



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 SESSION – DAY TWO

1 June 9, 2004 Session:

2

3 The second meeting of the Negotiated Rulemaking (Neg-Reg) Advisory Committee on
 4 the Operating Fund Allocation System (the Committee) was called to order at 9:40 am on
 5 Wednesday, June 9, 2004, by Mr. Michael Liu, the Assistant Secretary of Public and Indian
 6 Housing. Ms. Tran served as the facilitator. The location of the meeting was the Benjamin
 7 Franklin Hall of the Bolger Center; 9600 Newbridge Drive, Potomac, MD 20854.

8

9 Committee members in attendance and interests represented were:

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 Resident Management Corporation
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)

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

11

12



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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 9th, 2004.

3

4 **[Mr. Land and Ms. Watson were not present].**

5

6 Ms. Tran Good morning. One item to take care of before we get into today's
7 agenda. The third session minutes were distributed to everyone and we
8 did not receive any changes. We would like to vote on those now so that
9 we can approve the minutes. If everyone is in agreement, please raise
10 your hands if you would like to move to adopt the 3rd session meeting
11 minutes.

12

13 **Supermajority. Motion passes. The 3rd session meeting minutes are adopted by the**
14 **committee.**

15

16 Ms. Tran Today's agenda has been passed out. We want to cover the remaining
17 sections of the Rule and go through the last working group discussion –
18 Asset Repositioning Fee. We would like to work through these items
19 quickly so we have time to discuss other important topics. Mr. Nolan will
20 summarize the Asset Repositioning Fee language that is shown on the
21 screens.

22

23 Mr. Nolan This has been changed a lot since the commencement of this session and
24 we feel that it reflects a good compromise. For demolition and disposition
25 units, you will get the fee. Disposition was not included previously and
26 we thank HUD for adding that.

27

28 Ms. Tran A new copy of the Rule is now being distributed. (See [Appendix 3](#) – Mid
29 4th Session Rule).

30

31 Mr. Nolan On page 32, the fee paid will be paid beginning on a date determined in
32 part from the demolition/disposition application and the schedule of when
33 relocation will begin. The fee begins six months from the date the first
34 unit will be vacated. The amount paid for demolition units will be equal
35 to 75% of PEL per unit (50% in year one and 75% in year two). For units
36 approved for demolition there is no section 8 offset and that was a big
37 change and a big benefit to the industry. This is something that we should
38 approve.

39

40 Ms. Zaterman I agree that we should approve this. On page 32, line 30 and page 33 line
41 1, the date "in accordance with the approved plan" that is the 1st vacancy
42 after the plan has been approved?



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- 1
2 Mr. Tamburrino I don't understand the question.
3
4 Ms. Zatterman The 1st vacant unit after the approved plan schedule?
5
6 Mr. Tamburrino 1st scheduled vacancy according to the approved plan.
7
8 Ms. Tran Are there any other questions or is further discussion needed? No. Does
9 anyone want to motion?
10
11 Mr. Myers I motion to approve the language.
12
13 Mr. Epstein I second the motion.
14
15 Ms. Tran All those in favor, please raise your hands.
16
17 **Supermajority. Motion passes.**
18
19 Ms. Tran The next topic is subpart C, Section §990.175 – Add-ons. Part (a)
20 through part (i), except for parts (b) and (h) which have already been
21 covered by the committee. Starting with part (a) – Self Sufficiency, are
22 there any questions?
23
24 [Silence.]
25
26 Ms. Tran Part (b) – Loan Amortization was covered yesterday by Mr. Steinmann so
27 we do not need to discuss that again. Moving to part (c)- PILOT. Are
28 there any questions or comments?
29
30 Mr. Kaiser I believe we submitted language for a minor change and Ms. Tran is
31 passing this around (See [Appendix 4](#)). It is a handwritten change and is
32 only a few sentences. The revised language would provide the PILOT
33 add-on for PHAs that do not currently pay PILOT but do provide other,
34 similar services. The intent is to have the word “agreement” after the
35 word “application” so it reads “cooperation agreement or applicable law”.
36 The revised sentence should read: “Each PHA will receive an amount for
37 PILOT in accordance with Section 6(d) of the 1937 act as amended based
38 on their previous year’s formula calculation in accordance with the PHA
39 cooperation agreement or applicable law”.
40
41 Mr. Kubacki How would we calculate this?
42



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- 1 Mr. Kaiser It says to use last year's formula amount.
2
- 3 Mr. Kubacki There is a line item called PILOT right now, but the PHAs cooperation
4 agreement is what it refers to. For the PHAs that are not paying PILOT
5 how do we value that?
6
- 7 Mr. Kaiser You could ask the PHAs city for a letter documenting that dollar figure.
8
- 9 Mr. Nolan There is a formula inside each cooperating agreement between the PHA
10 and the locality that states that amount.
11
- 12 Mr. Liu I am aware of such agreements and they don't all have such explicit
13 language.
14
- 15 Mr. Murray If you could be more specific, is there a HUD form to calculate PILOT
16 each year? Will that not be considered now as part of this?
17
- 18 Mr. Kubacki There is a form that we use to calculate PILOT. The formula is rental
19 revenue minus utilities multiplied by 10%. The problem is that some
20 PHAs don't make that payment. Are we saying that for those PHAs that
21 do not pay the local government that we would fund them that amount
22 anyway?
23
- 24 Mr. Longo I know PHAs that make arrangements with the city to pick up their own
25 trash and they don't pay the city taxes in lieu of that service.
26
- 27 Mr. Byrne Since the basic formula is rental revenue minus utilities multiplied by
28 10%, the amount could be calculated by HUD. However, as a matter of
29 policy, to pay PILOT for PHAs that don't incur the cost it is a separate
30 policy issue and we should recognize this as two separate issues.
31
- 32 Mr. Nolan I can think of where we pay PILOT in certain cases and we get certain
33 designations and we don't pay taxes and/or development partners and
34 mixed income deals don't pay taxes either. There could be a case where
35 you work numbers into an entire cash flow projection where you want
36 PILOT to help the property.
37
- 38 Mr. Ramirez Another example, going back to the way we handled it in Laredo, TX
39 when I was mayor there, is that there are services that the PHA provided
40 to segments of the community, particularly lower income families, in the
41 vicinity of the development for different kinds of activities and the PHA
42 provided these services in lieu of taxes and provided the services to



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1 residents outside the community. The PHA agreed to provide these
2 services in lieu of payment, so there are expenditures, so it's not giving
3 them PILOT for nothing.
4
5 Ms. Basgal I have a question for Mr. Kubacki. If there are 2 formulas, then there is
6 another formula you can use based on some percentage other than 10%.
7 My question is, are you are saying that you show this on your form, your
8 formal calculation?
9
10 Mr. Nolan You used to. The form was once required; it is no longer required.
11
12 Mr. Kubacki The form is being reinstated due to the number of inquires we have had.
13
14 **[Silence.]**
15
16 Mr. Kubacki HUD proposes the following language.
17
18 **[Mr. Kubacki read the revised language: "Each PHA will receive an amount for PILOT in**
19 **accordance with Section 6(d) of the 1937 Act"]**.
20
21 Ms. Tran Are there any questions?
22
23 Mr. Kaiser Thank you.
24
25 Ms Tran Going to subpart C, Section § 990.175(d). Are there any questions?
26
27 **[Silence.]**
28
29 Ms Tran Paragraph (e) of § 990.175. Are there any questions?
30
31 Mr. Byrne Mr. Russell, the phrase "but not limited to", I assume that HUD is
32 referring to when we talked about how restrictive the current Rule is and
33 that the PHAs are asking for more flexibility, is that the intent?
34
35 Mr. Russell Yes that is the intent.
36
37 Mr. Cooper I have some concerns about that because the residents have not had a
38 caucus about what that means. CFR 964 is very explicit in that it covers
39 the local resident cooperation and how the money is distributed. The PHA
40 agrees to this process and those activities that do not have the \$25 are used
41 by the Resident Management Corporation as a partnership. To open up
42 more than that, my agency and I would have an issue that the dollars



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- 1 would be used for self sufficiency or resident services and that was not the
2 intent. What are the other eligible uses?
3
- 4 Mr. Russell Mr. Cooper, the current language is exactly what is in 24 CFR 964 and
5 you raised an issue at the 1st Negotiated Rulemaking session about how
6 restrictive the uses of those funds were. In response, we went back and
7 looked at the language and those items that are covered under the
8 regulation as eligible uses, but they are not just limited to those uses.
9
- 10 Mr. Cooper Actually, it was Mr. Morton that raised that issue and we had a sidebar on
11 that, if Mr. Morton would like to speak.
12
- 13 Mr. Morton I did bring that up because I saw so many resident groups that wanted
14 more flexibility. You have fears that PHAs can use this to their
15 advantage, but the intent is for Resident Management Corporations to
16 have greater flexibility.
17
- 18 Mr. Cooper Mr. Russell, I stand corrected and I apologize. I stand corrected it is in the
19 regulation.
20
- 21 Ms. Tran Moving on to §990.175(f) – Asset Management Fee. HUD has changed
22 the language as shown on the screens above. Can we change paragraph
23 §990.175 (g) as well?
24
- 25 Mr. Kubacki This language was drafted to clarify that these two add-ons will be based
26 on ACC units and not eligible unit months.
27
- 28 Tran Are there any questions?
29
- 30 **[Silence.]**
31
- 32 Ms. Tran Moving on to §990.175(i) – Costs attributable to changes in federal law,
33 regulations, or economy. Are there any comments or questions?
34
- 35 Mr. Kaiser We discussed this at length as a caucus and we have serious concerns with
36 the way this has been drafted. We have talked with HUD and while the
37 language is well intended, it is overly broad and under a future
38 administration could result in major changes to the program. I suggest
39 that this matter be stricken in its entirety and replaced with the verbiage
40 that is in the current Rule, Section §990.108 – Costs Attributed.
41
- 42 Mr. Russell HUD seconds that motion.



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- 1
2 Mr. Kaiser Well... we are moving right along.
3
4 Mr. Liu Mr. Kaiser, you need to quit while you are ahead.
5
6 Ms. Tran We will update §990.175(i) on the screen. We have now covered all of
7 subpart C. Is there a motion to vote?
8
9 Mr. Nolan We proposed another paragraph as another part of this section regarding
10 the conversion to project-based accounting and project-based
11 management. Does the Department want to take that up now?
12
13 Mr. Russell We should take that up now since it is being proposed as an additional
14 paragraph to this section, but you should note that HUD is not receptive to
15 this proposed language and the other add-ons agreed to were to cover the
16 cost of the transition.
17
18 Mr. Nolan The asset management fee and information technology fee are on-going
19 costs that we have to incur and they are inadequate in terms of running a
20 project. It was mentioned at the First Negotiated Rulemaking session that
21 some PHAs had already gone down the road, to some degree, to convert to
22 project-based accounting and project-based management. We are seeking
23 compensation for this conversion and the asset management fee and the
24 information technology fee are not sufficient. The money is available in
25 the first year based on the Department's intent to convert to a calendar
26 year funding system. I know that in FY 2006 the monies will not be fully
27 disbursed, in fact almost \$900 million will not be disbursed and we
28 propose to have a small portion of that instead of rescinding it to
29 Congress.
30
31 Mr. Ramirez I would suggest that the Department, perhaps in this case, take a more
32 positive view of this one-time conversion fee to meet the mutual goals of
33 getting to project-based management. The asset management fee and
34 information technology fee are for on-going expenses and certainly as a
35 committee it would be good to consider the interim step to convert our
36 systems and management and the one time expense. Considering that the
37 Department will needs funds for its own conversion it would be short-
38 sighted to ignore the start-up costs of the conversion and given that there
39 are one-time savings realized during the conversion period of our
40 accounting process, why not consider funding the conversion. To go
41 before Congress and explain that this conversion is necessary, but funds
42 were not provided seems short-sighted.



