



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Operating Fund Negotiated Rulemaking Advisory Committee

9:00 am to 5:00 pm EST, Bolger Center, Potomac, MD

MINUTES OF FOURTH MEETING – DAY ONE

1 June 8, 2004 Session:

2

3 The first meeting of the Negotiated Rulemaking (Neg-Reg) Advisory Committee on the
 4 Operating Fund Allocation System (the Committee) was called to order at 9:05 am on Tuesday,
 5 June 8, 2004, by Mr. Michael Liu, the Assistant Secretary of Public and Indian Housing. Ms.
 6 Tran served as the facilitator. The location of the meeting was the Benjamin Franklin Hall of the
 7 Bolger Center; 9600 Newbridge Drive, Potomac, MD 20854.

8

9 Committee members in attendance and interests represented were:

10

No.	Committee Member	Organization
1	Mr. Michael Liu	Assistant Secretary, Public and Indian Housing
2	Mr. William Russell	Deputy Assistant Secretary, Public Housing and Voucher Programs
3	Mr. Steve Nolan	Atlanta Housing Authority
4	Mr. Felix Lam	New York City Housing Authority
5	Mr. Carlos Laboy-Diaz	Puerto Rico Housing Authority
6	Mr. Todd Gomez	Chicago Housing Authority
7	Ms. Janie Douglass	Dallas Housing Authority
8	Mr. Larry Loyd	Housing Commission of Anne Arundel County
9	Mr. Rufus Myers	Indianapolis Housing Authority
10	Mr. Steven Longo	Albany Housing Authority
11	Mr. Rick Parker	Athens Housing Authority
12	Mr. Richard Murray	Housing Authority of East Baton Rouge
13	Mr. Michael McInnish	Housing Authority of the City of Montgomery
14	Mr. Willie Martin	Jackson Housing Authority
15	Ms. Deanna Watson ¹	Boise City/Ada County Housing Authority
16	Mr. David Morton	Reno Housing Authority
17	Ms. Ophelia Basgal	Alameda County Housing Authority
18	Ms. Sharon Scudder	Meade County Housing Authority
19	Mr. John Cooper	Massachusetts Union of Public Housing Tenants
20	Ms. Veronica Sledge	Resident Advisory Board/Victory Point RMC
21	Mr. Ned Epstein	Housing Partners, Inc.
22	Mr. Greg Byrne	Harvard Cost Study
23	Mr. Dan Anderson	Bank of America
24	Mr. David Land ¹	Lindsey and Company
25	Mr. Sunia Zaterman	Council of Large Public Housing Authorities (CLPHA)
26	Mr. Saul Ramirez	National Association of Housing and Redevelopment Officials (NAHRO)
27	Mr. Tim Kaiser	Public Housing Authorities Directors Association (PHADA)
28	Mr. Michael Kelly	National Organization of African Americans in Housing (NOAAH)

11 ¹ Ms. Watson and Mr. Land were not present at the 4th Session.



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1 **Appendix 1** contains the sign in sheets for the Committee members and members of the public.
2 **Appendix 2** contains the proposed agenda for June 8th and June 9th, 2004. The committee
3 members were provided with a copy of the Pre-4th Session Draft Interim-Final Rule for the day
4 (See **Appendix 3**).
5

6 **[Mr. Land and Ms. Watson are not present. Ms. Mejia is representing the Chicago HA.]**
7

8 Ms. Tran Good morning and welcome to the Bolger Center. A few items, first how
9 to operate your chair. You can use the lever on the right hand side of the
10 chair to raise or lower your chair. The second item is how to work the
11 microphones. You have to push the green button to turn the microphone
12 on in order to speak and you must press the button again to turn it off. Our
13 sound technician, Chris, will adjust the sound level if necessary. Also, I
14 have a master microphone, which allows me to silence your microphone if
15 you go over the time limit. We would like to start the morning with the
16 working groups. The first working group will discuss PEL in room 16.
17 The second work group will convene to discuss utilities in room 14 and
18 the third will cover Eligible Unit Months (EUM) in room 4, which is also
19 the Industry Caucus Room. We would like working groups to go ahead
20 and meet in the designated location to discuss the remaining issues and
21 then we can reconvene back in this room at 10:30 am.
22

23 Ms. Zatterman Am I to understand that the Asset Repositioning Working Group had
24 reached consensus, because I had heard otherwise.
25

26 Mr. Kubacki Mr. Nolan and I spoke and he was going to gather the group and go over
27 the language that was of concern this morning while the other working
28 groups met.
29

30 Mr. Ramirez I have a point of clarification, so that we are clear on the charge of the
31 working groups. The working groups are to flush out these subparts
32 where no consensus was reached. Am I correct in my understanding that
33 the decisions reached in the working groups are not binding to the group.
34

35 Ms. Tran That is correct. If that is all, let's go ahead and have the working groups
36 get together.
37

38 **The working groups convened at 9:10 am. The committee reconvened at 4:38 pm.**
39

