



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Operating Fund Negotiated Rulemaking Advisory Committee
 8:30 am to 5:30 pm EST, Room B182 HUD Headquarters

MINUTES OF FIRST SESSION – FIRST DAY
March 30, 2004

1 March 30, 2004 Session:

2

3 The first meeting of the Negotiated Rulemaking (Neg-Reg) Advisory Committee on the
 4 Operating Fund Allocation System (the Committee) was called to order at 8:30 am on Tuesday,
 5 March 30, 2004, by Mr. Michael Liu, the Assistant Secretary of Public and Indian Housing. Ms.
 6 Tran served as the facilitator. The location of the meeting was room B182 of the U.S.
 7 Department of Housing and Urban Development; 451 7th Street, Washington, DC 20410. Mr.
 8 Liu provided welcoming remarks and the committee members were introduced.

9

10 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. Ann Lott	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	Boise City/Ada County Housing Authority
16	Mr. David Morton	Reno Housing Authority
17	Ms. Ophelia Basgal	Alameda County Housing Authority
18	Ms. Sharon Scudder	Meade County Housing Authority
19	Mr. John Cooper	Massachusetts Union of Public Housing Tenants
20	Ms. Veronica Sledge	Resident Advisory Board/Victory Point RMC
21	Mr. Ned Epstein	Housing Partners, Inc.
22	Mr. Greg Byrne	Harvard Cost Study
23	Mr. Dan Anderson	Bank of America
24	Mr. David Land	Lindsey and Company
25	Mr. Sunia Zaterman	Council of Large Public Housing Authorities (CLPHA)
26	Mr. Sael Ramirez	National Association of Housing and Redevelopment Officials (NAHRO)
27	Mr. Tim Kaiser	Public Housing Authorities Directors Association (PHADA)
28	Mr. Michael Kelly	National Organization of African Americans in Housing (NOAAH)

11

12 [Appendix 1](#) contains the meeting agenda and attendance listing for the Committee members.



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1
2 **[All participants were given a binder containing the proposed meeting agenda and**
3 **proposed protocols.]**
4

5 Mr. Liu Good morning everybody. We won't be voting on anything soon so we'll get
6 started. I'm Assistant Secretary Michael Liu from HUD, we welcome you to
7 our wonderful accommodations. This is obviously a very important subject.
8 HUD has been working on this for more than a few years and for some since
9 the start of their careers. Since the late 1990s early 2000s, a lot of revelations
10 have occurred. We have received directives from Congress, directives from
11 PHAs, and from the administration to look at what we have, and to try to do a
12 better job. Congress asked HUD to examine this and funded a study
13 conducted by the Harvard Graduate School of Design (GSD). HUD
14 subsequently indicated basic support for the substance and approach of the
15 study. However, this doesn't mean there is not a lot of room for discussion
16 and ideas to come up with something that will work. We certainly have to
17 work within a timeframe. We are sensitive to concerns that have been
18 expressed by the committee and the public. Congress wants a rule by July,
19 and some have expressed concerns about whether or not this can be done. I
20 think we can if we keep our heads level, if we look to core issues we want to
21 resolve, and understand whatever developed is not something for all time.
22 This area continues to evolve, and ultimately the goal will be to get at true
23 actual costs. Even as we talk about proposed ideas and a basis for the next
24 iteration of the formula, we realize that we are not prepared and won't be for
25 some time to have enough information and data to have a true real cost basis
26 formula until sometime in the medium range future. Even the Public Housing
27 Operating Cost Study (PHOCS) is admittedly a temporarily bridge as we
28 collect more information over the next few years to have a true cost-based
29 system. HUD's theory and hope is that we can come to consensus on that
30 through this process. Before we begin, let's do a short introduction of the
31 membership. We recognize all the work of the members that has gone on
32 before and will after this meeting.
33

34 **Committee Members introduced themselves.**
35

36 Mr. Liu Thanks again for taking the time to be with us and part of this process. One
37 member, because of other issues, will not be part of the committee and will
38 not be replaced - that is Howard Husock. Moving on, we would like to get
39 into the discussion and see how far we can get in adopting protocols. As
40 initiation into this, I would like to call on Ariel Pereira to give some
41 background on the protocols and how they are based on authorities in the Neg



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1 Reg laws. Let's proceed in reviewing and hopefully adopting the protocols.
2 **(See Appendix 2).**

