Subpart D—Calculating Formula Income

§ 990.195 Calculation of formula income.

(a) *General.* For the purpose of the formula, formula income is equal to the amount of rent charged to tenants divided by the respective unit months leased, and is therefore expressed as a PUM. Formula income will be derived from a PHA's year-end financial information. The financial information used in the formula income computation will be the audited information provided by the PHA through HUD's information systems. The information will be calculated using the following PHA fiscal year-end information:

(1) April 1, 2003, through March 31, 2004;

(2) July 1, 2003, through June 30, 2004;

(3) October 1, 2003, through September 30, 2004; and

(4) January 1, 2004, through December 31, 2004.

(b) *Calculation of formula income.* To calculate formula income in whole dollars, the PUM amount will be multiplied by the EUMs as described in subpart B of this part.

(c) *Frozen at 2004 level.* After a PHA's formula income is calculated as described in paragraph (a) of this section, it will not be recalculated or inflated for fiscal years 2007 through 2009, unless a PHA can show a severe local economic hardship that is impacting the PHA's ability to maintain some semblance of its formula income (see subpart G of this part—Appeals). A PHA's formula income may be recalculated if the PHA appeals to HUD for an adjustment in its formula.

(d) *Calculation of formula income when data are inadequate or unavailable.* When audited data are unavailable in HUD's information systems for the calculation of formula income, HUD may use an alternative methodology, including, but not limited to, certifications, hard copy reports, and communications with the respective PHAs.

(e) *Inapplicability of 24 CFR 85.25.* Formula income is not subject to the provisions regarding program income in 24 CFR 85.25.

[70 FR 54997, Sept. 19, 2005; 70 FR 61367, Oct. 24, 2005]

Subpart E—Determination and Payment of Operating Subsidy

§ 990.200 Determination of formula amount.

(a) *General.* The amount of operating subsidy that a PHA is eligible for is the difference between its formula expenses (as calculated under subpart C of this part) and its formula income (as calculated under subpart D of this part).

(b) *Use of HUD databases to calculate formula amount.* HUD shall utilize its databases to make the formula calculations. HUD's databases are intended to be employed to provide information on all primary factors in determining the operating subsidy amount. Each PHA is responsible for supplying accurate information on the status of each of its units in HUD's databases.

(c) *PHA responsibility to submit timely data.* PHAs shall submit data used in the formula on a regular and timely basis to ensure accurate calculation under the formula. If a PHA fails to provide accurate data, HUD will make a determination as to the PHA's inventory, occupancy, and financial information using available or verified data, which may result in a lower operating subsidy. HUD has the right to adjust any or all formula amounts based on clerical, mathematical, and information system errors that affect any of the data elements used in the calculation of the formula.

§ 990.205 Fungibility of operating subsidy between projects.

(a) *General.* Operating subsidy shall remain fully fungible between ACC projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can be transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information, as described more fully in § 990.280, produces excess cash flow, and only in the amount up to those excess cash flows.

(b) Notwithstanding the provisions of paragraph (a) of this section and subject to all of the other provisions of this part, the New York City Housing Authority's Development Grant

Project Amendment Number 180, dated July 13, 1995, to Consolidated Annual Contributions Contract NY–333, remains in effect.

§ 990.210 Payment of operating subsidy.

(a) *Payments of operating subsidy under the formula.* HUD shall make monthly payments equal to ¹⁄₁₂ of a PHA's total annual operating subsidy under the formula by electronic funds transfers through HUD's automated disbursement system. HUD shall establish thresholds that permit PHAs to request monthly installments. Requests by PHAs that exceed these thresholds will be subject to HUD review. HUD approvals of requests that exceed these thresholds are limited to PHAs that have an unanticipated and immediate need for disbursement.

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of the funding period, operating subsidy shall be provided monthly, quarterly, or annually based on the amount of the PHA's previous year's formula or another amount that HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available, HUD shall have discretion to revise, on a pro rata basis, the amounts of operating subsidy to be paid to PHAs.

§ 990.215 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *General.* Each PHA is required to reexamine the income of each family in accordance with the provisions of the ACC, the 1937 Act, and HUD regulations. Income reexaminations shall be performed annually, except as provided in the 1937 Act, in HUD regulations, or in the MTW agreements. A PHA must be in compliance with all reexamination requirements in order to be eligible to receive full operating subsidy. A PHA's calculations of rent and utility allowances shall be accurate and timely.

(b) *A PHA in compliance.* A PHA shall submit a certification that states that the PHA is in compliance with the annual income reexamination requirements and its rent and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.

(c) *A PHA not in compliance.* Any PHA not in compliance with annual income reexamination requirements at the time of the submission of the calculation of operating subsidy shall furnish to the responsible HUD field office a copy of the procedures it is using to achieve compliance and a statement of the number of families that have undergone reexamination during the 12 months preceding the current funding cycle. If, on the basis of this submission or any other information, HUD determines that the PHA is not substantially in compliance with all of the annual income reexamination requirements, HUD shall withhold payments to which the PHA may be entitled under this part. Payment may be withheld in an amount equal to HUD's estimate of the loss of rental income to the PHA resulting from its failure to comply with the requirements.

Subpart F—Transition Policy and Transition Funding

§ 990.220 Purpose.

This policy is aimed at assisting all PHAs in transitioning to the new funding levels as determined by the formula set forth in this rule. PHAs will be subject to a transition funding policy that will either increase or reduce their total operating subsidy for a given year.

§ 990.225 Transition determination.

The determination of the amount and period of the transition funding shall be based on the difference in subsidy levels between the formula set forth in this part and the formula in effect prior to implementation of the formula set forth in this part. The difference in subsidy levels will be calculated using FY 2004 data. When actual data are not available for one of the formula components needed to calculate the formula of this part for FY 2004, HUD will use alternate data as a substitute (*e.g.*, unit months available for eligible unit months, etc.) If the difference between these formulas indicates that a PHA