

Appendix 41

PROJECT-BASED CERTIFICATE PROGRAM
ESTABLISHING INITIAL CONTRACT
RENTS FOR INSURED OR COINSURED PROJECTS

Instructions: Within 30 working days of receipt of a PBC project application, the Valuation Branch must establish the initial contract rents and personal benefit expenses for the insured or coinsured project following the instructions contained in this appendix.

1. SECTION 8 CONTRACT RENTS FOR INSURED AND COINSURED MULTIFAMILY PROJECTS. Total housing expense (contract rents plus personal benefit expense (PBE) for utilities not paid by the owner) will be established by the HUD Field Office, not the PHA or coinsurer, as indicated below.

The initial Section 8 contract rents must be the lowest of:

- the Section 8 Existing FMRs (or exception rents as explained in Section 4) in effect when the Section 8 Agreement is executed minus HUD's PBE for the project,
- the HUD determined market rents (reasonable rents) based on comparables using the instructions for establishing comparable rents for unassisted projects contained in Handbook 4480.1 and Form HUD-92273,
- the amount determined by HUD to be necessary to amortize the insured or coinsured mortgage using Attachments 1 and 2 to this appendix, or
- the minimum rents HUD determines are necessary to make the project feasible after taking account of tax credits and other government assistance in accordance with 24 CFR Part 12. (This provision was effective 4/15/91 for projects with tax credits; a future Federal Register Notice will provide the effective date of this provision for projects with other government assistance but no tax credits.)

Please note that the Assistant Secretary's prerogative, special 5 percent elderly or handicapped adjustments to FMRs, and special Section 8 adjustments to correlated rents with cost justification for the rent comparability analysis are not

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applicable to the Project-Based Certificate Program. Further, the Section 8 rents approved for the Agreement cannot be increased because of change orders or any other reason; however, these Section 8 rents

for units under HAP Contract may be decreased as a result of cost certification.

Although the HUD Field Offices will be responsible for setting the Section 8 contract rents, both the PHA and coinsurer have some duties in the process.

A.PHA responsibility in connection with Section 8 project-based Certificate contract rents. The PHA does not set or recommend contract rents for insured or coinsured projects. However, the PHA will:

1. Notify the HUD Field Office and the coinsuring lender that the PHA has selected a project for the Project-Based Certificate Program which is proposed or being processed for FHA multifamily mortgage insurance or coinsurance.
2. Submit to HUD and the coinsuring lender a completed Form HUD-52580A indicating the PHA-required work items to meet the \$1000 per unit rehabilitation minimum and to bring the units up to the Section 8 Housing Quality Standards (HQS) (Section 882.721(a)).
3. Provide HUD and the coinsuring lender with a copy of the owner's rehabilitation work write-up (which generally will include additional work items beyond those required by the PHA) or new construction working drawings and specifications.
4. Provide HUD and the coinsuring lender with a letter indicating the HAP Contract term and ACC expiration date of the funding source, the unit distribution of the Section 8 units, and if applicable, a request by the PHA to approve exception rents up to 110% of the FMRs in accordance with Section 4.
5. Submit to HUD and the coinsuring lender the PHA's utility allowances.

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B.Coinsuring lender's responsibility in connection with Section 8 project-based Certificate contract rents. The coinsuring lender does not set contract rents or PBE allowances under the Section 8 Project-Based Certificate Program. However, the coinsuring lender must:

1. Submit Forms HUD-92013, 92013E (if applicable), 92264, 92264A, 92273, and 92274 to the HUD Field Office. When completing Form HUD-92273,

comparison rents must be derived from unassisted, comparable units without any special Section 8 adjustments.

2. Provide the HUD Field Office and the PHA with a copy of its work write-up, plans and specifications, cost estimate, and recommended PBE.

C. HUD responsibility in connection with Section 8 project-based Certificate contract rents. As stated above, HUD will establish the Section 8 total housing expense for all properties. The HUD Field Office staff must:

1. Review the materials submitted by the PHA and the coinsuring lender.

2. Review the comparability analysis submitted by the coinsuring lender and make appropriate revisions, if needed. (The Field Office can prepare a substitute analysis.) As stated above, rents by market comparison without any special Section 8 adjustments are determined using Form HUD-92273.

