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24 CFR Parts 905 and 990
Performance Funding System; Formal Review Process; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 990

[Docket No. R-92-1453; FR-3024-F-01]

RIN 2577-AB01

Performance Funding System: Formal Review Process

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

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 118 of the Housing and Community Development Act of 1987 that require modification of the Performance Funding System (PFS) of calculating operating subsidy eligibility of Public Housing Agencies and Indian Housing Authorities (hereafter, called PHAs/IHAs) operating public housing and Indian housing rental projects. This final rule adopts a revised formula for calculation of the Formula Expense Level. PHAs/IHAs that choose to do so may request an adjustment to their allowable expense level based on the use of the revised formula. The revised formula will also be substituted for the current formula when calculating the impact on the allowable expense level of a significant change in the characteristics of a PHA/IHA's units.

A proposed rule was published on this subject on December 19, 1989 (54 FR 52000), which also covered other changes to the PFS required by the statute: sharing of energy rate reductions; non-HUD financing of energy conservation measures; combining of units; and funding of audit costs. Those changes were the subject of a separate final rule, published on September 11, 1991 (56 FR 46356).

DATES: *Effective Date:* April 1, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Office of Public Housing, room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-1872, or (202) 245-0850 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 905.730(e) and 990.110(e) of this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. When they have been approved, a notice to that effect will be published in the Federal Register.

II. Background

The 1987 Act (section 118 (a)(2)) required HUD to correct inequities in the base year expense level, to reflect changes in operating circumstances, and to reflect the relative costs of operating in economically distressed and prosperous units of local government. The proposed formula works to correct inequities and to reflect changes by choosing plausible, standardized, and PHA/IHA-specific (or area-specific) indicators of operating costs and applying the cost relations of these indicators uniformly to all PHAs/IHAs based on their most current data. HUD's analysis shows that the indicators in this equation are statistically more reliable than those of the earlier AEL formula. (A copy of this analysis is available from the contact person listed above.) The new formula also addresses the relative condition of the local government by including an excellent proxy of city economic condition—the proportion of the population who are renter households with below poverty income and reside in old units. Two PHA/IHA-specific indicators in the formula—the size of the PHA/IHA and the extent of family high rises in the PHA/IHA—also are associated, on average, with economic distress in the larger community.

III. Revised Formula

The Formula is used to determine the Formula Expense Level (FEL), which, in turn, is used to determine the Allowable Expense Level (AEL). The FEL is calculated by adding various factors, which have been multiplied by their weights, and subtracting a calibration constant. The indicators chosen for the formula met certain tests. They had to follow the intent of the statute and the framework of the proposed rule, to be available and easily computable in a standardized format, to have a common sense rationale for explaining variations in PHA/IHA operating expenses, to be significantly correlated with PHA/IHA expenses, to add significantly to the statistical fit of a system of indicators, and to have a formula coefficient in the expected direction.

A. Indicators and Weights

The indicators in the revised formula, and the weights to be given them (stated in parentheses) are as follows:

1. Pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community (7.954). This Census-based statistic will apply to the county of the PHA/IHA, except if the PHA/IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons (in which case city-specific data are used). County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

2. Local Government Wage Rate (116.496)—The average of 1987 and 1988 local government wages, as determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA/IHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

3. The lesser of the current number of the PHA/IHA's two or more bedroom units available for occupancy, or 15,000 units (.002896).

4. The current ratio of the number of the PHA/IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA/IHA's units available for occupancy (37.294). For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

5. The current ratio of the number of the PHA/IHA's three or more bedroom units available for occupancy to the number of all the PHA/IHA's units available for occupancy (22.303).

6. An equation calibration constant of −.2344.

B. Use of Revised Formula in AEL Appeals Process

A PHA/IHA will calculate a revised Formula Expense Level (FEL) under the new equation by using the county (or city) based measures provided by HUD in a Notice to PHAs/IHAs and using the characteristics of its dwelling units available for occupancy in the fiscal year immediately preceding the effective date of this rule (hereafter called "current year"). Because the formula was developed based on PHA/IHA actual FY 1988 expenditure levels, it will be necessary to inflate the resulting FEL to reflect current year expenditures. HUD will provide a form and tables to be used to apply the PFS inflation factors, standard delta, and insurance increase for the PHA/IHA's locality for that period of time. The result will be a revised FEL for the PHA/IHA.

