

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 6, 2009.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5278-N-01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2009

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payments programs provide for annual adjustment in the monthly rentals for units covered by the contract. This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using data on residential rent and utilities cost changes from the most current annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice.

DATES: Effective Date: January 12, 2009.

FOR FURTHER INFORMATION CONTACT:

Contact David Vargas, Associate Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, 202-708-2815, for questions relating to the Project-Based Certificate, and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202-708-4300 for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202-708-3000, for questions relating to all other section 8 programs; and Marie L. Lihn, Senior Economist, Economic and Market Analysis Division, Office of Policy Development and Research 202-708-0590, for technical information

regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for the above persons: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Hearing-or speech-impaired persons may contact the Federal Information Relay Service at 800-877-8339 (TTY). (Other than the "800" TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: In addition to being published in the **Federal Register**, these data will be available electronically from the HUD data information page at <http://www.huduser.org/datasets/aaf.html>.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs during the initial (*i.e.*, pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of section 8 programs that use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-Based Certificate (PBC) program.

Each section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, AAFs are not used to determine renewal rents after expiration of the original section 8 HAP contract (either for projects where the section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies

under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs, or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most section 8/202 projects.

Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program, (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002-10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97-57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is

above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.*, unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the section 8 PBC program:

- The Table 2 AAF is always used.
- The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent, *i.e.*, where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, *i.e.*, where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for "highest cost included." If highest cost utility is not included, select the AAF from the column for "utility excluded."

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not include any change in the cost of utilities. The gross rent inflation factor is designated as "Highest Cost Utility Included" and the shelter rent inflation factor is designated as "Highest Cost Utility Excluded".

AAFs are calculated using CPI data on "rent of primary residence" and "fuels and utilities".¹ The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the "contract rent" which includes units with all utilities included in the rent, units with some utilities included in the rent and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) from the Consumer Expenditure Survey (CEX) and American Community Survey (ACS) data on the ratio of utilities to rents.²

Survey Data Used To Produce AAFs

In this publication, the rent and utility inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2006 to 2007. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2006 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used in the formula comes from 2006 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four

¹ CPI indexes CUUSA103SEHA and CUSR0000SAH2, respectively.

² The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at <http://www.HUDUSER.org>.

Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called "HUD Metro FMR Area" (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.³ For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables, by state and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey.

The AAFs shown in Schedule C use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2009 FMRs.

Area Definitions in Schedule C

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the metropolitan or nonmetropolitan counties receive the regional CPI for that Census Region.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated CPI region is shown next to each state name. Areas

whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed on Schedule C or the area file.

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs identified in the Table as "STATE: Hawaii," which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables.

Dated: January 6, 2009.

Darlene F. Williams,
Assistant Secretary for Policy Development and Research.

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS

CPI areas	Counties/towns
Alabama (South)	
All Counties in Alabama use the South Region AAF.	
Alaska (West)	
Anchorage, AK MSA: Metropolitan Area Components: Anchorage, AK HMFA Matanuska-Susitna Borough, AK HMFA	Anchorage. Matanuska-Susitna.
All other Boroughs use the West Region AAF.	
Arizona (West)	
Phoenix-Mesa-Scottsdale, AZ MSA	Maricopa, Pinal.
All other Counties use the West Region AAF.	
Arkansas (South)	
All Counties in Arkansas use the South Region AAF.	
California (West)	
Los Angeles-Long Beach-Santa Ana, CA MSA: Metropolitan Area Components: Los Angeles-Long Beach, CA HMFA Orange County, CA HMFA	Los Angeles. Orange.
Napa, CA MSA	Napa.
Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura.
Riverside-San Bernardino-Ontario, CA MSA	Riverside, San Bernardino.
San Diego-Carlsbad-San Marcos, CA MSA	San Diego.
San Francisco-Oakland-Fremont, CA MSA Metropolitan Area Components: Oakland-Fremont, CA HMFA	Alameda, Contra Costa.

³ There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the

geography underlying its survey for new OMB metropolitan area definitions, and these counties are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet

the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.