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Dated: April 29, 2013.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5697-N-01]

### Section 8 Housing Assistance Payments Program-Annual Adjustment Factors, Fiscal Year 2013

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Fiscal Year (FY) 2013 Annual Adjustment Factors (AAFs).

**SUMMARY:** The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payment programs provide annual adjustments to monthly rentals for units covered by the contracts. This notice announces FY 2013 AAFs for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using residential rent and utility cost changes from the most recent 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. For FY 2011 and FY 2010, these AAFs were designated as "Contract Rent" AAFs, to differentiate them from "Renewal Funding" AAFs that were used exclusively for renewal funding of tenant-based rental assistance. Renewal Funding AAFs were replaced by an inflation factor established by the Secretary in FY 2012, so there is no need to differentiate the AAF by use. A separate **Federal Register** Notice will be published at a later date that will identify the inflation factors that will be used to adjust tenant-based rental assistance funding for FY 2013.

**DATES:** *Effective Date:* May 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Contact Michael S. Dennis, Director, Housing Voucher Programs, Office of

Public Housing and Voucher Programs, Office of Public and Indian Housing, 202-708-1380, for questions relating to the Project-Based Certificate and Moderate Rehabilitation programs (non-Single Room Occupancy); Ann Oliva, Director, 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; Catherine Brennan, 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 Lihn, Economist, Economic and Market Analysis Division, Office of Policy Development and Research, 202-402-5866, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. The mailing address for these individuals is: 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:** Tables showing AAFs will be available electronically from the HUD data information page at [http://www.huduser.org/portal/datasets/aaf/FY2013\\_tables.pdf](http://www.huduser.org/portal/datasets/aaf/FY2013_tables.pdf)

#### 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 payment 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, Substantial Rehabilitation, and Moderate Rehabilitation programs;

Category 2: The Section 8 Loan Management (LM) and Property Disposition (PD) programs; and

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.

*Tenant-based 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.

#### 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 is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF 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 contract rent will be the greater of the comparable rent level (plus any initial difference) or the pre-adjustment contract rent. The pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is restrained 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: Section 8 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).)

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 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).

Legislative history for this statutory provision states that “the rationale [for lower AAFs for non-turnover units is] that operating costs are less if tenant turnover is less...” (see Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations 103d Cong., 2d Sess. 591 (1994)). The Congressional Record also states the following:

Because the cost to owners of turnover-related vacancies, maintenance, and marketing are lower for long-term stable tenants, these tenants are typically charged less than recent movers in the unassisted market. Since HUD pays the full amount of any rent increases for assisted tenants in section 8 projects and under the Certificate

program, HUD should expect to benefit from this ‘tenure discount.’ Turnover is lower in assisted properties than in the unassisted market, so the effect of the current inconsistency with market-based rent increases is exacerbated. (140 Cong. Rec. 8659, 8693 (1994)).

To implement the law, HUD publishes two separate AAF Tables, Tables 1 and 2. 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**

AAF Tables 1 and 2 are posted on the HUD User Web site at [http://www.huduser.org/portal/datasets/aaf/FY2013\\_tables.pdf](http://www.huduser.org/portal/datasets/aaf/FY2013_tables.pdf). There are two columns in each AAF table. The first column is used to adjust contract rent for rental units where the highest cost utility is included in the contract rent, i.e., if 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., if 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 Utility Included.” If highest cost utility is not included, select the AAF from the column for “Highest Cost 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 reflect 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.”<sup>1</sup> 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 data from the Consumer Expenditure Survey (CEX) on the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) and also American Community Survey (ACS) data on the ratio of utilities to rents.<sup>2</sup>

#### Survey Data Used To Produce AAFs

The rent and fuel and utilities 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 2010 to 2011. 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 2010 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used to produce AAFs comes from 2010 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 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 the “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.<sup>3</sup> 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 and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specific 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 (to be used for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey).

AAFs use the same OMB metropolitan area definitions, as revised by HUD, that are used for the FY 2012 FMRs.

#### Area Definitions

To make certain that they are using the correct AAFs, users should refer to the Area Definitions Table section at [http://www.huduser.org/portal/datasets/aaf/FY2013\\_AreaDef.pdf](http://www.huduser.org/portal/datasets/aaf/FY2013_AreaDef.pdf). The Area Definitions Table lists CPI areas in alphabetical order by state, and the associated Census 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 in the Area Definitions Table at [http://www.huduser.org/portal/datasets/aaf/FY2013\\_AreaDef.pdf](http://www.huduser.org/portal/datasets/aaf/FY2013_AreaDef.pdf).

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs listed next to “Hawaii” in the Tables which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

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.

Dated: May 10, 2013.

**Jean Lin Pao,**

*General Deputy Assistant Secretary for Policy Development and Research.*

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[DR5A3111A000113]

#### Secretarial Commission on Indian Trust Administration and Reform

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on June 7, 2013. During the public meeting, the Commission will: Attend to operational activities of the Commission; receive an update on the leasing regulations/HEARTH Act implementation; gain insights and knowledge from invited speakers and attendees about the trust relationship, other trust models, and trust reform; review Commission action items; and gain insights and perspectives from members of the public.

**DATES:** The Commission’s public meeting will begin at 8 a.m. and end at 12 p.m. on June 7, 2013. Members of the public who wish to attend should RSVP by June 3, 2013, to: [trustcommission@ios.doi.gov](mailto:trustcommission@ios.doi.gov).

**ADDRESSES:** The public meeting will be held at the Courtyard by Marriott Downtown Oklahoma City, Two West Reno, Oklahoma City, OK 73102. We encourage you to RSVP to [trustcommission@ios.doi.gov](mailto:trustcommission@ios.doi.gov) by June 3, 2013.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Official, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to [Lizzie\\_Marsters@ios.doi.gov](mailto:Lizzie_Marsters@ios.doi.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department’s ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the

<sup>1</sup> CPI indexes CUUSA103SEHA and CUSR0000SAH2 respectively.

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

<sup>3</sup> There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County,