

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 93

[Docket No. FR-5246-P-01]

RIN 2506-AC23

## Housing Trust Fund; Allocation Formula

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Housing and Economic Recovery Act of 2008 establishes a Housing Trust Fund to be administered by HUD. The purpose of the fund is to provide grants to States to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families, and to increase homeownership for extremely low- and very low-income families. The Housing and Economic Recovery Act of 2008 charges HUD to establish through regulation the formula for the distribution of the Housing Trust Fund to States. The statute specifies that only certain factors are to be part of the formula, and assigns priority to certain factors. This proposed rule submits, for public comment, the proposed formula for allocating funds from the Housing Trust Fund.

**DATES:** *Comment due date:* February 2, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables

HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

### FOR FURTHER INFORMATION CONTACT:

Marcia Sigal, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7158, Washington, DC 20410; telephone number 202-708-2684 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Housing and Economic Recovery Act of 2008, (Pub. L. 110-289, enacted July 30, 2008) (HERA) was major housing legislation enacted to reform and improve the regulation of Fannie Mae and Freddie Mac (the government-sponsored enterprises or GSEs), strengthen neighborhoods hardest hit by the foreclosure crisis, enhance mortgage protection and disclosures, and maintain the availability of affordable home loans. Section 1131 of HERA amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Act) to add a new section 1337, entitled "Affordable Housing

Allocation" and a new section 1338, entitled "Housing Trust Fund."

Section 1338 of the Act directs HUD to establish and manage a Housing Trust Fund, which is to be funded with amounts allocated by the GSEs as well as any amounts that may be appropriated, transferred, or credited to the Housing Trust Fund under any other provision of law. The purpose of the Housing Trust Fund is to provide grants to States for use to: (1) Increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families; and (2) increase homeownership for extremely low- and very low-income families. The primary focus of the Housing Trust Fund is rental housing for extremely low- and very low-income households, as the Act provides that no more than 10 percent of each formula allocation may be expended on homeownership.

#### II. This Proposed Rule—New 24 CFR Part 93

HUD proposes to codify the regulations for the Housing Trust Fund in a new part 93 of title 24 of the Code of Federal Regulations. Further, HUD intends to implement the Housing Trust Fund through two separate rulemakings. Today's proposed rule would establish new 24 CFR part 93, and codify the formula for grant allocations under the Housing Trust Fund. A future rulemaking will propose the requirements and procedures governing operation of the Housing Trust Fund.

This section of the preamble highlights some of the key provisions of today's proposed rule.

##### A. General Provisions—Subpart A

Subpart A of new part 93 would set forth the general provisions applicable to the Housing Trust Fund (HTF) program. This subpart includes a definition section (§ 93.52) that establishes the definitions applicable to the HTF program. In keeping with the scope of this rulemaking, the definitions that would be established by the proposed rule pertain to the allocation formula, including the statutory definitions of "extremely low-income renter household," "shortage of standard rental units both affordable and available to extremely low-income renter households," and "shortage of standard rental units both affordable and available to very low-income renter households," found in section 1338(f) of the Act. The list of defined terms will be expanded, as necessary, by HUD's forthcoming rule establishing the HTF programmatic requirements.

The proposed rule utilizes the statutory definitions of the terms “extremely low-income renter household” and “very low-income renter household.” Specifically, the proposed rule would define an extremely low-income renter household as a household whose income does not exceed 30 percent of the area median income (AMI). A very low-income renter household would be defined as a household whose income does not exceed 50 percent of AMI. Consistent with departmental practice for other of its programs, the proposed definitions of extremely low-income and very low-income renter households would provide for adjustment for family size as determined by the Secretary of HUD. The adjustments are standard factors that HUD applies to AMI before determining the extremely low-income and very low-income threshold. The adjustments for other family sizes are as follows: One person, 70 percent of AMI; two persons, 80 percent of AMI; three persons, 90 percent of AMI; four persons, base AMI; five persons, 108 percent of AMI; six persons, 116 percent of AMI; seven persons, 124 percent of AMI; and eight persons, 132 percent of AMI. The method is documented in the “FY 2008 HUD Income Limits” briefing materials available at <http://www.huduser.org/datasets/il/il08/index.html>.