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2 Mr. Epstein This is taking us back to the discussions we entertained at the first three
3 sessions. In the non-public housing world there is not an asset
4 management fee, information technology fee or public entity fee. These
5 are add-ons that you have now and I agree with Mr. Russell that these are
6 sources of income that you get as PHA that do not exist in the non-public
7 housing world. You should quit while you are ahead; you have done very
8 well. To adapt to project-based management and project-based
9 accounting, you can stop your losses, as the industry has coined that
10 phrase, whether or not there are savings included. Project-based
11 management is not being used to determine whether or not there is a loss
12 or whether or not you are running this efficiently. These add-ons are very
13 generous and we should not be revisiting the prior session discussions.
14
15 Mr. Parker The issue is that the asset management fee and information technology fee
16 exist for the sole purpose of handling conversion issues, if I could remind
17 everyone how we got to this point and what the drivers were. In the 1st
18 Negotiated Rulemaking session the industry proposed that there were
19 shortcomings in the Harvard Cost Study and we chose to go a route where
20 we would adopt the Study even though Harvard, in its own documents,
21 said that there were differences between the PHA and FHA environment
22 and that one of those items was information technology costs. If I recall it
23 was \$8PUM and we agreed to \$2 PUM. Regarding the issue of corporate
24 governing, if we would recall where the add-ons came from. They were
25 not for asset management, conversion or transition. It was to discuss
26 whether or not Harvard was right in the first place. Our mutual goal is to
27 convert from where we are now to a property-centric model and there are
28 a lot of medium-sized properties and large units that have a whole series
29 of costs. A lot of PHAs use fee accountant services that are not going to
30 convert for free. There will be front end cost and if we are committed to a
31 conversion to this model, we should provide a one-time expenditure to
32 help agencies transition to this successfully. Perhaps, some PHAs that
33 have already converted or some accounting and auditing professionals
34 may want to speak to this.
35
36 Mr. Longo I am concerned about the “losers” or those that get decrease in subsidy.
37 We lost \$220,000 in add-ons, for example for FICA we now only get
38 \$38,000 and given the 5% cut and that have to meet the asset management
39 goal by FY 2005 is this Rule setting us up to fail? Because we have to
40 hustle to meet the goal and we can’t wait for the \$2 or \$4 PUM each
41 month. There will be up front expenses that need to be addressed.
42



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- 1 Mr. Gomez There is some confusion over what is covered in the PUM and what it
2 costs. For PHAs to fund the start-up for the conversion there are costs that
3 will be incurred for training and we will have to look at the changing of
4 accounting systems and hiring outside accountants to set up the properties
5 financial systems. The industry is asking for HUD to recognize those set-
6 up costs. This is not an on-going expense. There is a cost for getting to
7 where you want PHAs to be that is outside the PEL and PUM and the add-
8 ons for the day-to-day management of the portfolio.
9
- 10 Ms. Zaterman Whether or not we recognize it or not it's moving a 60-year-old property
11 to this new direction. Congress will appreciate that we have been able to
12 reach a conclusion on these issues, however PHAs have concerns about
13 undertaking this conversion. As we move from an appropriation year or
14 fiscal year funding basis to a calendar year funding basis there will be
15 significant funds available. Can HUD clarify how that will take place and
16 how we could use a fraction of those funds for the conversion issue?
17 Could you clarify how that will work?
18
- 19 Mr. Russell I don't think that this is the appropriate venue to talk about availability of
20 appropriations in a given fiscal year. This issue is whether or not the
21 formula should contain an additional add-on and if that is warranted. This
22 decision should not be based on the availability of funds. The availability
23 of funds will vary from year to year. This should not be a case where you
24 say, 'oh you have lots of money so we can create a new add-on to make
25 claim to that money'.
26
- 27 Mr. Liu The attractiveness for HUD to consider another add-on has been
28 diminished by the instance for HUD to compromise on whether or not the
29 PHAs and HUD would be bound by the assessments and costs associated
30 with the assessments and the PEL and transition policy. If you remove
31 yourself from this room, the biggest challenge in working with others who
32 are critical, and in FY 2009 and FY 2011 it is possible that all the work to
33 move to project-based management would be for nothing. Are we willing
34 to be held accountable for what project-based management is? Because
35 that is what this is all about. We have left the door open for those to say
36 that we are not serious. I believe that we are, which is why we
37 compromised, but we had agreed to all to be held accountable in FY 2011.
38 Now, since we are not conveying that commitment we have removed the
39 incentive.
40
- 41 Mr. Nolan I was not aware that we had said that we would not be held accountable in
42 FY 2011. We will be held accountable and that is why the concern exists



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- 1 and that is why we are asking for the money. We take this seriously. We
2 have to convert, at the latest by FY 2011 and for others much sooner than
3 FY 2011. The stop loss exists, but not for everyone. That the fees in the
4 private sector do not exist is true, but they are not sitting in our shoes. We
5 have an archaic and centralized system and for many reasons due to HUD
6 policy. It is what it is. You can't change so fast that you cause chaos or
7 wither without funds. I don't anticipate that the private sector gets these
8 fees, but it is a different animal. We are asking for assistance because we
9 take this seriously.
- 10
- 11 Mr. Lam I want to echo the concerns realized by other PHAs for the transition costs
12 to project-based budgeting and project-based management. It is a
13 significant cost. NYCHA started the process a while ago and had to
14 completely scrap our old financial system and get a new one. That was a
15 huge cost. We have already incurred substantial expenses and are now
16 facing incurring more.
- 17
- 18 Mr. Strickland I appreciate Mr. Liu's comments. The members of this committee have
19 committed to project-based management, project-based budgeting, and
20 project-based accounting and the up-front costs that are associated with
21 the conversion to project-based budgeting and project-based accounting.
22 We have agreed to be bound to the Rule that PHAs must be in compliance
23 by FY 2007. We are committed to the bulk of these expenses that are
24 related to the conversion. Some PHAs have already experienced
25 significant conversion costs and it would be fair to award some type of
26 assistance.
- 27
- 28 Mr. Parker I want to address Mr. Liu's concern. This Rule creates a serious and
29 permanent change from an agency-centric model to a property-based
30 model and the only thing still in doubt is still what the funding level will
31 be. That of course is based on future circumstances and other
32 uncertainties. We are now permanently bound to the Harvard Cost Study
33 and a switch to true property-based management at the local level upon the
34 completion of this FACA process. We will not wind up going back to an
35 agency-centric model under any circumstances. The private sector, as
36 other committee members started, was not set up as a property-based
37 system, however we were set-up that way and untangling the portfolio and
38 accounting down to property-by-property is the reason we need some
39 assistance.
- 40
- 41 Mr. Longo For those that are going to experience a decrease under the Harvard Cost
42 Study, there can be no doubt of our commitment. The subsidy for Niagara



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- 1 Falls PHA was cut by 40% under Harvard, so you can believe they will
2 move heaven and earth to achieve project-based management by FY 2007.
3 However, I worry that they will fail because they don't have the money to
4 make the system conversions.
5
- 6 Mr. Russell I want to keep this in perspective in terms of transition. Not only was
7 HUD very acceptable in terms of a phase-down add-on for the Harvard
8 PEL and for the PHAs that decrease under Harvard, it was very significant
9 first and foremost that PHAs that increase will have that phased-in and
10 that the phase-in for those that will decrease in subsidy will be over a 5
11 year period. More significantly than that was that we also offered you the
12 ability to stop those losses. This is not laying down the gauntlet. You can
13 step up to the plate, achieve the set goals and avoid a reduction in subsidy.
14 You are viewing this in a negative way and I understand your point of
15 view, however in light of the transition policy we agreed to, I don't
16 understand how you can view the transition policy as negative or punitive.
17 It is a wonderful opportunity to stave off or to have a stop loss. This is a
18 very positive agreement that was reached by the committee.
19
- 20 Mr. Longo I agree to that for the majority of PHAs, but we have been submitting
21 balanced budgets and running the PHA efficiently and getting good PHAS
22 scores. Now with a 5% cut we are looking at a \$500,000 hole in our
23 budget come January 2006 and we have challenges ahead. On top of that
24 we have systematic costs that we will have to incur.
25
- 26 Mr. Ramirez I respectfully say that the changes we made were prudent business
27 decisions to transition PHAs that have been operating for 60 years and if
28 you take a segment of an industry and apply a 40% loss, in one year it
29 could go bankrupt. It was purely a prudent business practice. In addition,
30 there is precedence for this Administration to offer transition dollars, to
31 give money to go from one mode to another mode. There is recognition
32 that this will be a shift from one to another and this is not unprecedented.
33 Regardless of whether the money is there or not, and I agree that this is not
34 the debate. This is the pink elephant in the room. It is necessary to
35 develop a platform for success. The startup of the new system needs to be
36 acknowledged externally just like it has been internally. It is practical and
37 a prudent business practice.
38
- 39 Mr. Kubacki I would like to talk for a few moments on the costs associated with the
40 accounting side. We have looked at three points. (1) Some PHAs have or
41 already undertook this effort using their current funding levels and they
42 did this on their own because it is a better way to manage their portfolio.