For the formal review process, a PHA/IHA will compare its AEL for the year before this rule's effective date (PHA/IHA fiscal years ending in calendar year 1992) with the revised FEL. If .85 times the revised FEL for the current year is greater than the existing AEL for the current year, the PHA/IHA is eligible to request an upward revision to its AEL. The PHA/IHA would request the revision by using .85 times the FEL instead of the existing AEL as the basis for calculating its AEL for the PHA's/IHA's next fiscal year. (For purposes of this rule, the next fiscal year is the PHA/IHA fiscal year starting on or after the April 1, 1992 effective date of this rule, which would thus end in calendar year 1993). On the other hand, if 1.15 times the revised FEL is less than the existing AEL, the PHA/IHA is eligible to request a downward revision to its AEL (but it would not benefit from such a request). If the PHA/IHA were to request such a revision, it would use 1.15 times the FEL instead of the existing AEL as the basis for calculating its AEL for the next fiscal year. (Normally the previous AEL is increased by the delta and inflation factor to develop the subsequent AEL. In these cases, .85 times the FEL (or 1.15 times the FEL) will be increased by the delta and inflation factor to develop the subsequent AEL.) This system treats all PHAs/IHAs in accordance with an objective standard, and it is administratively feasible for both the Department and the PHAs/IHAs.

If a PHA/IHA is requesting a change in its AEL based on the revised formula, it will use the revised AEL in developing its operating budget for the next fiscal year, or any revision to that operating budget. It will submit its operating budget for the next fiscal year, including the PFS forms containing the calculation, to its HUD Field Office, and the Field Office will review the calculations and approve an operating subsidy based on the revised AEL for the PHA/IHA's next fiscal year operating budget. If a PHA/IHA has submitted its original operating budget before the publication of a change to the Performance Funding System Handbook, 7475.13, which will provide instructions and revised forms to be used in implementing this regulatory change, the PHA/IHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the PFS handbook change, which will follow publication of this rule.

The Department estimates that about 843 PHAs and 25 IHAs might be entitled to increases in their Allowable Expense Levels as a result of this appeals process, at an estimated annual cost to the government of $30 million. PHAs/IHAs with fewer than 1250 units would be the group most affected. About 20 to 25 percent of PHAs/IHAs in the 1–99, 100–249, 250–499, and 500–1249 unit size groups will be potential gainers under the range test and the revised formula. Since this rule does not require PHAs/IHAs to have their AELs adjusted in accordance with the revised formula for the next fiscal year (but they have the option to request the adjustment), the many PHAs/IHAs that had AELs at least 15 percent above the revised formula are very unlikely to request an adjustment. However, if they do so, a downward adjustment would result. (See the paragraphs in the Findings and Certifications section below, VI C, that discuss the Regulatory Flexibility Act.)

Example

As an illustration of the calculation of the formula expense level using the new formula, suppose that a PHA had the following characteristics:

—2.00 for the number of households in poverty living in pre-1940 rental units in 1980 as a percentage of the population in 1980 for the area served by the PHA;
—1.05 for the local government wage index for 1987–88 for the areas served by the PHA;
—5,000 for the number of the PHA's two or more bedroom units available for occupancy;
—.1 for the ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy;
—and .25 for the ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of its total number of units available for occupancy.

Furthermore, suppose that the local inflation factor for the PHA area was 1.0495 for FY 1989, 1.0628 for FY 1990, and 1.051 for FY 1991. (These hypothetical figures are, in fact, the unit-weighted national averages for those periods.)

Finally, suppose the AEL of the PHA was $165 in FY 1991. Its range test and FEL computation for FY 1992 would proceed as follows:

1. Compute its base-year estimated FEL for FY 1988 as the sum of:

7.954 times 2.00, plus
116.496 times 1.05, plus
.002896 times 5,000, plus
37.294 times .10, plus
22.303 times .25, plus
—.2344 (the formula calibration constant).

This sum is $161.79 for the revised estimate of predicted FEL for FY 1988.

2. The sum in step 1 is raised to a revised estimate of predicted FEL for FY 1991 in the same manner that the FY 1988 AEL was raised to a FY 1991 AEL, as follows:

FY 1989: Multiply by the inflation factor (1.0495) and the standard delta aging coefficient (1.005), and add the one-time insurance adjustment of $8.45 per unit month. These steps raise the $161.79 to $179.10 for FY 1989.

FY 1990: Multiply by the inflation factor (1.0625) and the standard delta aging coefficient (1.005). These steps raise $179.10 to $191.24 for FY 1990.

FY 1991: Multiply by the inflation factor (1.051) and the standard delta aging coefficient (1.005). These steps raise $191.24 to $201.99 as the revised FEL for FY 1991.

3. Eighty-five percent of the revised FEL for FY 1991 is computed as .85 times $201.99, which is $171.69. Under the fifteen percent range test, the revised allowable expense level of the PHA can be appealed to be based on the higher of its current AEL or 85 percent of its current revised FEL. In the illustrative case, the PHA can thereby request that it base its calculation of its FY 1992 AEL on $171.69 (which is $6.69 higher than its FY 1991 AEL).

C. Use of Revised Formula in Delta Calculation

As explained in the proposed rule, after the effective date of the final rule, the usual methods of adjusting the AEL to reflect changes in housing stock would be followed, substituting the revised formula for the current formula. Currently, when there has been no significant change in housing stock, a PHA/IHA uses an increase of .5 percent to reflect the aging of the PHA/IHA's projects in lieu of the formula calculation. Because project age no longer would be a factor in the new formula, all PHAs/IHAs would perform the simplified calculation of increasing the AEL by .5 percent (Simplified Delta). Only PHAs/IHAs that meet the threshold of 5 percent or 1,000 net change in number of units would perform the additional calculation to reflect changes in average number of bedrooms per unit and building height (Long Calculation of the Delta).