The proposed rule would also track the statutory definition of the term “shortage of standard rental units both affordable and available to extremely low-income renter households.” Consistent with the statutory language, the determination of whether such a shortage exists would be based on the gap between (1) the number of units with complete plumbing and kitchen facilities with a rent that does not exceed 30 percent of the income of a household whose income is 30 percent of the AMI, that either are occupied by extremely low-income renter households or are vacant for rent; and (2) the number of extremely low-income renter households.

The proposed rule uses the “30 percent of 30 percent” terminology for consistency with the statutory language and conformity to housing industry practice to approximate the annual gross rent affordable to extremely low-income renter households; however, HUD notes that “30 percent of 30 percent” of the AMI equals nine percent of the AMI. In addition, the annual gross rent affordable to extremely low-income households is adjusted for the number of bedrooms. This is done to take into consideration that the number of bedrooms needed for a unit will vary

with family size. This method will be documented and made available on the <http://www.huduser.org> Web site.

#### B. Allocation Formula—Subpart B

The allocation formula for the HTF program would be codified in subpart B of new 24 CFR part 93. The factors which determine the allocation of the formula incorporate the statutory factors found in section 1338(c)(3)(B) of the Act. The statutory factors are as follows:

(B)(i) The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(ii) The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(iii) The ratio of extremely low-income renter households in the State living with either (I) incomplete kitchen or plumbing facilities, (II) more than 1 person per room, or (III) paying more than 50 percent of income for housing costs, to the aggregate number of extremely low-income renter households living with either (IV) incomplete kitchen or plumbing facilities, (V) more than 1 person per room, or (VI) paying more than 50 percent of income for housing costs in all the States.

(iv) The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(v) The resulting sum calculated from the factors described in clauses (i) through (iv) shall be multiplied by the relative cost of construction in the State. For purposes of this subclause, the term “cost of construction”—

(I) means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(II) shall be calculated such that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

The statutory formula factors are incorporated in proposed § 93.70. Section 1338(c)(3)(C) of the Act requires the formula to give priority emphasis and consideration to the first factor in section 1338(c)(3)(B)(i). The proposed rule reflects this priority consideration by weighting this factor higher than the other factors in the formula (see proposed § 93.70(b)(2)). Section 1338(c)(10)(A) of the Act requires that

no more than 10 percent of the funds may be spent on homeownership activities, Section 1338(c)(10)(D) states that no more than 10 percent may be spent on administration, and Section 1338(c)(10)(A) states that a minimum of 75 percent of the funds for rental activities must be for the benefit only of extremely low-income families or families with incomes at or below the poverty line. Therefore, HUD proposes to ensure that the two factors in section 1338(c)(3)(B)(i) that address extremely low-income renters, the first and third factors, receive a combined weight of 75 percent, with priority emphasis on the first factor.

Section 1338(c)(4)(B) of the Act provides that in each fiscal year other than Fiscal Year 2009, the Secretary of HUD shall make a grant to each State in an amount that is equal to the amount determined for that State under the formula. Section 1303 of the Act defines the term “State” to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, America Samoa and Trust Territory of the Pacific Islands, and any other territory or possession of the United States. There are no remaining entities or jurisdictions in the Trust Territory of the Pacific Islands or other territories or possessions of the United States. Accordingly, these jurisdictions are not included in the proposed regulatory definition of the term “State”.

Data for calculating the HTF program formula allocations must come from readily available standardized data sources. The U.S. Census, the American Community Survey, and the RSMears cost survey, are the most readily available sources for the data necessary to calculate the formula allocations. However, the data available for insular areas (Guam, the Northern Mariana Islands, the United States Virgin Islands, and America Samoa) in the surveys differ from the data available from those sources for the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia. To accommodate the differences in data, the proposed rule would establish a separate formula allocation process for the insular areas. The portion of the annual appropriation available for formula allocations for insular areas will be determined by establishing the ratio of renter households in the insular areas to the total number of renter households in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas. This is an appropriate way to establish the amount to be allocated to the insular areas, as these data (on

renter households) are readily available from the U.S. Census Bureau for all of the jurisdictions in the potential pool of grantees for this program; and the primary focus of the HTF is to produce or preserve housing to serve renter households. Note that because of the limited data available for insular areas, HUD's other formula programs similar to the HTF program also treat insular areas in a different way than other program grantees. For example, the HOME and Community Development Block Grants programs set aside specific percentage or dollar amounts for the insular areas. Proposed § 93.60(b) describes this allocation process.