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1 (2) Project-based management is not a new requirement. You should be
2 able to use your systems now. For PHAs that modernized their systems
3 this is just a matter of making sure that the functional requirements are
4 turned on. The costs are not that dramatic. (3) It is a cultural change, not
5 an information systems change.
6

7 Mr. Nolan I echo the point that this is a massive cultural change. This is an example
8 of classic organizational change, if you remove the information
9 technology and accounting portion of it. There are certain accounting
10 aspects, except the balance sheet, especially the process of overhauling
11 personnel: releasing, hiring, and training new people. These are huge
12 cultural changes that HUD recognizes within their own organization. You
13 cannot implement this without new personnel. You have spent a lot of
14 money on information technology costs and personnel and we have too. If
15 you ask for money to fund your costs or have funded your costs then we
16 should be able to fund our costs as well. If I use the money it comes at
17 the expense of something else, maybe I use the money and then my
18 properties are as not as good as Mr. Longo's properties.
19

20 Ms. Zaterman I second the motion and I am amazed that Mr. Liu is not willing to
21 entertain the conversion fee. The FACA process in FY 2009 is to
22 determine how to implement the actual cost system. The consensus on
23 having a FACA process was to have an open and transparent process. It
24 was not a signal that we were not committed to project-based accounting
25 or project-based management. How does HUD expect to pay for the
26 conversion process? The Capital Fund has historically covered these types
27 of costs. We have a concern that the conversion process will come out of
28 the dollars used to reposition assets. We want both parties to be adequately
29 funded. If the roadblock is a misunderstanding then let's air that out and
30 make it clear, but not cannibalize it. It is important for both PHAs and
31 HUD to be successful. We will both sink or swim.
32

33 Mr. Kaiser I would like to echo what Ms. Zaterman said. This is comparable to when
34 PHAs were in the position where they had to do things immediately and they
35 bore assignment costs of the conversion to the new system. At the time,
36 under the Administration, the Department saw that it was already funded
37 and the PHAs ended up paying for it via the Capital Fund. HUD sought
38 funding for itself through those funds that came off the top of the PHAs
39 allocation, that is all we are asking for. Mr. Parker made a key point,
40 which is that this is a one-time fee. Mr. Nolan has a motion on the floor
41 that we should address.
42



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- 1 Mr. Marchman I recently did work with the Boulder County Housing Authority and the
2 accounting systems were old and had management and finance issues.
3 This process was not unlike the conversion being discussed now. It was
4 costly and we had to lay off 8 people to fund it. In terms of the assessment
5 of PHAs, I am more scared of that then if we don't have the means. This
6 is a real situation, and I could share what we went through in 9 months,
7 particularly for small PHAs. This will take a big effort, it is a big change
8 and 10 months is not enough time. If you think this is not real then you
9 are missing the concept. If you tell a PHA that they have to go from A to
10 B and don't give them the money, real people are going to get hurt and we
11 will be back here in 2-3 years trying to fix the problem.
12
- 13 Mr. Anderson Has the Department calibrated a range of costs?
14
- 15 Mr. Kubacki It has been estimated to be around \$150 million dollars.
16
- 17 Ms. Tran There is a motion to vote. To summarize, changes were made to PILOT,
18 asset management fee, IT fee and costs attributed to changes in federal
19 law, regulations, or economy and paragraph (j) has been added.
20
- 21 Ms. Scudder Ms. Zaterman asked a question and we never got a response.
22
- 23 Mr. Liu My earlier statement spoke for itself.
24
- 25 Ms. Zaterman What were you referring to regarding a compromise, the FACA process?
26
- 27 Mr. Liu Yes.
28
- 29 Ms. Zaterman I want to understand your concern.
30
- 31 Mr. Liu I already spoke on that issue and you can interpret that any way you like.
32
- 33 Ms. Zaterman I want to be able to relay your position to my membership. By agreeing to
34 having a FACA process, that indicates that the industry was not committed
35 to project-based management?
36
- 37 Mr. Liu There will be others that will be critical to this process and to the way the
38 language is drafted. I am encouraged by the committee's comments that
39 we are committed. However, the legal reality is that that a option that
40 exists that shows a lack of commitment. I will argue that this is not the
41 case, but it would have been clearer if we had accepted HUD's position
42 but in the spirit of cooperation we agreed. However, it does provide a



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- 1 barrier. HUD will have to reallocate our resources for the transition within
2 our current funding levels. There is no expectations that HUD will need
3 additional resources for its current plan for information technology
4 systems, or personnel to incorporate these changes and what we receive in
5 future budgets to do it, but it will require reallocation.
6
- 7 Ms. Zaterman The barriers are the perceptions outside this room? We have all stated our
8 commitment, however your concern is that there are perceptions that this
9 is not a sufficient commitment to move to project-based management and
10 that is the impediment to providing this one time funding?
11
- 12 Mr. Ramirez We are trying to capture the spirit of cooperation. For clarification, you
13 will make your transition through your current designated funding level
14 and no reallocation of capital funds or operating fund subsidy is
15 anticipated to go out to PHAs to make this transition.
16
- 17 Mr. Liu Yes.
18
- 19 Mr. Ramirez I conclude that as we look at the grand scheme of things, a fraction of the
20 resources that will be recaptured over this one-time shift will be a recipe
21 for success for these PHAs. If we are not willing to invest in a transition
22 cost of \$150 million, any give the Department will further contemplate to
23 our commitment to making this happen would be appreciated.
24
- 25 Mr. Nolan My motion was to vote on the language on paragraph (j) and not the entire
26 section.
27
- 28 Ms. Tran Thus the motion is to vote on paragraph (j) only. All those in favor,
29 please raise your hands.
30
- 31 **Motion fails.**
32
- 33 Mr. Ramirez For the record, this motion failed because HUD did not vote, but the
34 majority of the committee members did raise their hands.
35
- 36 Ms. Tran Is there a motion to vote on the other changes besides those in paragraph
37 (j).
38
- 39 Mr. Ramirez I motion.
40
- 41 Mr. Morton I second that motion.
42



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1 Ms. Tran All those in favor, please raise your hands.

2

3

4 **Supermajority. Motion passed.**

5

6 Ms. Tran Moving on to the next topic, subpart I: Operating Subsidy for Properties
7 Managed by Resident Management Corporations (RMCs).

8

9 Mr. Kaiser I have a procedural question. We have submitted changes to subpart H,
10 will we return to that later?

11

12 Ms. Tran We will add that to the end of today's agenda. Do we have copies?

13

14 Mr. Kaiser I gave them to Mr. Kubacki.

15

16 Mr. Russell The agenda states that we were to finish the subparts before noon and then
17 after the OCG presentation any issues could be raised.

18

19 Ms. Tran Are there any questions regarding the Resident Management Corporations
20 section.

21 **[Silence.]**

22

23 Mr. Byrne It would be nice, and I assume since we have not talked about this, we
24 should say that we are treating Resident Management Corporation just like
25 any other thing.

26

27 Mr. Tamburrino I have two general comments. First, we revised this section to
28 accommodate the other revisions and secondly we retained aspects related
29 to the interim Rule that are statutory requirements.

30

31 Ms. Tran Are there any questions on subpart I? Would any one like more
32 discussion on this subpart, if not, is there a motion to vote on it?

33

34 Mr. Byrne I motion that we vote.

35

36 Mr. Myers I second the motion.

37

38 Ms. Tran All those in favor, please raise your hands.

39

40 **Supermajority. Motion passes. Subpart I, as amended, is adopted by the committee.**

41



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- 1 Ms. Tran The next item is subpart K: Sanctions. Could someone from HUD please
2 summarize the language?
3
- 4 Mr. Russell HUD moves to strike subpart K from the Rule.
5
- 6 Mr. Morton I second the motion.
7
- 8 Ms. Tran The motion is to strike subpart K.
9
- 10 Mr. Kaiser I am speechless.
11
- 12 Ms. Tran All those in favor, please raise your hands.
13
- 14 **Supermajority. Motion passes. Subpart K is stricken from the Rule.**
15
- 16 Ms. Tran The next item is subpart E, Section §990.205: Payment of Operating
17 Subsidy. HUD is proposing a technical change, as shown on the screens
18 above. Mr. Kubacki will walk the committee through the proposed
19 changes.
20
- 21 Mr. Kubacki In Atlanta this was changed to reflect payment schedules on the form
22 HUD-52721 that has expired. Now HUD funds PHAs via the electric
23 Line of Credit Control System (e-LOCCS). This language/regulation
24 describes how the process is actually done. HUD makes payments via e-
25 LOCCS. Basically this is how we have put out funds for the last 2 years.
26
- 27 Mr. Cooper Are you saying that PHAs are funded via the electronic Line of Credit
28 Control System?
29
- 30 Mr. Kubacki Yes, e-LOCCS was rolled out 2 years ago.
31
- 32 Ms. Tran Everyone, please note that the agenda says subpart J. The agenda is
33 wrong it should be subpart E not J.
34
- 35 Ms. Tran Mr. Kubacki you were trying to clarify that there is no such thing as a
36 payment schedule.
37
- 38 Mr. Kubacki Basically, HUD takes your total subsidy amount for the year and divides it
39 by the number of months, normally 12. That number becomes the amount
40 that a PHA receives on a monthly basis, however the PHA must request
41 the draw down.
42



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- 1 Mr. Ramirez Based on this language, does that mean that you are now going to convert
2 the electric line of credit control systems to disburse not on an agency
3 basis but on a property basis? That would be over 1,3000 projects.
4
- 5 Mr. Kubacki No, just that it would be a monthly disbursement.
6
- 7 Ms. Tran This language has never been updated, is that correct?
8
- 9 Mr. Kubacki The language has never been included in a Rule, but it has been published
10 in Notices., specifically PIH Notice 2002- 28.
11
- 12 Ms. Scudder Is this automatic or do you have to request the disbursement.
13
- 14 Mr. Kubacki You have to go in each month and make your request. If you don't ask for
15 more than 1/12, the request will be automatically approved, but if you ask
16 for more than that amount you need Field Office approval to override the
17 threshold.
18
- 19 Mr. Ramirez On line 4, is the threshold 1/12th of the PEL or 1/12th of the total subsidy?
20
- 21 Mr. Liu We are trying to craft language that indicates that the process described
22 here is the process in place today. We are not trying to change anything.
23 Perhaps this is not the best language, maybe we should say that this has
24 been in place since FY 2002.
25
- 26 Mr. Ramirez The threshold that we are talking about is 1/12th of the total subsidy
27 amount?
28
- 29 Mr. Kubacki Theoretically yes, but we have been disbursing in 3 months increments.
30
- 31 Mr. Ramirez Then it should say that is prorated for 1/12th. You spoke that in theory we
32 have systems for project-based accounting but the way it is supposed to be
33 and the way it is are not always the same. Can we put on the screen that it
34 is equal to 1/12th of the total subsidy?
35
- 36 Mr. Kubacki HUD has no problem with that language.
37
- 38 **[Language is being revised].**
39
- 40 Mr. Ramirez Thank you. That is acceptable.
41
- 42 Ms. Tran Are there any questions?



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- 1
2 Mr. Parker Out of curiosity, is there a situation where the department would want to
3 disburse more than 1/12th? We don't want to be in violation of this Rule.
4 Mr. Kubacki The PHA can request more than that amount and with HUD's approval
5 you can get more funds.
6
7 Mr. Parker Would there ever be a situation where you would want a higher threshold?
8
9 Mr. Ramirez Mr. Nolan.
10
11 Mr. Nolan Where it says "installments equal to 1/12th of the PHAs total operating
12 subsidy" after the word "payments" could we replace "payments with
13 "installments" so that the first sentence reads: "HUD shall make
14 payments equal to 1/12 of the PHAs total annual subsidy under the
15 Operating Fund Formula by electronic fund transfers through HUD's
16 automated disbursement system.
17
18 Ms. Tran Are there any other questions?
19
20 Ms. Scudder Do we need to remove the dates?
21
22 Ms. Tran Are you referring to "January 1, 2003"?
23
24 **[Ms. Scudder nods yes.]**
25
26 Ms. Tran Mr. Liu would like to keep that language. Is there a motion to vote on this
27 language?
28
29 Mr. Parker I motion.
30
31 Mr. Kaiser I second the motion.
32
33 Ms. Tran All those in favor, please raise your hands.
34
35 **Supermajority. Motion passes.**
36
37 Ms. Tran Continuing with subpart E, Section §990.200 and the language referring to
38 NYCHA. Would someone from HUD like to summarize the language on
39 the screen?
40
41 Ms. Yarus Paragraph (b) has been added to accommodate a unique situation for
42 NYCHA. In 1995 a number of state and local projects were federalized.