40 **[Mr. Todd Gomez is now representing the Chicago HA.]**
41



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- 1 Ms. Tran Everyone, please take your seats. Welcome back. A few reminders, one
2 please raise your tent cards if you wish to speak. The first topic that we
3 will discuss will be PEL. Mr. Kubacki will read the language from the
4 screens that are located at either end of the table and hard copies will also
5 be distributed to all the committee members so that everyone can follow
6 along with the proposed changes.
7
- 8 **[Subpart C – Calculating Formula Expenses section §990.155 – Computation of Project**
9 **Expense Level as revised (6/8/04 2:03 pm) was distributed to the committee members (See**
10 **Appendix 4).]**
- 11
- 12 Mr. Kubacki We would like to go through what the working group discussed and
13 summarize how we came up with the language that you see on the screen.
14 The following were members of the working group: Dan Anderson,
15 Michael McInnish, Saul Ramirez, Veronica Sledge, Willie Martin, Lloyd
16 Strickland and William Maher. We met on and off from Wednesday May
17 55th through Wednesday May 27th and we met again this morning to
18 develop the language that is now shown before you. The adoption of the
19 Harvard Cost Study methodology at the second session had the goal of a
20 more simplified and transparent formula. We initially walked the group
21 through how the PEL would be calculated. The regulation language walks
22 through the steps that a PHA would need to go through to calculate a PEL.
23 The PEL would be based on FY 2000 data so we then talked about an
24 inflation factor that would be applied to bring up the numbers to the
25 current amount. The group looked at the Bureau of Labor Statistics,
26 which would be 40% Consumer Price Index (CPI) and 60% of
27 Employment Cost Index (ECI). The only other major concern was
28 language regarding compliance with asset management and the issue of
29 basing operating subsidy in FY 2011 on a PHAs compliance. The
30 committee agreed that HUD would convene a meeting via FACA
31 regulations in FY 2009 to discuss this last issue. With that said, we would
32 now like to present that language to the committee.
33
- 34 Mr. Nolan For Subpart E – Determination and Payment of Operating Subsidy - will
35 the audit costs from FY 2003 remain in place?
36
- 37 Mr. Kubacki That is correct.
38
- 39 Ms. Tran Would the committee like to go through this page by page?
40
- 41 Mr. Ramirez I don't know if we want to read this page by page, but there were changes
42 that were not picked up. One change was on line 9 where it refers to



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- 1 floors and ceilings. We had talked about inserting “referenced by the
2 Harvard Cost Study”.
- 3
- 4 Ms. Tran What page are you on?
- 5
- 6 Mr. Ramirez Page 3.
- 7
- 8 Mr. Kubacki Page 2, lines 12-14 we inserted that language.
- 9
- 10 [The language is shown on the screen to read: “As referenced in the Harvard Public Housing
11 Cost Study, they are (1) a \$200 floor for any senior property and a \$215 floor for any family
12 property, (2) a \$420 ceiling for any property except for New York City Housing Authority
13 projects, which have a \$480 ceiling, (3) 4% reduction for any PEL calculated over \$325, limited
14 to \$325; (4) a public entity fee, calculated at \$2 per unit month for the initial PELs; and (5) audit
15 costs as reported for FFY 2003 PUM amount.]
- 16
- 17 Mr. Ramirez Great, the language is in there.
- 18
- 19 Mr. Byrne On page 2, line 17 regarding audit costs as reported, this reads as if you
20 get both the Harvard Cost Study amount and the audit costs. Are we not
21 reducing the Harvard Cost Study and then getting the audit costs? It
22 seems that you are double counting.
- 23
- 24 Mr. Kubacki There should be a reference that it is deducted from the Harvard Cost
25 Study. I agree that it should be clearer.
- 26
- 27 Mr. Ramirez On page 3, line 9 it is my understanding that the committee brought this
28 forward for consideration that the word “adjusted” should be “unadjusted”
29 because the adjustments are after the PEL, therefore the sentence should
30 read “The exponent of that sum shall be multiplied by 110% to reflect the
31 non-profit ownership type, which will produce an unadjusted PEL.”
- 32
- 33 Ms. Tran Can you please read the sentence again, Mr. Ramirez.
- 34
- 35 **[Mr. Ramirez read the revised sentence.]**
- 36
- 37 Mr. Parker In the same sentence, the constant is a percentage. Could someone remind
38 me how this works.
- 39



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- 1 Mr. Kubacki The coefficients that we put out are in percentages.
2
3 Mr. Parker The cost of 520.18% gets applied to what?
4
5 Mr. Kubacki We take the coefficient of each variable and apply the percentage.
6
7 Mr. Parker On line 9, I assume the order of application be the same order that is
8 published in the Harvard Cost Study. We are talking about taking the
9 published Harvard numbers. We could come up different numbers, but we
10 should use the Harvard numbers.
11
12 Mr. Kubacki Mr. Parker you are correct in that the order does matter and we have steps
13 laid out stating what that order should be.
14
15 Mr. Parker Will it be in the same order as the Study?
16
17 Mr. Kubacki Yes, it will tie to the Harvard Cost Study number.
18
19 Mr. Kaiser I have a question on page 2, line 17 and on page 2 lines 10 and 11.
20 Regarding line 17 and the audit costs that will be used or as it reads “(5)
21 audit costs reported on FFY 2003 PUM amount”. Maybe I don’t
22 understand, but on the next page it talks about a public entity fee. Can you
23 explain that disparity?
24
25 Mr. Kubacki We have a handout (See [Appendix 5](#)) that walks us through the steps.
26 Would the committee like to see this document?
27
28 **[Committee motions ‘yes’. Appendix 1 of Draft Rule – Detailed Computation of Project**
29 **Expense Level (PEL) dated 6/3/04 was distributed (See [Appendix 5](#).)]**
30
31 Mr. Kubacki Now that everyone has a copy of Appendix 1, I will walk you through this
32 document. Essentially, we will use the 10 variables that were in the
33 Harvard Cost Study from Size to Geographic Area. Step one is to
34 calculate the PEL you need to determine the proper coefficient for the 10
35 variables, those that are published in the Study using the applicable
36 characteristics. This is how this is published and you can see that it is
37 stated in percentages. If you look at your property coefficients and let’s
38 say that you have less than 100 units you would get 4%. You would do
39 the same for each coefficient. Step two is where you sum the coefficients.
40 You just add up the 8 coefficients, you don’t add are bedroom size, which
41 requires you to figure how many 2 or 3 bedrooms you have you have and