3. Compare the coinsuring lender's and the PHA's required repairs and review the work write-up and, if applicable, working drawings, plans, and specifications to ensure that the Section 8 units will be modest in design. Amenities in Section 8 units must be limited to those amenities, as determined by the Field Office, that are generally provided in unassisted, decent, safe, and sanitary housing for lower income families in the market

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area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement cost is not considered an excess amenity. The HUD Field Office will provide a list of any disapproved work items to the PHA and the coinsuring lender.

4. Determine the Section 8 Existing FMRs or exception rents in effect when the Section 8 Agreement was executed or will be executed. See Section 4. If exception rents are proposed, contact the Economic and Market Analysis Staff to determine whether the PHA is authorized to approve exception rents up to 120 percent of the FMR (See paragraph 4-B). If the PHA has submitted a letter requesting HUD to approve exception rents up to 110 percent of the FMR pursuant to 882.714(b)(2)(i), contact the Public Housing Division (PHD) staff to determine whether such approval is possible (See paragraph 4-A). The Existing FMRs or approved exception rents are entered in column a of Attachment 2, "Allocation of Formula Rent for Insured and Coinsured Projects, Section

8 Project-Based Certificate Program".

5. Review the utility allowances submitted by the PHA and the PBE recommended by the coinsuring lender and make appropriate revisions. If the HUD approved PBE varies significantly from the PHA's utility allowances, the PHD staff should be requested to conduct a review of the adequacy of the PHA's utility allowances for the tenant-based Certificate Program. The HUD PBE must be used.

6. Complete Attachment 1, "Rent Formula - Supplement to Form HUD-92264 for Section 8 Project-Based Certificate Program".

7. Complete Attachment 2, "Contract Rents-Insured and Coinsured Projects - Section 8 Project-Based Certificate Program". The HUD approved rents for the Section 8 units will be the rents shown in column (f) of Attachment 2.

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8. Inform the coinsuring lender and PHA of the HUD approved contract rents and PBE and require the coinsuring lender to reprocess the project if the rents for the Section 8 units vary from the rents used by the coinsuring lender in the original processing. (The results of HUD's Forms 92273 and 92274 analyses should be shared with the coinsuring lender, if indicated).

2. COINSURANCE PROCESSING RENTS.

A. PHA and HUD Responsibility. The PHA and HUD do not calculate processing rents used to establish the coinsured mortgage.

B. Coinsuring Lender's Responsibility. Coinsuring lenders will establish processing rents used to set mortgage amounts.

Processing rents will be the lower of:

1. Rents established by market rent comparability in accordance with Handbooks 4480, 4561.1 and 4566.1 without any Section 8 adjustments.

2. Section 8 contract rents (for assisted units only):

(a) The effective Section 8 rent reflected in an existing HAP Contract (i.e., for projects with executed Section 8 HAP Contracts), or

(b) The Section 8 contract rents set by HUD for a new HAP

Contract.

3. DIFFERENCES BETWEEN SECTION 8 MODERATE REHABILITATION AND PROJECT-BASED CERTIFICATE CONTRACT RENTS FOR INSURED AND COINSURED MULTIFAMILY PROJECTS. The current procedures for processing Section 221(d) and 223(f) coinsurance projects with Section 8 Moderate Rehabilitation are contained in Headquarter's May 8, 1989 memorandum to PHAs and Field Office staff and Coinsuring Letter No. 89-5 also dated May 8, 1989. The procedures for processing multifamily insured projects with Section 8 Moderate Rehabilitation are contained in Appendix 33 of Handbook 7420.3.

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The procedures for processing Section 8 Project-Based Certificate projects are similar, but there are a number of differences since project-based Certificate assistance is for a shorter subsidy term and the rent policies are different. In addition separate regulations govern each program (Moderate Rehabilitation - Subparts D & E of 24 CFR Part 882 and Project-Based Certificates - Subpart G of 24 CFR Part 882).

The principal differences between contract rents for insured and coinsured Moderate Rehabilitation projects and Project-Based Certificate projects follow.

