Public Housing Agencies;
Indian Housing Authorities;
Secretary's Representatives;
State/Area Coordinators;
Directors, Public Housing Divisions; Administrators, Offices of Native American Programs; Resident Management Corporations (RMCs)

Notice PIH 96-87 (HA)
Issued: 11/20/96
Expires: 11/30/97

FY 1997 Performance Funding System (PFS) Inflation Factor and Equation and PFS Incentives Rule

This Notice transmits the updated Inflation Factor, Equation, and related tables which must be used for the determination of operating subsidy eligibility for Public Housing Agencies and Indian Housing Authorities (HAs) operating locally-owned projects for Fiscal Years Beginning January 1, April 1, July 1, and October 1, 1997.

This information is found in the following Appendixes to this Notice:

Appendix 1 - PFS INFLATION FACTOR

Appendix 2 - PFS EQUATION FOR REQUESTED BUDGET YEAR

Appendix 3 - FEL INCREASE WORKSHEET FOR FY 1997

Appendix 4 - LISTING OF METROPOLITAN AREAS

Appendix 5 - PFS INCENTIVES - INTERIM RULE

Appendix 6 - SAMPLE FORMAT FOR OPTIONAL PFS INCENTIVE ADJUSTMENT

NOTE: Most HAs use only the PFS Inflation Factor contained in Appendix 1 of this Notice to calculate their operating subsidy eligibility. A small number of HAs which have experienced a significant change in their housing stock use the PFS equation to adjust their Allowable Expense Level (AEL) (Long Calculation of the Delta.)

LISTING OF RECENT CHANGES TO OPERATING SUBSIDY ELIGIBILITY:

1. **Public and Indian Housing Performance Funding System: Incentives - Interim Rule published September 30. 1996.**

   Following is a short description of the changes to the PFS regulation made by this interim rule. The full text of the rule is provided in Appendix 5 and should be read for further detail.

   A. **Temporary elimination of the three percent rental income change factor.** No increase factor will be used for Federal Fiscal Years 1996 through 1998 if HUD has an operating subsidy shortfall. As a result of this change all HAs will enter 1.00 on line 15 of Form HUD-52723, Calculation of Performance Funding System Operating Subsidy.

   B. **Incentive for HAs to increase Other Income.** HAs will be able to make up part or all of any shortfall in operating subsidy during Federal Fiscal Years 1996 through 1998 if they have certain kinds of other income. There is no change to the definition of Other Income in the PFS. All HAs will continue to report all Other Income as defined in the PFS regulation on Line 20 of Form HUD-52723. The incentive will consist of the difference between (1) the PFS definition of Other Income and (2) other income from Excess Utilities, rents billed to dwelling units rented for nondwelling purposes, and rents and charges to other HUD programs. The difference between (1) and (2) will be the potential other income incentive. The total of the Other Income incentives under this paragraph and any earned income incentive under paragraph C will be compared with the shortfall and the smaller of the two will be entered on Line 37 of Form HUD-52723 and will increase the operating subsidy. This change was first announced in Notice PIH 96-24 dated April 3, 1996. A sample format for calculating this adjustment is included as Appendix 6.

   C. **Incentive for HAs which adopt optional earned income exclusions or deductions.** HAs will be able to make up part or all of any shortfall in operating subsidy during Federal Fiscal Years 1996 through 1998 if they make significant efforts to utilize optional earned income exclusions or deductions for current residents. HAs which adopt optional earned income exclusions or deductions must make an adjustment in reporting the rent roll used for calculating operating subsidy. The rent roll amount reported on Line 12 must be adjusted by adding back the total value of all optional earned income exclusions and deductions. This step results in a decrease in operating subsidy that can be made up through the incentive when the HA achieves an increase in rents from earnings. The amount of the potential incentive is calculated by comparing the rental income per occupied unit resulting from earned income on the April 1, 1996 rent roll to the rental income per occupied unit resulting from earned income on the date of the rent roll used for PFS calculation. During Federal Fiscal Years 1996 through 1998 the HA qualifies for an incentive increase in operating subsidy in an amount that, when added to any incentive earned under paragraph B above, is less than or equal to the PFS shortfall. The total of the incentives under B and this paragraph will be compared with the shortfall and the smaller of the two will be entered on Line 37 of Form HUD-52723 and will increase the operating subsidy. This change was first announced in Notice PIH 96-24 dated April 3, 1996. A sample format for calculating this adjustment is included as Appendix 6.

Other references:
For Annual Income: Optional Earned Income Exclusions Interim Rule. Published August 30, 1996; effective September 30, 1996. Transmitted to HAs by HUD Notice PIH 96-71 (HA), issued September 9, 1996.
For Adjusted Income: Optional Earned Income Deductions - From the Continuing Resolution of January 26, 1996, as discussed in HUD Notice PIH 96-6 (HA) issued February 13, 1996. Extended until September 30, 1997 by the FY 1997 Appropriations Act of September 26, 1997 as mentioned in HUD Notice PIH 96-81 (HA), issued September 30, 1996.

D. **Transition Funding for Units Approved for Demolition.** The regulation provides for a short transition period of funding for some units that have been approved for demolition. HAs lose operating subsidy funding when units approved for demolition become vacant. Units replaced with Section 8 Certificates or Vouchers for relocation of residents or replacement of units are not eligible for the phase-down subsidy. The transition funding for units that have been continuously vacant for the twelve month period immediately preceding the HUD approval for demolition will be equal to 20% of the Allowable Expense Level (AEL) for an additional twelve months. All other units will be eligible for the phase-down funding of an additional twelve months of full AEL, twelve months of 66% of AEL, and twelve months of 33% of AEL. When replacement public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for the phase-down funding. Until the Form

HUD-52723 can be revised, any transition funding for demolished units will be shown parenthetically (   ) on line 28, immediately following the line description and identified as "Transition Funding for Demolition". The total of all other add-ons (i.e., the sum of lines 28.a.-28.e. plus any parenthetical entry on line 28, plus any other add-on funding), will continue to be reflected on line 28 under the column heading "Requested by PHA/IHA".

E. **Funding for Conversions of Efficiency into One Bedroom Units.** The regulation includes units lost through these conversions as eligible for funding under "Costs resulting from combination of two or more units", otherwise known as Unit reconfigurations. This eligibility is entered on Line 28c of HUD-52723.

F. **Removal of time limit on retention of utility rate savings.** A HA taking action, such as the wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, formerly was permitted to retain one-half the first year's cost savings and, if the actions continued to be cost effective, one-half the annual savings for an additional six years. The regulation reflects the removal by Congress of this time limit and permits the retention of the savings for as long as the actions continue to be cost effective.

2. **Vacancy Rule.** Notice PIH 96-35 (HA) transmitted the Final Rule - Low Income Public and Indian Housing Vacancy Rule. This final rule was published in the Federal Register on February 28, 1996 and was first used by HAs having fiscal years beginning July 1, 1996. The rule established new conditions under which vacant units will receive operating subsidy. It gives greater recognition to units that are vacant for reasons beyond the HA's control, makes changes in the current treatment of vacant units that are part of a modernization program, and, under certain circumstances, has HAs exclude the unit months associated with long-term vacant units from the count of unit months available for occupancy.

3. **Funding for Public/Indian Housing Family Self Sufficiency (FSS) Programs.** HAs with HUD approved FSS Action Plans may request additional operating subsidy under the PFS to cover the public housing share of the reasonable cost of salary and fringe benefits for the FSS service coordinator. When Section 8 and public/Indian housing FSS programs are combined, the shared costs of the service coordinator must be prorated between the programs using an equitable

allocation system such as percentage of time or number of FSS participants. The subsidy may also be increased by an amount equal to the PFS Allowable Expense Level for each vacant public housing unit approved by HUD for provision of supportive services to support Section 8 and/or public Housing FSS programs. These FSS costs are eligible under the PFS regulation as costs attributable to a change in Federal Law and should be entered on Line 28a of Form HUD-52723, Calculation of PFS Operating Subsidy.

4. **No PFS funding for Tenant Opportunity Program (TOP).** The Final Rule on Tenant Participation and Tenant Opportunities in Public and Indian Housing was published on August 24, 1994. The regulation changes the PFS to add two new categories of eligibility: Funding for Resident Council Expenses and Funding for Resident Council Office Space. As the regulation and preamble state, both of these additions are "subject to appropriations". We do <u>not</u> have appropriations to support these additions. The Department will issue a Notice to all HAs if funds are appropriated for these purposes.