As noted above, section 1338(c)(3)(B)(v) of the Act requires that the formula contain a multiplication factor reflecting the relative cost of construction in the State. The construction cost factor would be implemented at § 93.70(c)(5). HUD will use RSMean construction cost data in making this calculation. The factor will be constructed by calculating a population weighted average of the construction costs in sampled metropolitan areas of each State as a proportion of the national average of such State averages. For example, if a State's weighted average RSMean location adjustment factor is 0.818 and the national average of the State averages is 0.939, that State's base calculation, based on its share of housing need, would be multiplied times a ratio of 0.818/0.939. That is, the base calculation would be multiplied times 0.871. In contrast, a State with an average location adjustment factor of 1.145 would have its grant multiplied times a ratio of 1.145/0.939, thus its base calculation would be multiplied times 1.220.

Section 1338(c)(4)(C) of the Act establishes minimum allocations for the 50 States and the District of Columbia and provides that if the formula would allocate less than \$3,000,000 to any of the 50 States or the District of Columbia in a fiscal year, the allocation for such State or the District of Columbia shall be \$3,000,000, and the portion of State calculated allocations above \$3,000,000 would be pro rata adjusted to match the amount available to be allocated. The minimum allocation established by the Act is found in proposed § 93.70(d).

### III. Findings and Certifications

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, "Regulatory Planning and Review").

This rule was determined to be economically significant under the Executive Order. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

The Economic Analysis prepared for this rule also is available for public inspection and on HUD's Web site at <http://www.hud.gov>. A summary of the findings contained in the Economic Analysis follows.

#### *A. Assessing Effects of HUD's Discretionary Choices in Defining the Allocation Formula*

In developing the allocation formula, HUD tested several alternatives to determine to what extent the resulting economic outcomes are sensitive to modest discretionary choices.

To address the statutory requirement that Factor 1 (shortage of extremely low-income (ELI) rental units) be given "priority emphasis and consideration" HUD proposes to assign to the factor 50 percent of the total weight. By further giving a 25 percent weight to Factor 3 (housing problems of ELI renters), the weights will correspond with the statute's 75 percent requirement for targeting rental housing funds toward ELI households. HUD proposes equal weights of 12.5 percent for Factor 2 (shortage of very low-income units) and Factor 4 (severe cost burdens of very low-income renters). The Department's proposed allocation formula can be considered to use a 50-12.5-25-12.5 weighting approach for the four factors.

To examine the importance of this weighting for allocation outcomes, HUD also ran the allocation formula with alternative weight structures. The first alternative was to retain the 50 percent priority weight for Factor 1 but remove the overweighting of Factor 3 so that it equals Factors 2 and 4, resulting in a 50-16.7-16.7-16.7 structure. HUD also tested two additional levels of preference for Factor 1, one applying a weight 10 percentage points below and the other 10 points above the proposed 50 percent value. Both of these

alternatives provide equal weights for the other factors.

#### *B. Selection of Alternative for Proposed Rule*

HUD concluded that the allocation formula weights in the proposed rule accommodate States for which ELI needs take different forms, while responding as closely as feasible to the statutory requirement that 75 percent of rental assistance funds provided by the Housing Trust Fund should serve ELI households. HUD's analysis of the sensitivity of State allocations to various prioritizations of the needs of ELI renters under Factor 1 and Factor 3 revealed that about half of the States are not affected greatly by any of the weighting alternatives, as 23 to 30 States experiencing changes of less than 1 percent. For larger States, effects tend to be more pronounced, yet only rarely exceeding 3 percent relative to HUD's proposed formula.

#### *C. Summary of Impacts*

As noted, HERA is very specific about the factors to be used in the allocation formula and different weighting schemes have only modest impact on allocation grants. The largest impact on allocation grants is the amount made available for the program. The direct Federal cost of the program will be the amount eventually provided by Congress.