If a PHA/IHA is required to perform the Long Calculation of the Delta for the next fiscal year and submits its budget based on the old formula before a date which is 60 days after the publication of the PFS handbook change implementing this rule, the PHA/IHA would be given the option of recomputing its adjusted AEL based on the revised formula if it submits a revision to HUD within 60 days after the publication of the PFS handbook change containing the revised formula. Any PHA/IHA submitting a budget to HUD more than 60 days after the publication of the PFS handbook change containing the revised formula would be required to use the new formula in the Long Calculation of the Delta—if it exceeded the threshold of unit change and was required to perform the Long Calculation of the Delta described above.

Example. FY 1992. Assume that: (1) The PHA has experienced no change in the number of its units, (2) the AEL for the PHA's FY 1991 was $176.00, and (3) the applicable Local Inflation Factor is 6 percent (expressed as 1.06). The AEL for FY 1992 is $187.49, computed as follows:

1. Allowable Expense Level for FY 1991	$176.00
2. Delta: (Simplified Calculation) ($176.00×.5 percent)	.88
3. Sum (line 1 plus line 2)	176.88
4. Local Inflation Factor	1.06
5. Allowable Expense Level for FY 1992 (line 3 multiplied by line 4)	187.49

FY 1993. Assume that the PHA has deprogrammed (e.g., demolished or sold) a project that represents seven percent of its units and that the last time an adjustment to the AEL was made based on the Long Calculation of the Delta was in its FY 1986. At that time, the PHA had the following characteristics for its Requested Budget Year: 1500 two or more bedroom units were available for occupancy; five percent of all the PHA's units available for occupancy were two or more bedroom units in high-rise family buildings; and half of all the PHA's units were three bedrooms or more. Each of these FY 1986 characteristics is multiplied by the corresponding equation weights and totaled: (1500×.002896)+(.05×37.294)+(.50×22.303). The weighted total for the FY 1986 characteristics is 17.36.

Also assume that the PHA average characteristics for the Requested Budget Year are now 1200 two or more bedroom units available for occupancy, none of the PHA's units available for occupancy were two or more bedroom units in high-rise family buildings, and 47 percent of all the PHA's units were three bedrooms or more. Each of these FY 1993 characteristics are multiplied by the corresponding equation weights and totaled: (1200×.002896)+(.00×37.294)+(.47×22.303). The weighted total for the FY 1993 characteristics is 13.96.

The change in the prediction due to the change in characteristics is a decrease of $3.40 (17.36 minus 13.96). This result is then multiplied by the Local Inflation Factors for FY 1989 through 1992. The inflated delta is ($4.15). (This step is taken because the formula for FY 1992 was developed using FY 1988 expenses and the prediction must be increased for inflation since 1988.) The AEL for FY 1992 is $192.57 computed as follows:

1. Allowable Expense Level for FY 1992	$187.49
2. Delta: Increase (or Decrease) in Formula Expense Level:	
a. (Simplified Calculation) ($187.49×.5 percent)	.94
b. (Long Calculation of the Delta)	(4.15)
3. Sum (line 1 plus line 2a & b)	184.28
4. Local Inflation Factor	1.045
5. Allowable Expense Level for FY 1993 (line 3 multiplied by line 4)	192.57

D. Use of Revised Formula for Troubled PHAs and IHAs

The Department intends to publish a proposed rule by April 1, 1992, that when implemented, would apply the revised formula administratively in FY 1993 to PHAs operating 250 units or more that are identified as troubled by the end of FY 1992.

IV. Response to Public Comments

A. General Comments

We received comments on the formal review process from the National Association of Housing and Redevelopment Officials, the Council of Large Public Housing Authorities, and 58 PHAs/IHAs, 38 of which are located in North Carolina.

The proposed rule elicited several comments with respect to the impact of the PFS formula on the Indian Housing programs. One comment rejected the proposed revised formula because no IHAs had been included in the sample on which it was based, and no PHA with fewer than 100 units had been included. The revised formula is based on a sample that did include a large number of IHAs and PHAs with fewer than 100 units. Another commenter advocated having an entirely separate formula for IHAs. The primary distinction between IHAs and PHAs is the extent to which scattered site housing is used. That subject is dealt with at more length later in this discussion. We have concluded that about 25 IHAs are likely to do better under the revised formula than under the current formula, so this rule will provide them with a benefit. Consequently, the provisions of part 905, applicable to Indian Housing Authorities, are revised in this rulemaking to correspond with the changes being made to Part 990, applicable to non-Indian public housing agencies.

There were no public comments on the technical amendment to § 990.101 of the rule that removes an outdated provision that a PHA/IHA's eligibility for operating subsidy be conditioned on charging aggregate rentals in any year of at least 20 percent of the sum of the monthly incomes of all the families. That amendment remains in this final rule without change.