5. **Elimination of Heating Degree Day Adjustment in the PFS.** On October 13, 1994, a Final Rule was published in the Federal Register which eliminates the application of the heating degree day adjustment factor for utility consumption. A copy of this Final Rule was provided in the PFS Notice for FY 1995 (Notice PIH 94-81). The first years that will not be adjusted will be fiscal years ending 12/95, 3/96, 6/96, and 9/96.

If additional information is needed, please contact Joan DeWitt, Director, Finance and Budget Division, Office of Public and Assisted Housing Operations, at (202) 708-1872. Offices of Native American Programs or Indian Housing Authorities should contact Debbie Lalancette, Office of Native American Programs, at (303) 765-1600.

/s/ Michael B. Janis for
Kevin Emanuel Marchman
Acting Assistant Secretary for
Public and Indian Housing

Attachments

PFS INFLATION FACTOR
(For PHA/IHA Fiscal Years Beginning January 1, 1997,
April 1, 1997, July 1, 1997 and October 1, 1997)

---See Appendix 4 for listing of Metro areas---

STATE	METRO	NON-METRO	STATE	METRO	NON-METRO
Alabama	1.032	1.036	Montana	1.028	1.017
Arizona	1.031	1.018	Nebraska	1.019	1.021
Arkansas	1.020	1.023	Nevada	1.023	1.041
California	1.016	1.018	New Hampshire	1.013	1.020
Colorado	1.020	1.026	New Jersey	1.040	NA
Connecticut	1.029	1.029	New Mexico	1.026	1.023
Delaware	1.022	1.029	New York	1.030	1.028
D.C.	1.043	NA	North Carolina	1.029	1.023
Florida	1.016	1.026	North Dakota	1.021	1.022
Georgia	1.019	1.017	Ohio	1.028	1.023
Hawaii	1.032	1.036	Oklahoma	1.029	1.029
Idaho	1.039	1.025	Oregon	1.025	1.025
Illinois	1.044	1.017	Pennsylvania	1.025	1.025
Indiana	1.023	1.020	Rhode Island	1.017	1.017
Iowa	1.022	1.024	South Carolina	1.015	1.016
Kansas	1.016	1.019	South Dakota	1.031	1.027
Kentucky	1.016	1.017	Tennessee	1.034	1.031
Louisiana	1.018	1.022	Texas	1.020	1.017
Maine	1.015	1.013	Utah	1.026	1.028
Maryland	1.018	1.022	Vermont	1.031	1.018
Massachusetts	1.026	1.007	Virginia	1.021	1.019
Michigan	1.031	1.024	Washington	1.026	1.020
Minnesota	1.025	1.020	West Virginia	1.011	1.016
Mississippi	1.026	1.026	Wisconsin	1.022	1.028
Missouri	1.019	1.026	Wyoming	1.007	1.014

PFS EQUATION FOR REQUESTED BUDGET YEAR
FY 1997

A. On all forms and worksheets, refer to the applicable dates below each time Current or Requested Year appears.

1. Current Year - Agency fiscal year ending December 31, 1996, March 31, 1997, June 30, 1997, or September 30, 1997.

2. Requested Year - Agency fiscal year ending December 31, 1997, March 31, 1998, June 30, 1998, or September 30, 1998.

B. Formula Expense Level equation multipliers and equation calibration constant. Enter these numbers on form HUD-52720-B.

OPERATING FACTOR	MULTIPLIER
Number of pre-1940 rental units occupied by poor households as a percentage of the population of the community.	7.954
Local government wage rate index.	116.496
Number of two or more bedroom units or 15,000 whichever is less.	.002896
Ratio of three or more bedroom units to total dwelling units.	22.303
Ratio of two or more bedroom units in high rise family projects to total dwelling units.	37.294
Equation calibration constant.	-.2344

FEL INCREASE WORKSHEET FOR FY 1997
Fiscal Years Beginning 1/1/97, 4/1/97, 7/1/97, and 10/1/97

Follow these seven steps to complete an entry for Form HUD-52720-B.
The answer is entered on Line 4, Part VI.
Complete current year, requested year, or both, in accordance with the instructions on the Form.

	CURRENT YR	REQUESTED YR
1. Enter amount on Line 3, Part VI of HUD-52720-B	____	____
2. Enter FY 89 Increase Factor from table below	X____	X____
3. Multiply Line 1 by Line 2	=____	=____
4. FY 89 Insurance Increase	+ 8.45	+ 8.45
5. Add Line 3 and Line 4	=____	=____
6. Enter FY 90-96 Increase Factor (table next page)	X ____	X____
7. Multiply Line 5 by Line 6. FORMULA EXPENSE LEVEL	=____	=____

FY 89 INCREASE FOR LINE 2 ABOVE

NOTE: These Increase Factors include Inflation and Delta increases.

STATE	METRO	NON-METRO	STATE	METRO	NON-METRO
Alabama	1.04520	1.04419	Montana	1.04922	1.04822
Arizona	1.05022	1.04721	Nebraska	1.05324	1.05123
Arkansas	1.04620	1.04520	Nevada	1.05223	1.05324
California	1.05625	1.05425	New Hampshire	1.06731	1.06731
Colorado	1.05022	1.04721	New Jersey	1.06429	NA
Connecticut	1.06832	1.06630	New Mexico	1.05123	1.04822
Delaware	1.06530	1.06530	New York	1.05927	1.05726
D.C.	1.04822	NA	North Carolina	1.05927	1.05726
Florida	1.05927	1.05826	North Dakota	1.04219	1.04419
Georgia	1.05826	1.05726	Ohio	1.05123	1.05123
Hawaii	1.05123	1.05022	Oklahoma	1.03816	1.03716
Idaho	1.04721	1.04620	Oregon	1.04922	1.04822
Illinois	1.04822	1.04721	Pennsylvania	1.06028	1.05927
Indiana	1.05425	1.05525	Rhode Island	1.06530	1.06630
Iowa	1.05022	1.05022	South Carolina	1.05625	1.05625
Kansas	1.04721	1.04721	South Dakota	1.04922	1.05022
Kentucky	1.05726	1.05726	Tennessee	1.05525	1.05425
Louisiana	1.04319	1.04219	Texas	1.04419	1.04219
Maine	1.06229	1.06128	Utah	1.03816	1.03716
Maryland	1.06128	1.06128	Vermont	1.06028	1.05927

Massachusetts	1.05625	1.05425	Virginia	1.05726	1.05726
Michigan	1.04419	1.04419	Washington	1.04319	1.04017
Minnesota	1.04922	1.04721	West Virginia	1.04620	1.04822
Mississippi	1.04822	1.04721	Wisconsin	1.05324	1.05324
Missouri	1.05525	1.05425	Wyoming	1.04419	1.04319

FEL INCREASE WORKSHEET FOR FY 1997
(continued)

FY 90 - 96 INCREASE FOR LINE 6 ABOVE
NOTE: These Increase Factors include Inflation and Delta increases.

STATE	METRO	NON-METRO	STATE	METRO	NON-METRO
Alabama	1.36159	1.36612	Montana	1.30905	1.30204
Arizona	1.30478	1.30266	Nebraska	1.35372	1.38126
Arkansas	1.36243	1.34574	Nevada	1.39469	1.40890
California	1.41005	1.35492	New Hampshire	1.53071	1.50570
Colorado	1.32006	1.31394	New Jersey	1.53322	NA
Connecticut	1.56380	1.58459	New Mexico	1.30894	1.27426
Delaware	1.46761	1.46193	New York	1.44898	1.49901
D.C.	1.38527	NA	North Carolina	1.41338	1.38472
Florida	1.40617	1.40767	North Dakota	1.28381	1.28353
Georgia	1.38549	1.35129	Ohio	1.39299	1.38724
Hawaii	1.48706	1.49491	Oklahoma	1.31349	1.31262
Idaho	1.34301	1.35597	Oregon	1.37179	1.36569
Illinois	1.40315	1.36599	Pennsylvania	1.46003	1.44011
Indiana	1.39841	1.40828	Rhode Island	1.43526	1.38319
Iowa	1.37611	1.37443	South Carolina	1.41325	1.38848
Kansas	1.35626	1.29503	South Dakota	1.38820	1.32984
Kentucky	1.37607	1.40951	Tennessee	1.37754	1.38566
Louisiana	1.33365	1.33681	Texas	1.32156	1.31810
Maine	1.45962	1.46042	Utah	1.28089	1.27786
Maryland	1.45544	1.46532	Vermont	1.42631	1.46476
Massachusetts	1.44652	1.52360	Virginia	1.40749	1.39214
Michigan	1.41323	1.38574	Washington	1.37964	1.37312
Minnesota	1.35484	1.34463	West Virginia	1.35026	1.36732
Mississippi	1.37872	1.38013	Wisconsin	1.38467	1.41985
Missouri	1.36499	1.33932	Wyoming	1.28158	1.25204