The proposed allocation formula is intended to target funds primarily to States with a shortage of rental housing affordable to extremely low-income households. Specifically, this program provides funding to add supply to market places where there is strong evidence of inadequate supply. This program represents a strong complement to the demand side program, the Housing Choice Voucher program, which provides a tenant based subsidy for primarily extremely low-income households to afford existing privately owned rental housing. The primary benefits of the HTF program are expected to be similar to the Housing Choice Voucher program. An evaluation of the impact of receiving a housing voucher versus not receiving a housing voucher has shown that the primary benefit of housing assistance programs is to reduce homelessness and housing cost burdens. Thus, the primary benefit of the HTF program will be to reduce the number of homeless families and individuals, as well as reducing the number of families paying a disproportionate share of their income for housing in relatively tight housing markets.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Under the HTF program, HUD makes grants to the relatively large entities, States and their designated housing entities, for the purposes of increasing and preserving the supply of rental housing and homeownership for eligible families. The focus of this proposed rule is the proposed formula for the HTF program. The formula allocations in this program are statutorily restricted to States and their designated entities. Therefore, the primary focus of this proposed rule is on these large entities. The States and State designated housing entities may, in turn, make funding available to recipients, which may include smaller entities (such as nonprofit or for-profit organizations). However, HUD does not anticipate that this proposed rule will place an undue burden on these smaller entities. The proposed rule, to a great extent, tracks the language of the authorizing statute. Accordingly, the proposed regulatory text reflects statutorily mandated requirements that HUD does not have the discretion to modify.

HUD has attempted to minimize the regulatory burden imposed for all entities participating in the HTF program. However, HUD also is cognizant that, as with all new programs, changes to these regulations may be necessary as the Department and participating entities gain experience with the HTF program. HUD will take into consideration the special needs and concerns of small entities in crafting any such future amendments, as it has done in developing this proposed rule. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for

public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of Section 6 of the Executive Order are met. This rule does not have federalism implications, and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandate on any State, local, or Tribal government or the private sector within the meaning of UMRA.

**List of Subjects in 24 CFR Part 93**

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

1. Add new part 93 to read as follows:

**PART 93—HOUSING TRUST FUND**

Sec.

**Subpart A—General Provisions**

93.50 Purpose.

93.52 Definitions.

**Subpart B—Allocation Formula**

93.55 Formula allocation.

93.60 Allocations for the insular areas.

93.70 Allocations for the 50 States, the Commonwealth of Puerto Rico and the District of Columbia.

93.75 Federal Register notice of formula allocations.

**Authority:** 12 U.S.C. 4567; 42 U.S.C. 3535(d).

**Subpart A—General Provisions****§ 93.50 Purpose.**

This part implements the Housing Trust Fund (HTF) program established under section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act, as amended by the Federal Housing Finance Regulatory Reform Act of 2008 (12 U.S.C. 4568) (Act). In general, under the HTF program, HUD allocates funds by formula to eligible States to increase and preserve the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for extremely low-income and very low-income households, including homeless families.

**§ 93.52 Definitions.**

As used in this part:

*Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

*Extremely low-income renter households* means a household whose income is not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

*Household* means one or more persons occupying a housing unit.

*Insular areas* means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

*Poverty line* is defined in section 673 of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902).

*Secretary* means the Secretary of Housing and Urban Development.

*Shortage of standard rental units both affordable and available to extremely low-income renter households* (1) Means for any State or other geographical area the gap between:

(i) The number of units with complete plumbing and kitchen facilities with a rent that does not exceed 30 percent of 30 percent of the adjusted area median income (AMI) as determined by the Secretary that either are occupied by extremely low-income renter households or are vacant for rent; and

(ii) The number of extremely low-income renter households.

(2) If the number of units described in paragraph (1)(i) of this definition exceeds the number of extremely low-income households described in paragraph (1)(ii) of this definition, there is no shortage.

*Shortage of standard rental units both affordable and available to very low-income renter households* (1) Means for any State or other geographical area the gap between:

(i) The number of units with complete plumbing and kitchen facilities with a rent that is greater than 30 percent of the income of a household whose income is 30 percent of the AMI, but does not exceed 30 percent of 50 percent of the AMI as determined by the Secretary that either are occupied by very low-income renter households (net of units occupied by extremely low-income households) or are vacant for rent; and

(ii) The number of very low-income renter households (net of extremely low-income households).