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- 1 that in itself is really a separate step. Step four is adding the results to
2 520.18% model constant and you take the x component of that result. You
3 can use MS Excel to compute this formula and that gives you the PUM.
4 You multiply the PUM by 110%, which is the nonprofit coefficient. Step
5 seven you add when the PUM is above \$325 and then you reduce it by
6 4%, except for NYCHA. Step seven does not apply to NYCHA. Then
7 you add the public entity fee, which is Step nine. Step ten is where you
8 subtract the audit costs from Step nine. Step 11 is when you increase the
9 results of Step ten by the annual inflation factor. We have an MS Excel
10 template to show you , which walks you through the steps and
11 calculations.
12
- 13 Mr. Kaiser Can we get a copy of that template so our statistician can review it?
14
- 15 Mr. Ramirez I understand and appreciate the hard efforts of the Department. On page
16 2, line 19, it should be “annually, commencing in 2005 by an inflation
17 factor based on information...”: Is that acceptable?
18
- 19 Mr. Kubacki Yes.
20
- 21 [The revised sentence will read: “The PEL for each project shall be adjusted annually,
22 commencing in 2005, by an inflation factor based on information published by the U.S.
23 Department of Labor Bureau of Labor Statistics (BLS).”]
24
- 25 Mr. Ramirez Unless there are comments on pages 2 or 3, I would like to ask a question
26 about page 4.
27
- 28 Ms. Scudder For clarification purposes, because the Harvard Cost Study was done in
29 FY 2000, will the floor will be adjusted by an inflation factor?
30
- 31 Mr. Kubacki No. We will calculate the PEL one time. It gets calculated at FY 2000 and
32 the floors and ceilings reflect FY 2000 dollars then we use and inflation
33 factor to update the PEL.
34
- 35 Ms. Tran Ms. Scudder would you like to comment?
36
- 37 Ms. Scudder What can I say?
38
- 39 Mr. Lam To be very clear, with respect to the inflation factor, what impact does that
40 have on the ceilings?
41



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- 1 Mr. Kubacki Once we have an adjusted PEL, if you had a floor or ceiling then you
2 apply the inflation factor going forward. We don't recalculate it each
3 year.
4
- 5 Mr. Lam Then the floors and ceilings are abandoned after the initial calculation?
6
- 7 Mr. Strickland For the record, on line 7 of page 3 I would like to see why there are a
8 couple of points that are different than the Harvard Cost Study. If
9 someone in our group could explain that to the committee.
10
- 11 Ms. Tran Mr. Kubacki, Mark Hutton provided an explanation to the working group
12 that met earlier today, perhaps Mr. Hutton can step forward and repeat
13 what he said earlier.
14
- 15 Mr. Kubacki That is fine. Let's come back to this once Mr. Hutton is present.
16
- 17 Mr. Strickland Is there a reason why audit costs are subtracted out of FY 2003? Would it
18 make more sense to subtract out the FY 2000 costs out of FY 2000
19 number?
20
- 21 Mr. Kubacki We used FY 2003 data because that's what we talked about in the first few
22 sessions, but there is merit in what you are saying.
23
- 24 Ms. Tran Are there any other questions?
25
- 26 **[Silence.]**
27
- 28 Ms. Tran Let's move to page 4 and then we will go back to Mr. Strickland's
29 comments.
30
- 31 Ms. Zaterman On page 4, lines 2-3 could we state that "PHA has submitted rental term
32 sheet" instead of "(ii) a PHA has filed a complete package of definitive
33 documents seeking HUD approval for a mixed finance closing" so that it
34 is easily defined and understood.
35
- 36 Mr. Liu The problem there is that the final package consists of more than just a
37 term sheet, there are other documents and using "Rental Term Sheet" does
38 not depict that.
39
- 40 Ms. Zaterman The hope was to get clarity on "definitive documents". We would like
41 more clarity regarding that.
42



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- 1 Mr. Liu Again, the problem is that it can differ, and so in each mixed-finance
2 closing so you might have different documents. It should be kept as
3 “definitive” to include all the documents of a closing package.
4
- 5 Ms. Zaterman The concern is to give comfort to nervous investors. The rental term sheet
6 does define the business aspect of this provision. Really we want to give
7 comfort to investors, so how can we do that?
8
- 9 Mr. Liu Perhaps Mr. Anderson could speak to this.
10
- 11 Mr. Anderson The general notion is that the form of documents which represent the final
12 business agreement which HUD is asked to approve is the marker. This is
13 designed to capture the documents current review by the Department at
14 the effective date of the rule and not thereafter.
15
- 16 Ms. Zaterman Maybe this is not the time to work out this language but I assume that
17 once they submit a rental term sheet the deal is locked.
18
- 19 Mr. Anderson That is a misconception. Until you have the agreement reduced to writing
20 and formally filed as a composite approval package you are not there.
21
- 22 Ms. Zaterman Is there something between “rental term sheet” and the ambiguous term
23 “definitive documents” that we can agree on. Is there a middle ground
24 here?
25
- 26 Mr. Liu The bottom line is that it is a HUD approved package. We can say that,
27 “A package has to be approved by HUD”.
28
- 29 Ms. Zaterman That is different from what you have here. Here you have “documents
30 seeking HUD approval”.
31
- 32 Mr. Liu We were compromising, but now you are asking for clarity.
33
- 34 Mr. Ramirez We want to insert that because when you have your investors lined up and
35 accounted for you have to bring certainty to them. If you have an investor
36 lined up on a syndicated deal and the actual closing might be a few months
37 away, we want some language that would reflect that the investors deal
38 would not be changed due to the changing dynamics during this transition
39 period and that would not bring capacity building to a halt.
40
- 41 Mr. Liu The issue is that there will never be the type of guarantee that an investor
42 would want. As you know, a deal can always unravel at the last minute



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- 1 based on a phrase or whatever. This is as fair as we can be to meet the
2 investors and to get as much certainly as possible, but it is impossible to
3 lock this in the Rule.
4
- 5 Mr. Ramirez We are not looking for a guarantee; we are looking for language that
6 creates assurance, always subject to HUD, but so investors can be sure that
7 the deal will continue to proceed. I am not sure that this language is
8 strong enough for investors.
9
- 10 Mr. Liu If there is concern with this language, would it be better to work on a
11 specific timeframe subject to the adoption of this Rule and that will be a
12 time where deals that are close will be linked to the effective date of the
13 Rule. That could be a way to get away from this language. We could
14 stick to a closing date.
15
- 16 Ms. Zaterman Could we think about this and come back? This is not only for the
17 investors. There is standard way for PHAs to determine what is clear;
18 that a deal is locked in before HUD gives us a PEL. What if we said
19 "PHA submitting documents seeking approval for a mixed finance deal".
20
- 21 Mr. Epstein I would like to make two points. First, the Department has gone
22 overboard to try to compromise. Secondly, any investor that is involved,
23 for instance a lender in terms of syndication, will only get comfort once
24 HUD approves the deal and even after HUD approval. issues can arise. I
25 know because I work on the FHA side, it does not mean anything unless
26 you get HUD approval. Ms. Zaterman, what you were suggesting does
27 translate into definitive documents. It's really the same thing. For
28 instance if you were not asking for tax credits as part of your deal then that
29 document would not be required, but for other deals it would be.
30
- 31 Ms. Zaterman I appreciate the provision and I am happy it is in here but I want to clarify
32 the language. "Definitive documents", are those the documents you need
33 for mixed-finance approval?
34
- 35 **[Mr. Liu nods yes.]**
36
- 37 Mr. Epstein They are the documents you need if you would like to have HUD
38 approval.
39
- 40 Mr. Ramirez I have a procedural question on the progress that we have made on Section
41 I and to bring clarity to lines 13 and 17. My question is there may be other
42 sections within this Rule that are in direct conflict to Section I, in terms of