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- 1 The ACC Amendment provided that these properties would not receive
2 operating subsidy. It also provided that NYCHA could use the operating
3 subsidy it received for its other properties to operate the newly
4 federalized state and local properties. Paragraph (b) memorializes the
5 terms of the amendment to the ACC agreement. So, when we move to
6 project-based accounting and project-based funding, where normally there
7 would be no fungibility that would not apply to these 20 properties in the
8 NYCHA portfolio. Mr. Lam did I capture that accurately?
9
- 10 **[Mr. Lam nods yes.]**
- 11
- 12 Ms. Yarus Essentially, this provision allows for fungibility of the operating subsidy.
13
- 14 Mr. Lam For the record, and for the benefit of other PHAs, the adoption of this
15 provision does not increase their losses or decrease their funding. I
16 motion to accept this language.
17
- 18 Ms. Yarus That is correct, this does not also increase the subsidy amount that
19 NYCHA receives. The PEL will be based on the Harvard Cost Study not
20 including these units.
21
- 22 Mr. Byrne What percent of these units represents your total subsidy?
23
- 24 Mr. Lam It is about 20,000 units.
25
- 26 Mr. Byrne This is the subsidy of these units?
27
- 28 Mr. Lam This is the sole subsidy.
29
- 30 Mr. Ramirez I second the motion.
31
- 32 Ms. Scudder I second as well.
33
- 34 Mr. Strickland What is the motion?
35
- 36 Ms. Tran There is a motion to vote on adding paragraph (b) to Section §990.200.
37 All those in favor, please raise your hands.
38
- 39 Mr. Strickland Before we vote, I have a few comments with respect to paragraph (a).
40
- 41 Ms. Tran Mr. Strickland, the committee has already voted on paragraph (a) and
42 adopted the language. The motion on the floor is to vote on paragraph (b).



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- 1
2 Mr. Nolan Is NYCHA satisfied with the project-based accounting Rule as it relates to
3 this provision?
4
5 Mr. Lam Considering the circumstances, we don't have much choice but to have
6 these properties also be in compliance with the project-based accounting
7 and project-based management rules. We are willing to comply with these
8 rules.
9
10 Ms. Tran The motion is to vote on paragraph (b) of Section §990.200. All those in
11 favor, please raise your hands.
12
13 **Supermajority. Motion passed. Section §990.200(b) is adopted by the committee.**
14
15 Ms. Tran Are there any procedural questions at this point? We have now covered
16 all the open items and all items have been voted on. Mr. Kaiser
17 mentioned that he had a proposed change within subpart H and subpart E
18 paragraph (a). Mr. Kaiser, would you like to address those issues now?
19
20 Mr. Kaiser We are okay with having the Department look at the proposed changes
21 and comment on them after the break.
22
23 Mr. Russell I move that we break and return at 12:45 pm with all language changes
24 already prepared.
25
26 Ms. Tran Break granted. We are adjourned until 12:45 pm. If you need a lunch
27 pass, please see Claudia Yarus.
28
29 **Break granted at 11:31 am. The committee reconvened at 12:55 pm.**
30
31 **[Jeff Lines is now representing NOAAH].**
32
33 Ms. Tran Welcome back. According to the agenda, Mr. Ariel Pereira from HUD's
34 Office of General Counsel (OGC) will now describe the rulemaking
35 process.
36
37 Mr. Pereira Good afternoon. I have been asked to walk the committee through the
38 next steps of the rulemaking process, that is, what happens between the
39 time we go home today and a draft of the Rule appears in the Federal
40 Register.
41
42 [See [Appendix 5](#) – The Office of General Council's PowerPoint presentation].



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Step 1: Submit Report to HUD Secretary. The first step is to submit a report to the secretary of HUD, which consists of the consensus items and can also include any information the committee feels should be brought to the Secretary's attention, including non-consensus items. This is in accordance with Section 566(f) of the Negotiated Rulemaking Act. This report is the work report of the committee.

Step 2: HUD Clearance. The next step is the internal departmental clearance process, which ensures two things: (1) that the Rule is consistent with other department or agency Rules and (2) that rules that HUD promulgates are consistent with other external rules, such as fair housing guidance. HUD will review and provide comments on the work procedures. This process typically takes 10 days. However, since this is a negotiated procedure the clearance process will be a little different and the reviewers will show respect for the negotiations that have been made and the substantive decisions that have been made. So while there may be necessary technical changes, definition changes, cross-references, etc., substance policy issues will not be revised.

Step 3: OMB Review. Section 6 of the Executive Order 12866 – Regulatory Planning and Review allows OMB to review “significant” regulatory actions. OMB has up to 90 days to review the Rule and we are certain that they will consider the Operating Fund Rule “significant”. What makes a Rule “significant”? (1) If it has an annual effect on the economy of \$100 million, (2) if it will materially and adversely affect the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, tribal governments or communities, (3) if it will materially alter the budgetary impact of a program or (4) if it will raise novel legal or policy issues. The third reason is why OMB considers the Operating Fund rule “significant”.

Step 4: Congressional Review. This is authorized under section 7(o) of the Departmental HUD Act. Under the statute the committee may review anything that is published. Normally items are published semi-annually; once in the spring and once in the fall. In actuality and practice, Congress will review all Rules that are issued for public comment, including proposed and interim rules, not final rules, whether or not Congress is in session. Congress has 15 calendar days to submit any comments to HUD and it is very rare for the Hill to submit any comments on a HUD rule, but may do so on high profile matters. My experience is that that is a very rare occurrence.



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- 1
2 Step 5: Submit to Federal Register. After the 15-day Hill review clock
3 expires the Rule will be submitted to the Federal Register. It usually takes
4 3-5 business days to be published. After that both an Interim and Final
5 Rule will take effect 30 days after it is published. An Interim rule will
6 have a 60-day comment period. If it is a final rule it will be effective 30
7 days after publication and there will be no additional comment period.
8 Please note that committee members may also submit comments to be
9 considered and HUD will respond to those comments. Are there any
10 questions? I know that I went through this quickly.
11
12 Mr. Parker I wasn't doing the math, what is the most likely publication date?
13
14 Mr. Pereira We are operating under the statutory deadline of July 1, 2004. The worst-
15 case scenario is 101 days from now or about 4 months. The reviewers are
16 aware of our tight deadline and while OMB has 90 days to review the
17 Rule, we expect it will take them less time. Hopefully the Rule will be
18 published late this summer.
19
20 Mr. Parker It will be in place to make the October 1, 2004 effective date?
21
22 Mr. Pereira That is our goal.
23
24 Mr. Nolan One of the first slides mentioned the product of the working group. Will
25 we review that report before it goes to the Secretary?
26
27 Mr. Pereira You will have the opportunity to review that product.
28
29 Mr. Nolan I guess other than that product, I am not certain we have discussed what
30 would be in a report. Could we discuss that today?
31
32 Mr. Pereira That would be according to the agenda and the time permitted. The
33 Negotiated Rulemaking Act has been interpreted by other agencies to not
34 include the actual text but rather reflect substantive changes that should be
35 made to 24 CFR 990. The consensus items, any materials that would be
36 helpful for the Secretary, and any data or other information deemed
37 helpful are included in the public file.
38
39 Mr. Nolan Would we include the meeting minutes as a part of this report? We can't
40 approve the minutes of today's meeting.
41



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1 Mr. Pereira The meeting minutes are part of the public file and may be reviewed and
2 inspected at any time.
3
4 Mr. Nolan I would like to approve the minutes.
5
6 Mr. Pereira Could Ms. Tran speak to the minute taking process.
7
8 Ms. Tran As we have done in previous sessions, what we will do in this case is send
9 the meeting minutes from yesterday's and today's session out to the
10 committee members out on Monday next week ask for comments and then
11 circulate the final minutes.
12
13 Mr. Nolan What is the format of the final report? Will that also be circulated?
14
15 Mr. Pereira My understanding is that a report is being worked on as we speak and will
16 be reviewed by the committee this afternoon. The report will summarize
17 the consensus items.
18
19 Ms. Tran Per our protocols, the report in this case is the Rule that we have gone
20 through. For this committee the final report is the Rule.
21
22 Mr. Pereira The report can take many forms; it can be the text of the Rule or a memo
23 that outlines the consensus changes, whatever has been agreed to as part
24 of this process.
25
26 Ms. Tran In the protocols the final report will be the Rule language.
27
28 Mr. Cooper Thank you. As a follow-up, will residents be able to include statements
29 that could be attached to that report?
30
31 Ms. Tran Yes.
32
33 Mr. Lines You intend to go to an Interim-Final Rule, is that correct? And if so, how
34 will that affect the public comment time period and process?
35
36 Mr. Pereira The type of Rule that will be issued, whether it is proposed, interim or
37 final, is not something that HUD can address today. Everyone is aware of
38 the appropriation language that HUD needs to issue the final Rule by July
39 1, 2004 but that needs to be read in conjunction with 24 CFR 10. That
40 decision needs to be made in conjunction with OMB, and HUD will
41 discuss that issue with OMB. With regards to the public comment
42 process, whether it is an interim or proposed Rule the public and members



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- 1 of the committee would have 60 days to comment. The difference with
2 the Interim Rule is that it will take effect 30 days after publication.
3
- 4 Mr. Lines Will HUD respond to our comments?
5
- 6 Mr. Pereira Part 10 of the APA requires that all comments be responded to and that
7 HUD maintain a summary of the issues raised.
8
- 9 Mr. Nolan Are we now changing the preamble to a 60-day comment period instead of
10 30 days?
11
- 12 Mr. Pereira It should show 60 days, anything other than that needs to be justified.
13
- 14 Ms. Tran Are there any more questions?
15
- 16 **[Silence.]**
17
- 18 Ms. Tran Thank you Mr. Pereira. The next item on our agenda is any additional
19 concerns or new proposed changes to the language. Copies of handwritten
20 changes are now being distributed.
21
- 22 **[Appendices 6 and 7** were distributed to the committee members.]
23
- 24 Mr. Russell I have received two documents: the first is a 1-page document with
25 changes to subpart H and then I have a multiple page document with lots
26 of amendments. Is that all? We would like to identify concerns or
27 changes that the industry would like to make at this time, look at that
28 language, go through the changes briefly to ask questions, get clarification
29 and then maybe caucus and come back. If there are any other changes, not
30 that this would preclude anything from when we get back, but if we could
31 bring all changes to the floor now that is what we would like to do. Other
32 than theses changes is that all?
33
- 34 Mr. Kaiser I have a minor suggested change on page 26, line 26 regarding the types of
35 inflation factors to be determined by HUD. I propose to add something to
36 the effect of “in (e) below”. The sentence should now read: “The UEL
37 for a given funding cycle is the product of the Utility Rate determined in
38 (b) times the Consumption Level by utility calculated in (c) times an
39 inflation/deflation factor to be determined by HUD, as described in
40 paragraph (e) of this section”.
41
- 42 Mr. Russell HUD accepts that change.