A. The Section 8 Existing FMRs published in the Federal Register are applicable to the Project-Based Certificate Program. The FMRs for the Section 8 Moderate Rehabilitation Program are 120% of the Section 8 published Existing FMRs and are not published separately in the Federal Register.

B. The exception rent policies are different for the two programs. For example, 110% PHA exception rents (authorized under 24 CFR 882.714(b)(2)(i)) are only applicable to the Project-Based Certificate Program, not the Moderate Rehabilitation Program. In addition, increases in contract rents after the Agreement is executed are only applicable, under limited circumstances, to the Section 8 Moderate Rehabilitation Program; they are not available for project-based Certificate projects.

C. The procedures in Appendix 31 of Handbook 7420.3 for PHAs to establish contract rents based on the rehabilitation costs and to establish base rents are only applicable to the Section 8 Moderate Rehabilitation Program. (Contract rents are based on market comparables in the Section 8 Project-Based Certificate Program.)

D. Special adjustments to market rent comparability (1 to 20 percent depending on the term of the HAP Contract and the mortgage insurance program) are only applicable to the Section 8 Moderate Rehabilitation Program.

E.For insured and coinsured Section 8 moderate rehabilitation projects, PHAs may complete the Appendix 31 rent calculations and submit them to the HUD Field

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Office for review and approval or for other Field Office action in accordance with Appendix 33. For insured and coinsured projects with project-based Certificate assistance, the PHA does not recommend or establish the Section 8 rents.

4.SECTION 8 EXCEPTION RENTS: PROJECT-BASED CERTIFICATE PROGRAM.

The exception rent policies for project-based Certificates are the same as those for tenant-based Certificates, except that increased rents (up to 20 percent above the FMRs) based on the unique needs of individual families pursuant to 882.106(a)(4)(iv) - (vi) are not authorized for project-based assistance. Exception rents may be approved for the Section 8 Project-Based Certificate Program under the following circumstances. HUD approved exception rents apply to all Certificate units, not just the project-based component.

A.The PHA may approve gross rents up to 110 percent of the current Existing FMRs for a maximum of 20 percent of its combined project-based and tenant-based Certificate units (Section 882.714(b)(2)(i)). These 110 percent PHA exception rents are appropriate to (a) expand housing opportunities in nonimpacted areas, (b) make available handicapped accessible units, and (c) make available units which warrant a higher rent because of the number of bedrooms, amenities, or location. Once the PHA has reached its maximum exception rent authority, additional 110 percent exception rents may not be approved until the PHA receives a new allocation of units or families currently occupying units that were granted exception rents move to units that do not require an exception rent or leave the program.

B.Upon PHA request, HUD Field Offices may authorize PHAs to approve exception rents up to 120 percent of the current Existing FMRs for some or all unit sizes within a geographic area (municipality, county, neighborhood) pursuant to Section 882.714(b)(2)(ii) and (iii) if: (a) the exception is necessary for the successful operation of the Section 8 Certificate Program (e.g., fewer than 90 percent of the PHA's Certificate units are leased due to insufficient housing stock within the FMR limits), (b) the 45th percentile rent of standard

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quality unassisted units within the exception rent area exceeds the applicable FMRs, and (c) the units are not located in a soft market where housing supply exceeds demand and a high rate of vacancies exist. PHA requests for such exceptions must be supported by rental housing survey data that is statistically representative of rent levels for the entire exception area.

These data must demonstrate that 45th percentile rents in the designated area are higher than for the FMR area as a whole and that the requested rents are consistent with rents of comparable unassisted units. Exception rents cannot be approved solely for specific projects on the basis of market comparables.

All PHA requests for geographic area exception rents are to be reviewed by the Economic and Market Analysis Staff (EMAS) with jurisdiction. Based on its review findings, EMAS will recommend approval or disapproval depending on whether the request satisfied the above requirements. It should be noted that exception rents cannot be approved for either soft markets or the major part of any FMR area, i.e., all exceptions in total cannot include more than 50 percent of the population of the FMR area. All recommendations to approve or disapprove FMR geographic area exceptions, including any that would override the EMAS recommendation to disapprove a PHA's request, must be justified in writing and copies retained in the Field Office files. Regional Economists will continue to be responsible for monitoring all FMR geographic area exception rent approvals to ensure that there is correct and uniform application of the review requirements.