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

ALABAMA

Autauga
Baldwin
Blount
Calhoun
Colbert
Dale
Elmore
Etowah
Houston
Jefferson
Lauderdale
Lawrence
Limestone
Madison
Mobile
Montgomery
Morgan
Russell
St. Clair
Shelby
Tuscaloosa

ARIZONA

Coconino
Maricopa
Mohave
Pima
Pinal
Yuma

ARKANSAS

Benton
Craighead*
Crawford
Crittenden
Faulkner
Jefferson
Lonoke
Miller
Pulaski
Saline
Sebastian
Washington

CALIFORNIA

Alameda
Butte
Contra Costa
El Dorado
Fresno
Kern
Los Angeles
Madera
Marin
Merced
Monterey
Napa
Orange
Placer
Riverside
Sacramento
San Bernardino
San Diego
San Francisco
San Joaquin
San Luis Obispo
San Mateo
Santa Barbara
Santa Clara
Santa Cruz
Shasta
Solano
Sonoma
Stanislaus
Sutter
CA (cont.)

Tulare
Ventura
Yolo
Yuba

COLORADO

Adams
Arapahoe
Boulder
Denver
Douglas
El Paso
Jefferson
Larimer
Mesa
Pueblo
Weld

CONNECTICUT
(towns)

Andover
Ansonia
Ashford
Avon
Barkhamsted
Beacon Falls
Berlin
Bethany
Bethel
Bethlehem
Bloomfield
Bolton
Bozrah
Branford
Bridgeport
Bridgewater
Bristol
Brookfield
Burlington
Canterbury
Canton
Chaplin
Cheshire
Clinton
Colchester
Columbia
Coventry
Cromwell
Danbury
Darien
Derby
Durham
East Granby
East Haddam
East Hampton
East Hartford
East Haven
East Lyme
East Windsor
Easton
Ellington
Enfield
Fairfield
Farmington
Franklin
Glastonbury
Granby
Greenwich
Griswold
Groton
Guilford
Haddam
Hamden
Hartford
Harwinton
Hebron
CT towns (cont.)

Killingworth
Lebanon
Ledyard
Lisbon
Madison
Manchester
Mansfield
Marlborough
Meriden
Middlebury
Middlefield
Middletown
Milford
Monroe
Montville
Naugatuck
New Britain
New Canaan
New Fairfield
New Hartford
New Haven
New London
New Milford
Newington
Newtown
North Branford
North Haven
North Stonington
Norwalk
Norwich
Old Lyme
Old Saybrook
Orange
Oxford
Plainfield
Plainville
Plymouth
Portland
Preston
Prospect
Redding
Ridgefield
Rocky Hill
Roxbury
Salem
Seymour
Shelton
Sherman
Simsbury
Somers
South Windsor
Southbury
Southington
Sprague
Stafford
Stamford
Stonington
Stratford
Suffield
Thomaston
Thompson
Tolland
Trumbull
Vernon
Wallingford
Washington
Waterbury
Waterford
Watertown
West Hartford
West Haven
Weston
Westport
Wethersfield
Willington
Wilton
Winchester
Windham

CT towns (cont.)

Windsor
Windsor Locks
Wolcott
Woodbridge
Woodbury

DELAWARE

Kent
New Castle

D.C.

Washington

FLORIDA

Alachua
Bay
Brevard
Broward
Charlotte
Clay
Collier
Dade
Duvall
Escambia
Flagler
Gadsden
Hernando
Hillsborough
Lake
Lee
Leon
Manatee
Marion
Martin
Nassau
Okaloosa
Orange
Osceola
Palm Beach
Pasco
Pinellas
Polk

County Name* = New addition to list, ~~County Name~~ = Deleted from list.

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

St. Johns
St. Lucie
Santa Rosa
Sarasota
Seminole
Volusia

GEORGIA

Barrow
Bartow
Bibb
Bryan
Carroll
Catoosa
Chatham
Chattahoochee
Cherokee
Clarke
Clayton
Cobb
Columbia
Coweta
Dade
DeKalb
Dougherty
Douglas
Effingham
Fayette
Forsyth
Fulton
Gwinnett
Harris
GA (cont.)

Henry
Houston
Jones
Lee
Madison
McDuffie
Muscogee
Newton
Oconee
Paulding
Peach
Pickens
Richmond
Rockdale
Spalding
Twiggs
Walker
Walton

HAWAII

Honolulu

IDAHO

Ada
Bannock*
Canyon

ILLINOIS

Boone
Champaign
Clinton
Cook
DeKalb
DuPage
Grundy
Henry
Jersey
Kane
Kankakee
Kendall
Lake
McHenry
McLean
Macon
Madison
Menard
Monroe
Ogle
Peoria
Rock Island
St. Clair
Sangamon
Tazewell
Will
Winnebago
Woodford

INDIANA

Adams
Allen
Boone
Clark
Clay
Clinton
Dearborn
DeKalb
Delaware
Elkhart
Floyd
Hamilton
Hancock
Harrison
Hendricks
Howard

IN (cont.)

Huntington
Johnson
Lake
Madison
Marion
Monroe
Morgan
Ohio
Porter
Posey
St. Joseph
Scott
Shelby
Tippecanoe
Tipton
Vanderburgh
Vermillion
Vigo
Warrick
Wells
Whitley

IOWA

Black Hawk
Dallas
Dubuque
Johnson
Linn
Polk
Pottawattamie
Scott
Warren
Woodbury

KANSAS

Butler
Douglas
Harvey
Johnson
Leavenworth
Miami
Sedgwick
Shawnee
Wyandotte

KENTUCKY

Boone
Bourbon
Boyd
Bullitt
Campbell
Carter
Christian
Clark
Daviess
Fayette
Gallatin
Grant
Greenup
Henderson
Jefferson
Jessamine
Kenton
Madison
Oldham
Pendleton
Scott
Woodford

LOUISIANA

Acadia
Ascension
Bossier
Caddo
LA (cont.)

Calcasieu
E. Baton Rouge
Jefferson
Lafayette
Lafourche
Livingston
Orleans
Ouachita
Plaquemines
Rapides
St. Bernard
St. Charles
St. James
St. John the Baptist
St. Landry
St. Martin
St. Tammany
Terrebonne
Webster
W. Baton Rouge

MAINE (towns)

Auburn
Bangor
Berwick
Brewer
Buxton
Cape Elizabeth
Casco
Cumberland
Eddington
Eliot
Falmouth
Freeport
Glenburn
Gorham
Gray
Greene
Hampden
Hermon
Holden
Hollis
Kenduskeag
Kittery
Lewiston
Limington
Lisbon
Mechanic Falls
Milford
North Yarmouth
Old Orchard Beach
Old Town
Orono
Orrington
Penobscot Indian
Poland
Portland
Raymond
Sabattus
Scarborough
South Berwick
South Portland
Standish
Turner
Veazie
Wales
Westbrook
Windham
Winterport
Yarmouth
York

MARYLAND

Allegany
Anne Arundel

MD (cont.)

Baltimore
Baltimore City
Calvert
Carroll
Cecil
Charles
Frederick
Harford
Howard
Montgomery
Prince Georges

County Name* = New addition to list, ~~County Name~~ = Deleted from list.

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

Queen Anne's
Washington

MASSACHUSETTS
(towns)

Abington
Acton
Acushnet
Adams
Agawam
Amesbury
Amherst
Andover
Arlington
Ashburnham
Ashby
Ashland
Attleboro
Auburn
Avon
Ayer
Barnstable
Barre
Bedford
Belchertown
Bellingham
Belmont
Berkley
Berlin
Beverly
Billerica
Blackstone
Bolton
Boston
Boxborough
Boxford
Boylston
Braintree
Brewster
Bridgewater
Brockton
Brookfield
Brookline
Burlington
Cambridge
Canton
Carlisle
Carver
Charlton
Chatham
Chelmsford
Chelsea
Cheshire
Chicopee
Clinton
Cohasset
Concord
Dalton
Danvers
Dartmouth
Dedham
Dennis
Dighton
Douglas
Dover
Dracut
MA towns (cont.)

