Special Attention of: Notice H 95-92 (HUD)  
State/Area Coordinators; Issued: October 26, 1995  
Directors of Housing; Expires: October 31, 1996  
Directors, Multifamily Housing Cross References:  
Division; Multifamily Asset  
Management and Production  
Branch Chiefs; Contract  
Administrators; Owners and Managers of Projects with Section 8 Contracts Adjusted by the Annual Adjustment Factor.  

Subject: Reinstatement and extension of Notice 95-12: Annual Adjustment Factor (AAF) Rent Increase Requirements

This Notice reinstates and extends Notice 95-12 issued on March 7, 1995, and expired on September 30, 1995. The following information must be used in conjunction with Notice 95-12.

At this time, the Congress has not enacted the HUD appropriation for fiscal year 1996. However, the Congress has enacted a continuing resolution to provide temporary funding for continuation of government activities during fiscal year 1996 (until November 13 or enactment of 1996 appropriation). During the period of the continuing resolution, funds must be used in accordance with the same "authority and conditions" provided in the HUD Appropriation Act for fiscal year 1995. The legislative history of the fiscal year 1996 continuing resolution specifically confirms that the fiscal year 1995 rent adjustment requirements apply during the period of the fiscal year 1996 continuing resolution. (Colloquy of Senators Feinstein and Hatfield at Congressional Record, P.S 14638, September 29, 1995.)

HUD expects that the fiscal year 1996 appropriation, when enacted, will probably include the same Section 8 rent adjustment requirements in fiscal year 1996 that applied in fiscal year 1995 (and which were extended during the period of the fiscal year 1996 continuing resolution). This notice provides instructions on rent adjustment for contract anniversaries in fiscal year 1996, including the period of the continuing resolution and any extensions. If Congress enacts a new continuing resolution or appropriation that requires any change in the fiscal year 1996 rent adjustment procedures stated in this notice, a new notice will be issued.

EFFECTIVE DATE: All Section 8 contracts (New Construction, Substantial Rehabilitation, Loan Management and Property Disposition projects) with HAP anniversary dates on or after October 1, 1995. In order to allow time for owners to submit required information, contracts with HAP anniversary dates which fall within the first sixty (60) days after this Notice is issued:

HMIP: Distribution: W-3-1, W-2(H), W-3(A) (OGC) (ZAS), W-4(H), R-1, R-2, R-3-1(H) (RC), R-3-2, R-3-3, R-6, R-6-2, R-7, R-7-2, R-8

will be permitted to have any rent increase paid retroactive to the HAP anniversary date, so long as
a request which meets the requirements of this Notice is received no later than sixty (60) days after the date this Notice is issued.

If the request is submitted after the first sixty (60) days, the increase will be effective for months commencing at least 60 days after receipt of the required material is submitted.

The FY 96 AAFs will be published soon and will be effective for HAP anniversary dates on or after October 1, 1995. As in the last fiscal year, the Department will publish two tables. The Field Offices must use FY 96 AAFs in calculating adjustments for FY 96 contract anniversaries.

The proposed FMRs for the Section 8 Housing Assistance Payments Program for FY 96 were published for comments on August 15, 1995, and interim FMRs were published on September 18, 1995. Until final FMRs are published, the interim FMRs will be used to determine adjustments for New Construction and Substantial Rehabilitation projects under Part 1 of Notice 95-12.

CLARIFICATIONS TO NOTICE 95-12

GROSS RENTS/FAIR MARKET RENTS: Gross rents (contract rents and utilities) are compared to the Fair Market Rents in determining whether New Construction Substantial Rehabilitation rents are above the FMRs under Notice 95-12 (see attached worksheets). There were several calls from the Field Offices suggesting this clarification is necessary.

DEPOSITS TO THE RESERVE FOR REPLACEMENT ACCOUNT: When calculating the new deposit amount to the Reserve for Replacement Account (where required), this amount will correspond to the amount of the rent increase granted to the project. This should be determined by dividing the new Gross Rent Potential by the old Gross Rent Potential to derive a factor. This factor will then be applied to the current reserve deposit amount to determine the new reserve deposit amount.

