

procedures for requesting a waiver and required documentation. HUD will take prompt action in responding to a waiver request, and any relief provided will be in accordance with these procedures and at a level established at HUD's discretion on a case-by-case basis.

Computation of Subsidy Under Proposed Rule

In computing its per-unit Dwelling Rental Income under the Performance Funding System, an HA will determine its Projected Occupancy Percentage in much the same manner as in the current rule. The HA will either take a "snapshot" of the last day of the month which is 6 months before the start of its fiscal year or take the average occupancy during that month. The HA will then use the data to develop an estimated average occupancy percentage for its Requested Budget Year (RBY). The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below:

(1) If the RBY percentage is 97% or higher, the HA will use 97% as its projected occupancy percentage. If the HA estimates a RBY percentage of less than 97% but can demonstrate that it will have an average of five or fewer vacant units in the requested budget year, the HA may use its RBY percentage as its projected occupancy percentage. (Reference in this part to "more than five units" or "fewer than five units" refers to a circumstance in which 5 units equals or exceeds 3% of the number of units to which the 3% threshold is applicable.)

Example: The ABC Housing Authority has 1,000 units available for occupancy. It estimates for its RBY an average of 980 units will be occupied, an occupancy rate of 98%. Since the RBY percentage is higher than 97%, it will use 97% as its projected occupancy percentage.

Example: The XYZ Housing Authority has 50 units available for occupancy. It estimates that for its RBY an average of 46 units will be occupied; a RBY occupancy percentage of 92%. Since the Authority estimates that it will have four vacant units in the RBY, it will use 92% as its projected occupancy percentage.

(2) If the RBY occupancy percentage is less than 97% and the HA has more than 5 vacant units, the HA will adjust its estimate of vacant units to exclude units undergoing modernization. (see item 3 under the section of the preamble headed *COMPONENTS OF PROPOSED RULE*). The HA will also adjust its estimate for units that are vacant due to circumstances and actions beyond the HA's control (see item 2 under the

section of the preamble headed *COMPONENTS OF PROPOSED RULE*). After making these adjustments, the HA will recalculate its estimated vacancy percentage. If the recalculated vacancy percentage is 3% or less (or the HA would have five or fewer vacant units), the HA will use its RBY occupancy percentage as its projected occupancy percentage.

Example: The ABC Housing Authority has 1,000 units available for occupancy. It estimates that for its RBY an average of 950 units will be occupied, a RBY occupancy percentage of 95%. Of its 50 vacant units, 40 units are part of a HUD-approved modernization budget and will be under a construction contract during the budget year. The Authority will adjust its 50 vacancies to exclude the 40 vacant units undergoing modernization and recalculate its RBY vacancy percentage ($10/1,000 = 1\%$). Since the recalculated RBY vacancy percentage is less than 3%, the Authority will use its RBY occupancy percentage of 95% as its projected occupancy percentage.

Example: The XYZ Housing Authority is a small HA with 50 units available for occupancy. It estimates for its RBY an average of 40 units will be occupied, a RBY occupancy percentage of 80%. The Authority documents that 5 of the vacancies are efficiencies in a building serving elderly residents. There is no demand for these units despite aggressive marketing and outreach and selling, demolishing, or reconfiguration of the units is not possible. Since the Authority can show that these 5 vacancies are due to circumstances or action beyond its control, it will adjust its 10 vacancies to exclude these 5. With the number of vacant units now recalculated to be 5, the Authority will use its RBY occupancy percentage of 80% as its projected occupancy percentage.

(3) If the RBY vacancy percentage is greater than 3% and the HA has more than 5 vacant units, even after adjusting for vacant units undergoing modernization or units vacant due to circumstances and actions beyond its control, the HA will then recalculate its RBY occupancy percentage by excluding from its calculation of units months available (UMAs), all vacant units that have been vacant for longer than 12 months that are not either undergoing modernization or vacant for reasons beyond the HA's control. The long-term vacancies removed will be eligible to receive a reduced operating subsidy calculated at 20% of the HA's AEL. The conditions under which the recalculated RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility for a low-occupancy HA are described below:

(a) If the recalculated RBY occupancy percentage estimate is 97% or higher, the HA will use 97%.

Example: The ABC Housing Authority has 1,000 units available for occupancy. It estimates for its RBY an average of 950 units will be occupied, a RBY occupancy percentage of 95%. The 50 vacant units do not meet the criteria of being either vacant units undergoing modernization or vacant due to circumstances or actions beyond the HA's control. There are 25 long-term vacancies in the group of 50. The Authority will remove these 25 units from its determination of units available for occupancy and recalculate its RBY occupancy percentage ($950/975 = 98\%$). Since the RBY occupancy percentage is higher than 97%, it will use 97% as its projected occupancy percentage.

(b) If the recalculated RBY occupancy percentage is less than 97%, but the RBY vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the HA's control is 3% or less (or the HA has five or fewer vacant units), the HA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

Example: The ABC Housing Authority has 1,000 units available for occupancy. It estimates for its RBY that an average of 900 units will be occupied, a RBY occupancy percentage of 90%. Of its 100 vacant units, 50 units are part of a HUD-approved modernization budget and will be under a construction contract during the budget year. The remaining 50 units fall outside the definition of being vacant due to circumstances or actions beyond the HA's control: 25 of these units have been vacant for more than 12 months (long-term vacancies) and 25 have been vacant for 12 months or less. When the Authority excludes its long-term vacancies from its inventory of units available for occupancy and recalculates its RBY occupancy percentage, it finds that the recalculated RBY occupancy percentage is still below 97%, ($900/975 = 92\%$). The Authority will then take its 75 vacancies, exclude the 50 vacant units undergoing modernization, and recalculate its RBY vacancy percentage. Since the resulting vacancy percentage is 3% or below ($25/975 = 3\%$), the Authority will use its recalculated RBY occupancy percentage of 92% as its projected occupancy percentage.

(c) If the vacancy percentage is greater than 3% and the HA has more than five vacant units after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the HA's control, the HA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the HA's control. For a small HA using five vacant units as its occupancy objective for the RBY, the HA will determine what percentage five