Dudley
Dunstable
Duxbury
East Bridgewater
East Brookfield
East Longmeadow
Eastham
Easthampton
Easton
Essex
Everett
Fairhaven
Fall River
Fitchburg
Foxborough
Framingham
Franklin
Freetown
Gardner
Georgetown
Gloucester
Grafton
Granby
Groton
Groveland
Hadley
Halifax
Hamilton
Hampden
Hanover
Hanson
Harvard
Harwich
Hatfield
Haverhill
Hingham
Hinsdale
Holbrook
Holden
Holland
Holliston
Holyoke
Hopedale
Hopkinton
Hudson
Hull
Huntington
Ipswich
Kingston
Lakeville
Lancaster
Lanesborough
Lawrence
Lee
Leicester
Lenox
Leominster
Lexington
Lincoln
Littleton
Longmeadow
Lowell
Ludlow
Lunenburg
Lynn
Lynnfield
Malden
Manchester
Mansfield
Marblehead
Marion
Marlborough
Marshfield
Mashpee
Mattapoisett
Maynard
Medfield
Medford
MA towns (cont.)

Medway
Melrose
Mendon
Merrimac
Methuen
Middleborough
Middleton
Milford
Millbury
Millis
Millville
Milton
Monson
Montgomery
Nahant
Natick
Needham
New Bedford
Newbury
Newburyport
Newton
Norfolk
North Andover
N. Attleboro
North Brookfield
North Reading
Northampton
Northborough
Northbridge
Norton
Norwell
Norwood
Oakham
Orleans
Oxford
Palmer
Paxton
Peabody
Pembroke
Pepperell
Pittsfield
Plainville
Plymouth
Plympton
Princeton
Quincy
Randolph
Raynham
Reading
Rehoboth
Revere
Richmond
Rochester
Rockland
Rockport
Rowley
Russell
Rutland
Salem
Salisbury
Sandwich
Saugus
Scituate
Seekonk
Sharon
Sherborn
Shirley
Shrewsbury
Somerset
Somerville
South Hadley
Southborough
Southbridge
Southhampton
Southwick
Spencer
Springfield
Sterling

MA towns (cont.)

Stockbridge
Stoneham
Stoughton
Stow
Sturbridge
Sudbury
Sunderland
Sutton
Swampscott
Swansea
Taunton
Templeton
Tewksbury
Topsfield
Townsend
Tyngsborough
Upton
Uxbridge
Wakefield
Walpole
Waltham
Ware
Wareham
Watertown
Wayland
Webster
Wellesley
Wenham
West Boylston
West Bridgewater
West Brookfield
West Newbury
West Springfield
Westborough
Westfield
Westford
Westminster
Weston
Westport
Westwood
Weymouth
Whitman
Wilbraham
Williamsburg
Wilmington
Winchendon
Winchester
Winthrop
Woburn
Worcester
Wrentham
Yarmouth

MICHIGAN

Allegan
Bay
Berrien

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

Calhoun
Clinton
Eaton
Genesee
Ingham
Jackson
Kalamazoo
Kent
Lapeer
Lenawee
Livingston
Macomb
Midland
Monroe
Muskegon
Oakland
Ottawa
Saginaw
St. Clair
Van Buren

MI towns (cont.)

Washtenaw
Wayne

MINNESOTA

Anoka
Benton
Carver
Chisago
Clay
Dakota
Hennepin
Houston
Isanti
Olmstead
Polk
Ramsey
St. Louis
Scott
Sherburne
Stearns
Washington
Wright

MISSISSIPPI

DeSoto
Forrest
Hancock
Harrison
Hinds
Jackson
Lamar
Madison
Rankin

MISSOURI

Andrew
Boone
Buchanan
Cass
Christian
Clay
Clinton
Franklin
Greene
Jackson
Jasper
Jefferson
Lafayette
Lincoln
Newton
Platte
Ray
St. Charles
St. Louis
St. Louis City
Sullivan City
Warren
Webster

MONTANA

Cascade
Yellowstone

NEBRASKA

Cass
Dakota
Douglas
Lancaster
Sarpy
Washington

NEVADA

Clark
Nye
Washoe

NEW HAMPSHIRE
(towns)

Allenstown
Amherst
Atkinson
Auburn
Barrington
Bedford
Brentwood
Brookline
Candia
Chester
Danville
Derry
Dover
Durham
East Kingston
Epping
Exeter
Farmington
Fremont
Goffstown
Greenland
Greenville
Hampstead
Hampton
Hampton Falls
Hollis
Hooksett
Hudson
Kensington
Kingston
Lee
Litchfield
Londonderry
Madbury
Manchester
Mason
Merrimack
Milford
Milton
Mont Vernon
Nashua
New Castle
New Ipswich
Newfields
Newington
Newmarket
Newton
North Hampton
Pelham
Plaistow
Portsmouth
Raymond
Rochester
Rollinsford
Rye
Salem
Sandown
Seabrook
Somersworth
South Hampton
Stratham
Weare
Wilton
Windham

NEW JERSEY

Atlantic
Bergen
Burlington
Camden
NJ (cont.)

Cape May
Cumberland
Essex
Gloucester
Hudson
Hunterdon
Mercer
Middlesex
Monmouth
Morris
Ocean
Passaic
Salem
Somerset
Sussex
Union
Warren

NEW MEXICO

Bernalillo
Dona Ana
Los Alamos
Sandoval
Santa Fe
Valencia

NEW YORK

Albany
Bronx
Broome
Cayuga
Chautauqua
Chemung
Dutchess
Erie
Genesee
Herkimer
Kings
Livingston
Madison
Monroe
Montgomery
Nassau
New York
Niagara
Oneida
Onondaga
Ontario
Orange
Orleans
Oswego
Putnam
Queens
Rensselaer
Richmond
Rockland
Saratoga
Schenectady
Schoharie
Suffolk
Tioga
Warren
Washington
Wayne
Westchester

NORTH CAROLINA

Alamance
Alexander
Brunswick
Buncombe
Burke
Cabarrus
Caldwell
Catawba
NC (cont.)

Chatham
Cumberland
Currituck
Davidson
Davie
Durham
Edgecombe
Forsyth
Franklin
Gaston
Guilford
Johnston
Lincoln
Madison
Mecklenburg
Nash
New Hanover
Onslow
Orange
Pitt
Randolph
Rowan
Stokes
Union
Wake

County Name* = New addition to list, ~~County Name~~ = Deleted from list.

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

Wayne
Yadkin

NORTH DAKOTA

Burleigh
Cass
Grand Forks
Morton

OHIO

Allen
Ashtabula
Auglaize
Belmont
Brown
Butler
Carroll
Clark
Clermont
Columbiana
Crawford
Cuyahoga
Delaware
Fairfield
Franklin
Fulton
Geauga
Greene
Hamilton
Jefferson
Lake
Lawrence
Licking
Lorain
Lucas
Madison
Mahoning
Medina
Miami
Montgomery
Pickaway
Portage
Richland
Stark
Summit
Trumbull
Warren
Washington
Wood

OKLAHOMA

Canadian
Cleveland
Comanche
Creek
Garfield
Logan
McClain
Oklahoma
Osage
Pottawatomie
Rogers
Sequoyah
Tulsa
Wagoner

OREGON

Clackamas
Columbia
Jackson
Lane
Marion
Multnomah
Polk
Washington
Yamhill

PENNSYLVANIA

Allegheny
Beaver
Berks
Blair
Bucks
Butler
Cambria
Carbon
Centre
Chester
Columbia
Cumberland
Dauphin
Delaware
Erie
Fayette
Lackawanna
Lancaster
Lebanon
Lehigh
Luzerne
Lycoming
Mercer
Montgomery
Northampton
Perry
Philadelphia
Pike
Somerset
Washington
Westmoreland
Wyoming
York

RHODE ISLAND
(towns)

Barrington
Bristol
Burrillville
Central Falls
Charlestown
Coventry
Cranston
Cumberland
East Greenwich
East Providence
Exeter
Foster

RI towns (cont.)