1. Overall Approach

Four PHAs advocated an AEL review system developed outside the constraints of the current system. As discussed in detail in the preamble to the proposed rule, in order to depart from the historical expense level approach of the current system one would have to determine the adequacy of the level of historical PHA/IHA expenditures. This would entail the use of a "standards" approach, which would require consensus on the type and level of maintenance, administrative, and tenant services that should be eligible for reimbursement. Information on how much it costs to achieve these standards would then need to be obtained, preferably based on the experience of well-managed projects that are not part of the public housing system. (Otherwise the cost structure is self-perpetuating, whether too high or too low.) This approach was not adopted, because it would be a significant departure from the approach specifically endorsed by Congress in the 1987 Act and because of difficulties in reaching a consensus as to what standards to use and what types of non-PHA/IHA projects to select for comparison.

Some commenters wanted to step away from a formula approach and allow PHAs/IHAs to provide historic and other information on their projects and community and have their AELs revised under a more informal structure. A formula approach has been adopted because it has the advantages of treating all PHAs/IHAs in accordance with an objective standard, and is administratively feasible for both the Department and the PHAs/IHAs.

As directed by sections 524 and 525 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (hereafter NAHA), HUD is conducting a study assessing revised methods of providing sufficient Federal funds to public housing agencies for the operation, maintenance, and modernization of public housing.

2. Rulemaking Process

One commenter observed that the proposed rule was hard to understand and asked us to build some reviews into the process to ensure that the regulations are understandable to readers. The rulemaking process provides this opportunity for review by all interested parties, and, in response to public comments, we have attempted to clear up any ambiguity in this final preamble and regulation.

Some comments complained that we have not developed the rule in consultation with PHAs/IHAs. By giving everyone a chance to comment on the proposed rule we have given all PHAs/IHAs a chance to be consulted.

3. Implementation

One comment received was that PHAs/IHAs should be able to appeal in the future, that appeals should not be a one-time opportunity. A one-time systematic adjustment to the current Allowable Expense Level makes sense. The factors which have proved to have the most predictive value for PHA/IHA expenses in the new formula are PHA/IHA inventory and community characteristics. PHA/IHA expenditure patterns are closely tied to past Allowable Expense Levels, and the other factors used to derive an equation change little in the short term. HUD intends to study the impacts of changes that would result from introduction of 1990 Census data, but these data will not be available for some time and are not likely to alter the predicted values for most PHAs/IHAs. Once the new formula has been used by PHAs/IHAs that want to appeal their current AELs, the Department believes that no additional significant improvement in accuracy of PHA/IHA expense levels is feasible using a comparative approach that relies on cost data driven by allowed historic costs.

Some commenters observed that the Department should make every effort to fund the PFS at 100 percent, otherwise the same pot will just be redistributed after the AEL adjustments are made, with some getting less than they did in the past. The Department has made every effort to request funding sufficient to cover 100 percent of PFS eligibility. Our requests are based on the Administration's latest economic and program change assumptions at the time the budget request is forwarded to the Congress so that funds are not merely redistributed when a new rule takes effect. The Department included the cost of these AEL adjustments in the FY 1992 Budget Request.

Two comments suggested that a deadline of 60 days after publication of the final rule would not provide enough time to allow for implementation including forms changes, instructions, and budget revisions. The regulation has been revised to allow PHAs/IHAs 60 days after the publication of a change to the Performance Funding System Handbook, 7475.13, which will provide instructions and revised forms to be used in implementing this regulatory change.

Three comments asked that the adjustment to AELs be made retroactive. Budgetary constraints and requirements that changes in the rule governing the PFS be made by notice and comment rulemaking preclude us from making this adjustment retroactive.

Although a specific effective date is stated in this rule, the PFS revisions of the rule will affect a particular PHA/IHA at the beginning of its new budget year following that effective date.

B. Formula Indicators

The proposed rule put forward the following indicators to estimate the comparative expenses of PHAs/IHAs:

—Measures of community distress (and need), such as the community's per capita value of the Community Development Block Grant program's Formula B (multiplied by the proportion of the PHA/IHA's units containing two or more bedrooms);
—Measures of area costs, such as the community's index of local government wage rates and the median rent in the community; and
—Measures of the PHA/IHA's operating characteristics, such as, the weighted average height of the PHA/IHA's buildings (multiplied by the proportion of its units containing two or more bedrooms), and the total number of the PHA/IHA's units containing two or more bedrooms.

This final rule preserves these general categories of indicators but modifies the specific indicators in response to the public comments.

One commenter supported use of the Community Development Block Grant (CDBG) formula as the measure of distress required by statute, but several commenters objected to its use. They questioned its availability for non-entitlement CDBG areas, or thought the population lag and age of housing components of the CDBG formula to be biased against areas with population growth and housing built after 1940, or considered the formula components to be out of date. In choosing an indicator of community distress for the revised formula, HUD addressed some of the commenter concerns about the CDBG formula.