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2 Mr. Strickland I have one more comment that we discussed in the industry meeting
3 yesterday. We have an issue with compliance with sentence in Section
4 §990.280(b)(1), page 45, lines 7-8: “The assessment is to be conducted by
5 a professional familiar with property management practices and costs in
6 the region or state the PHA is located”. We feel that to determine if you
7 are operating under the asset management model, “costs” don’t have
8 anything to do with if you are operating under an asset management
9 model. Someone said that if you have cost overruns then you are not
10 complying with asset management. I don’t agree with that. I don’t see
11 how they relate.
12
13 Mr. Liu We will come back to that.
14
15 Mr. Morton I have one change on page 19 and the phrase “the first day of the month”
16 that Ms. Scudder and Mr. Cooper talked about. I propose that we use the
17 last day of the month instead of the first day since there is always a higher
18 vacancy rate on the first day of the month. Could it be changed back to
19 make it the last day of the month? The issue is counting each month and
20 occupied units and dealing with turnover in a positive manner.
21
22 Mr. Nolan For some of us, our systems are set up to run occupancy on the 1st of the
23 month. This is a common industry practice, including for Section 8
24 programs.
25
26 Mr. Morton From the standpoint of counting occupancy, to have it on the last day is an
27 issue for small PHAs.
28
29 Ms. Scudder I concur with Mr. Morton. It affects our count on vacancies; it is more
30 advantageous for many PHAs.
31
32 Ms. Tran Are there any other language items?
33
34 Mr. Kaiser I have a question. We have not discussed definitions or the preamble. For
35 definitions on page 6, line 5 “expected outcomes” and “sanctions” and the
36 “computation of eligible unit months” are mentioned. My understanding,
37 based on OGC’s presentation, is that these definitions would be made to
38 conform with what is in the body of the Rule. The definitions right now
39 don’t agree with what we have developed in the last few days.
40
41 Mr. Liu That is correct.
42



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 SESSION – DAY TWO

- 1 Mr. Parker I would like to bring up an issue that we discussed in our working group.
2 There is a workaround for large PHAs and I am not certain that the
3 workaround leads to better project-based management. Subpart B –
4 Eligible Unit Months of the Rule postulates going to a unit count for
5 PHAs with less than 100 units rather than going to a percentage (see page
6 21 of the pre 4th Session Rule, version 5). Let's say that I have a 4 unit
7 new property and it makes sense for me to manage from property-based
8 management rather than lumping it with other units. I could do that, but it
9 would not be the best way to do project based management. But if I
10 administer it as 4 units the vacancy rules only allow 1.23 vacancies and if
11 we are looking at this on a property- by-property basis what is the
12 difference between a PHA with less than 100 units and a property with
13 more than 100 units? My fear is that this may lead to strange decisions to
14 keep things above the 100-unit marker. This is something that we need to
15 consider.
16
- 17 Mr. Lines I have a small change that NOAAH would suggest. On page 2, line 25 (of
18 the mid 4th session Rule) reflect that NOAAH was part of Negotiated
19 Rulemaking process in March 1999 and that there were four industry
20 groups representing housing interests.
21
- 22 Mr. Nolan Going back to the report. Are we going to include the preamble in the
23 report and vote on the preamble as we did with other sections of the Rule?
24
- 25 Mr. Pereira The report will only contain substantive regulatory text. The preamble
26 will not be part of the report since it only provides a summary of the
27 substantive parts.
28
- 29 Mr. Nolan So everything before page 11 would not be included in the report and does
30 not need to be considered by the committee?
31
- 32 Mr. Pereira That is correct.
33
- 34 Mr. Lines As Mr. Marchman, the former Assistant Secretary, pointed out, the
35 process for selecting an independent reviewer needs to be clear and
36 include minorities in the contracting process. HUD needs to include an
37 appeals process for PHAs and establish a timetable for when PHAs can
38 request an appeal.
39
- 40 Ms. Tran Are there any questions or additional language changes?
41
- 42 **[Silence.]**



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- 1
2 Ms. Tran At this time does HUD want to go through the handwritten document?
3
4 Mr. Russell It might be helpful before we caucus, if an industry representative
5 explained the nature of the intent of the amendments that we have in
6 writing so we have a clear understanding of the intent.
7
8 Mr. Kaiser I have a question, will we vote on the changes suggested? How are we
9 going to do that? Mr. Strickland wanted to discuss subpart H.
10
11 Ms. Tran I suggest that we vote after we caucus, that way we can discuss all
12 changes that have made up to this point.
13
14 Mr. Longo I submitted similar language to that which Mr. Marchman brought up. If
15 two people have an honest disagreement over the independent assessment,
16 the assessor and the PHA over the threshold, where do you turn? Who do
17 you turn to? We propose to add the following language to section
18 §990.220(d)(1), on page 38: “If the PHA disputes the review and or
19 recommendation of the HUD-procured professional, it may at its own
20 expense cause a second review to be performed by a second professional
21 assessor selected by the PHA, who must be acceptable to HUD. The
22 recommendation of such second professional assessor shall replace that of
23 the first assessment”.
24
25 Ms. Tran Mr. Strickland if we could go through your thoughts on the changes that
26 were submitted. (See [Appendix 6](#)).
27
28 Mr. Strickland Some of the committee members including myself felt that as PHAs were
29 funded based on a rolled up PEL that the 3% vacancy would be computed
30 at a PHA-wide level and not on a property-level. This morning’s Rule is
31 calculating vacancy on a project-by-project basis so we have alternative
32 language to allow the 3% to be calculated on an agency-wide basis. Then,
33 when HUD converts to computing the PEL at the project-level, we will
34 then convert vacancy to be computed on a project-by project basis as well.
35 Should I continue?
36
37 Ms. Tran Yes.
38
39 Mr. Strickland The next item was in reference to the single sheet, page 43 of Subpart H
40 (See [Appendix 7](#)), Section §990.270(b). We would like to add language at
41 the end of the paragraph that illustrates that we are compliant with GAAP,
42 which are the proper accounting principles. There are different ways to



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1 allocate things and different things are acceptable, and if a PHA thought
2 that something would work better for them, then this language would
3 allow them that flexibly. We also added a new subsection (e), which
4 allows Capital Funds that are not designed at time of receipt to be
5 allocated among projects, basically on income, and this gives flexibly to
6 the PHAs, subject to proper accounting principles. The next proposed
7 change is to section §990.200 (See [Appendix 7](#)). On page 35, lines 13-14
8 we would like to add clarifying language so that the sentence reads:
9 “Once subsidy is calculated at a project level, operating subsidy can be
10 transferred as a PHA may determine from time to time during the PHAs
11 fiscal year to another ACC project or projects, if a project’s financial
12 information, as described more fully in §990.270, produces excess cash
13 flow, as such excess cash flow is determined by the PHA from time to
14 time in its discretion, but only in amounts not exceeding such excess cash
15 flow”. This allows a PHA excess flow under a rolled up PEL and the
16 ability to move money on a day-to-day basis, so if we only get paid a PEL
17 of \$275 and they really have a PEL of \$300 we can give them the money.
18 That is all.

19
20 Ms. Tran Would anyone like to ask clarifying questions?

21
22 Mr. Kubacki HUD would like to request a 30-minute caucus to review the proposed
23 language.

24
25 Ms. Tran A 30-minute caucus is granted. We are adjourned until 2:15 pm.

26
27 Mr. Kaiser The industry will caucus as well.

28
29 **Break granted at 1:46pm. The committee reconvened at 3:48pm.**

30
31 **[Mr. Land, Ms. Watson and Mr. Anderson were not present. Mr. Lines is now**
32 **representing NOAAH, Mr. Strickland is representing the City of Montgomery HA and Mr.**
33 **Ted Van Dyke is representing the HA of East Baton Rouge.]**

34
35 Ms. Tran Everyone, please take your seats. Would HUD like to start.

36
37 Mr. Russell Thank you. We are going to go through the changes starting with the
38 single handout on subpart H. (See [Appendix 7](#)). Please note that this is
39 not in the order of the Rule. The first issue that we will take up is Section
40 §990.270(b)(1). What you see on the screen is the language that HUD is
41 proposing. We think that is conveys, essentially, the same message that



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- 1 the industry was proposing. If you would please take a look at that and
2 then we can discuss it.
3
4 Ms. Tran Are there any comments on Section §990.270(b)(1)?
5
6 **[Silence.]**
7
8 Mr. Strickland I was wondering why you would not include “including the establishment
9 of cost and equity allocations and the preparation of financial statements”?
10 (See [Appendix 7](#)).
11
12 Mr. Kubacki It is more than a cost and allocation methodology. We want to emphasize
13 that depreciation methodology is still determined by the PHA.
14
15 Mr. Strickland So then it does include those costs and a myriad of other things?
16
17 Mr. Kubacki That is correct.
18
19 **[Mr. Anderson is now present].**
20
21 Ms. Tran Moving on.
22
23 Mr. Russell Within the same section, the industry proposed adding a new subsection
24 (e). There was a slight clarification to the language, however we propose
25 to add the industry language so that the sentence reads: “Funds other than
26 Operating Subsidies, received by a PHA...” instead of “Capital Fund
27 distributions and other funds received by a PHA...”.
28
29 Ms. Tran Moving on to the next item.
30
31 Mr. Russell Section §990.200(a), as shown on the screen, is HUD’s reaction to the
32 proposed industry language. You can see that we agree to add “as the
33 PHA determines during the PHA fiscal year” to give you the flexibility to
34 do that during the year. [Referring to comment 3 of [Appendix 7](#).] Instead
35 of adding the words “or projects” we just say “ACC project(s)” and we
36 took out “at the discretion of the PHA”. These changes give you the
37 flexibility that you were seeking to allocate excess cash flow during the
38 year.
39
40 Ms. Tran Are there any questions or comments?
41



