

**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 §§ 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.

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 §§ 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 §§ 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

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 §§ 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.

*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 §§ 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:

Type of collection	Proposed section of 24 CFR affected	Number of respondents	Frequency of response	Est. ave. response time (hrs.)	Annual burden (hrs.)
Addition to PFS rent roll of Earned Income Exclusions.	950.725& 990.109 (b)(1)(ii).	700	1	3	2,100
Phase-down for demolished units .....	950.756, 990.114 .....	20	1	1	20
Incentive for increases in earned income .....	950.757, 990.116 .....	700	1	20	14,000
Total Burden .....	.....	.....	.....	.....	16,120

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

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 § 950.705, a new paragraph (c) is added, to read as follows:

##### § 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 § 950.756.

##### § 950.715 [Amended]

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

4. In § 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:

##### § 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 § 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:

##### § 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 § 950.102. But see § 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.

\* \* \* \* \*

##### § 950.730 [Amended]

6. In § 950.730, paragraph (c)(1)(i) is amended by removing the phrase, “up to an additional six years,”.

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

##### § 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 § 950.757 is added to read as follows:

##### § 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

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 § 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 § 990.104, a new paragraph (c) is added, to read as follows:

### § 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 § 990.114.

### § 990.107 [Amended]

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

12. In § 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:

### § 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 § 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:

### § 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 § 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.

\* \* \* \* \*

### § 990.110 [Amended]

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

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

### § 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 § 990.116 is added to read as follows:

### § 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

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 § 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