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- 1 dates. Will HUD go back and correct all those errors in dates or is that a
2 task of this committee?
3
- 4 [Reference made to page 4 of Appendix 3 – Subpart C – Calculating Formula Expenses where it
5 states “In 2009 HUD will convene a (FACA) meeting” and the “appropriate funding levels for
6 each project to be effective in 2011.”]
7
- 8 Mr. Liu If there are unintended conflicts within this Rule that HUD is not aware of,
9 we will entertain comments either during or following this session to clean
10 this up, but I would not like to go through and do a technical “clean-up” at
11 this point. We don’t think that there are major errors.
12
- 13 Mr. Ramirez I know of at least one but I will yield my time to Mr. Morton.
14
- 15 Mr. Morton I have two questions: (1) What is in the transition policy and (2) what are
16 the asset management requirements?
17
- 18 Mr. Ramirez Since Mr. Morton and I both worked on the Transition subcommittee, this
19 section in direct conflict and would best be served if it were stricken. I am
20 referring to Section 990.280 page 45, lines 5-6, item (c). “Upon
21 determination of successful compliance to asset management, PHAs will
22 then be funded in the next calculation of operating subsidy based partially
23 on this information.”
24
- 25 Mr. Russell So, how is that in conflict?
26
- 27 Mr. Ramirez In the next part it states that “PHAs must be in compliance with project-
28 based accounting requirements by 2007 and then with the remainder of
29 asset management components in 2011” and then § 990.155(i) will be
30 reviewed in 2009. There is conflict in trying to get to the true meaning of
31 § 990.280(c) and (d) versus § 990.155(i). I open this up to the committee
32 and I may stand to be corrected.
33
34
- 35 Mr. Russell § 990.155(i) says that in accordance with the Federal Advisory Committee
36 Act (FACA) HUD will convene a meeting in FY 2009 to discuss project
37 levels and the methodology that will be effective in FY 2011. I don’t
38 think that it is incongruent with the other sections regarding being
39 compliant with asset management. It will all be effective by FY 2011.
40
- 41 Mr. Ramirez Is the year 2011 irrelevant?
42



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- 1 Mr. Russell It is irrelevant.
2
- 3 Mr. Parker I want to come back to what was said, but for the moment in § 990.155(h)
4 “Calculation of PELs when data is inadequate or unavailable” -- needs to
5 be pulled out as part of the clean-up effort. Regarding recent
6 conversations, could Mr. Russell explain if 990.280(c) -- “based partially
7 on this information” is in conflict with § 990.155(i). What does that
8 mean? I don’t understand what § 990.280(c) is trying to say.
9
- 10 Mr. Russell That was part of the concern the industry had regarding how the
11 calculation would work in FY 2007 and with taking project level data to
12 an independent assessor. So we said that there would be a FACA meeting
13 in 2009 and a Negotiated Rulemaking to develop the methodologies
14 needed to see how that will affect the calculation of operating subsidy.
15
- 16 Mr. Ramirez Wouldn’t that then beg for additional clarity in § 990.155(i) and following
17 that explanation, it means that we have to wait for a review and the next
18 FACA cycle.
19
- 20 Mr. Russell For §990.280(c), “Upon determination of successful compliance to asset
21 management, PHAs will then be funded in the next calculation of
22 operating subsidy based partially on this information”, as a friendly
23 amendment we could change the phrase so that it reads “PHAs will then
24 be funded based on this information as pursuant to section 990.155(i)”.
25
- 26 Mr. Ramirez That sound good. Thank you.
27
- 28 Mr. Morton That was a good point that Mr. Ramirez raised.
29
- 30 Mr. Longo This is important because subpart F refers to section §990.280.
31
- 32 Mr. Russell We will now discuss the language that the Transition Policy working
33 group has developed.
34
- 35 Mr. Kaiser We never got to Mr. Strickland's question.
36
- 37 Ms. Tran We can cover that now.
38
- 39 **[Mark Hutton came forward].**
40
- 41 Mr. Hutton In § 990.155(e) – Calculating the PEL, basically the 520.18% percent
42 consists of two components and is the constant in the regression model.