Geographic area 120 percent exception rents apply to all Certificate units (project-based and tenant-based) leased in the exception rent area. The HUD Field Office should not approve exception rents for a specific project (or the immediate neighborhood including a specific project) based solely on market comparables for that project determined by the coinsuring lender or the Valuation Branch, or based on

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high construction costs. Instead, exception rents should only be approved based on the review of the 45th percentile rents of rental housing in the entire neighborhood, county or municipality, and only if warranted for the successful operation

of the tenant-based Certificate program.

5.CHANGE ORDERS: PROJECT-BASED CERTIFICATE PROGRAM.

A.Coinsured Projects. Within 5 days of receipt, the coinsuring lender will submit change orders directly to the PHA and HUD Field Office. Within 5 days of receipt, the HUD Field Office will review and approve the owner's request after consulting with the PHA concerning whether the project will meet HQS after the construction or rehabilitation is completed. HUD will notify the PHA whether the change order must be approved or disapproved.

In determining whether a proposed change is approvable, the Field Office is advised that only change orders representing necessities may be paid from mortgage proceeds (including contingency reserve) or net income during construction. Betterment change orders are approvable, but they may not be paid from contingency reserve funds, net income during construction, or savings in other line items. When responding to the coinsuring lender, the HUD Field Office will indicate whether the change is considered to be a necessity or a betterment as well as whether or not it is eligible to be paid from the contingency reserve.

The notification to the coinsuring lender should also state that HUD approval of a necessity change order will never be funded from mortgage proceeds other than the contingency reserve or cost savings at cost certification. Further, if the change order involves the deletion of amenities or modifies other work items which impact on market rent comparability, the Field Office should determine whether a Section 8 rent decrease and/or a mortgage decrease are necessary.

Only HUD-approved necessity change orders may be used by the coinsuring lender in calculating the final mortgage amount for the approved certified cost or partially assisted projects. The Section 8 contract rents approved for the Agreement cannot be increased

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because of cost overruns, change orders or any other reason; the contract rents could be decreased as a result of change orders (Section 882.732(c)). Further, if the project is 100% assisted, a mortgage increase for cost overruns or change orders cannot be approved.

B.Insured Projects. The owner will submit change orders directly to the PHA and HUD Field Office, and the HUD Field Office will review and approve or disapprove the owner's request after consulting with the PHA in accordance with section 5.A. above. The Section 8 rents approved for the Agreement cannot be

increased because of change orders or any other reason; the contract rents could be decreased as a result of change orders (Section 882.732(c)). The Field Office will determine if a rent decrease is necessary. Further, if the project is 100% assisted, a mortgage increase for cost overruns or change orders cannot be approved.

6.COST CERTIFICATION: PROJECT-BASED CERTIFICATE PROGRAM.

A.Coinsured Projects. At project completion, the PHA and owner will execute the HAP Contract at the contract rents reflected in the Agreement. (Rents cannot be increased because of increased costs.) The owner will also certify the project's actual cost to the coinsuring lender who will review the certification in the manner required by the coinsurance procedures. If the project is 100 percent assisted, a mortgage increase cannot be approved.

The coinsuring lender will forward a copy of the cost certification, its review and determination of the maximum coinsurable mortgage to the HUD Field Office, if its review of the cost certification results in a mortgage reduction. The HUD Field Office will determine if the contract rents should be reduced and the HAP Contract amended. The HUD Field Office will notify the coinsuring lender and the PHA of the results of its review.

B.Insured Projects. Same as above, except the owner will submit the cost certification directly to HUD, and HUD will notify the PHA of the results of its review and whether the rents should be reduced.

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7.OTHER PRE-HAP CONTRACT RESPONSIBILITIES.

A.PHA Responsibilities.

1.PHAs are not required to implement a Project-Based Certificate Program. If a PHA decides it wants to project-base up to 15 percent of its Certificate units, it will request authorization from HUD pursuant to Sections 882.703 and 882.704 of the regulations.