3
4 Mr. Pereira Good morning, I want to touch briefly on the protocols, everyone should have
5 received a set. The Neg Reg Act says that the committee may adopt the rules.
6 The protocols are an aid and roadmap to assist the committee in
7 accomplishing its work. We will begin by going through each section and
8 then take questions at the end.
9

10 Section One: Participation. The key points are that we are hopeful that every
11 member designated will make good faith efforts to be here but there is a provision
12 that if you can't make it to a session, you may designate an alternate. That person
13 will serve for that session. This section also touches on reimbursement and per
14 diem.
15

16 Section Two: Meetings.

- 17 a) Structure. All meetings will be held in accordance with the Negotiated
18 Rulemaking Act – the Federal Advisory Committee Act (FACA). All
19 meetings will be announced in the Federal Register and they will be
20 open to the public.
21 b) Meetings. A member may not speak for more than 5 minutes at a time.
22 Another member can give another member his or her allotted time;
23 however no member may speak for more than 10 minutes at a time.
24 This is modeled on the Neg Reg Tribal Meetings and worked very
25 successfully. Members of the public may file written statements and
26 submit them for the public record.
27 c) Minutes. Detailed notes will be taken during the meetings, they will not
28 be word for word, and they will be available to the public. There will be
29 no electronic recordings of these meetings by HUD, members of the
30 committee or the public.
31 d) Agenda. [Provided in the Committee Member binders]. The agenda
32 will be developed and approved by the federal designated officer, Mr.
33 Liu or designee, and in conjunction with the facilitator.
34 e) Caucus. There may be times when individual members may want to
35 have discussions outside the meetings. Any member may request a
36 caucus. The facilitator may grant the caucus based on subject and time.
37 We [HUD] request the caucuses adhere to a reasonable amount of time.
38 f) Discussion Period. The discussion period sets forth a time period for
39 each issue. If the committee is unable to reach consensus in this period,
40 the issue will be deferred until later in the negotiations, as time permits.
41 The facilitator will then decide in what order to address the outstanding
42 items and time allotted for each item.



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1 Section Three: Decision Making.

- 2 a) Consensus. As members of the previous Neg Reg committee know, all
3 decision making is by consensus. Consensus is defined as the absence of
4 expressed disagreement, although the committee can come up with
5 another definition, if it so chooses.
6 b) HUD Assistance to Committee Members. HUD will make its best efforts
7 to provide technical assistance or develop data. To facilitate work flow,
8 we ask that all requests be channeled through the facilitator. Committee
9 members are asked to complete a Data Request form **(See Appendix 3)**.

10
11 Section Four: Agreement. We are here to produce a report on what has been
12 reached through consensus, in accordance with the Neg Reg Act. HUD will use
13 this report as the basis for a Rule. The report does not have to be actual
14 regulatory language; the regulation will be based on the meeting minutes. The
15 minutes will be presented to the committee for review and approval.

16
17 Section Five: Responsibilities of the Committee Members. This section tries to
18 lay out the responsibilities of the committee members.

- 19 a) Good Faith. All members are here for a good faith effort to reach
20 consensus.
21 b) Information. Section B of this section reiterates the good faith policy.
22 There is a provision that the committee members are not to use other
23 committee member statements or public statements in future legal
24 proceedings.

25
26 Section Six: Facilitator. The responsibilities of the facilitator are discussed in
27 this section. The facilitator chairs meetings and keeps proceedings flowing in an
28 impartial manner. The facilitator is not to take a stance on any issue, but is here
29 to facilitate the discussion.

30
31 Section Seven: Designated Federal Officer and Designated HUD Representative.
32 HUD will have two (2) committee members: The first is the Designated Federal
33 Officer, Mr. Liu, and the second is a Designated HUD Representative, Mr.
34 Russell. Both HUD committee members will designate an alternate, if they are
35 unable to attend.

36
37 Section Eight: Communication. These protocols are also to assist the
38 stenographers.

- 39 a) Please announce your name prior to speaking.
40 b) Only one person should speak at a time.
41 c) ***Not discussed.***
42 d) Everyone should try to maintain a sense of humor and be open-minded.



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Section Nine: Media. These meetings are open to the public, and media are welcome to attend, but they must identify their credentials. Members are free to state opinions but these do not indicate committee positions, they are individual positions. No member of the committee should indicate to the media that their opinions reflect the viewpoints of the committee.