Glocester
Hopkinton
Jamestown
Johnston
Lincoln
Little Compton
Narragansett
North Kingstown
North Providence
North Smithfield
Pawtucket
Providence
Richmond
Scituate
Smithfield
South Kingstown
Tiverton
Warren
Warwick
West Greenwich
West Warwick
Westerly
Woonsocket

SOUTH CAROLINA

Aiken
Anderson
Berkeley
Charleston
Cherokee
Dorchester
Edgefield
Florence
Greenville
Horry
Lexington
Pickens
Richland
Spartanburg
Sumter
York

SOUTH DAKOTA

Lincoln
Minehaha
Pennington

TENNESSEE

Anderson
Blount
Carter
Cheatham
Davidson
Dickson
Fayette
Hamilton
Hawkins
Knox
Loudon
Madison
Marion
Montgomery
Robertson
Rutherford
Sevier
Shelby
Sullivan
Sumner
Tipton
Unicoi
Union
Washington
Williamson
Wilson

TEXAS

Archer
Bastrop
Bell
Bexar
Bowie
Brazoria
Brazos
Caldwell
Cameron
Chambers
Collin
Comal
Coryell
Dallas
Denton
Ector
El Paso
Ellis
Fort Bend
Galveston
Grayson
Gregg
Guadalupe
Hardin
Harris
Harrison
Hays
Henderson
Hidalgo
Hood
Hunt
Jefferson
Johnson
Kaufman
Liberty
Lubbock
McLennan
Midland
Montgomery
Nueces
Orange
Parker
Potter
Randall
Rockwall
San Patricio
Smith
Tarrant
Taylor
Tom Green
Travis
Upshur
Victoria
Waller
Webb
Wichita
Williamson
Wilson

UTAH

Davis
Kane
Salt Lake
Utah
Weber

VERMONT (towns)

Burlington
Charlotte
Colchester

LISTING OF METROPOLITAN AREAS
(For PHA/IHA Fiscal Years Beginning In Calendar Year 1996)
Note: Areas listed are counties, unless otherwise identified.

Essex
Fairfax
Georgia
Grand Isle
Hinesburg
Jericho

VT towns (cont.)

Milton
Richmond
St. Albans City
St. Albans Town
St. George
Shelburne
South Burlington
South Hero
Swanton
Williston
Winooski

VIRGINIA

Albemarle Co.
Alexandria City
Amherst Co.
Arlington Co.
Bedford City
Bedford Co.
Bristol City
Botetourt Co.
Campbell Co.
Charles City Co.
Charlottesville City
Chesapeake City
Chesterfield Co.
Clarke Co.
Colonial Heights City
Culpeper Co.
Danville City
Dinwiddie Co.
Fairfax City
Fairfax Co.
Falls Church City
Fauquier Co.
Fluvanna Co.
Fredericksburg City
Gloucester Co.
Goochland Co.
Greene Co.
Hampton City
Hanover Co.
Henrico Co.
Hopewell City
Isle of Wight Co.
James City Co.
King George Co.
Loudoun Co.
Lynchburg City
Manassas City
Manassas Park City
Mathews Co.
New Kent Co.
Newport News City
Norfolk City
Petersburg City
Pittsylvania Co.
Poquoson City
Portsmouth City
Powhatan Co.
Prince George Co.
Prince William Co.
Richmond City
Roanoke City
Roanoke Co.
Salem City
Scott Co.
Spotsylvania Co.
Stafford Co.
Suffolk City
Va. Beach City

VA (cont.)

Warren Co.
Washington Co.
Williamsburg City
York Co.

WASHINGTON

Benton
Clark
Franklin
Island
Kitsap
King
Pierce
Snohomish
Spokane
Thurston
Whatcom
Yakima

WEST VIRGINIA

Berkeley
Brooke
Cabell
Hancock
Jefferson
Kanawha
Marshall
Mineral
Ohio
Putnam
Wayne
Wood

WISCONSIN

Brown
Calumet
Chippewa
Dane
Douglas
Eau Claire
Kenosha
La Crosse
Marathon
Milwaukee
Outagamie
Ozaukee
Pierce
Racine
Rock
Sheboygan
St. Croix
Washington
Waukesha
Winnebago

WYOMING

Laramie
Natrona

County Name* = New addition to list, ~~County Name~~ = Deleted from list.

[Federal Register: September 30, 1996 (Volume 61, Number 190)] [Rules and Regulations] [Page 51177-51184] From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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Part V

Department of Housing and Urban Development

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24 CFR Parts 950 and 990

Public and Indian Housing Performance Funding System: Incentives; Interim Rule

[[Page 51178]]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 950 and 990

[Docket No. FR-4072-I-01] RIN 2577-AB65

Public and Indian Housing Performance Funding System: Incentives

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

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's regulations for the Performance Funding System that governs payment of operating subsidy to Public Housing Agencies and Indian Housing Authorities (collectively called Housing Agencies or HAs). It makes four principal changes: it codifies incentive adjustments that were made for Federal Fiscal Years 1996 through 1998 via a Notice to Housing Agencies; it adds a provision to gradually phase down operating subsidies provided to Housing Agencies when they obtain HUD approval to demolish units; it clarifies how combining two efficiency units into a one-bedroom unit is to be treated for operating subsidy eligibility; and it removes a limitation on the time period that applies to an HA's eligibility to benefit from certain utility savings efforts.

A rule is necessary because the incentives that were contained in the referenced Notice were based on legislation that expires after September 30, 1996. Without action by HUD to continue these incentives beyond that date, HAs may be reluctant to adopt and implement worthwhile practices based solely on the provisions of the Notice. Since the Secretary has authority to regulate in this area, promulgation of this interim rule will give HAs a regulatory basis for adopting worthy changes. The change with respect to utility savings is to conform the regulation to the statute, since a six-year limitation was just removed from the authorizing statute.

DATES: Effective date: October 30, 1996, except that Secs. 950.725(b), 950.756, 950.757, 990.109(b), 990.114, and 990.116 shall not become effective until the OMB approval of the information collections contained in those sections are announced by a separate publication in the Federal Register.

Comment due date: Comments must be submitted by November 29, 1996.

The deadline for comments on the information collection requirements is November 29, 1996, although commenters are advised that a comment is best assured of having its full effect if it is received by the Office of Management and Budget (OMB) within 30 days of publication. See the Public Reporting Burden heading under the Findings and Certifications section of this preamble regarding the information collection burden.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Comments should refer to the above docket number and title of the rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

Comments on the information collections contained in the rule, which are described in detail in the section, Findings and Certifications, must refer to the docket number and title of the rule and be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and Reports Liaison Officer, Room 4238, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-5000.

FOR FURTHER INFORMATION CONTACT: For the public housing program, contact Joan DeWitt, Director, Finance and Budget Division, Office of Public and Assisted Housing Operations, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 708-1872, ext. 4035. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

For the Indian housing programs, contact Deborah Lalancette, Director, Housing Management Division, Office of Native American Programs, Department of Housing and Urban Development, Room B-133, 451 Seventh Street, SW., Washington, DC 20410, telephone (voice): (202) 755-0088. (This is not a toll-free number.) For hearing- and speech- impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Changes to Encourage HAs to Facilitate Resident Employment and Undertake Entrepreneurial Initiatives

Congress enacted the Balanced Budget Downpayment Act I on January 26, 1996 (Pub. L. No. 104-99), effective only for Federal Fiscal Year 1996. This legislation permitted housing agencies to take actions to attract and retain working families in occupancy such as the adoption of ceiling rents, adoption of earned income adjustments that would make work attractive to tenants, and adoption of local preferences. The legislation also repealed Federal admissions preferences.

HUD issued a Notice to housing agencies (PIH 96-24) in the spring of 1996, providing an incentive under the Performance Funding System (PFS) for HAs that make significant efforts to utilize the new optional earned income adjustments for existing residents or that undertake entrepreneurial activities. The Notice made the incentive effective for the shorter of the period of three Federal Fiscal Years (FFYs), 1996- 1998, or the period during which there is a shortfall in the availability of funds to pay full operating subsidy eligibility to all HAs. Specifically, the Notice permitted HAs that implement the optional earned income exclusion for existing residents to offset performance funding system (PFS) funding shortfalls by retaining increases in dwelling rental income that result from increases in residents' earned incomes. The Notice also provided an incentive related to other income earned by the HAs through entrepreneurial activities. This rule adopts similar changes.