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- 1 Mr. Ramirez So that I am clear, we eliminated "at the discretion of the PHA" because it
2 is inherently understood.
3
- 4 Mr. Russell It is redundant and unnecessary. If there is excess cash flow the PHA can
5 determine that during the fiscal year.
6
- 7 Mr. Ramirez Thank you.
8
- 9 Ms. Tran Moving on to the next item.
10
- 11 Mr. Russell Section §990.220(3)(1). We did something different here based on the
12 comments received yesterday during the working group and the
13 suggestion of the committee to select independent assessors. HUD will
14 come up with an approved list of assessors and you will see that under
15 Section §990.220(d)(3): "A PHA may select from a list of HUD approved
16 professionals to conduct the independent assessment". We also kept the
17 following clause: "In the event that HUD is unable to produce a list of
18 independent assessors on a timely basis, the PHA may submit its own
19 demonstration of successful conversion to asset management, as described
20 in subpart H directly to HUD for determination of compliance" in the case
21 where HUD has not yet developed the list for your state so that you can
22 come directly to HUD.
23
- 24 Mr. Nolan It would be difficult to submit something prior to or with the independent
25 assessment if we don't know what the assessment says.
26
- 27 Mr. Russell That is the point. If you want to submit other information to make your
28 case, other than the independent assessment, do so, but we don't want
29 everyone to wait to see the results and then have people submit other items
30 to bolster their case. To address your concerns about having only one
31 assessor that you are not confident in we have revised the language so that
32 the assessor will be procured by HUD, but selected by the PHA.
33
- 34 Mr. Ramirez Based on the changes proposed, a few things have been brought to light
35 that are of concern for the agencies that are looking to cap their losses
36 prior to FY 2009. Regarding FACA and the evaluation of standards, there
37 are no standards nor a standard setting body to establish thresholds. That
38 is a concern for those PHAs who wish to cap their losses. Things evolve
39 and there is no appeals mechanism in place. That is not a sound practice
40 for an agency to be placed in a situation where it does not meet the
41 standard, whatever that standard may be. There is no appeals process
42 similar to PHAS. Those are areas of concerns and we are working to try



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1 to build a consensus and but this could create a big problem down the road
2 for all those concerned.
3
4 Ms. Tran Are there any questions or comments?
5
6 Mr. Parker Does “concurrent” mean within two days, one day, or what? Since we are
7 not in control of when the independent assessor will submit his or her
8 report, what is your understanding of concurrent?
9
10 Mr. Russell The point is that we do not want you to wait until the assessment has been
11 completed and the results are in to submit additional documentation. We
12 could say “prior to the determination of the Secretary based on the results
13 of the assessment”.
14
15 Mr. Parker When do we send it in if it is already done?
16
17 Mr. Russell If it is done, send it in.
18
19 Mr. Parker We don’t want it to be late. We don’t want the deadline to be at 5:00 pm
20 on Tuesday and find out at 8:00 am on Wednesday. We want to know
21 when the deadline is.
22
23 Mr. Russell First, you will know that the PHA will seek an assessment as part of their
24 transition. Secondly, you will know when and whom you select as an
25 independent assessor. At that point, you have made the selection and are
26 about to embark on the process. If you are ready for the assessment that
27 means that you have the materials, so that would be a good time to submit
28 any other documents to HUD for review.
29
30 Mr. Nolan I ask that the Department consider putting a process around this in way of
31 a Notice. There is a process for audit and REAC reviews and for each
32 process there is a way that the reviewer interacts with the PHA and it
33 would be nice if we understood the rules of the game and had a process
34 laid out before us. I ask for more specificity as we begin to implement
35 this.
36
37 Mr. Morton I welcome that, Mr. Nolan. I would also suggest working with the local
38 folks so we can submit our own local information. I have no trouble with
39 this language, personally.
40
41 Mr. Kaiser I have a question. Are there other outstanding issues beyond this?
42



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- 1 Mr. Russell Let's stick to this for right now.
2
3 Mr. Kaiser I ask we be given 15 minutes to caucus to discuss this issue.
4
5 Mr. Russell Let's run through the rest of this before we caucus. Are there any
6 questions or comments on this at this point?
7
8 **[Silence.]**
9
10 Ms. Tran Moving to the next issue.
11
12 Mr. Russell Mr. Lines pointed out the omission of NOAAH on lines 25 and 26. That
13 has been added.
14
15 Ms. Tran Next.
16
17 Mr. Russell Regarding §Section 990.125 and the issue of the first or last day raised by
18 Mr. Nolan. To accommodate both sides of the debate HUD will accept
19 the vacancy status of either the first or last day of the month.
20
21 **[Clapping].**
22
23 Mr. Russell You can't have anything in between - it has to be one or the other. There
24 is another change that was proposed by Mr. Kaiser on page 26 of Section
25 §990.160(d). You will see the changes on the screen. The revised
26 language reads: "...HUD as described in paragraph (e) of this section".
27
28 Ms. Tran Are there any other items?
29
30 Mr. Kubacki Regarding Section §990.155 and the discussion of HUD's calculation of
31 PUM at the PHA level instead of the project level. HUD's intention is to
32 collect and give subsidy at the project level so we did not make any
33 change to this section.
34
35 Ms. Tran Are there any questions or comments?
36
37 **[Silence.]**
38
39 Ms. Tran Moving on to the next item.
40



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- 1 Mr. Kubacki On page 45 of Section §990.280(b)(1) we kept the word “cost” because
2 this deals with the independent assessor and the assessors understanding of
3 costs. This addresses the qualifications of the assessor.
4
- 5 Mr. Strickland Regarding the issue of compliance with asset management, if a PHA has
6 cost overruns are they still in compliance? That is, regardless of cost;
7 compliance will be based on methodology and not cost, is that correct?
8
- 9 Mr. Russell This section has nothing to do with a PHA meeting compliance it has to do
10 with the qualifications of the person you select. The person that you select
11 should be knowable about the costs.
12
- 13 Mr. Ramirez My understanding of this point and regarding Mr. Strickland’s comments,
14 instead of “costs” to determine the professional in that area wouldn’t it be
15 “practices”. I’m not sure what you are looking for, perhaps it is more the
16 conduct of the professional. That said, the issue is not being stricken. To
17 be sure that costs referred to here are not agency specific costs but rather
18 the costs of the area where the professional will be going into, the
19 language should be clarified. If there is an agency operating with cost
20 overruns it won’t arbitrarily be classified as noncompliant.
21
- 22 Mr. Liu Clearly we have marked out a path in this regulation where we don’t tie
23 costs to compliance. To the extent that costs can lead an accountant,
24 auditor, or other professional to understand the project-based
25 methodologies the agency uses is one of the tools among other practices
26 that the assessor should be able to utilize. There should be no fear of
27 someone who understands regional costs. That is not to say that overruns
28 will be an issue that will disqualify an entity from noncompliance. We are
29 talking about various elements of managing a property and that includes
30 costs. Let's not strike that from our memories.
31
- 32 Ms. Tran Are there any questions or comments?
33
- 34 Mr. Nolan Let’s go back to something I heard regarding Section §990.125 and EUM
35 because this was not my understanding of what Mr. Kubacki just said.
36 Vacancies would be measured on a property-by-property basis initially.
37 Are you are saying that day one - the effective day - Jan 1 2006, all
38 vacancies will be measured on a per property vacancy basis. Therefore, if
39 I have a property with a 5% vacancy then I loose 2% of operating subsidy.
40
- 41 Mr. Kubacki That is correct. The idea is to get to project-based management and
42 accounting.



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1
2 Mr. Nolan We thought we would be funded using an agency-wide PEL.
3
4 Mr. Kubacki It will still be a weighted average.
5
6 Mr. Kubacki The weighted aggregate is based on the occupancy rate.
7
8 Mr. Nolan Don't you also weight the vacancy rate? I have one property with a higher
9 PEL so that impacts my funding.
10
11 Mr. Kubacki I agree. This is to get us thinking in a more project-based mindset and to
12 help us transition there.
13
14 Mr. Nolan I have no problem with that, but it should be applied consistently across
15 the calculations.
16
17 Mr. Kubacki PEL is what has already been calculated based on what we have done and
18 that is the PEL -- what you use.
19
20 Mr. Nolan It impacts the weighted average.
21
22 Mr. Kubacki I understand what you are saying and we could separate the whole PEL by
23 project.
24
25 Mr. Nolan We will discuss this in caucus.
26
27 Ms. Tran Mr. Van Dyke who is now representing Mr. Murray and the HA of East
28 Baton Rouge, do you have a comment.
29
30 Mr. Van Dyke Mr. Kubacki's answer contradicts the Rule. The Rule says convert by
31 2007 and PHAs that have not converted, most of the them, will still have
32 the original ACC projects of which many of them have fewer than 100
33 units. A project with 4 units or 12 units is very common. If you evaluate
34 PHAs vacancies on a project-by-project basis when the Rule does not
35 require that we convert to project-based accounting, that does not seem
36 fair.
37
38 Mr. Parker I would like to point out something that could allow us to look at this
39 differently. I am referring to Subpart B, Section §990.120, line 19, where
40 it states "A unit would not be included in the calculation of operating
41 subsidy as an eligible unit...when it exceeds the project vacancy
42 allowance of 3 percent". Would you do the calculation based from July 1



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1 to June 30, prior to the applicable funding cycle so the applicable funding
2 cycle begins January 2005? When is the first calculation, is it this
3 January?
4
5 Mr. Kubacki It will be January 1, 2006.
6
7 Mr. Parker It would be as of the next June 30th.
8
9 Mr. Kubacki That is correct.
10
11 Mr. Parker That gives everyone one year to rearrange their systems and to collect the
12 data. PHAs do not have the ability to collect vacancy data or reconfigure
13 all this stuff retroactively. Therefore, you are talking about creating
14 vacancy data as of July 1, 2004 through June 30, 2005 is that correct?
15
16 Mr. Kubacki The funding will start next January.
17
18 Mr. Parker January 2005? Could you clarify which July to June Section §990.125(b)
19 is referring to? The funding cycle begins January of which year?
20
21 Mr. Kubacki A PHAs eligible unit months will be calculated from July 1, 2004 to June
22 30, 2005. The formula will be run in November of 2005 and become
23 effective in FY 2006.
24
25 Mr. Strickland I have one other observation. If you have two identical projects and one
26 PEL is \$300 and one is \$250 and you get \$275 and you have a 1%
27 vacancy for the project with the PEL of \$300 and a 5% vacancy at the
28 project that has a PEL of \$275, then I would supplement the vacancy rate
29 because I have a rolled up PEL and I will take a hit. It's not fair to the
30 projects in that scenario. Furthermore we don't know which ones will and
31 won't. That's the problem.
32
33 Ms. Zaterman I understand HUD's concern about vacancies but my understanding was
34 that a rolled up PEL comes with a rolled up vacancy; that was the
35 example. And it is tied to the PEL. If you have apples and oranges it gets
36 complicated since it is calculated on a weighted PEL. My understanding
37 was to match the two in FY 2007, and I don't understand why you do not
38 want to proceed that way.
39
40 Mr. Russell We are going to discuss this during the brief caucus.
41