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1
2 Mr. Ramirez What is being discussed as a way of a motion?
3
4 Ms. Tran There has been a motion vote on the language in subsection §990.155 -
5 Calculating PEL - as amended on the screen and that motion has been
6 seconded.
7
8 Mr. Ramirez I move that we vote on this subsection with the commitment from HUD
9 that we are welcome to look at the entire package at the end.
10
11 Mr. Liu That is fine.
12
13 Mr. Murray There were adjustments made in section §990.280? Are we saying that
14 those adjustments will be voted on as well.
15
16 Mr. Liu I did not make the motion, but it can include the changes within section
17 §990.280.
18
19 Mr. Loyd I concur.
20
21 Ms. Tran Is any more discussion needed before we vote?
22
23 Mr. Ramirez In section §990.280(c), we have not yet discussed section (h).
24
25 Mr. Epstein We already voted to accept that section.
26
27 Mr. Tran Mr. McInnish has made motion to adopt the language as amended with the
28 changes to 990.280(c). Can we entertain the motion and Mr. Morton's
29 second to the motion?
30
31 **[Supermajority. Motion passed. Section §990.280 is adopted.]**
32
33 Ms. Tran As a logistical matter, we also have to include time in our schedule for a
34 public comment period, however on the EUM, we can cover that first if
35 the committee so desires.
36
37 Mr. Liu Let's cover that first.
38
39 **[Subpart B – Eligible Unit Months, Sections 990.120 through 990.145 was distributed to the**
40 **committee. (See [Appendix 6](#).)]**
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- 1 Mr. Parker This is one of the most contentious sections. We struggled with this in
2 Atlanta and in the working groups. I have not seen the detailed language
3 but I will try to describe the framework. Essentially, HUD will pay
4 operating subsidy for all occupied units with a 3% vacancy allowance and
5 modernization units and rehabilitated units are above the vacancy
6 allowance with time limits for units out of the PHAs control, those being
7 litigation, natural disasters or casualty loss. In addition PHAs can appeal
8 to HUD to receive operating subsidy for vacant units due to changes in
9 market conditions. Mr. Russell is that a fair representation of what was
10 discussed?
11
- 12 Mr. Russell Yes. We no longer have a category called “other units” but those would
13 be broken-out into the three following categories: casualty losses,
14 litigation, and natural disaster
15
- 16 Ms. Tran Are there any questions on section §990.120? I feel that it would be
17 helpful to go through this section-by-section.
18
- 19 **[Silence.]**
20
- 21 Mr. Nolan Could someone explain what you mean on line 26 regarding “18 months”?
22
- 23 Mr. Kubacki This has to deal with how we are funding on a calendar year and we are
24 looking back at historical information to calculate subsidy based on a July
25 1 to June 30 timeframe with the first obligation occurring on January 1st.
26 There is a 6-month lag in calculating the formula.
27
- 28 Mr. Byrne Since you now know that this will kick in either 2006 or 2007 could you
29 include the dates?
30
- 31 Mr. Kubacki The PHAs EUM will be calculated beginning July 1 to June 30.
32
- 33 Mr. Nolan If you could define that the funding period will be a calendar year.
34
- 35 Mr. Russell Basically, the July 1 date is 18-months prior to the January 1st date, which
36 is when funding will begin. If we are in agreement on the concept we can
37 work on language. Will that work?
38
- 39 Mr. Kubacki It will only work for one year and then when we run the cycle again.
40
- 41 Mr. Nolan Will this measure still be in place when we go to a quarterly reporting and
42 funding mechanism?



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Operating Fund Negotiated Rulemaking Advisory Committee

9:00 am to 5:00 pm EST, Bolger Center, Potomac, MD

MINUTES OF FOURTH MEETING – DAY ONE

1
2 Mr. Kubacki Yes. We are looking at changing how you add or remove projects.
3
4 Mr. Ramirez Can I get some clarification. Mr. Kubacki, during this 18-month period,
5 units that come on-line would get picked up as an adjustment?
6
7 Mr. Kubacki Yes.
8
9 Ms. Tran Moving to section § 990.130. Are there any questions or comments?
10
11 **[Silence.]**
12
13 Ms. Tran Section §990.140. Are there any questions or comments?
14
15 Mr. Kelly I want to applaud the committee for the inclusion of resident participation
16 units. It was not part of the Harvard Cost Study and I am glad that it has
17 been included.
18
19 Ms. Scudder I want to make sure that section §990.105 is still included and that we are
20 just talking about the changes.
21
22 Ms. Tran The question is whether or not section §990.135 is still in the Rule.
23
24 Mr. Kubacki No, this language reflects all the language.
25
26 Ms. Scudder Okay, but §990.135 had a provision for PHAs with 100 or few units that
27 allowed up to 5 vacant units.
28
29 Mr. Kubacki This has been moved to section §990.140(b), page 4.
30
31 Mr. Cooper I would like to echo Mr. Kelly and say thank you for placing resident units
32 into the formula
33
34 Mr. Morton I would like to applaud everyone involved on his/her efforts. This seems
35 like a very fair solution and I motion that we adopt this.
36
37 Mr. Lloyd I second the motion.
38
39 Mr. Parker Could I finish reading this first?
40
41 Mr. Lam For 990.140(a)(2) “Natural Disasters”, in terms of these ‘disasters’, I
42 recommend that we not exclude acts of terrorism.



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1
2 Mr. Liu As defined, we are talking about federal or state declared or other natural
3 disasters.
4
5 Mr. Lam It just says “natural”.
6
7 Mr. Liu It could just say “disasters”.
8
9 Mr. Strickland The unit will not be included in the operating subsidy, but in our PEL
10 working group there was a sample form, which took the asset management
11 fee any only gave the fee for an available unit. The Rule says that each
12 PHA should receive a \$4 PUM and in my mind you still manage the asset
13 even if it is vacant, but the way it reads is that you won’t get the fee unless
14 it is an eligible unit. Which way are we going? And the same thing on the
15 information technology fees? “As owners, PHAs have asset management
16 responsibilities that are above-and-beyond property management fees” and
17 this affects the property as a whole.
18
19 Mr. Russell You are referring to language in another subpart?
20
21 Mr. Strickland Yes, subpart H, section §990.260.
22
23 Mr. Russell Could we take care of this in that subpart?
24
25 Mr. Strickland But lines 10-12 affect the computation of the subsidy – the asset
26 management fee and the information technology fee - regardless of the
27 definition in another subpart.
28
29 Mr. Russell We will clarify this so that the asset management fee and the information
30 technology fee will apply to ACC units in the other subparts.
31
32 Ms. Sledge Thank you to the working group and the Department.
33
34 Mr. Longo In section §990.140 I understand (i), that you have to be under a contract
35 modernization schedule but then (ii) says that you don’t have to be under a
36 mod contract, it seems very different.
37
38 Mr. Kubacki This is the same language as in the Interim Rule.
39
40 Mr. Ramirez It’s an “either or” situation.
41



