Journal of Housing & Community Development
May/June 2001 issue, Vol. 58 No.3 on pages 27-32

Section 8 Renewal Rule: *Use It or Lose It*

If LHAs understand the new rule, they can serve their families without cutting participants.

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HUD published a final regulation governing renewal of expiring Section 8 tenant based assistance contracts on Oct. 21, 1999. Local housing agencies (LHAs) must understand the new rule, because the new rule of thumb is "use it or lose it."

The renewal funding formula will significantly affect LHA decisions on the voucher payment standard(s) and how many families an LHA will decide to assist. In addition, the new rule permits HUD to reduce funding permanently to LHAs that do not use nearly all their Section 8 funds. The new rule applies to voucher and certificate (including project based certificate) contracts that expire after Dec. 31, 1999.

The final renewal rule

The final rule is a refinement of the actual cost methodology HUD developed during 1998 and 1999, including an important change in how LHAs can use their program reserves. The rule is the result of a negotiated rulemaking ordered by Congress. Basically, the formula is as follows:

LHA's expiring baseline
number of units (adjusted for changes
made after Dec. 31, 1999)
x
LHA's actual cost per unit
x
inflation adjustment.

The renewal formula

The determination of an LHA's Section 8 renewal budget for the subsequent calendar year starts with an LHA's baseline number of units, or the number of Section 8 subsidies HUD reserved for the LHA program as of Dec. 31, 1999. In the years following 2000, HUD adjusts the baseline to reflect permanent changes in the number of units reserved by HUD for the LHA. This adjustment could be up or down, based on permanent changes in HUD's allocation to the LHA.

This baseline includes the greater number of certificate and voucher units leased or reserved on Oct. 1, 1997, plus adjustments HUD has made to correct its records and to add new units. An April 2000 HUD notice includes a more detailed explanation of how the baseline is determined. This renewal notice is available at HUD's Web site, *www.hud.gov/pih/programs/s8/s8neg-rulemaking.html*. In the spring of 2000, HUD issued individual notices of its determination of LHAs' baselines.

The LHA's cost data are derived from its most recent HUD-approved year-end statement. This could mean that renewal funding for subsidies, which expire in calendar year 2001, is based on either the LHA's FY 1999 or FY 2000 year-end statement, depending on the LHA's fiscal year and the speed of HUD's approval process.

There is a one- to two-year lag between the cost data used to determine actual costs and the subsequent period in which the funding will be used. As a result, HUD adjusts the actual annual per-unit cost by the Section 8 annual adjustment factor(s) (AAF) that applies to the LHA's jurisdiction for the periods) between the last approved year-end statement and the end date of the funding under the renewal contract. HUD has committed to trying to develop a better measure of actual inflation in local costs relevant to the amount of Section 8 assistance payments in place of the Section 8 annual adjustment factors (AAFs).

The text box illustrates how these principles apply to renewal funding in 2001:

Example for 2001

Initial Baseline =	110 "units"
Adjustment since Dec. 31, 1999 =	+ 10 incrementals
	+ 10 conversion
Adjusted baseline =	130 units
Minus units expiring after Dec. 31, 2000	-20
Total renewal units	110
Determining ACPU:	
Total FY 1999 HAP:	$120,000
FY 1999 unit months leased:	$300
Monthly per-unit costs =	$400
	X 12
Actual annual per-unit cost:	$4,800
X FY 2000 AAF (1.5%)	X .015
$4,872	
X FY 2001 AAF (2.2%)	X .022
$4,979	
110 renewal units X $4,979 [ACPU] =	$547,690

Significance of renewal formula

HUD's new renewal formula means that it will pick up the tab for additional costs incurred when LHAs increase their voucher payment standards if the costs enable more families to use their vouchers, promote deconcentration of poverty, restrain families' payment burdens, or serve extremely low-income applicants. At least 75 percent of the families newly leasing under the voucher program each year must be in this extremely low-income group for an LHA to comply with the new targeting requirements for the voucher program. Assuming Congress appropriates the money, LHAs are assured of funds to serve at least the number of families HUD considers its adjusted baseline.

In general, a higher voucher payment standard will make more units available to families at a rent burden of 30 percent of income for rent and utilities. It also will make more units available for which a family's share of the rent will be within the permissible maximum (40 percent of adjusted income). This is particularly true for poorer families and for housing in areas where poverty is less concentrated and where residents have better access to jobs and quality services. Making more affordable units available may be needed for an LHA to score well on the Section 8 Management Assessment Program (SEMAP) and to maintain the size of its voucher program.