The chosen indicator is the proportion of pre-1940 rental housing occupied by poor households. This indicator does not explicitly include population lag, but it improves age of housing as a proxy of community fiscal and social need by pairing older housing units with poor rental households. It might be noted that the same rent-poverty-age of housing indicator is used in the Rental Rehabilitation and Fair Share formulas as a proxy of substandard and abandoned housing, the type of housing in a community which can increase social and physical demands on the upkeep of public housing. This indicator uses 1980 Census information, because 1990 Census information for this indicator will not be available until FY 1993. Even so, it is unlikely that the 1990 Census information will greatly alter patterns of relative city distress. The underlying economic condition of most cities does not alter much even over a ten-year period.

The choice of an indicator of area costs received a good deal of comment. Several commenters questioned the use of median rents and of Fair Market Rents (FMRs) as a proxy for area public housing costs, because these distributional indicators of area rent did not seem timely or place-specific or meaningfully related to public housing costs. As part of an extensive analysis of costs for this formula and for other HUD formulas, HUD also judged that measures of rent distribution such as the FMR require further study before they could proxy inter-area costs for the maintenance or modernization of lower income housing. An FMR measure, in fact, is mandated for study in NAHA.

Some commenters supported the formula use of local government wage rates, which currently play an important role in updating Allowable Expense Levels, but one commenter questioned the validity of local government wages rates in areas that service many low income persons. Several commenters questioned these rates as a valid indicator for rural areas where many governmental workers are part-time or voluntary. The response to the first concern is that local governments that serve many low income persons average quite high wage levels—in part, perhaps, because of their more stressful working environment. As for rural areas, their index of local government wage rates averaged almost the same as their index of private sector wages. For both rural and urban areas, the indicator of local government wages was not allowed to be more than 15 percent lower or higher than the averages of comparable areas in the State to smooth out statistical oddities.

With respect to the operating characteristics indicators, one broad comment of approval was made on linking the average height of a PHA/IHA's building to its bedroom characteristics. The high-rise family indicator used in this final rule simplifies the computation and targets the indicator even more closely to need, by counting only two or more bedroom units in projects that are both family and high-rise.

An indicator of scattered-site housing was recommended by several commenters, but measures of scattered-site or low density housing were not significantly related to actual PHA/IHA expenses. One reason might be that scattered-site housing is usually only present in some of the projects of a PHA/IHA, and its costs are not great enough to significantly raise the total cost level of the PHA/IHA. Another reason is that scattered-site housing does not necessarily lead to higher operating costs. Although scattered-site housing imposes transportation costs and diseconomies of scale, scattered site housing typically is newer or is located in a better neighborhood or is kept up better by its tenants.

One indicator chosen in the revised formula, the proportion of 3 or more bedroom units, indirectly reflects scattered-site housing, because scattered-site housing in many PHAs/IHAs disproportionately houses large families. The indicator of the proportion of 3 or more bedroom units is simply a more intensive version of the 2 or more bedroom ratio in the proposed rule, and the 3 bedroom version stands by itself in the revised formula instead of being multiplied against other indicators as in the proposed rule.

Some commenters questioned the overall ability of the formula to recognize the needs of large (urban) PHAs. In fact, the formula estimate follows the pattern of actual expenses and averages a much higher level of estimated expenses for large PHAs. Most of the formula indicators respond to large PHA concerns. The indicator of the number of two bedroom units directly reflects large PHA characteristics, and the indicator of high-rise family units directly benefits some large PHAs. The community indicators of the local area wage rate and poor rental households in pre-1940 units also tend to be much higher for large PHAs.

From a different perspective, some commenters questioned the ability of the formula to reflect the special circumstances of smaller or rural PHAs with dispersed or remote sites. Indian Housing Authorities were cited as having these circumstances. Unlike the current formula, the revised formula in this rule has been tested against an extremely large "sample" of PHAs for which HUD had data available—more than 2500 PHAs with full coverage of PHAs and IHAs of all sizes. As a result, the formula estimates could be tested against their actual expenses and AELs. The revised formula enables a considerable proportion of small, rural PHAs and Indian Housing Authorities to benefit from an increase to their AEL.

While small, rural PHAs and Indian Housing Authorities are more likely to be adjusted, the revised formula provides an adjustment for PHAs/IHAs in any category which have AELs lower than other PHAs/IHAs with the same characteristics. Whether the formula goes far enough in meeting the relative needs of all categories of PHAs/IHAs cannot be answered at this time, because any formula fitted to actual PHA/IHA expenses has the limitations noted earlier. This question is being considered for further study.

Several commenters expressed a broader unease that they could not judge the validity of the formula without more detailed statistical information. Anticipating such concern, HUD in the proposed rule gave a detailed account of what a formula could and could not do, of the advantages of the indicators in the proposed formula, and of the impact of the formula and range test on different PHA/IHA size categories. It seems more valid to judge a formula by its methodology, intended use, and average impacts, than by a case-by-case listing of winners and losers.