The Secretary has authority under section 3 of the United States Housing Act of 1937, 42 U.S.C. 1437a, to define the term ``income,'' as it used for purposes of determining eligibility and rental payment in the public and Indian housing programs. Although the Appropriations Act provision expires at the end of the current fiscal year (September 30, 1996), a change made by the Secretary in the definition of income permitting HAs to adopt an exclusion for earned income can have longer lasting effect. The Secretary is exercising this authority in another pending rulemaking, but this rule specifies the impact of adoption of such an exclusion by an HA.

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Under this new policy, HAs have the authority to establish their own earned income exclusion, as a means of attracting and retaining more tenants with earned income. PFS subsidies, however, will be calculated without respect to either decreases in rental income resulting from the exclusion, or increases resulting from higher rents received from households with earned income. In general, HAs that opt to adopt earned income exclusions will increase their total income if they are successful in obtaining more and/or higher income working tenants but will lose income if their policies do not produce a net increase in rent revenues.

To permit proper determination of operating subsidy eligibility, in accordance with the principle stated above, a housing agency that adopts an earned income exclusion will have to calculate and document the following:

(1) Per unit rental income from resident earned income in the April 1, 1996 rent roll;

(2) A future month's per unit rental income from resident earned income (see Secs. 950.757(b) and 990.116(b)); and

(3) A future month's rent roll adjusted so that it does not reflect decreases resulting from the HA's implementation of an optional earned income exclusion (see Secs. 950.725(b)(1)(ii) and 990.109(b)(1)(ii)).

In addition to the change with respect to an earned income adjustment, the Department's recent Notice suspended a three percent change factor applied to project an HA's dwelling rental income. In recent years this assumption of an increase in the dwelling rental income has not been realized. In order to ensure that all HAs receive a level of funding that most nearly reflects their final eligibility based on actual experience, without requiring them to request a year end adjustment, the Department suspended use of the change factor for the same period of time as applies to the earned income exclusion. This rule codifies that change, as well.

The rationale for incorporating these changes in the PFS regulation is to ensure some degree of continuity in Departmental policy on which HAs may rely. The Department believes that these measures can significantly improve the stability of HAs by permitting HAs to improve the income mix in their developments, and thus increase dwelling rental income. The retention by HAs of additional rental income--and other income--above that permitted under the current PFS formula, up to 100 percent of their PFS eligibility, will directly allow these HAs to provide better housing services in their communities.

There is statutory authority for these changes under section 9 of the United States Housing Act of 1937, 42 U.S.C. 1437g. That provision authorizes HUD to base operating subsidy to housing agencies on a performance funding system that is substantially based on the system defined in regulations and in effect on February 5, 1988. These changes to the PFS are not substantial changes. They deal only with the matter of how to cope with a subsidy shortfall during the three-year period of FY 1996 through FY 1998, but they do not apply during any FFY during which there is not an overall PFS shortfall.

II. Transition Funding for Units Approved for Demolition

This rule also contains a change to the PFS regulations to provide a short transition period of funding for HAs that have received approval to demolish HA-owned public or Indian housing units. The purpose of the change is to encourage and support efforts by an HA to reduce its overhead costs in a planned and orderly manner when its inventory of units is reduced by demolition.

Under the current PFS regulations, units are no longer eligible for operating subsidy when the Department approves the unit for deprogramming (including approval to demolish the unit) and the unit is vacant. The only funding provided after that point is funding for direct costs relating to preserving and protecting the unit pending actual demolition or disposition.

This abrupt cut-off in subsidy does not provide an opportunity for affected HAs to reduce their overhead costs in a planned and orderly way. An HA that undertakes a significant reduction to its inventory will need to rethink and possibly restructure the way it does business. This is especially true if the units are not going to be replaced or if some different type of development management is contemplated. Some HAs are contemplating the demolition of up to 20% of their inventory.

Faced with the prospect of a sudden and sharp decrease in subsidy funding, some HAs may decide to postpone the decision to seek HUD approval to demolish units that clearly meet the criteria for such an action, especially where the units are not being replaced by tenant- based subsidy, such as Section 8 Certificates or Vouchers. By retaining these units in its inventory, an HA continues to receive some level of operating subsidy support.

This proposed rule strikes a balance between the need to eliminate disincentives and the need to achieve a reduction in operating subsidy as a result of demolition activity. Subsidy funding will be continued to units approved by HUD for demolition under the following conditions:

(1) Units replaced with Section 8 Certificates or Vouchers will not be eligible for phase-down subsidy;

(2) Units that have been continuously vacant for the twelve-month period immediately preceding HUD approval for the demolition will be eligible for subsidy funding based on 20% of the Allowable Expense Level (AEL) for 12 months beginning with the month that the demolition request was approved by HUD; and

(3) For units that have not been continuously vacant for twelve months, the rule phases out the subsidy over a three-year period, starting with the month in which the unit is approved for demolition and is vacant. For the initial 12-month period, the unit will be eligible for subsidy funding based on 100% of AEL. For the next 12- month period, the unit will be eligible for

subsidy funding based on 66% of the AEL. For the third 12-month period, the unit will be eligible for funding based on 33% of the AEL.

(4) Units that are approved for demolition and are replaced with conventional public or Indian housing units will not be eligible for phase-down subsidy when the replacement units become eligible for subsidy.

(5) Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

The intent of this change is to maintain the momentum that has been achieved to demolish the worst parts of the public housing inventory. The Department is concerned that if it does not address the legitimate transitional funding need problems of HAs undergoing inventory and funding reductions, this momentum will be lost.

This change to the PFS regulations falls within the authority of the Secretary to define the PFS for payment of operating subsidy. The change merely removes some of the obstacles to demolishing seriously deteriorated or obsolete housing stock, while coping with an operating subsidy shortfall.

One limitation on the Department's ability to issue rules on the subject of PFS is the statutory requirement that ``any proposed regulation providing for amendment, alteration, adjustment, or other change in the performance funding system relating to vacant units shall be issued pursuant to a negotiated rule making procedure * * *.''

This rule will provide additional operating subsidy to certain HAs that had or will have (vacant) units approved

[[Page 51180]]

for demolition in 1995 or later. The additional costs to the PFS are estimated as follows: $17.6 million in FY 1997 (including $1.3 million for FY 1995, $6 million for FY 1996, and $10.3 million for FY 1997); $19.6 million in FY 1998; and $25.5 million in FY 1999. The corresponding savings for the PFS resulting from the demolitions are as follows: $4.9 million in FY 1996; $10.8 million in FY 1997; $44.1 million in FY 1998; and $81.9 million in FY 1999. When the savings are compared with the cost, the results are a net cost of $1.9 million for FYs 1995 through 1997, but a net savings of $24.5 million and $56.4 million, respectively, for FYs 1998 and 1999. Thus, the net effect of this rule on PFS during the period is a savings in total operating subsidy eligibility amount.

Moreover, compared to the magnitude of the PFS in its entirety, this phase-down funding is minimal in scale. The $1,900,000 of net cost in FYs 1996 and 1997 can be contrasted with the amount provided in the FY 1997 HUD appropriations bill as passed by the House of $2,850,000,000. In addition, it should be noted that most HAs that are demolishing public or Indian housing units are receiving certificates as replacement for those lost units. Those HAs are not eligible for phase-down of subsidy under this rule, and so are not affected by this provision.

The purpose to be served by a negotiated rulemaking is to assure that all interested parties have an opportunity to advance their interests during the development of a proposal that will affect them. Since the phase-down of subsidy for units approved for demolition produces an overall savings to the PFS and is minimal in effect when compared with the overall level of PFS funding, the impact on HAs and tenants of this rule does not rise to the level to necessitate participation in a negotiated rulemaking. Therefore, the Department has determined that the phase-down provision does not constitute the type of change in PFS relating to vacant units for which a negotiated rulemaking is required.

III. Treatment of Combination of Two Efficiency Units Into a One Bedroom Unit

In recognition of the marketing problem HAs have regarding efficiency apartments and the resulting high vacancy rates in these units, the Department wants to support HAs which make the decision to convert efficiency units into one bedroom units. This rule amends Secs. 990.108(d) and 950.720(e), Costs resulting from combination of two or more units, to treat the conversion of two efficiency units into a one-bedroom unit as eligible for funding under this section.