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- 1 Mr. Longo Well, the language is interpreted differently by different field offices
2 across the country.
3
- 4 Mr. Parker This is a clarification issue.
5
- 6 Mr. Morton I motion that we adopt this.
7
- 8 Mr. Land I second.
9
- 10 Ms. Tran We have now covered section §990.145.
11
- 12 Mr. Russell Going back to §990.125, if we struck the words “for the 18 months”
13 would that work?
14
- 15 **[Several committee members nod yes.]**
16
- 17 Mr. Parker On page 18, lines 3, are we are striking the word “natural”?
18
- 19 Ms. Tran Yes.
20
- 21 Mr. Ramirez I move to adopt the language as amended.
22
- 23 Ms. Tran All those in favor of adopting this language please raise your hands.
24
- 25 **Supermajority. Motion passes. Subpart B §990.120 through §990.145 is approved.**
26
- 27 Ms. Tran The third topic is Transition Policy.
28
- 29 **[Subpart F – Transition Policy, Sections 990.215 through 990.225 is distributed to the**
30 **committee members (See Appendix 7).]**
31
- 32 Mr. Morton First, I want to say that we have spent a lot of time to make sure that the
33 transition policy reflected all of the agreements we previously reached.
34 Mr. Ramirez and myself went through the process and we took this very
35 seriously. We wanted to reflect what exactly the winners and losers would
36 experience. We also wanted to clarify the 5-year process, and while this
37 was never an issue, we just wanted to clarify how it worked.
38
- 39 The implementation of the first phase of PHAs that were in compliance
40 was an issue that we didn’t notice at first. It would be impossible for
41 anyone to be in compliance at first, so HUD did agree to modify the
42 language and on page 2 and change the funding period prior to year one if



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- 1 a PHA can demonstrate that by October 1 you could be eligible to be
2 compliant. The second issue is “what is compliance”? Who determines
3 what is compliance? That issue branched into another working group in
4 itself. We want this clarified so this is not open ended and so we do not
5 want to get locked into a cost. We do not want the independent
6 assessment cost to leave us worse off. We were able to address that issue
7 and to make sure we were in compliance in terms of the process and not
8 the cost assessment. We worked that out in a satisfactory manner and on
9 page 3, paragraph (d)(1) compliance with asset management
10 requirements” would be based on an independent assessment by a
11 professional reviewer. The key is that if HUD may not be able to procure
12 an independent assessment so that means that if HUD can not develop a
13 process we can develop one on our own.
14
- 15 Mr. Ramirez For clarification, going back to our earlier discussion regarding
16 procurement, instead of having independent reviewers post their
17 qualifications and having them posted as qualified reviewers and they
18 would not be directly procured by HUD.
19
- 20 Mr. Russell I have several ideas about that and what we discussed. Our final decision
21 was that to go through that processes...that is we are not in the process of
22 identifying if someone is qualified.
23
- 24 Mr. Ramirez Thank you.
25
- 26 Mr. Longo I like the chart because it demonstrates that prior to year one that you are
27 not held to the 5% but I like the previous language better in §990.220,
28 version 5. Page 38 starts out the same “alternatively if a PHA can
29 demonstrate a successful conversion to asset management...” Could we
30 add the sentence: “If a PHA demonstrates a successful conversion to asset
31 management prior to the effective date of this Rule, the PHA shall have its
32 reduction limited to no more than 5 percent of the difference.
33
- 34 **[Sentence is added to the section §990.220 on the overhead projector.]**
35
- 36 Ms. Tran It has been added, Mr. Longo.
37
- 38 Mr. Russell It is saying the exact same thing as “as reflected in the chart below”.
39
- 40 Mr. Longo The language makes the chart clear.
41



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- 1 Mr. Parker In addressing Mr. Longo’s concern. The language undoes the chart
2 because the effective date would be October 1, 2004. The working group
3 clarified the language by putting it in table format. The table says October
4 1 2005. The language undoes the chart.
5
- 6 Mr. Longo The effective date is FY 2004 except there are other effective dates.
7
- 8 Mr. Parker If you are adding language instead of a chart you should avoid the word
9 “effective date”.
- 10
- 11 Mr. Morton Mr. Longo the chart is clear.
12
- 13 Mr. Gomez I understand Mr. Morton's description of the word “timely” regarding the
14 procurement of the independent assessment, however can we define
15 timely. Does that mean 30 days, 60 days, what?
16
- 17 Mr. Russell At the point in time that you can demonstrate compliance and you have
18 not procured someone, then send it to HUD. We will set someone up as
19 soon as possible so if you don’t have anyone in Illinois just send it to us.
20
- 21 Mr. Ramirez We should talk about the reviewers qualifications and maybe this is not
22 the venue to discuss this. In discussing a recommendation to halt losses for
23 PHAs that have gone to project-based accounting and budgeting, we
24 should talk about the qualifications that HUD will be looking for to
25 procure these reviewers.
26
- 27 Mr. Lloyd I motion to approve subpart F.
28
- 29 Ms. Tran All those in favor of the proposed language, please raise your hands.
30
- 31 **Supermajority. Motion passes. Subpart F - Transition Policy - is adopted by the**
32 **committee.**
33
- 34 Ms. Tran Then next item is utilities. Mr. Steinmann will summarize the working
35 group discussions of sections §990.160 through §990.175.
36
- 37 Mr. Steinmann I would like to thank everyone involved in the working group including
38 Mr. Kaiser, Mr. Murray, Mr. Santiago, Ms. Mangum, Mr. Cianciosi and
39 Mr. Van Dyke. We have a Rule that we think is very workable. In the
40 second session HUD presented to us a hybrid formula and after further
41 review it did not make up for inflation. Considering the trend that
42 inflation goes up year after year it left the PHA in debt and so we have