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- 1 Mr. Nolan I would ask that when you discuss this, that you discuss that we still have
2 the flexibility to group units to logical projects, we measure this 21 days
3 from now that we all understand the rules and then make a logical
4 determination of what a project is and capture the information accurately.
5 There are logistical problems of implementing this in 21 days. It is a
6 surprise.
7
- 8 Ms. Tran Shall we caucus now?
9
- 10 Mr. Kaiser Earlier I suggested a 15 minutes caucus, however since there are now two
11 substantive issues I suggest that we have 30 minutes.
12
- 13 Ms. Zatterman Before we caucus, were there other language changes submitted?
14
- 15 **[Silence.]**
16
- 17 Ms. Tran We have now covered all the issues that were identified prior to our
18 caucus earlier or did we miss anything?
19 **[Silence.]**
20
- 21 Mr. Kaiser If we could make the caucus according to real time, we could move this
22 more quickly.
23
- 24 **Break granted at 4:36pm. The committee reconvened at 5:34pm.**
25
- 26 Ms. Tran Let's get started.
27
- 28 Mr. Parker The caucus met and is prepared to report the determinations of the caucus.
29 We have crafted language on the last piece, subject to a discussion on
30 language review or no language review, I think we are at a point of
31 consensus and if we could put on the screen the proposed changes to
32 Section §990.220(d).
33 **[Mr. Parker read the proposed Section §990.220(d).]**
34
- 35 Ms. Tran Are there any questions or comments?
36
- 37 Ms. Sledge I would like to thank the industry and Department. That was fabulous.
38
- 39 Ms. Tran Mr. Parker.
40
- 41 Mr. Parker That being the case, the industry is prepared to accept the Department's
42 proposal and is prepared to accept the rest of the language presented by



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1 the Department prior to our caucus. We might want to do this in the form
2 of two separate votes: One to vote on the language up to this point and
3 vote on the language prior to the caucus.
4
5 Mr. Ramirez I would like to clarify the amendment regarding independent assessors.
6 The review of materials, shouldn't that direction be "shall" not "may"
7 consider all the information submitted?
8
9 Mr. Liu I have no objections.
10
11 **[Clapping.]**
12
13 Mr. Parker Have we changed dates on page 19 line 6 of Section §990.125, which was
14 brought to our attention by Mr. Tamburrino so that it reads "commencing
15 July 1, 2005".
16
17 Mr. Kubacki That change was made.
18
19 Mr. Parker Fine. I have no other comments. I have made a motion and it was
20 seconded by Mr. Myers to approve the change of "shall".
21
22 Mr. Myers Are the dates correct in Section §990.125?
23
24 Mr. Parker On page 21, line 1, there is another reference where the dates might not be
25 correct. Wait, that has been taken care of. Great.
26
27 Ms. Tran Are there other items for discussion before we vote?
28
29 **[Silence.]**
30
31 Ms. Tran The motion would be on the language amended prior to the caucus and
32 further revised since the caucus.
33
34 Mr. Parker That is correct.
35
36 Ms. Tran All those in favor, please raise your hands.
37
38 **Supermajority. Motion Passes.**
39
40 Mr. Parker We are close now on the entire Rule. There was some concern about the
41 changes and whether or not there was a desire to get a fresh copy of the
42 final Rule and vote on it or vote on a conditional approval subject to one



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- 1 last read through on a conference call. Could we discuss the approval
2 mechanism of the full rule before we take a final vote.
3
- 4 Mr. Russell HUD is not interested in ‘conditional voting. It is time to vote on the
5 product that we have crafted. We can break and read the final copy of the
6 Rule and then reconvene to vote, but let’s settle this.
7
- 8 Mr. Ramirez To that end, may I suggest since there were only some pages where there
9 were changes made and since HUD was caucusing for several hours and
10 we were caucusing for a while that maybe we could just print the sections
11 where we made changes.
12
- 13 **[General disagreement. Shouts to ‘print everything’].**
14
- 15 Mr. Ramirez Ok, if we print the entire Rule, how long will that take?
16
- 17 Ms. Tran About 30 minutes.
18
- 19 Mr. Ramirez What about 90 minutes and then you could just place the copies of the
20 Rule in our seats.
21
- 22 Ms. Tran Taking into consideration committee member’s flight schedules and given
23 the traffic we should plan to leave earlier and not later.
24
- 25 Ms. Zaterman Can you please clarify the status of the preamble. Mr. Pereira, the
26 representative from OGC, stated that the preamble would not be included
27 in the report. Will we review the preamble or just the body of the Rule
28 and how will we be able to comment on that?
29
- 30 Mr. Pereira The committee will approve the regulation text - the substance of the Rule.
31 HUD will revise the preamble subject to the negotiations, and that will be
32 reflected in the published version.
33
- 34 Ms. Zaterman It will not be available prior to publication for our review?
35
- 36 Mr. Pereira HUD will make it available before publication.
37
- 38 Ms. Scudder I would like to make one comment. There is one issue that we never dealt
39 with and I would appreciate it if the committee would address it – that is
40 the issue of regulatory relief. This was a topic that seemed to be on the
41 top of our list of issues when we began this process and now it seems to
42 have disappeared. Maybe we could discuss it now.



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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 SESSION – DAY TWO

1
2 Mr. Morton It's too late, Ms. Scudder.
3
4 Ms. Scudder It doesn't hurt to try.
5
6 Ms. Basgal Maybe you could move to do away with the Rule.
7
8 Mr. Ramirez We talked about this at the beginning of the rule making process and
9 perhaps we could include something in the preamble to reflect that there
10 was a clear intent of regulatory relief. That would be an appropriate
11 signal that this is not just a distribution formula but includes regulatory
12 and statutory relief to make this endeavor successful.
13
14 Mr. Liu I concur with Mr. Ramirez. We are in a situation where we are trying to
15 determine whether the chicken or the egg will come first. We have a tool
16 that allows us to make the case to a lot of forces that are part of what we
17 do and that are less than supportive of changes made and this will move
18 the ball forward. And in order for them to move forward, the changes and
19 regulatory relief have to be there.
20
21 Mr. Ramirez To conclude, if we could have language in the preamble that would reflect
22 our intent to pursue additional regulatory relief and since HUD has an
23 attorney present, could we draft and discuss that language?
24
25 **[Mr. Liu nods no.]**
26
27 Ms. Scudder It never hurts to ask.
28
29 Mr. Ramirez That's true.
30
31 Ms. Tran Is there an interest to break for dinner?
32
33 Mr. Ramirez Could I suggest that instead of coming back for a quick read through of
34 the Rule, can we allow people the time to review the Rule on their own
35 and then perhaps discuss or comment on the Rule and then we can vote.
36
37 Mr. Longo What time is the vote?
38
39 Mr. Ramirez Around 7:30 pm?
40
41 Ms. Tran We also have to allow time for public comment. It is now 6:00 pm, do we
42 want to allow time now for public comment, print and make copies of the



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1 Rule by about 6:45 pm and then come back at 7:30 pm having read the
2 Rule and ready to discuss and vote on the Rule?

3
4 Mr. Longo When can we pick up the Rule?

5
6 Ms. Tran Copies of the Rule will be available at 6:45 pm.

7
8 **Wayne Sherwood from Sherwood & Associates came forward.**

9
10 Mr. Sherwood One comment about the last thing discussed regarding regulatory relief.
11 This has not been part of the discussions and it is not appropriate to make
12 an open ended recommendation for language changes to the preamble. In
13 appendix H of the Harvard Cost Study it refers to many laws and
14 regulations that provide important protections for residents and for HUD.
15 For preamble to say that we are interested in regulatory relief and given
16 that there are others that do not feel that those regulations should be
17 changed; it is not appropriate for this committee to recommend that.

18
19 **[Silence.]**

20
21 Mr. Russell In the interest of time, we are not going to be able to go through the
22 preamble and make all of those conforming changes so we will only print
23 out the body of the Rule and make that available for review.

24
25 Ms. Tran We are adjourned until 7:30 pm.

26
27 **Break granted at 6:05 pm the committee reconvened at 8:46 pm.**

28
29 Ms. Tran Can everyone please take your seats.

30
31 **[Copies of the revised Rule have been distributed to the committee members - End 4th**
32 **Session Draft Interim-Final Rule (See [Appendix 8](#)).**

33
34 **[Bill Maher is now representing Todd Gomez and the Chicago Housing Authority].**

35
36 Ms. Tran Mr. Parker, are you starting for the industry groups?

37
38 Mr. Parker I don't know if you want to go through the changes page by page or by
39 section by section?

40
41 Mr. Ramirez Why don't we start at the beginning and go by page number. It starts on
42 page 15. That could expedite the review, if you feel that is appropriate.



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- 1
2 Ms. Tran Let's try to avoid basic wordsmithing.
3
4 Mr. Ramirez That would be a technical correction issue, so then if we have technical
5 corrections to who would we submit those to?
6
7 Ms. Tran Mr. Pereira from OGC. Moving on. Are there any changes to page 15?
8
9 Mr. Maher This was a change that was suggested to me. On line 12 the present
10 language says "payable to a PHA", however the amount payable to a PHA
11 may not be the amount a PHA is eligible to receive so it should say the
12 "operating subsidy each PHA is eligible to receive".
13
14 Ms. Tran Are there any other changes?
15
16 Mr. Parker Is the Department okay with that change.
17
18 Mr. Russell I guess we need to vote on this and go through this change-by-change.
19
20 Mr. Ramirez I move to accept the language so it is consistent with other language.
21
22 Mr. Maher I second the motion.
23
24 Ms. Tran All those in favor, please raise your hands.
25
26 **Supermajority. Motion passes. Page 15, as amended is adopted by the committee.**
27
28 Ms. Tran Are there any comments or questions on page 16?
29
30 **[Silence.]**
31
32 Ms. Tran On page 17 are there any proposed changes?
33
34 Mr. Kaiser This is more of a question. On line 19 regarding the reference to "RHIP",
35 this is no longer in the body of the Rule. Can it be deleted?
36
37 Mr. Maher I second the motion to delete the reference to RHIP.
38
39 Mr. Ramirez It was in the section that talked about RMC's and that was deleted.
40
41 Mr. Russell This will get cleaned up by Pereira's group.
42



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- 1 Mr. Anderson This is a flag for Mr. Pereira. The word “project” is a defined term in this
2 section and it is also defined in subpart C using a different definition.
3 OGC will need to reconcile the two definitions.
4
- 5 Ms. Tran On page 18 are there any proposed changes?
6
- 7 Mr. Morton On the first line, line 9, it should read “on” instead of “an”.
8
- 9 Mr. Nolan On line 15, regarding vacancies of 3% we should delete the word
10 “project” before the word “vacancy” and add “as defined in section
11 990.125” before the last sentence.
12
- 13 Mr. Morton This is a small issue. The writing of 3% is inconsistent. It is spelled out in
14 some places and appears as a percentage in other places.
15
- 16 Ms. Tran Would HUD like to comment?
17
- 18 **[Silence.]**
19
- 20 Mr. Kubacki HUD is okay with the language change and we would like to vote.
21
- 22 Ms. Tran All those in favor, please raise your hands.
23
- 24 **Supermajority. Motion passes. Page 18, as amended is adopted by the committee.**
25
- 26 Ms. Tran Are there any changes to page 19?
27
- 28 **[Silence.]**
29
- 30 Ms. Tran No, okay. Page 20?
31
- 32 **[Silence.]**
33
- 34 Ms. Tran Are there any changes to page 21?
35
- 36 **[Silence.]**
37
- 38
- 39 Ms. Tran Are there any changes to page 22? No. Page 23?
40
- 41 **[Silence.]**
42