IV. Changes to Utility Savings Retention Period

In enacting the 1996 Omnibus Appropriations Act, Congress removed the statutory restriction of six years imposed after the first year of utility rate savings that an HA is permitted to share. Therefore, this rule removes the language from the rule that enforced that time limit. Now, the utility rate savings can continue to be shared for as long as the actions of the HA continue to be cost-effective.

This change is being made not only for public housing but also for Indian housing. Section 201(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437aa(b)(2), ``the 1937 Act'') provides that amendments to provisions found in title II of the 1937 Act do not apply to Indian housing unless the amendment so states. Nevertheless, when the statutory authority to extend the period of permitted rate savings sharing from one year to seven years was implemented, the extension was made applicable to Indian housing despite the absence of specific mention of Indian housing in the statutory amendment. The preamble of the rule implementing the extension stated (at 59 FR 33653) that, ``Not to do so would frustrate the goals of providing incentives to undertake energy conservation activities.'' That policy still governs, and therefore this change to extend the period during which utility rate savings can continue is being applied to Indian housing, as well.

V. Findings and Certifications

A. Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ``impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

The change made by this interim rule merely adds an optional exclusion to the definition of income used by Housing Agencies, which supports the statutory policy of obtaining a broad range of income levels in public housing and Indian housing developments and the Secretary's policy of encouraging HAs to increase the number of working families residing in these developments. As noted earlier, the Department has already authorized the use of such income exclusions for a limited period of time, based on the Balanced Budget Downpayment Act I, in a Notice. Authorization of such an optional exclusion in this rule is expected to increase the number of HAs using it, helping to encourage the participation of working families in these programs.

Implementation of the rule's provisions is needed as soon as possible to facilitate the adoption of this type of exclusion to realize the benefits of increasing the incentives for working families to participate and to prevent HAs who are now excluding earned income from having to change their policy starting on October 1, 1996, only to re-institute it later. Therefore, the

Department has determined that good cause exists to omit prior public procedure for this final rule because such delay would be contrary to the public interest and unnecessary.

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an earned income exclusion and to assure that other changes made are well-tailored to HA operations, the Department does invite public comment on the rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

B. Impact on the Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(o) of the HUD regulations, the policies and procedures contained in this interim rule relate only to operating costs that do not affect a physical structure or property and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4332).

C. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule adds some incentives to the formula under which operating subsidies are paid on HUD-assisted housing owned and operated by HAs, but will not interfere with State or local government functions.

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D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. No significant change in existing HUD policies or programs results from promulgation of this rule, as those policies and programs relate to family concerns. The rule merely involves the amount of funding that a HA should receive under a refinement of an existing procedure.

E. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will permit some modest increase in subsidy eligibility for HAs that take advantage of the incentives. The rule would be unlikely to have any significant impact on small HAs.

F. Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

G. Regulatory Review

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866. Any changes made in this interim rule as a result of that review are clearly identified in the docket file for this interim rule, which is available for public inspection in the HUD's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

H. Public Reporting Burden

The information collection requirements contained in this rule, as described in Secs. 950.725(b), 950.756, 950.757, 990.109(b), 990.114, and 990.116 have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501- 3520).

1. In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(a) Title of the information collection proposal: Performance Funding System Incentives.

(b) Summary of the collection of information: The information collected is alternate information about rental income that would have been collected if the HA had not adopted an earned income exclusion, information about vacant units that have been approved for demolition and would not otherwise be eligible for operating subsidy, and identifying increases in earned income so as to exclude some of that income.

(c) Description of the need for the information and its proposed use: The information is needed to permit calculation of operating subsidy eligibility for HAs that want to take advantage of incentives to facilitate resident employment and to encourage demolition of seriously deteriorated vacant units.

(d) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: The likely respondents are the approximately 700 HAs that are estimated to take advantage of the incentives.

(e) Estimate of the total reporting and recordkeeping burden that will result from the collection of information: The total number of burden hours for this collection of information is estimated to be 16,120 hours, including the time for reviewing instructions, gathering and maintaining the data, and calculating and requesting the incentive adjustment. The information will be collected as part of the annual calculation of eligibility for operating subsidy. The 700 HAs will determine the effect of the incentives, at a cost of about $15 per hour, for a total cost of $241,800. This amount is expected to be more than offset by the resulting increase in operating subsidy payments. These estimates were developed by consulting with eight housing agencies.

Reporting Burden:

Proposed section Est. ave.

Type of collection of 24 CFR Number of Frequency of response time Annual burden

affected respondents response (hrs.) (hrs.)

---------------------------------- Addition to PFS rent roll of 950.725& 990.109 700 1 3 2,100 Earned Income Exclusions. (b)(1)(ii). Phase-down for demolished 950.756, 990.114 20 1 1 20 units. Incentive for increases in 950.757, 990.116 700 1 20 14,000 earned income.

Total Burden............. 16,120

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2. In accordance with 5 CFR 1320.8(b)(3), the Department makes the following statement:

The reason for collecting the information is to give HUD the basis for approving a request for a PFS incentive adjustment in operating subsidy. The information will be used by HUD to approve an adjustment based on the adoption of an earned income exclusion and/or based on a phase-down of operating subsidy in connection with demolition of units. The information collected is public information and does not lend itself to confidentiality. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

3. In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies (see DATES and ADDRESSES sections above) concerning the proposed collection of information to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who

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are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.850.

List of Subjects

24 CFR Part 950

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

24 CFR Part 990

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

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

PART 950--INDIAN HOUSING PROGRAMS

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

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437aa-1437ee and 3535(d).

2. In Sec. 950.705, a new paragraph (c) is added, to read as follows:

Sec. 950.705 Determination of amount of operating subsidy under PFS.

* * * * *

(c) A special phase-down of subsidy to IHAs is applicable when demolition of units is approved by HUD in Federal Fiscal Year 1995 and later. See Sec. 950.756.

Sec. 950.715 [Amended]

3. In Sec. 950.715, paragraph (b)(2) is amended by removing the phrase ``for an additional period not to exceed six years''.

4. In Sec. 950.720, paragraph (e) is amended by redesignating the text as paragraph (e)(1), and by adding a new paragraph (e)(2), to read as follows:

Sec. 950.720 Other costs.

* * * * *

(e) * * *

(2) An exception to paragraph (e)(1) of this section is made when an IHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. * * * * *

5. In Sec. 950.725, paragraph (b) is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), by adding a new paragraph (b)(1)(ii), and by revising paragraph (b)(2), to read as follows:

Sec. 950.725 Projected operating income level.

* * * * *

(b) * * *

(1) * * *

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the IHA's implementation of an optional earned income exclusion authorized by the definition of ``annual income'' in Sec. 950.102. But see Sec. 950.757 for the earned income incentive adjustment.

(2) Three percent increase. The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3

percent to obtain the projected average monthly dwelling rental charge per unit of the IHA for the Requested Budget Year, except that for the shorter of Federal Fiscal Years 1996 through 1998 or the period during which HUD has an operating subsidy shortfall, no increase factor will be used. * * * * *

Sec. 950.730 [Amended]

6. In Sec. 950.730, paragraph (c)(1)(i) is amended by removing the phrase, ``up to an additional six years,''.

7. A new Sec. 950.756 is added to read as follows:

Sec. 950.756 Phase-down of subsidy for units approved for demolition.

(a) General. Units that have both been approved by HUD for demolition and been vacated in FFY 1995 and after will be excluded from an IHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66 percent of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33 percent of the AEL will be allowed for the unit.

(b) Special case for long-term vacant units. Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) Treatment of units replaced with Section 8 Certificates or Vouchers. Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) Treatment of units replaced with Indian housing units. When replacement conventional Indian housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) Determination of what units are ``replaced.'' For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) Treatment of units combined with other units. Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

(g) Retroactive effect. This section is to be applied retroactively for units approved for demolition during Federal Fiscal Years 1995 and 1996. IHAs affected by this provision may submit a revised calculation of operating subsidy eligibility for the subject fiscal year(s).

8. A new Sec. 950.757 is added to read as follows:

Sec. 950.757 Three-year incentive adjustments.

(a) Applicability. For the period of Federal Fiscal Year 1996 through

Federal Fiscal Year 1998, the provisions of this section apply to permit IHAs to retain certain sources of income that would otherwise be offset by a reduction of subsidy. The combined amount retained in accordance with the provisions of this section may not exceed the amount of the PFS subsidy shortfall applicable to an IHA in the subject fiscal year.

