

under the HUD Reform Act of 1989. These regulations give broad public access to documentation of the basis for HUD decision on HA funding applications. The Reform Act rule provides that HUD must ensure that documentation on each application is "sufficient to indicate the basis on which HUD provided or denied the assistance." (24 CFR 12.14(b)(1)) Under the Reform Act rule, this documentation is available for public inspection for five years. (12.14(b)(2)) The rule for tenant-based assistance is revised to add a cross-reference to the documentation and public inspection requirements under the Reform Act rule. (§ 982.103(b)(3))

HUD has not accepted the recommendation to afford the HA applicant a right to appeal HUD's decision on HA funding applications, or to delay distribution of funds pending hearing on an HA appeal. HUD is deeply concerned that the grant of such a right would severely delay or paralyze the process for award of funds, would encourage fruitless and distracting appeals and litigation, and would result in major waste and diversion of administrative energies by HUD and the HAs. HUD seeks to award competitive funding by a fair and expeditious competition, carried out in accordance with criteria stated in a published NOFA. However, HUD will not encumber this process by adding the right to a formal appeal or hearing for the HA. Sometimes NOFAs provide a procedure for correction of allocation inequities.

#### *B. Amount of Funding: Units or Dollars*

Several comments ask HUD to provide funding to an HA for a specific number of units, rather than for a fixed allocation (amount) of funds. Under the certificate program, the HA was formerly required to maintain a HUD-approved unit distribution (by bedroom size), using the funding provided under the consolidated ACC, including any amendment funding. (Under the ACC, there is a separate ACC term for each funding increment.) In the voucher program, the unit distribution is not established by HUD. The HA is responsible for management of available voucher funding under the consolidated ACC. HUD did not provide voucher funding for ACC amendments to support a pre-determined unit mix. The HA controlled the use of available voucher funding by setting the level of subsidy for each family (payment standard), and by controlling admissions to the program.

Under recent amendments of regulatory selection requirements for

both the certificate and the voucher programs, admission from the waiting list may no longer be based on family size. (§ 982.204(d), as amended 7/18/94, 59 FR 36662 et seq.; see preamble discussion at 36666-36667) This change automatically eliminated possible inequities caused by disparities of wait-times for families of different sizes. The length of wait does not depend on the size of the family. In addition, the regulation change eliminated the problems and complexities of administering separate sub-lists for different unit sizes, as well as the requirement for the HA to maintain (in the certificate program) a HUD-determined unit distribution.

Comments ask if the HA will be required to maintain a HUD-approved unit distribution by bedroom size. Since the HA is prohibited from selection by unit size for tenant-based assistance, the HA is not required to maintain a HUD-approved unit distribution.

HUD believes that the new regulatory and administrative system is a better way of managing program funds. In the annual appropriation process, the Congress appropriates specific dollar amounts of funding (budget authority), rather than funding to support a specific number of units under each HA's consolidated ACC. HUD cannot guarantee that the funding that is appropriated by the Congress, and obligated by HUD to a specific HA, will support the changing number of units that will result from the HA's admission of families without regard to unit size, under the system provided in HUD's new regulation. Rather, the HA is in the best position to manage the available funding committed to the HA, so that the HA can continue to provide assistance for families already admitted to the program.

#### *C. Family Unification*

The proposed rule recites statutory requirements governing award of funding appropriated for "family unification" (also called "foster child care")—which is special Section 8 certificate program funding to avoid the need to place or keep children in out-of-home care. Comments recommend against providing categorical funding for family unification, object to limits on competition for family unification funds, and question why family unification does not apply to vouchers. Some comments support special funding for this purpose.

The final rule deletes the rule provisions stating statutory requirements governing family unification set-asides. When the Congress provides funding for family

unification, statutory and other requirements can be stated in the NOFA offering any family unification funding for public competition and award.

### **III. Annual Contributions Contract and HA Administration of Program**

#### *A. Annual Contributions Contract*

Comments recommend that funding for all increments in an HA's certificate or voucher program should be combined in a consolidated annual contributions contract (ACC). Under this rule and under current HUD practice, all funding for an HA's Section 8 tenant-based programs is provided under a single consolidated ACC, with separate ACC attachments that show all funding for the HA's certificate and voucher programs.

The final rule provides that commitments for all the funding increments in an HA's certificate and voucher programs are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). (§ 982.151(a)(2)) The final rule eliminates a proposed provision that would have required separate consolidated ACCs for an HA's certificate and voucher programs. In most respects, the certificate and voucher tenant-based programs are identical. In 1994, HUD combined the ACC forms for these programs into a single consolidated ACC. The single consolidated ACC provides a common contractual basis for unified administration of the tenant-based programs.

#### *B. Administrative Fees*

Administrative fees are paid by HUD to cover HA costs to run the Section 8 tenant-based assistance program. (§ 982.152) Fees must be approved by HUD. The rule describes the purposes for which fees are paid. The rule does not state how fees are calculated. The calculation of fees in each federal fiscal year is affected by the HUD budget and annual appropriations, and may be affected by other temporary legislation.

Section 8(q) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(q)) states requirements for determining administrative fees in the certificate and voucher tenant-based programs. However, the Section 8(q) requirements only apply if the HUD appropriation act so provides. Under the terms of HUD appropriations since federal fiscal year 1989, Section 8(q) requirements apply to calculation of administrative fees for so called "incremental" units. Generally, "incremental units" are new federally-assisted units, as contrasted with