Section Ten: Schedule. This section lays out a schedule: two (2) sessions, each three (3) days in length. The Designated Federal Officer can schedule additional sessions.

One last comment, these are only suggested protocols. The committee must approve them. These protocols are based on previous Operating Fund Neg Reg Sessions and the successful Indian Neg Reg.

Mr. Pereira opened the floor to questions, beginning with questions on Section One.

Mr. Ramirez We have prepared ground rules in the spirit of the Negotiated Rulemaking Act, taking from prior negotiations, and we would like to distribute them. The industry groups and agency members have worked on these as well and would like to put it up for discussion. (See Appendix 4).

Ms. Basgal I am trying to understand how the committee members will be addressed?

Ms. Tran Please raise your hand and announce your name and organization.

Ms. Basgal Can we raise our tent cards instead of our hands?

Ms. Tran That's fine.

Mr. Pereria Any questions on Section One of the Protocols? We can take questions in conjunction with protocols by NAHRO. For ease, let's use HUD protocols and take suggestions for amendment based on the NAHRO protocols.

Silence.

Mr. Ramirez Let me clarify that this is not a NAHRO recommendation. This is an industry recommendation that has been seen by several committee members.

Mr. Pereira On Section One of the HUD protocols, are there any questions?



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- 1 Ms. Scudder In reference to the HUD participation, I would like to ask for an amendment
2 to include the industry's proposed ground rules.
3
- 4 Ms. Tran Are there certain provisions you would like to include?
5
- 6 Ms. Scudder Sections a through d.
7
- 8 Ms. Zaterman I'd like to amend the motion that alternative ground rules be accepted in
9 entirety. This includes voting on the facilitator, which is also a provision in
10 the FACA statute.
11
- 12 Ms. Tran Yes.
13
- 14 Mr. Pereira I believe we have a motion. [In reference to the protocols submitted for the
15 record by Mr. Ramirez]. In particular, we have a limitation on committee
16 membership to those members that are substantially affected by the Rule. We
17 believe [HUD] that all those members that are significantly affected are
18 represented on the committee. The Neg Reg Act is a floor; not a ceiling on
19 membership, and you can have people with other expertise and outside
20 knowledge on the committee. This is also authorized under the Neg Reg Act.
21 We have identified members that are significantly affected and we have
22 attempted to identify parties and individuals with outside expertise to assist
23 the decision-making process.
24
- 25 Mr. Ramirez For the record that provision [the industry proposed revision] comes from the
26 last Op Fund Neg Reg.
27
- 28 Mr. Pereira That may be the case but HUD staff has worked hard to balance the
29 membership, have all interests represented and include outside expertise.
30 Therefore, HUD is not prepared to accept those provisions.
31
- 32 Mr. Byrne Regarding the recommendation for alternative protocols, what is the process
33 for voting on any individual member of the committee? The original protocol
34 says consensus means all members, to amend protocol, how does that happen,
35 do we take a vote?
36
- 37 Mr. Pereira Until we adopt a different definition of consensus, we operate under that
38 understanding.
39
- 40 Mr. Anderson In the proposal to adopt an alternative protocol, are you also proposing to
41 exclude any current committee member, and if so, please name them.
42



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- 1 Mr. Ramirez. The member that we have the most objections with has decided not to
2 participate. Others may have concerns. We do object to Mr. Byrne, since he
3 developed the Study and thus there is an inherent conflict of interest.
4
- 5 Mr. Liu My understanding from counsel and others, is that in the end, HUD nominates
6 the committee members and provides the public the opportunity to comment
7 on the selections, but actual the jurisdiction for that rests with HUD. There
8 may be reasons to discuss Section A but again, it is HUD's jurisdiction. I do
9 not know if there is a lot of value in talking about this point.
10
- 11 Mr. Kaiser PHADA shares the opinion of Mr. Ramirez. We feel it is important for Mr.
12 Byrne to be present, but there is a conflict of interest for Mr. Byrne to serve as
13 a voting member. There is precedence for this in the Cap Fund rule. HUD
14 hired Abt Associates, but they were not on the committee. I agree with Mr.
15 Liu that we should not spend a lot of time on this issue.
16
- 17 I want to make a few points. It is important for members of the public to
18 weigh in, other than through written comment. Informed members of the
19 public that are here could contribute and we could devote time at the
20 beginning or end of days, as proposed. Secondly, it was PHADAs'
21 understanding that these meetings could be recorded and transcribed. We
22 have a transcriber with us that is recording the minutes. It seems to contradict
23 the information given to us beforehand so this needs to be addressed. Third,
24 the definition of consensus that HUD proposes is highly problematic for the
25 purposes of this meeting. And lastly, the issue of agreeing not to use
26 member's comments or other comments in future legal proceedings. Why is
27 that in the ground rules? It seems to pose a situation where members are
28 inhibited from saying certain things.
29
- 30 Ms. Tran On public comments, all notes will be available for comment. The idea is to try to
31 move the sessions along. On the stenographer: The proposed protocols address
32 audio recordings only.
33
- 34 Mr. Parker We need to look at consensus. I understand the definition that currently
35 governs, however the real definition should be the one that is incorporated in
36 the Act. This definition is of supreme importance. If it means the total
37 absence here of any objections, it gives any individual total veto power and
38 will leave us here for days without end. First and foremost, what does the Act
39 say about consensus? This is what governs until new rules are adopted.
40
- 41 Mr. Pereira Consensus is a unanimous agreement, without any opposing remarks.
42



