

renewal or replacement of expiring assistance. Other units are not subject to Section 8(q) (generally, units funded before fiscal year 1989 and funding for renewal or replacement). HUD has full discretion to set HA fees for such units.

HA comments recommend increases in HA administrative fees. Comments disagree with HUD's statement, in the preamble of the proposed rule, that administrative fees generally exceed the amount needed to administer the program. Comments point out that HAs are now required to carry out many new tasks, such as administration of family self sufficiency, portability and assistance for special populations, such as homeless persons or persons with AIDS. Comments urge that the administrative fee be based on measurement of the time needed to accomplish tasks required by HUD rules.

The rule is intended to provide a regulatory framework for periodic determination of administrative fee. The detailed procedures for fee calculation are not described in the permanent program rule. From time to time, HUD issues notices and handbooks explaining how to compute the applicable fees in accordance with the appropriations and other governing laws.

Comments recommend allowing a one-time fee for implementation of the new rule. This comment is not adopted. This rule does not radically change existing program procedures. In certain respects, the rule will significantly simplify HA administration of the program. Any change in program requirements entails some administrative burden in changing existing management practice. However, HUD does not anticipate that the transition to operation under the new rule will cause problems justifying a higher administrative fee.

C. Ongoing Administrative Fee

1. How Calculated

HUD pays a fee to the HA for every month after a unit is "under Housing Assistance Payments (HAP) Contract". This is called the "ongoing administrative fee". In accordance with current program practice, the proposed rule provided that the ongoing fee for a unit equals a HUD specified percentage of the Section 8 existing housing fair market rent for a two-bedroom unit (regardless of the actual unit size). In present program usage, different fee percentages apply to different types of units in the HA's tenant-based program. A "blended fee" percentage is calculated for the HA's whole certificate

or voucher program, reflecting the proportions of these different unit types in the HA's program.

The proposed rule did not state the percentage of the FMR that is used to calculate the administrative fee, but provided that the percentage will be "HUD-specified". For units where the ongoing fee is calculated under Section 8(q) of the U.S.H. Act (42 U.S.C. 1437f(q)) (to date, only "incremental" units), the statute provides that the amount of the administrative fee is 8.2 percent of the fair market rent for a two bedroom unit.

HUD is currently considering how the administrative fee system should be revised to fairly and adequately compensate HAs to administer the program. In the future, administrative fees may or may not be calculated as a percentage of the fair market rent. Since the future fee system is not known, the final rule does not provide that the ongoing administrative fee is calculated as a percentage of the fair market rent.

The final rule states only that the ongoing fee is established by HUD. As in the past, the ongoing fee is paid for each program unit under HAP contract on the first day of the month. (§ 982.152(b)(1)) This change leaves flexibility for future adoption of a new administrative fee system. However, under current law, the ongoing fee for units under Section 8(q) remains 8.2 percent of the two-bedroom fair market rent. On January 24, 1995, HUD published a notice revising the method for calculating administrative fees for units that are not subject to Section 8(q). (60 FR 4764)

By law, an HA that administers Section 8 assistance may contract to make assistance payments to itself as a Section 8 owner. (42 U.S.C. 1437f(a)) The final rule adds a new provision confirming that HUD may pay a lower ongoing administrative fee for HA-owned units. (§ 982.152(b)(3))

2. Higher Ongoing Fee—For Small Program or Program Operating in Large Area

For units subject to Section 8(q), the law provides that HUD may decide to increase the ongoing administrative fee "if necessary to reflect the higher costs of administering *small programs and programs operating over large geographic areas*". (U.S.H. Act, Section 8(q)(1), 42 U.S.C. 1437f(q)(1)) The proposed rule would have provided that HUD could approve a higher ongoing fee for an HA program operating over a "large area". Such fees may only be approved "if appropriations are available" for this purpose.

Comments state that HUD should not pay a higher fee for an HA that operates in a large region. Comments want HUD to clarify the meaning of "large area". Comments ask HUD to allow a higher fee for an HA that must service portability families outside the HA's normal State-law jurisdiction. Comments state that the rule should allow higher ongoing fees in other cases (not just for an HA operating in a large area), including higher fees to compensate for "extenuating problems". Comments recommend that the ability to pay higher fees should not be tied to availability of appropriations.

Unlike Section 8(q), the proposed rule would not have permitted a higher ongoing fee for "small programs". Comments state that the proposed rule discriminates against HAs with small programs. They state that the rule should allow a higher fee for small programs, such as small rural programs, as well as programs operating in larger areas.

HUD can only pay administrative fees from funds (budget authority) appropriated by the Congress. HUD has amended the final rule to provide that HUD may decide to approve a higher ongoing fee in the two cases allowed by the Congress under Section 8(q)—for small programs and for programs operating in large areas. (§ 982.152(b)(2))

The two cases stated in the rule include the major circumstances where a higher ongoing fee may be justified. An HA operating in a large area may incur higher expenses to service the assisted units, for example, because of longer trips to inspect program units scattered in rural communities, than an HA whose units are clustered closer to HA offices. HAs with small programs may not benefit from economies of scale in administration of the program.

The rule does not give HAs that operate in large areas or with small programs any right to a higher ongoing fee. HUD has full discretion whether to approve any increase over the normal ongoing fee.

At this time, HUD will not attempt, as suggested by comment, to further define in this rule when a higher fee may be approved for a "large" geographic area or a "small" HA program. The field office will apply these concepts on a case by case basis, in accordance with HUD Headquarters instructions, to determine if an HA needs a higher fee for proper administration of its individual program.

D. Preliminary Fee

HUD pays a preliminary fee for each new unit added to the HA program. (By law, the maximum preliminary fee for