The chart on page 58 illustrates the effect of setting the voucher payment standard at different percentages of the applicable Fair Market Rent (FMR). Payment standards are calculated on the rent families would be responsible for paying and the cost of units families may be permitted to rent.

The renewal rule authorizes HUD to reduce permanently the funding level and number of baseline units for LHAs that fail to adequately lease units. HUD may then reallocate that funding to other LHAs. In the April 2000 renewal notice, HUD states that LHAs that are using less than 90 percent of their budget authority and do not lease 95 percent of budgeted units by the time they submit their second budget after HUD's notice of deficiency will permanently lose the number of vouchers they fail to utilize. According to HUD, this is likely to occur 16 months after an LHA receives a warning from HUD.

On the other hand, if LHAs can serve more than their baseline number of families within their budget authority because their costs have decreased (due to, higher family incomes, lower rents, or other causes), the new renewal rule may reduce an LHA's renewal funding. The new formula uses an LHA's actual costs to calculate the funding needed to support only the baseline number of assisted households, rather than any larger number of families the LHA may be assisting.

For example, if an LHA's actual cost per unit (ACPU) in fiscal 2001 declines from $4,979 to $4,800, an LHA with 110 units can use $19,690 "saved" in 2001 to assist four additional families (48 unit months). For 2002 or 2003, the ACPU used to calculate the LHA's renewal funding will equal $4,800 (assuming no inflation). The renewal budget for 110 units will be $528,000. In contrast with the $547,690 the LHA received in 2001, the LHA will able to support only 110 units (or fewer if costs increase in 2002), rather than the 114 families it helped in 2001. This situation is discussed further in the final section. However, if an LHA that has "maximized leasing" in this manner is caught in a budget squeeze as a result of reduced renewal funding, it will be allowed to use its reserve funds to support the additional families for at least a year. But the LHA will have to restore its reserves out of its regular budgeted funds. It is possible that HUD will allow LHAs to retain some of the financial benefit of reduced costs as an incentive to restrain costs in operating the voucher program.

New policy on use of reserves

This actual cost methodology means that if an LHA's average per-unit cost has increased, the increased cost will, within one to two years, be reflected fully in its Section 8 renewal funding. But during the year when per-unit costs increase and possibly the following year (depending on the LHA's fiscal year and HUD approval of the year-end statement), the actual cost formula may not reflect a cost increase. To avoid a reduction in the number of families served below the baseline during this adjustment period, LHAs will be permitted to draw more liberally on the two-month reserve HUD provides to each LHA. The April 19, 2000, renewal notice contains the details of this new reserve policy.

Nontroubled LHAs that need to use reserves to serve the adjusted baseline number of families at current costs may access 50 percent of their reserves-one month's funding-simply by submitting a revised budget to HUD, without prior HUD approval. If an additional withdrawal is needed, the LHA must get HUD's approval.

The renewal rule and the implementing notice obligate HUD to restore depleted reserves used to support the baseline number of families, so long as there are sufficient program appropriations. From the data reviewed during the negotiated rulemaking, in virtually all cases, this liberalized authority to draw on reserve funds should be enough to prevent a reduction in the number of families served.

Some LHAs that increase their payment standards too late in the fiscal year to be reflected in the year's cost data may anticipate that supplementing their renewal funding with one month's reserves will not be enough to serve the adjusted baseline number of families. To deal with such situations, the renewal rule permits LHAs to request, before their fiscal year, an increase in their budget authority. HUD is not required to grant such requests.

Limited authority to alter actual cost methodology

Other than an actual national shortfall in appropriations, HUD may depart from the rule's actual cost methodology for renewal funding (after consulting stakeholders and publishing a notice in the Federal Register) in three situations:

- **If HUD determines that an individual LHA, based on its spending pattern, is likely to exhaust its budget authority and its reserves during its fiscal year**. HUD can require such an LHA to bring its costs down and to reduce the number of families served with program resources. Yet the LHA is still assured

Section 8 Vouchers: Effect of Payment Standard at 90%, 100% and 110% of Fair Market Rent

2001 Fair Market Rent (FMR) in Your City is **$737** (w. utilities) for a 2 BR Unit. Sample Client: Household adjusted income is $11,000 (**$917**/month); 30% of monthly adjusted income of $917 is **$275**.