TURNOVER WHICH OCCURS AFTER THE RENT INCREASE REQUEST IS SUBMITTED: Under the terms of Notice 95-12 owners are required to submit turnover data at least 60 days prior to the anniversary.

To account for those units where turnover will occur between the date of submission and the HAP anniversary date, the owner may exercise one of two options:

Option 1: Owners may report units as turnover units where they have received written notice that a tenant intends to move prior to the HAP anniversary date, regardless of whether or not the unit has been vacated. In these situations, the owner should list these units on a separate sheet, and add language to the certification in Appendix 3 stating the tenant has given written notice to the owner of their intention to vacate the unit and that the owner has initiated action to fill the unit.

Option 2: The owner may use the average turnover data from the same time period of the three previous calendar years. For example, if the HAP anniversary date is August 10, 1995, then the owner who submits a rent increase request 60 days prior could use average turnover data from the
preceding 3 years, between June 10 to August 9, to estimate turnovers which would occur during this period.

The owner must state, in the documentation submitted, what option they are choosing to address turnovers during this time frame between date of submission and the HAP anniversary date.

SECTION 202/8 CONTRACTS: The majority of these contracts utilize the budget based method of rent adjustments. However, if a Section 202/8 contract has rents which are adjusted via the AAF, then they should be treated in the same manner as New Construction and Substantial Rehabilitation contracts under Part I of the Notice.

If you have any questions, please call Brenda Gronewold on (202)708-4162, or your desk officer in the Operations Division.

Assistant Secretary for Housing-
Federal Housing Commissioner
APPENDIX 2

PART I ADJUSTMENTS WORKSHEET

FIELD OFFICE WORKSHEET FOR
PROCESSING RENT INCREASES FOR AAF RENTS FOR NEW CONSTRUCTION
AND SUBSTANTIAL REHABILITATION UNIT TYPES WHICH EXCEED THE
EXISTING HOUSING FAIR MARKET RENTS
(NOT FOR USE ON BUDGET BASED RENT INCREASES)

Property Name: _________________________ Unit Type:_____________

ESSENTIAL INFORMATION

Existing FMR Level                  Current Gross
for unit Type $______              Rent for Unit Type $______

AAF from Table 1__________         Comparable Rent
from HUD-92273 $______             (Line 20)

Initial Difference Submitted By Owner (if any) $__________

STEP 1:   Is this contract a New Construction or Sub Rehab contract?: AND
Is the current rent for this unit type (before application of the AAF) above the Existing Housing FMR?

<> If the answer to BOTH questions is YES, then proceed to Step 2
<> If the answer to EITHER question is NO, then this unit type should be adjusted under Part 2 of this Notice. This worksheet does not apply. Please find Part 2 Adjustments Worksheet at the end of Appendix 2.

PART 2 ADJUSTMENTS WORKSHEET

FIELD OFFICE WORKSHEET FOR
PROCESSING RENT INCREASES FOR AAF RENTS FOR
NEW CONSTRUCTION
AND SUBSTANTIAL REHABILITATION UNIT TYPES WHICH DO NOT EXCEED THE EXISTING HOUSING FAIR MARKET RENTS AND FOR ALL LMSA AND PD SECTION 8 CONTRACT TYPES.
(NOT FOR USE ON BUDGET BASED RENT INCREASES)

Property Name:________________________  Unit Type: ________________

ESSENTIAL INFORMATION

| Existing FMR Level for Unit Type $______ | Current Gross Rent for Unit Type $______ |

STEP 1: If this contract is a New Construction or a Substantial Rehab contract, then is the current rent for this unit type (before application of the AAF) below the Existing Housing FMR?:

OR

If this contract is a LMSA or PD contract, is method of adjustment for contract rent the application of the AAF (as opposed to budget-based)? (NOTE: Budget-based rents are NOT processed under this Notice. See Chapter 7, Handbook 4350.1)

<> If the answer the applicable question is YES, then proceed to Step 2.

<> If the answer to the applicable question is NO, and the first question is applicable, then this unit type should be adjusted under Part I of this Notice. This worksheet does not apply. Please find Part I Adjustments Worksheet at the beginning of Appendix 2.

If the second question is applicable and the answer is NO, then this Notice is not applicable and the rents should be adjusted under Chapter 7, Handbook 4350.1.