(2) If the number of units described in paragraph (1)(i) of this definition exceeds the number of very low-income households as described in subparagraph (1)(ii) of this definition, there is no shortage.

*State* means any State of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the insular areas.

*Very low-income renter households* means a household whose income is in excess of 30 percent but not greater than 50 percent of the AMI, with adjustments for smaller and larger families, as determined by the Secretary.

## Subpart B—Allocation Formula

### § 93.55 Formula allocation.

(a) HUD will provide to the States allocations of funds in amounts determined by the formula described in this subpart.

(b) The amount of funds available for allocation by the formula is the balance remaining after providing for other purposes authorized by Congress, in accordance with the Act and appropriations.

### § 93.60 Allocations for the insular areas.

The allocation amount for each insular area is determined by multiplying the funds available times the ratio of renter households in each insular area to the total number of renter households in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas. This allocation is not subject to adjustment pursuant to § 93.70(d).

### § 93.70 Allocations for the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia.

(a) *Amounts available for allocations.* The amount of funds that is available for allocation by the formula to the 50 States, the Commonwealth of Puerto Rico, and the District of Columbia is determined using the most current data available from the U.S. Census Bureau that is available for the same year for all these geographic areas. The amount is equal to the balance of funds remaining after determining formula allocations for the insular areas under § 93.60. For purposes of subsections (b) and (c) of this section, the term “State” means any of the 50 United States, the Commonwealth of Puerto Rico, and the District of Columbia.

(b) *Allocations.* (1) Allocations to the States are determined using the four needs factors described in paragraphs (c)(1) through (c)(4) of this section, multiplying each factor by the amount available under paragraph (a) of this section by its priority weight, and summing the four factors for each State.

(2) The factor described in paragraph (c)(1) of this section is weighted 0.5. The factors described in paragraphs (c)(2) and (c)(4) of this section are weighted at 0.125 and the factor described in paragraph (c)(3) of this section is weighted at 0.25.

(3) The sum of the four needs factors for each State is then multiplied by the construction cost factor described in paragraph (c)(5) of this section and by the total amount of funds available for State allocations.

(c) *Formula factors*—(1) *Need factor one.* The ratio of the shortage of standard rental units both affordable and available to extremely low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to extremely low-income renter households in all the States.

(2) *Need factor two.* The ratio of the shortage of standard rental units both affordable and available to very low-income renter households in the State to the aggregate shortage of standard rental units both affordable and available to very low-income renter households in all the States.

(3) *Need factor three.* The ratio of:

(i) Extremely low-income renter households in the State living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs, to:

(ii) The aggregate number of extremely low-income renter households living with either incomplete kitchen or plumbing facilities, more than one person per room, or paying more than 50 percent of income for housing costs in all the States.

(4) *Need factor four.* The ratio of very low-income renter households in the State paying more than 50 percent of income on rent relative to the aggregate number of very low-income renter households paying more than 50 percent of income on rent in all the States.

(5) *Construction cost factor.* The resulting sum calculated from the factors described in paragraphs (c)(1) through (c)(4) of this section shall be multiplied by the relative cost of construction in the State. For purposes of calculating this factor, the term “cost of construction”:

(i) Means the cost of construction or building rehabilitation in the State relative to the national cost of construction or building rehabilitation; and

(ii) Is calculated so that values higher than 1.0 indicate that the State's construction costs are higher than the national average, a value of 1.0 indicates that the State's construction costs are exactly the same as the national average, and values lower than 1.0 indicate that the State's cost of construction are lower than the national average.

(d) *Minimum allocations.* If the formula amount determined for a fiscal year is less than \$3,000,000 to any of the 50 States or the District of Columbia, then the allocation to that State or the District of Columbia is increased to the \$3,000,000, and allocations to States, the Commonwealth of Puerto Rico, and the District of Columbia above \$3,000,000 are adjusted by an equal amount on a pro rata basis.

### § 93.75 Federal Register notice of formula allocations.

Not later than 60 days after the date that HUD determines the formula amounts under this subpart, HUD will publish a notice in the **Federal Register** announcing the availability of the allocations to States.

Dated: November 4, 2009.

**Mercedes M. Márquez,**  
Assistant Secretary for Community Planning and Development.

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