Scenario #1: Payment Standard =90% of FMR ($663)

Gross Rent	**$700**	**$800**	**$900**
Payment Standard	$663	$663	$663
Tenant Share	**$312** ($275 + $37)	**$412** ($275 + $137)	**$512** ($275 + $237)
Result	Payment Standard is lower than the rent, so tenant share **34%** of income.	Tenant share is **45%** of income. **PHA may not allow tenant to use voucher for this apartment**.	Tenant share is **56%** income. **PHA may not allow tenant to use voucher for this apartment**.

Scenario #2: Payment Standard =100% of FMR ($737)

Gross Rent	**$700**	**$800**	**$900**
Payment Standard	$737	$737	$737
Tenant Share	**$275**	**$338** ($275 + $63)	**$438** ($275 + $163)
Result	Payment Standard is greater than the rent + utilities, so tenant share is **30%** of income.	Payment Standard is lower than the gross rent, so tenant share is **37%** of income.	Tenant share is **48%** of income. **PHA may not allow tenant to use voucher for this apartment**.

Scenario #3: Payment Standard = 110% of FMR ($810)

Gross Rent	**$700**	**$800**	**$900**
Payment Standard	$810	$810	$810
Tenant Share	**$275**	**$275**	**$365** ($275 + 90)
Result	Payment Standard is higher than the rent, so tenant share is **30%** of income.	Payment Standard is higher than the rent; tenant share is **30%** of income.	Payment Standard is lower than the rent, so tenant share is **39.8%** of income.

Based on chart developed by Judith Liben, MLRI.

of adequate funds to serve the baseline number of families, as adjusted since Dec. 31, 1999, in a way that lets the families served have a reasonable rent burden and expanded housing opportunities. The funds also will enable the LHA to admit new families to the program consistent with identified housing needs and targeting requirements.

■ **If HUD determines that "threats to the future availability of funding" make it necessary to alter the coats used to determine the budgets of specific individual LHAs or all LHAs**. This provision is directed not at mismanagement by individual LHAs, but at avoiding an increasing trajectory for overall program costs that HUD believes Congress will not fund LHA.

While this situation presents some uncertainty concerning funding, the rule does not permit HUD to reduce the actual cost formula in a way that is inconsistent with the listed program goals. Therefore, LHAs should not be at any risk of decreased funding when they increase their payment standards if such an increase is necessary to deconcentrate poverty, expand housing opportunities, prevent unreasonable rent burdens, or comply with income targeting, and if they are administering their programs efficiently and complying with requirements to keep rents reasonable.

Moreover, should funding be reduced unexpectedly, an LHA remains free to reduce its payment standard within the basic range if it would rather do that than serve fewer families.

■ **When an LHA's actual average per subsidy cost has decreased from the prior year (because the LHA has lowered its payment standard, family incomes have increased, rents have fallen, or some other reason), and as a result, the LHA would be due to receive reduced funding under the actual cost formula.** Some LHAs may wish to respond to such a cost reduction by expanding the number of families served. To reward program efficiency and economy, and to give LHAs enough funds to serve additional families above its adjusted baseline, HUD may adjust the formula to prevent such LHAs from losing funding.

If HUD does not use its authority to adjust the cost formula for LHAs with declining costs-and it appears unlikely HUD will do sothe LHAs that permit additional families above the baseline number to lease units with Section 8 assistance will have to cut back the number of families they can serve within their budget authority.

During the attrition period, LHAs may be permitted to draw on reserve funds to continue assisting any family already participating in the program; HUD however, makes no commitment to restore the depleted reserves. If HUD does not restore the LHAs' reserves, LHAs that have "maximized" their leasing will need to attrite below the number of baseline units to restore their own reserves.

LHAs that set a lower payment standard (or otherwise reduce program costs) to serve more families within budget authority risk not being able to serve any new families in their Section 8 program the following year, or even longer. During this time, they are reducing the number of families served to the baseline number that can be supported with the reduced budget authority calculated by the rule's formula.

Helping LHAs better serve families

Taken as a whole, the new Section 8 renewal rule means that LHAs, advocates, and residents need to discard the old notion that Section 8 funds are fixed and that if costs increase (because of an increase in the payment standard, admitting poorer families, or any other reason), the number of families served must be reduced. LHAs are assured, so long as Congress fully funds renewal needs, as indicated by the regulatory formula, of having the funds to support at least the adjusted baseline number of families at the costs LHAs actually incur, so long as those costs reflect LHA reasonable decisions about how to implement Section 8 program goals. LHAs can serve families better without having to reduce the number of families they serve.■