program will be determined as follows:

8           (i) Step 1: Establishing the initial baseline. HUD will establish a baseline number of units  
9 ("baseline") for each PHA program. The initial baseline equals the highest of:

10           (A) Number of reserved units. The number of units reserved by HUD for the PHA  
11 program as of December 31, 1999; or

12           (ii) Step 2: Establishing the adjusted baseline. The adjusted baseline equals the  
13 initial baseline with the following adjustments from the initial baseline as of the first day of the  
14 calendar year for which renewal funding is calculated:

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

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

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

22           (2) Funding increments. HUD will assign all units reserved for a PHA program to one or

1 more funding increment(s).

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

3 (e) Determining the adjusted per unit cost. HUD will determine the PHA's adjusted per  
4 unit cost when HUD processes the allocation of renewal funding for an expiring contract funding  
5 increment. The adjusted per unit cost calculated during the calendar year in which renewal  
6 funding is being allocated will be determined as follows:

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

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

13 (A) Total program expenditures. The PHA's total program expenditures (including the  
14 total of housing assistance payments and administrative costs) for the PHA fiscal year covered by  
15 the approved year end statement; divided by (B) Total unit months leased. The total of  
16 unit months leased for the fiscal year covered by the approved year end statement.

17 (2) Step 2: Determining annual per unit cost. HUD will determine the PHA's annual per  
18 unit cost. The annual per unit cost equals the monthly program expenditures (as determined  
19 under paragraph (e)(1)(ii) of this section) multiplied by 12.

20 (3) Step 3: Adjusting annual per unit cost. HUD will update the PHA's annual per unit  
21 cost (as determined under paragraph (d)(1)(ii) of this section). The annual per unit cost will be  
22 adjusted by the annual per unit cost times the published Section 8 housing assistance payments

1 program contract rent annual adjustment factors as follows:

2 (i) Use of Annual Adjustment Factors applicable to PHA jurisdiction. In applying Annual  
3 Adjustment Factors HUD will use the Annual Adjustment Factors applicable to the jurisdiction of  
4 the PHA. In the case of PHAs whose geographic jurisdiction spans multiple Annual Adjustment  
5 Factor areas, HUD shall use the highest applicable Annual Adjustment Factor.

6 (ii) Use of Annual Adjustment Factors in effect subsequent to most recent Year End  
7 Statement. HUD shall use the Annual Adjustment Factors in effect during the time period  
8 subsequent to the time covered by the most recent HUD approved Year End Statement and the  
9 time of the processing of the contract funding increment to be renewed.

10 (iii) Special Circumstances. HUD may further modify the adjusted per unit cost based on  
11 receipt of a modification request from a PHA. The modification request must demonstrate that  
12 because of special circumstances application of the Annual Adjustment Factor will not provide an  
13 accurate adjusted per unit cost.

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

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

1           (2) HUD authority to limit increases to per unit costs through Federal Register notice.

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

4           (3) HUD authority to limit decreases to per unit costs through Federal Register notice.

5 HUD may, by Federal Register notice, limit the amount or percentage of decreases in the adjusted  
6 per unit cost to be used in calculating the allocation of budget authority.

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

12           (i) Deconcentration of poverty;

13           (ii) Reasonable rent burden;

14           (iii)           Income targeting

15           (iv)           consistency with applicable consolidated plan(s);

16           (v) Rent reasonableness;

17           (vi) Program efficiency and economy; (vii) Service to additional households within  
18 budgetary limitations; and

19           (viii) Service to the adjusted baseline number of families.

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

1 (h) Ability to prorate and synchronize contract funding increments. Notwithstanding  
2 §§ (c) through (g), HUD has the ability to prorate the renewal of funding increments that expire  
3 on different dates throughout the calendar year. This proration will synchronize the funding  
4 increment expiration dates with the expiration of other increments within the PHA's inventory  
5 and/or a given point in time during the PHA's fiscal year.

6 (i) Reallocation of renewal units. HUD may by Federal Register notice, reallocate budget  
7 authority from one PHA to another to address performance deficiencies, including failure to  
8 adequately lease based on the funding allocated. HUD may make such reallocations permanent by  
9 treating the budget authority reallocated as a transfer of units from one PHA to another.

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12 Date: \_\_\_\_\_  
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18 \_\_\_\_\_  
19 Harold Lucas, Assistant Secretary for  
20 Public and Indian Housing  
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