However, in analyzing the revised formula as well as the proposed formula, HUD studied written and informal comments by PHA/IHA representatives on alleged inequities of the current formula toward individual PHAs/IHAs. These comments provided a useful reality check on the results of the revised formula and helped to confirm its ability to improve the current formula by specifying more valid indicators of need and by representing different types of PHAs/IHAs with greater statistical precision.

In addition, as stated earlier, the indicators chosen for the formula met certain tests. They had to follow the intent of the statute and the framework of the proposed rule, to be available and easily computable in a standardized format, to have a common sense rationale for explaining variations in PHA/IHA operating expenses, to be significantly correlated with PHA/IHA expenses, to add significantly to the statistical fit of a system of indicators, and to have a formula coefficient in the expected direction.

C. Formula Range

Some comments reflected confusion caused by the regulatory references to downward adjustments when PHAs/IHAs are free to decide whether or not to appeal. Other comments wanted the regulation to call for a reduction of the AELs found to be above the range. The regulation has been designed to reflect two provisions of the 1987 Act. First, the 1987 Act provided for "A formal review process for the purpose of providing revisions (either increases or reductions) * * *". Second, the legislative history makes clear that the formal review would be made at the request of a PHA/IHA. Since HUD is making available all the necessary information for a PHA/IHA to calculate the new FEL and the AEL that would be based on it, each PHA/IHA will be able to calculate the outcome under an appeal before deciding whether to seek approval of an AEL based on the new FEL. Therefore, even though the Act provides for a downward adjustment, it is not expected that, having calculated the outcome, a PHA/IHA that stands to have its AEL reduced will request a formal review of its AEL.

Some PHAs/IHAs requested a range test of 5–8 percent or no range test at all. As noted previously, the equation developed is limited by its heavy reliance on historical expenditure patterns, which in turn were largely determined by the subsidy funding system used rather than by an objective standard of funding needs. The Formula Expense Level cost estimate produced by the equation is not an exact indicator of how much a PHA/IHA should be permitted to spend. In addition, the formula itself has a range of error. Consequently, for this formula revision, HUD has determined that a 15 percent range test is appropriate.

D. Delta

One comment was that the use of the new formula in the calculation of the annual adjustment to the AEL when a PHA/IHA has had a significant change in the number of its units goes beyond Congressional intent. The new formula is a major improvement over the one currently in use in terms of the statistical reliability of its predictions. It would be inconsistent for the Department to adopt an improved formula to adjust AELs and then revert to the use of the old formula to calculate the amount of change to the AEL when a PHA/IHA changes its characteristics.

E. Funding for Nonroutine Expenses

Two large PHAs wanted adjustments made to AELs to reflect nonroutine expenditures so that there would be predictability in the amounts available to meet these needs. Starting in 1992, all medium and large PHAs/IHAs will have their modernization funded and managed under a new Comprehensive Grant Program (CGP). These funds will be available through a non-competitive formula distribution and will be subject to HUD approval of the Modernization Comprehensive Plan for each PHA/IHA. The CGP will provide modernization assistance on a more predictable basis and permit PHAs/IHAs to have considerable discretion and control in planning and expending the funds available.

F. Rental Income

Several comments addressed the problems faced by PHAs/IHAs that are unable to achieve the level of rental income estimated under the PFS. Under 24 CFR 990.110(d) for PHAs and 905.730(d) for IHAs, a PHA/IHA is eligible for additional subsidy if actual rental income falls short of the amount used in the subsidy calculation for a reason which is beyond the control of the PHA/IHA. A decline in rental income should not have an impact on a PHA/IHA's financial condition unless, of course, the drop reflects their failure to achieve the PFS occupancy percentage, effectively implement tenant selection criteria and broad range of income policy, conduct timely recertifications, or charge correct rents.

One comment suggested that the PFS occupancy rate be changed from 97 percent to 95 percent to reflect higher turnover. The treatment of vacancies under the PFS is outside the scope of this regulation.

One comment stated that the PFS should be revised to incorporate only a fraction of actual revenue increases above a certain minimum in the prior year into the projection of rental income in the operating subsidy calculation. Under the current system, these increases accrue to the PHA/IHA only in the first year. This suggestion is outside the scope of this formula revision.

One housing authority suggested that the costs it incurs operating a Congregate Housing program should be included in its AEL. Congress has addressed this issue in Section 507 of NAHA by authorizing appropriations to cover some of the costs of providing services to the frail elderly. The implementation of this and other provisions of NAHA will be dealt with separately and are not addressed in this regulation.

V. Miscellaneous

The proposed rule included changes to provisions concerning energy conservation and insurance, which are not included in this final rule. The energy conservation provisions have already been the subject of a final rule, and a separate rulemaking is now underway on insurance. However, this rule does include amendments to part 905 (Indian Housing), which were not found in the proposed rule, since part 905 now replicates for IHAs the PFS provisions that were formerly found only in one part (990).