2.PHAs implementing a project-based component will select units in accordance with their HUD-approved written selection policies and other HUD requirements. Before selection the PHA will inspect the property and determine the specific work items that are needed to meet the \$1,000 per unit rehabilitation requirement (Section 882.710) and to

bring the units up to the Section 8 Housing Quality Standards. The owner will prepare rehabilitation work write-ups and, if necessary, plans and specifications or new construction working drawings and specifications. The PHA will conduct a final inspection upon completion of the rehabilitation or construction, review the owner's evidence of completion and accept the units (Section 882.733).

3. For insured and coinsured projects, the PHA does not have responsibility for the following items: (1) inspections during rehabilitation or construction; (2) monitoring of Davis-Bacon wage issues; (3) determining compliance with environmental and other requirements under 24 CFR Part 50; or (4) establishing initial rents.

B. Coinsurer Responsibilities. For totally or partially assisted projects the coinsurer does not have responsibility for (1) establishing Section 8 rents and PBE; (2) approving change orders; and (3) determining the rehabilitation work items and costs. The coinsurer duties include but are not limited to monitoring Davis-Bacon wage rate compliance, reviewing the owner's evidence of completion, and accepting (jointly with the PHA) the units (Section 882.733).

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C. HUD Responsibilities.

1. For coinsured projects, the HUD Field Office will establish the Section 8 rents and PBE, determine the rehabilitation or construction work items and costs, approve change orders, review cost certifications and determine the maximum coinsurable mortgages after cost certification. Further, HUD will perform the functions required for coinsured projects (e.g., previous participation clearances, environmental reviews, prevailing wage determinations, market reviews, intergovernmental review resolutions, and EO document approvals).

2. For insured projects, the HUD Field Office will perform all duties required by outstanding mortgage insurance instructions for non-assisted projects. In addition, HUD will establish the Section 8 rents and PBE, review the owner's evidence of completion, accept (jointly with the PHA) the units (Section 882.733), monitor Davis-Bacon compliance, and determine the rehabilitation or construction work items and costs.

8. EXECUTION OF SECTION 8 CONTRACTS: PROJECT-BASED CERTIFICATE PROGRAM.

A. Agreement. The Agreement between the PHA and owner must always be executed prior to the start of rehabilitation or construction.

For Section 223(f) projects, the Agreement must be executed just prior to the start of rehabilitation but not earlier than issuance of a Conditional Commitment (see also paragraph 3-9 of Handbook 4565.1). For Section 221(d) projects involving insurance of advances, the Agreement must be executed at the time of the initial endorsement for mortgage insurance, or if the project has an approved early start in accordance with outstanding mortgage insurance instructions, the Agreement must be executed just prior to the early start. For 221(d) projects involving insurance upon completion, a Firm Commitment must be issued before execution of the Agreement.

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B.HAP Contract. The HAP Contract between the PHA and the owner must always be executed upon completion of the rehabilitation or construction and after the Field Office or the coinsurer and the PHA review the owner's evidence of completion and accept the units (Section 882.733). The executed HAP Contract may need to be amended to reduce the rents based on the HUD Field Office review of the cost certification.

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Attachment 1

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RENT FORMULA - SUPPLEMENT TO FORM HUD-92264
SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

1. Replacement Cost from Section G of Form HUD-92264* \$_____
2. Debt Service Rate (Principal, Interest & MIP) _____%
3. Allowable Return on Capital Investment (Line 2 X Line 1) \$_____
4. Annual Payments to Ground Lease (Leasehold Projects Only) \$_____
5. Sum of Lines 3 and 4 \$_____

6. Add Net Income Reserve for Nonprofit Projects Only by Dividing Line 5 by .95 (For other projects, divide by 1.0) \$_____

7. Total Annual Expense, Taxes and Reserves \$_____

8. Total Allowable Annual Effective Gross Income (Sum of Lines 6 & 7) \$_____

9. Total Allowable Annual Gross Income (Line 8 divided by processing occupancy factor_____%) \$_____

10. Total Allowable Monthly Gross Income (Line 9 divided by 12) \$_____

11.Total Non Residential Monthly Income

a. Monthly Commercial Income \$_____

b.Monthly Residential Related Accessory Income \$_____

Total Allowable Monthly Income from Sources Other Than Dwelling Units (Line 11.a plus 11.b) \$_____

12.Total Allowable Monthly Rent from Revenue Producing Dwelling Units (Line 10 minus Line 11) \$_____

*For Section 223(f) use, purchase price (if acquisition) or existing indebtedness (if refinance), plus repairs and improvements (if any), other fees, and loan closing charges.