(b) Increases in earned income. IHAs are permitted to retain any increase in dwelling rental income realized after April 1, 1996 as a result of increased resident earned income, where the governing body of the IHA has certified that the IHA is making significant efforts to increase the earned income of existing residents by adopting the optional earned income exclusion and not just taking actions regarding new admissions. To implement this paragraph (b), the IHA will compare the rental income per occupied unit from earned income from April 1, 1996 to the

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rental income per occupied unit from earned income on the date of the rent roll used for PFS calculation. If an IHA does not have the April 1, 1996 data available, HUD may approve the use of data from a later month.

(c) Increases in other income. IHAs are permitted to retain any increase in ``other income'' based on using the definition provided in this section, as compared with using the definition found in Sec. 950.102. For purposes of this section, the amount of ``other income'' is limited to the following three sources:

(1) Excess Utilities: charges to tenants for excess utility consumption for IHA-supplied utilities.

(2) Nondwelling Rental Income: Rent billed to lessees of dwelling units rented for nondwelling purposes. Rent billed to lessees of nondwelling facilities will not be included except for rent billed to other HUD programs (e.g.; Section 8, congregate housing, family investment centers).

(3) Other Income: Only charges to other HUD programs (e.g.; Section 8, congregate housing, family investment centers) for use of community space, central office management and maintenance space will be taken into consideration. IHAs will calculate the amount of ``other income'' to be retained in a manner prescribed by HUD.

PART 990--ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

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

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

10. In Sec. 990.104, a new paragraph (c) is added, to read as follows:

Sec. 990.104 Determination of amount of operating subsidy under PFS.

* * * * *

(c) A special phase-down of subsidy to HAs is applicable when demolition of units is approved by HUD in Federal Fiscal Year 1995 and later. See Sec. 990.114.

Sec. 990.107 [Amended]

11. In Sec. 990.107, paragraph (b)(2) is amended by removing the phrase ``for an additional period not to exceed six years''.

12. In Sec. 990.108, paragraph (d) is amended by redesignating the text as paragraph (d)(1), and by adding a new paragraph (d)(2), to read as follows:

Sec. 990.108 Other costs.

* * * * *

(d) * * *

(2) An exception to paragraph (d)(1) of this section is made when an HA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. * * * * *

13. In Sec. 990.109, paragraph (b) is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), by adding a new paragraph (b)(1)(ii), and by revising paragraph (b)(2), to read as follows:

Sec. 990.109 Projected operating income level.

* * * * *

(b) * * *

(1) * * *

(ii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the HA's implementation of an optional earned income exclusion authorized by the definition of ``annual income'' in 24 CFR 913.106(d). But see Sec. 990.116 for the earned income incentive adjustment.

(2) Three percent increase. The average monthly dwelling rental charge per unit, computed under paragraph (b)(1) of this section, is increased by 3 percent to obtain the projected average monthly dwelling rental charge per unit of the HA for the Requested Budget Year, except that for the shorter of Federal Fiscal Years 1996 through 1998 or the period during which HUD has an operating subsidy shortfall, no increase factor will be used. * * * * *

Sec. 990.110 [Amended]

14. In Sec. 990.110, paragraph (c)(1) is amended by removing the phrase, ``up to an additional six years,''.

15. A new Sec. 990.114 is added to read as follows:

Sec. 990.114 Phase-down of subsidy for units approved for demolition.

(a) General. Units that have both been approved by HUD for demolition and been vacated in FFY 1995 and after will be excluded from an HA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66 percent of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions,

33 percent of the AEL will be allowed for the unit.

(b) Special case for long-term vacant units. Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) Treatment of units replaced with Section 8 Certificates or Vouchers. Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) Treatment of units replaced with public housing units. When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) Determination of what units are ``replaced.'' For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) Treatment of units combined with other units. Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

(g) Retroactive effect. This section is to be applied retroactively for units approved for demolition during Federal Fiscal Years 1995 and 1996. HAs affected by this provision may submit a revised calculation of operating subsidy eligibility for the subject fiscal year(s).

16. A new Sec. 990.116 is added to read as follows:

Sec. 990.116 Three-year incentive adjustments.

(a) Applicability. For the period of Federal Fiscal Year 1996 through Federal Fiscal Year 1998, the provisions of this section apply to permit HAs to retain certain sources of income that would otherwise be offset by a reduction of subsidy. The combined amount retained in accordance with the provisions of this section may not exceed the amount of the PFS subsidy shortfall applicable to an HA in the subject fiscal year.

(b) Increases in earned income. HAs are permitted to retain any increase in dwelling rental income realized after April 1, 1996 as a result of increased resident earned income, where the Board of Commissioners of the HA has certified that the HA is making significant efforts to increase the earned income of existing residents by adopting the optional earned income exclusion and not just taking actions regarding new admissions. To implement this

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paragraph (b), the HA will compare the rental income per occupied unit resulting from earned income from April 1, 1996 to the rental income per occupied unit resulting from earned income on the date of the rent roll used for PFS calculation. If an HA does not have the April 1, 1996 data available, HUD may approve the use of data from a later month.

(c) Increases in other income. HAs are permitted to retain any increase in ``other income'' based on using the definition provided in this section, as compared with using the definition found in Sec. 990.102. For purposes of this section, the amount of ``other income'' is limited to the following three sources:

(1) Excess Utilities: charges to tenants for excess utility consumption for HA supplied utilities.

(2) Nondwelling Rental Income: rent billed to lessees of dwelling units rented for nondwelling purposes. Rent billed to lessees of nondwelling facilities will not be included except for rent billed to other HUD programs (e.g.; Section 8, congregate housing, family investment centers).

(3) Other Income: Only charges to other HUD programs (e.g.; Section 8, congregate housing, family investment centers) for use of community space, central office management and maintenance space will be taken into consideration. HAs will calculate the amount of ``other income'' to be retained in a manner prescribed by HUD.

Dated: July 29, 1996. Christopher Hornig, Acting Assistant Secretary for Public and Indian Housing. [FR Doc. 96-24874 Filed 9-27-96; 8:45 am] BILLING CODE 4210-33-P

HA Name: HA FYE: Appendix 6

SAMPLE FORMAT FOR OPTIONAL PFS INCENTIVE ADJUSTMENT (revised 11/96)
Note: Line references are to PFS form HUD-52723.
A HA must calculate PFS subsidy eligibility and proration before completing this worksheet.

A	Unfunded Portion of Operating Subsidy due to Proration (Line 40)*:	$
OTHER INCOME INCENTIVE:		
B	Estimate of PFS Other Income (Line 20 times UMA):	$
C	Estimate of Other Income from Excess Utilities, rents billed to dwelling units rented for nondwelling purposes, and rents and charges to other HUD programs:	$
D	Potential incentive adjustment for Other Income (B minus C): [If the HA has not adopted optional earned income exclusions or deductions, enter zero on line H and skip to Line I]	$
DWELLING RENTAL INCOME INCENTIVE: Only for HA that certifies that it is making significant efforts to utilize optional earned income exclusions or deductions for current residents.		
E	Based on April 1, 1996 rent roll: Total rental income from wages and self employment divided by total number of occupied units at rent roll date.	PUM
F	From <u>actual</u> rent roll (not rent roll adjusted for PFS calculation by adding back earned income adjustments) for same month used for PFS calculation: Total rental income from wages and self employment divided by total number of occupied units. For FFY 96, if rent roll is earlier than April 1, 1996 enter zero on line H skip to Line I.	PUM
G	PUM increase in rent from earned income: (F minus E):	PUM
H	Potential incentive adjustment for earned income (G times PFS unit months available):	$
I	Total potential incentive adjustment (D plus H)	$
J	Actual incentive adjustment (Enter smaller of A or I). Enter this amount on Line 37 of HUD-52723.*	$

* The amount of the shortfall may increase after year-end adjustments are calculated if the adjustment is due the HA. HAs which have a higher potential incentive adjustment (I) than shortfall (A) may revise this calculation after year-end adjustments by adding to Line 40 the unfunded adjustments reported on Line 62 (if the adjustment is due the HA) and entering this revised shortfall in A. It is not a requirement that HAs submit adjustments to reflect amounts on Line 62.