VI. Findings and Certifications

A. Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. At its estimated cost of $30 million, it will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule, as distinguished from the statute, would not have a significant economic impact on a substantial number of small entities. The formal appeals process might affect favorably nearly 400 of the PHAs/IHAs that operate fewer than 100 dwelling units, as a result of the revision of the formula. That result is attributable to the statutorily required modifications to correct inequities and abnormalities that existed in the base year, to accurately reflect changes in operating circumstances since the determination of the base year expense level, and to reflect the relative cost of operating in an economically distressed area or an economically prosperous area. Small PHAs/IHAs have been more likely than large PHAs/IHAs to deviate more from the allowable expense level predicted under the current formula. Since the formal review process will affect only PHAs/IHAs that request a review and they will be able to calculate in advance the impact of the revised formula, the effect on small PHAs/IHAs of the formal review process is likely to be entirely favorable.

The computational burden of the revised formula will also be considerably less than that of the current formula, because the PHA/IHA indicators of the revised formula are PHA/IHA-wide or affect only a small number of projects (the family high-rise indicator), and the community-wide indicators are established by independent sources and will be arrayed by HUD in convenient form for PHAs/IHAs to use.

D. Executive Order 12612, Federalism

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 would not have federalism implications and, thus, are not subject to review under the Order. The rule will provide for additional financial assistance or retained savings to HUD-assisted housing owned and operated by PHAs/IHAs but will not interfere with State or local government functions.

E. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves the amount of funding that a PHA/IHA should receive under a formula revised to satisfy statutory requirements.

F. Regulatory Agenda

This rule is listed as sequence number 1517 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on October 21, 1991 (56 FR 53380, 53431), under Executive Order 12291 and the Regulatory Flexibility Act.

G. Catalog

The Catalog of Federal Domestic Assistance Program numbers for this rule are 14.145, 14.146, and 14.147.

List of Subjects

24 CFR Part 905

Grant programs: Indians, Low and moderate income housing; Homeownership; Public housing.

24 CFR Part 990

Grant programs: housing and community development; Low and moderate income housing; Public housing.

Accordingly, 24 CFR chapter IX is amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100–358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 905.710, the following paragraphs are revised: (c), (d)(1), (d)(2) introductory text, (d)(2)(ii), and (d)(5). A new paragraph (d)(6) is added. Paragraph (d) introductory text is republished. They now read as follows:

§ 905.710 Computation of allowable expense level.

* * * * *

(c) *Computation of Formula Expense Level.* The IHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular IHA's inventory. The formula takes into account such data as number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights, and a Local Inflation Factor assigned each year, to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The IHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 905.730):

(i) Any increase approved by HUD in accordance with § 905.730;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April 1, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every IHA whose Base Year Expense Level exceeds the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the allowable expense level, computed as provided above, the IHA may be eligible for transition funding under § 905.735.)

* * * * *

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 905.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) shall be added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of § 905.710(b) or § 905.720(c).

3. In § 905.730, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added, to read as follows:

§ 905.730 Adjustments.

* * * * *

(f) *Formal review process (1992)*—(1) *Eligibility for consideration.* Any IHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If an IHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the IHA and its community, then the IHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the IHA's request. The revised formula expense level for the fiscal year ending during calendar year 1992 is the IHA's value of the following formula, after updating by the local inflation factors

from FY 1989 to the requested budget year.

(ii) The revised formula is the sum of the following six numbers:

(A) *The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954.* This Census-based statistic applies to the county of the IHA, except that, if the IHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) *The Local Government Wage Rate multiplied by a weight of 116.496.* The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted IHA standard of 1.0. For multicounty IHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) *The lesser of the current number of the IHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.*

(D) *The current ratio of the number of the IHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the IHA's units available for occupancy multiplied by a weight of 37.294.* For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(E) *The current ratio of the number of the IHA's three or more bedroom units available for occupancy to the number of all the IHA's units available for occupancy multiplied by a weight of 22.303.*

(F) *An equation calibration constant of −.2344.*

(3) *Procedure.* If an IHA wants to request a revision to its AEL, it should determine whether its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the IHA's AEL and operating budget for the fiscal year ending in calendar year 1993, the IHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If an IHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the IHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the handbook change. If an IHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If an IHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the IHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

* * * * *

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

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

Authority: Sec. 9, United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 990.102 [Amended]

5. Section 990.102 is amended by removing the definition of "Range".

6. In § 990.105, paragraph (d) is removed; paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f), respectively; newly redesignated paragraph (f) is amended by removing the words "paragraphs (a) through (f)" and substituting the words "paragraphs (a) through (e)"; and the newly redesignated paragraph (d)(6) is redesignated as paragraph (d)(7). In addition, paragraph (c) and the following newly redesignated paragraphs are revised: (d)(1); the introductory paragraph of (d)(2); (d)(2)(ii); (d)(4)(iii); the heading of (d)(5) introductory text; (d)(5)(ii)(A) and (B); and (d)(5)(iii). A new paragraph (d)(6) is added. Newly redesignated paragraph (d) introductory text is republished. They now read as follows:

§ 990.105 Computation of allowable expense level.