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1 Ms. Tran Are there any changes to page 24?
2
3 Mr. Nolan On line 18, I would like to strike the language “prior to the effectiveness
4 of this rule”.
5
6 Ms. Tran Mr. Russell.
7
8 Mr. Russell HUD is not in agreement with that change.
9
10 Mr. Nolan One could interpret that the Harvard Study would not apply to Moving to
11 Work (MTW) PHAs. So if I have to use the current operating subsidy
12 calculation prior to this Rule and this Rule no longer applies to that group?
13
14 Mr. Morton I don’t understand part (g)...
15
16 Mr. Nolan Excuse me, can I get an answer to my question?
17
18 **[Silence.]**
19
20 Mr. Liu This provides that for MTW cities, per their agreement in attachment ,
21 those agreements are reflected herein.
22
23 Mr. Nolan So that I am clear, I have to use the old formula that was in effect at the
24 time the agreement was executed.
25
26 Mr. Liu We are grandfathering in whatever was previously agreed to.
27
28 Mr. Ramirez You are honoring prior commitments?
29
30 Mr. Liu Yes, if there are clauses. For those PHAs who had reason to be treated
31 uniquely, those agreements are preserved. But, that does not preclude
32 amendments and that is a separate issue.
33
34 Mr. Morton Part (g) it reads as an incomplete sentence. Was something left out?
35
36 Mr. Anderson Something was lost and one could fix it by substituting a comma for
37 period and striking the phrase “pursuant to that documentation”. We
38 could leave this to Mr. Pereira and OGC to fashion it into something more
39 reasonable.
40
41 Mr. Maher Will Mr. Pereira and OGC clean this up?
42



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- 1 Mr. Anderson Yes.
2
3 Ms. Tran Are there any other changes? No. We do not need to vote on that since it
4 is a technical change. Are there any changes to page 25?
5
6 **[Silence.]**
7
8 Ms. Tran Are there any changes to page 26?
9
10 **[Silence.]**
11
12 Ms. Tran Are there any changes to page 27?
13
14 **[Silence.]**
15
16 Ms. Tran Are there any changes to page 28?
17
18
19 Mr. Kubacki We need to go back to page 26, part (f). We added language to take care
20 of a disparity for PHAs that have tenant paid utilities. Under this language
21 freezing rental income will have the same effect for PHAs with tenant paid
22 utilities as it would under the frozen formula.
23
24 Mr. Kaiser I move to adopt the language.
25
26 Mr. Lam I second that motion. That was a change I was going to propose because it
27 keeps the original intent of section §990.185(b).
28
29 Ms. Tran All those in favor, please raise your hands.
30
31 **Supermajority. Motion passes. Page 27, as amended is adopted by the committee.**
32
33 Ms. Tran Are there any changes to page 28?
34
35 **[Silence.]**
36
37 Ms. Tran Are there any changes to page 29?
38
39 **[Silence.]**
40
41 Ms. Tran Are there any changes to page 30?
42



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- 1 Mr. Kaiser On line 2 is currently say “cooperative”, however it should say
2 “cooperation”.
3
- 4 Mr. Kubacki HUD accepts that change.
5
- 6 Ms. Tran That is wordsmithing so we will not vote on that change. Are there any
7 changes to page 32? No. Page 33?
8
- 9 Mr. Kaiser On line 17, the word “its” should not have an apostrophe.
10
- 11 Ms. Tran Are there any other changes to page 33? No. Page 34?
12
- 13 Mr. Maher I think we should add “monthly” to line 29, ‘HUD shall make monthly
14 payments’.
15
- 16 Ms. Tran HUD accepts the change. On page 34 are there more changes?
17
- 18 Ms. Scudder On page 33 the language on lines 1-3 regarding “not freezing the utility
19 allowance” has that been corrected? Did it come out of the document?
20
- 21 Kubacki That language is correct and the section we agreed to before will make
22 sure that all those references come out.
23
- 24 Ms. Scudder Thank you for clarifying that.
25
- 26 Ms. Tran Are there any suggested changes to page 35?
27
- 28 **[Silence.]**
29
- 30 Ms. Tran Are there any suggested changes to page 36?
31
- 32 **[Silence.]**
33
- 34 Ms. Tran Are there any suggested changes to page 37?
35
- 36 **[Silence.]**
37
- 38 Ms. Tran Are there any suggested changes to page 38?
39
- 40 **[Silence.]**
41
- 42 Ms. Tran Are there any suggested changes to page 39?



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1

2 Mr. Parker

We were debating this earlier, on line 27, appeals must be submitted one year after the effective date of this regulation, so we should say July 1, 2006. That would be 6 months after the date that they are published for the first time, so that will be adequate time for people to make their appeals. The intent was to have one year after July 1, but you only have 6 months.

8

9 Mr. Russell

Six months is what you just said would be sufficient time. You must file by July 1, 2006. HUD agrees to the change.

10

11

12 Ms. Tran

Shall we vote? All those in favor, please raise your hands.

13

14 **Supermajority. Motion passes. Page 39, as amended is adopted by the committee.**

15

16 Ms. Tran

Are there any suggested changes to page 40?

17

18 **[Silence.]**

19

20 Ms. Tran

Are there any suggested changes to page 41?

21

22 Mr. Byrne

On line 29 where it says “This” at the beginning of the sentence. We need to define “this”. We also on line 27 need to say “property-based services” instead of “property-based management”.

23

24

25

26 Mr. Russell

HUD moves to vote the approval of that change.

27

28 **Supermajority. Motion passes. Page 41, as amended is adopted by the committee.**

29

30 Ms. Scudder

On page 41, line 6, I want to be consistent with the paragraph above, and add the phrase “dwelling rental units”.

31

32

33 Ms. Tran

That will be considered a technical change and thus will not require a vote.

34

35 Ms. Zaterman

On page 40, our independent process is different than the independent process for asset-based management. Could we conform those two definitions? We worked on language before the break for getting an independent cost assessment for having a management review for a halt loss. Previously, this was the same process. Now we have two different appeals processes and the language should be conformed. The language for the stop loss should also apply.

36

37

38

39

40

41

42



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- 1 Mr. Lines It should conform with Section §990.280?
2
3 Ms. Zaterman Never mind.
4
5 Ms. Tran Are there any suggested changes to page 41?
6
7 **[Silence.]**
8
9 Ms. Tran Are there any suggested changes to page 42?
10
11 **[Silence.]**
12
13 Ms. Tran Are there any suggested changes to page 43?
14
15 Mr. Morton I have a minor change to line 9. You need to add a few words so the
16 sentence reads: “If a PHA contracts with a private management company
17 to manage a project, the PHA may use the difference between the property
18 management fee paid to the private management company a fee that is
19 reasonable to fund operations of the central office and other eligible
20 purposes”.
21
22 Mr. Russell HUD agrees with that change.
23
24 Mr. Parker On page 43, lines 27-29 we changed the language to strip out references of
25 capital funds and grant funds and the language may now be confusing. I
26 move that we strike section (e) of the Rule since it could be interpreted as
27 other federal grant programs.
28
29 Mr. Russell HUD agrees with that and moves to vote.
30
31 Ms. Tran All those who agree, please raise your hands.
32
33 **Supermajority. Motion passes. Page 43, as amended is adopted by the committee.**
34
35 Mr. Nolan Section §990.270(b)(1), on page 42 where it says “financial information
36 should be budgeted” and I want to make sure that HUD is not asking us to
37 budget a balance sheet.
38
39 Mr. Kubacki That is correct.
40
41 Ms. Tran On page 44 are there other changes?
42



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1 [Silence.]
2
3 Ms. Tran Are there any suggested changes to page 45?
4
5 [Silence.]
6
7 Ms. Tran Any changes to page 46?
8
9 [Silence.]
10
11 Ms. Tran Any changes to page 47?
12
13 Mr. Morton I have a minor change to line 24 where it states “establishing businesses
14 enterprise” it should just be “business” instead of “businesses”.
15
16 **[Mr. Liu and Mr. Russell nod in acceptance.]**
17
18 Ms. Tran HUD agrees with that change. Are there further changes to page 47?
19
20 [Silence.]
21
22 Ms. Tran Any changes to page 48?
23
24 [Silence.]
25
26 Ms. Tran Any changes to page 49?
27
28 [Silence.]
29
30 Ms. Tran We have now gone through the entire Rule
31 .
32 Mr. Ramirez Regarding technical corrections, what is the time frame to submit
33 technical corrections following a slower read of the Rule to OGC.
34
35 Mr. Pereira By the close of business next Friday.
36
37 Mr. Russell I move to vote on the approval of the Rule, as it currently appears.
38
39 Mr. Myers I second the motion.
40
41 Ms. Tran The committee is comprised of 28 people, two members are not present so
42 two thirds majority of those present would be 18 out of 26 plus HUD.



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1

2 Mr. Liu I ask that we entertain any other comments before we vote.

3

4 Mr. Ramirez I request that there be a roll call on the final vote, to memorialize it.

5

6 **[A roll call vote was conducted.]**

7

8 Ms. Tran The vote is 25 of 26. The motion passes the rule is adopted.

9

10 **[All committee members voted yes, except for Mr. Nolan. Supermajority. The motion**
11 **passes. The Rule is adopted by the committee.]**

12

13 Mr. Zaterman See you in FY 2009.

14

15 Mr. Liu HUD would like to thank all the committee members, members of the
16 public and support staff. There is more work to follow but we have come
17 very far and surmounted a great hurdle. What we have is historical and I
18 would like to express my personal appreciation to everyone involved.

19

20 **[Clapping.]**

21

22 Mr. Lam I want to publicly express my gratitude to Secretary Liu and to Deputy
23 Assistant Secretary Russell for your appreciation, hard work and
24 willingness to work through the issues.

25

26 Ms. Tran With that we are adjourned. The handouts are on the table.

27

28 **The committee adjourned at 9:28 pm.**

29

30



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List of Appendices for the June 9, 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 9, 2004 Session.
3. Operating Fund Draft Interim-Final Rule – Mid 4th Session.
4. Subpart C – Calculating Formula Expenses, Section §990.175: Other Formula Expenses – proposed revised language. (§990.175 was voted on and approved by the committee on June 8, 2004).
5. Office of General Council’s PowerPoint Presentation: The Negotiated Rulemaking Process – Key Steps in Publishing Rule.
6. Subpart B – Eligibility of Operating Subsidy; Computation of Eligible Unit Months, Sections §990.125: Eligible Unit Months Overview and §990.142: Limited Number of Vacancies and Other Uses – proposed revised language.
Subpart F – Transition Policy, Section §990.220: PHAs that will experience a reduction in Subsidy – proposed revised language.
7. Subpart H – Asset Management, Section §990.270: Project-based Budgeting and Accounting – proposed revised language.
Subpart E – Determination of Payment of Operating Subsidy, Section §990.200: Fungibility of Operating Subsidy Between Projects – proposed revised language.
8. Operating Fund Draft Interim-Final Rule – End 4th Session.