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1 agreed to accept the language and add an inflation factor to solve the
2 problem. The inflation factor will be based on the Bureau of Labor
3 Statistics, and while inflation goes up over time, deflation can incur as
4 well. Since we are using this component and it can go up or down, PHAs
5 need to be made aware that this. They need to understand that this can
6 have a downward trend on the UEL even though over time it will even
7 itself out. We are pleased with the way this is set up. The other item was
8 benchmarking and this was an onerous task. We have included language
9 where HUD will do a feasibility study and in FY 2009 they will convene
10 via a FACA meeting to discuss benchmarking and how to implement
11 utility benchmarking.
12
13 The only change that I have to the proposed language is to move the
14 sentence on line 3 in front of the sentence that ends with “management”.
15 The other issue we discussed was project expense levels or utilities
16 expense levels (UEL). We have no problem reporting expense level by
17 project, by consumption but we would have to provide over 350 utilities
18 sheets every year. If you establish the PEL in the first year and then
19 provide 350 sheets or nationwide 1,300 sheets every year it is a bit much.
20 The UEL should be set for the PHA, but we will report project-by-project
21 and authority-by-authority. HUD should understand what they are asking
22 for, which is 1,300 sheets every year, which is onerous.
23
24 Nolan Did your group discuss cases where you have contract rate in a
25 deregulated market or a published rate?
26
27 Mr. Steinmann It was taken out in an effort to compromise. Those are published in the
28 Bureau of Labor Statistics (BLS). When you discuss the inflation factor
29 you are discussing the delta in year one. You have to mitigate the
30 difference between the actual cost and the projected cost.
31
32 Mr. Kelly I want to complement the committee on their work. This is a valuable
33 financing tool and it is important in repositioning public housing assets.
34
35 Mr. Kaiser I have a comment and a small suggested change. First with the comment,
36 I want to thank Mr. Cianciosi from the Buffalo Field Office. He was of
37 considerable help despite the fact that he is on medical leave and we really
38 appreciate his assistance. Next, the issue of reporting by project, this is a
39 small concern in the grand scheme in front of us because we have a good
40 product. The hybrid form will capture project-by-project data but the
41 concern is that the PHA, as an agency-wide entity, is being funded and it
42 could be made more clear with a language change on page 2 of section



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1 §990.165 so that it reads “The PHAs Rolling Base Consumption Level
2 (RBCL) is the sum of the amounts as determined under paragraphs (b) and
3 (c), as appropriate.
4
5 Mr. Kubacki This is subject to HUD systems ability to collect data on a project-by-
6 project-basis.
7
8 Mr. Kaiser We will submit the data on a project-by-project basis, but you will not
9 have a system. But we can supply you with the data.
10
11 Mr. Kubacki We will supply you with one number.
12
13 Mr. Steinmann You want all 1,300 hybrid forms.
14
15 Mr. Kubacki Yes. That will assist us in the benchmarking process. And we need to
16 clarify this intent in the language
17
18 Mr. Steinmann We can supply you with all this information, so why would you need
19 1,300 hybrid forms every year? You will get the data by development
20 every year. Completing the forms every year is not the intent of the
21 Harvard Cost Study.
22
23 Mr. Kubacki It’s not the forms we want; we want the core data elements. Most of the
24 information on the forms are calculations.
25
26 Mr. Steinmann We can give you the core data elements but we don’t want to fill out 1,300
27 forms.
28
29 Mr. Kubacki I think we are saying the same thing.
30
31 Mr. Ramirez I am looking forward to seeing this system.
32
33 Mr. Byrne The Department and the PHA will be submitting PHA project level data.
34
35 Mr. Kubacki That is correct.
36
37 Mr. Nolan I have a clarification. Mr. Steinmann, you recommended striking a
38 sentence, no?
39
40 Mr. Steinmann It was not striking the sentence it was moving it one sentence up. On page
41 7, line 10 the “Department intends to establish benchmarking....” Move
42 that up one sentence ahead of “in FY 2009”.



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1
2 Mr. Nolan If in this section we could address the 18-month language on page 1, line
3 17 and on page 3, line 5.
4
5 Mr. Tamburrino Page 1, line 17. This might be one example where the use of 18 months is
6 clear.
7
8 Mr. Nolan The period ending 18 months prior is 6 months.
9
10 Mr. Tamburrino That is correct since we moved up the rolling base. We should say 6
11 months.
12
13 Mr. Nolan That is the same for page 3.
14
15 Mr. Kubacki That is the correct language, because you don't use the first 12 months in
16 the rolling base so it is 18 months.
17
18 Mr. Parker We could give an example and make sure we all understand this. I am
19 confused.
20
21 Mr. Kubacki On page 3 of section §990.165 we are saying the rolling base is 3 years.
22 7/1/01 to 6/30/04 and that is why it is an 18 month lag. The next set of
23 data will be used to calculate the latest rate and consumption data and that
24 would be compared to the rolling base.
25
26 Mr. Parker The phrase "applicable funding cycle" should be clarified. As a general
27 comment can we define "funding cycle".
28
29 Mr. Russell On page 2, line 7, number 4, we can amend the reporting of this data so
30 that it reads: "At such time that HUD has the automated systems capacity
31 to receive such information, each PHA shall provide consumption and cost
32 data to HUD for each project and for all utilities".
33
34 Mr. Steinmann That is fine.
35
36 Mr. Morton The intent is to only report on utilities that we are paying for. We have no
37 intention of attempting to gain access to utilities that are resident paid, am
38 I correct?
39
40 Mr. Kubacki That is correct.
41



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- 1 Mr. Parker It seems that every PHA is keeping all utilities on a project-by-project
2 basis we are supposed to supply 2003 and 2004 and then in 2007 we
3 supply 2003, 2004 and 2005. If everyone has to go back a few years and
4 split all that out that could present a real reporting problem, especially for
5 medium or large PHAs. How will that issue work out? Does everyone
6 report on that at the project level?
7
- 8 Mr. Kubacki Did the working group discuss this issue?
9
- 10 Mr. Steinmann We would need to survey small PHAs. Ms. Scudder, do you keep
11 monthly data?
12
- 13 Mr. Scudder We do have monthly data.
14
- 15 Mr. Morton If you don't have it, the utility company should have that data.
16
- 17 Mr. Parker You are talking about going back a few years and if the utility company
18 does not have those records, I want to make sure we have thought through
19 that issue.
20
- 21 Mr. Morton The public utility commission would require that those records are kept.
22
- 23 Mr. Parker I am asking a question.
24
- 25 Mr. Gomez There are some PHAs with centralized boiler systems where you don't
26 have data broken down by complex. This is especially the case for some
27 folks in bigger systems. We can't get that data going backwards and that
28 should be considered.
29
- 30 Mr. Kaiser There are provisions for the situation where a PHA can't locate that data.
31 That language is on page 3 line 15 (c) so we could address that.
32
- 33 Ms. Tran Are there any other comments?
34
- 35 Mr. Steinmann For clarification when we provide you the data every year, it won't be our
36 responsibility to do the hybrid forms. HUD will complete the forms?
37
- 38 Mr. Nolan Will there be a transition mechanism?
39
- 40 Mr. Kubacki That is correct. It is a rolling base and missing data is part of that.
41
- 42 Ms. Tran Are there any other comments?