* * * * *

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. The formula takes into account such data as number of two or more bedroom units, ratio of two or more bedroom units in high-rise family projects, ratio of units with three or more bedrooms, local government wage rates, and number of pre-1940 rental units occupied by poor households. It uses weights and a Local Inflation Factor assigned each year, to derive a Formula Expense Level for the current year and the requested budget year. The weights of the formula and the formula are subject to updating by HUD.

(d) *Computation of Allowable Expense Level.* The PHA shall compute its Allowable Expense Level as follows:

(1) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level does not exceed the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April l, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every PHA whose Base Year Expense Level is less than the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to its Base Year Expense Level (before adjustment under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year under PFS; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *Allowable Expense Level for first budget year under PFS where Base Year Expense Level exceeds the top of the range.* The top of the range is defined as: FEL plus $10.31 for fiscal years starting before April l, 1992, and FEL multiplied by 1.15 for fiscal years starting on or after April 1, 1992. Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its Allowable Expense Level for the first budget year under PFS by adding the following to the top of the range (not to

its Base Year Expense Level, as in paragraph (d)(1) of this section):

* * * * *

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the Allowable Expense Level, computed as provided above, the PHA may be eligible for Transition Funding under § 990.106.)

* * * * *

(4) * * *

(iii) The sum of the AEL for the Current Budget Year and the increase (decrease) described in paragraphs (d)(4)(i) and (ii) of this section, multiplied by the Local Inflation Factor.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after April 1, 1986 and before April 1, 1992.* * * *

* * * * *

(ii) * * *

(A) If the PHA has not experienced a change in the number of its units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or paragraph (d)(5)(ii)(B) of this section, the AEL shall be increased by one-half of one percent (.5 percent); or

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) of this section or this paragraph (d)(5)(ii)(B), it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The PHA characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that were used for the Requested Budget Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B), except that the number of interim years in which the .5 percent adjustment was made under paragraph (d)(5)(ii)(A) shall be added to the average age that was used for the last adjustment; and

(iii) The amount computed in accordance with paragraphs (d)(5) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Allowable Expense Level for budget years after the first budget year under PFS that begin on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 990.108(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the PHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on paragraph (d)(4) or (d)(5)(ii)(B) of this section or this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on paragraph (d)(5)(ii)(B) or this paragraph (d)(6)(ii)(B) and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(6) (i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

* * * * *

7. In § 990.110, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added, to read as follows:

§ 990.110 Adjustments.

* * * * *

(f) *Formal review process (1992)*—(1) *Eligibility for consideration.* Any PHA with an established Allowable Expense Level may request to use a revised Allowable Expense Level for its requested budget year that starts on or after April 1, 1992 (and ends during calendar year 1993).

(2) *Eligibility for adjustment.* (i) If a PHA's AEL for the budget year that ends during calendar year 1992 is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level, as calculated using the revised formula and the characteristics for the PHA and its community, then the PHA's AEL for the budget year that ends during calendar year 1993 is subject to adjustment at the PHA's request. The revised formula expense level for the fiscal year ending in calendar year 1992 is the PHA's value of the following formula, after updating by the local inflation factors from FY 1989 to the Requested Budget Year.

(ii) The revised formula is the sum of the following six numbers:

(A) *The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954.* This Census-based statistic applies to the county of the PHA, except that, if the PHA has 80 percent or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(B) *The Local Government Wage Rate multiplied by a weight of 116.496.* The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multicounty PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85 percent or more than 115 percent of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85 percent or more than 115 percent of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Company.

(C) *The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.*

(D) *The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294.* For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(E) *The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.*

(F) *An equation calibration constant of −.2344.*

(3) *Procedure.* If a PHA wants to request a revision to its AEL, it should determine that its AEL for the fiscal year ending in calendar year 1992 (for purposes of this section, the "unrevised AEL") is either less than 85 percent of the Formula Expense Level or more than 115 percent of the Formula Expense Level. Then, in lieu of using the unrevised AEL as the basis for developing the PHA's AEL and operating budget for the fiscal year

ending in calendar year 1993, the PHA will use 85 percent of the FEL (if this is higher than the unrevised AEL) or 115 percent of the FEL (if this is lower than the unrevised AEL). If a PHA has submitted its original operating budget before the publication of a change to the PFS handbook containing forms and instructions necessary to implementation of this regulatory change, the PHA must submit a revision to its operating budget with calculations based on the new AEL within 60 days of the publication of the handbook change. If a PHA requests such revision of its AEL in connection with submission of an operating budget and its current AEL is within 85 to 115 percent of the FEL, HUD will not adjust the AEL. If a PHA requests revision and its AEL is not within 85 to 115 percent of the FEL, HUD will increase it to 85 percent or decrease it to 115 percent. The revised Allowable Expense Levels approved by HUD will be put into effect for the PHA's budget year that begins on or after April 1, 1992 (and thus ends in calendar year 1993).

* * * * *

Dated: January 22, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

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