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Attachment 1

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13.Maximum Section 8 Contract Rents

| NO. | BR | (a) Published Existing FMR or Applicable Exception Rent | (b) PBE | (c)** Maximum Section 8 Contract Rents (a) minus (b) | (d) Number of Units | (e) Products and Totals |
|-----|----|---|------------|--|------------------------------|----------------------------------|
| 0 | | \$_____ | - \$_____ | = \$_____ | x _____ | = \$_____ |
| 1 | | \$_____ | - \$_____ | = \$_____ | x _____ | = \$_____ |

| | | | | | | | | | |
|---|----------|---|----------|---|----------|---|-------|---|----------|
| 2 | \$ _____ | - | \$ _____ | = | \$ _____ | x | _____ | = | \$ _____ |
| 3 | \$ _____ | - | \$ _____ | = | \$ _____ | x | _____ | = | \$ _____ |
| 4 | \$ _____ | - | \$ _____ | = | \$ _____ | x | _____ | = | \$ _____ |

TOTAL = \$ _____

14. Contract Rents by Rent Formula

| No. BR | (a) Line 12 | (b) Total Line 13(e) | (c)*** Allocation Ratio (a) divided by (b) | (d) Line 13c | (e)** Contract Rents by Rents |
|--------|----------------|----------------------------|---|-----------------|--|
|--------|----------------|----------------------------|---|-----------------|--|

Formula

| | | | | | | | |
|---|---------------------|---|-------|---|----------|---|----------|
| 0 | \$ _____ / \$ _____ | = | _____ | x | \$ _____ | = | \$ _____ |
| 1 | | | | | \$ _____ | = | \$ _____ |
| 2 | | | | | \$ _____ | = | \$ _____ |
| 3 | | | | | \$ _____ | = | \$ _____ |
| 4 | | | | | \$ _____ | = | \$ _____ |

** Fractions of a dollar should be rounded up to the next whole dollar.

***If the allocation ratio exceeds 1 (e.g. 1.17) it must be reduced to 1.0 in order to limit contract rents to the allowable maximums.

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Attachment 2

CONTRACT RENTS
INSURED AND COINSURED PROJECTS
SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

| No. BR. | (a) Published Existing FMR or Applicable Exception Rent | (b) PBE | (c)* Maximum Section 8 Contract Rents ((a) minus (b)) | (d)* Market Rents by Comparison with Unassisted | (e)* Contract Rents by Rent Formula (Line | (f) ** Contract Rents (Lowest of (c), (d), or (e)) |
|---------|--|------------|---|--|--|---|
| 0 | \$ _____ | - | \$ _____ | = | \$ _____ | |
| 1 | \$ _____ | - | \$ _____ | = | \$ _____ | |
| 2 | \$ _____ | - | \$ _____ | = | \$ _____ | |
| 3 | \$ _____ | - | \$ _____ | = | \$ _____ | |
| 4 | \$ _____ | - | \$ _____ | = | \$ _____ | |

| No. BR. | Units (Line 22 of Form 92273) | 14(e) of Attachment 1) | |
|---------|----------------------------------|---------------------------|----------|
| 0 | \$ _____ | \$ _____ | \$ _____ |
| 1 | \$ _____ | \$ _____ | \$ _____ |
| 2 | \$ _____ | \$ _____ | \$ _____ |
| 3 | \$ _____ | \$ _____ | \$ _____ |
| 4 | \$ _____ | \$ _____ | \$ _____ |

* Fractions of a dollar should be rounded up to the next whole dollar.

**Compare rents entered in columns (c), (d), and (e) for each bedroom size and enter the lowest of the three amounts in column (f)