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- 1
2 Mr. Kaiser I have a question. In a scenario where PHA adds units to their inventory,
3 those units would not be in the calculation of the rolling base. How would
4 the utilities for those units be funded?
5
6 Mr. Kubacki Under “Eligible Unit Months” there would be an adjustment during the
7 year. If you do an initial calculation and then add 100 units we would
8 increase subsidy for those units for 6 months at that rate.
9
10 Mr. Steinmann You have the language on page 3, line 16. This is very explicit; this is not
11 an issue. Can we accept the language?
12
13 Ms. Tran Loan amortization add-ons.
14
15 Mr. Steinmann. Yes. Any kind of payments necessary for loan amortization add-ons.
16
17 Mr. Kubacki The group is looking for loan amortization for add-ons only. That is the
18 only part being reflected.
19
20 Ms. Tran All those in favor of adopting the language as amended on the screen,
21 please raise your hands.
22
23 **Supermajority. Motion passes. Sections §990.160 through §990.175 are adopted.**
24
25 Ms. Tran At this point I would like to allow time for the public comment period.
26
27 **[Mr. Carl Green from the Philadelphia Housing Authority came forward.]**
28
29 Mr. Green This has been an impressive process and I commend everyone. We were
30 very interested in the section that was just previously adopted. There were
31 no standards and many of you may feel that you have been treated unfairly
32 and we would like to see an appeals process, if there is not an appeals
33 board. The issue of standards without an appeals process leads to an
34 unfair disparate treatment and the result is that we do not have justice.
35 Members of the committee that are creating rules may in the future act as
36 independent assessors and we should establish something to ensure the
37 independence of the review and to make sure that the rules established by
38 the committee are upheld. We should have standards and an appeals
39 process and a board if we have an objective to be in compliance. The
40 assessor works for HUD. That is challenging. With respect to your work,
41 we request that we look at some rules and definitions of project-based
42 accounting and project-based management, whether it's this year or three



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1 years down the road. An act of injustice three years from now may seem
2 like an act of justice now.

3
4 Ms. Tran Just to remind members of the public that FACA procedures allow
5 members to comment but not to ask questions.
6

7 **[Mr. Keith Kinard, the Executive Director of the Pittsburgh Housing Authority came**
8 **forward.]**
9

10 Mr. Kinard I feel you have put in a lot of hard work and as I watched the proceeding, I
11 did not hear much talk about the residents and I implore the committee to
12 focus on the residents. I did not hear any mention of HOPE IV, Housing
13 Choice Voucher funds or Capital Funds. I implore the administration to
14 refocus on the group that we are here to serve. I request transition funding
15 and today I did not hear any conversation about transition funding. Any
16 PHA that is going to reorganize will need that funding. We are dealing
17 with planning, human resources, information technology systems and to
18 not talk about funding this! HUD will go to Congress to ask for money
19 for their information technology system and back in Pittsburgh I will have
20 to hire and fire people, put in new systems and shift people around to deal
21 with these provisions. I just want to strongly emphasize the need for
22 transition funding.
23

24 **[Mr. XX from the Reno Housing Authority came forward.]**
25

26 Mr. XX The transition to a calendar-based system has not been articulated in the
27 rule at this point and there are appropriation questions. Specifically, how
28 will money from one fiscal year get carried over, given budget caps in the
29 VA/HUD appropriations? We are going to have problems with one fiscal
30 year budgeted at a lower rate and another fiscal year at a higher rate. That
31 is a critical issue that relates to congressional appropriations and may be
32 beyond the scope of this negotiation.
33

34 **[Wayne Sherwood from Sherwood & Associates came forward.]**
35

36 Mr. Sherwood This is not a subject that the Department can go into - the amount of
37 money HUD asks Congress for and I am not sure how the Department will
38 know how much to ask for. It could be \$230 million or more. I would
39 recommend that HUD takes that into account and ask for more than the
40 Study recommends in case many PHAs move quickly to project-based
41 accounting.
42



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1 Ms. Tran We have one more topic but the dining hall closes at 8. Let's end with this
2 and meet tomorrow.

3
4 Mr. Ramirez Are we also going to review an agenda that includes items that have not
5 been discussed by the working groups such as Sanctions and subpart I?
6 Also, will be able to review the Rule in it's entirety sometime tomorrow
7 afternoon, perhaps?
8

9 **[Mr. Liu nods yes.]**

10
11 Ms. Tran Let's start at 9:00 am tomorrow.

12
13 Mr. Parker Just to clarify, for flights tomorrow, will we be finished? What happens to
14 those reservations if we are not finished? Should I make alternative
15 arrangements?
16

17 Mr. Russell I don't think you need to make any other arrangements because we will be
18 finished.
19

20 **[Clapping.]**

21
22 The committee adjourned at 7:02 pm.
23
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List of Appendices for the June 8, 2004 Session:

1. Sign-in sheet for committee members, guests of committee members and members of the public.
2. Negotiated Rulemaking Advisory Committee on Operating Fund Agenda for June 8 and 9th, 2004 Session.
3. Operating Fund Draft Interim-Final Rule – Pre 4th Session.
4. Subpart C – Calculating Formula Expenses section §990.155 – Computation of Project Expense Level as revised (6/8/04 2:03 pm).
5. Appendix 1 of Draft Rule – Detailed Computation of Project Expense Level (PEL) (6/3/04).
6. Subpart B – Eligible Unit Months, Sections 990.120 through 990.145 (6/8/04 11:45 am).
7. Subpart B – Eligible Unit Months, Section 990.160 through 990.175.
8. Subpart F – Transition Policy, Sections 990.215 through 990.225 (6/8/04 2:43 pm).
9. Asset Repositioning Fee (6/8/04 3:40 pm).