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- 1 Mr. Tran Mr. Liu has made his issue clear and Mr. Kaiser's point has been heard. Can
2 we drop this issue?
3
- 4 Ms. Zaterman We have a chicken and egg problem. If HUD insists on unanimity we are
5 stuck before we start. A majority of committee already caucused and agreed
6 on ground rules. I think we should use the ground rules proposed by the
7 majority of the committee so we can move forward.
8
- 9 Ms. Tran Can we agree on the ground rules? HUD position is unanimous consent.
10 The industry groups position is HUD + 2/3 of members. Agreement?
11
- 12 Mr. Epstein No.
13
- 14 Mr. Morton No.
15
- 16 Mr. Land NAHRO and the other organizations have done a fine job of writing the
17 ground rules. I have not had time to read or look at these rules and I do not
18 want to vote until I have read these rules.
19
- 20 Mr. Ramirez I would like to read these rules and the HUD rules.
21
- 22 Ms. Tran Can we go though other areas of the ground rules?
23
- 24 Mr. Liu In the interest of becoming better acquainted with both sets of ground rules. I
25 think we should have a 30 minute recess to review both documents and
26 formulate views and have a meaningful discussion.
27
- 28 Ms. Tran If everyone is in agreement, let's have a 30-minute recess until 9:55 am.
29
- 30 **Recess. The Committee reconvened at 10:50 am to discuss a revised version of the**
31 **protocols. A draft of the protocols was also available on the overhead projectors for public**
32 **viewing. (See Appendix 5).**
33
- 34 Ms. Tran Let's go ahead and start. Before turning to the draft protocols that Bill
35 Russell, HUD and the industry groups worked on together, please remember
36 to use microphones and state your name.
37
- 38 Mr. Russell A small group of us tried to hammer out this document. A small group could
39 not agree on some issues. Let's go through this one by one. Moon do you
40 want to just read through it.
41
- 42 Ms. Tran Starting with the Participation. (Ms. Tran read Participation b).



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- 1
2 Mr. Russell Are there any issues or concerns?
3
4 **No. Agreement.**
5
6 Ms. Tran I'll take that as a no. (Read Participation c). Any disagreement? I will take
7 that as no, let's move on. (Read Participation d) Any objections? Does
8 everyone agree?
9
10 **No. Agreement.**
11
12 Mr. Byrne Is there any significance that the document starts with B.
13
14 Mr. Kubacki It is not formatted properly.
15
16 Ms. Tran Moving on. [Ms. Tran read A. Consensus (should read "must include the
17 concurrence of the HUD representative plus 2/3 of the committee members
18 present.) I'm sorry, can someone interpret that?
19
20 Mr. Tamburrino It must include the concurrence of HUD representatives + 2/3 of the
21 committee members present. All discussions are assumed to be tentative
22 until agreed upon.
23
24 Mr. Cooper I'm concerned about the supermajority of the 2/3's, how that is defined.
25 There are only 2 resident organizations present. Want to say the two tenant
26 organizations must agree. Does the 2/3 include the 2 resident representatives?
27
28 Ms. Tran Are you suggesting that the provision should be revised to include the tenant
29 groups in the supermajority.
30
31 Mr. Byrne Are we voting or commenting?
32
33 Ms. Basgal So if the residents are not part of the 2/3, then it is not consensus.
34
35 Ms. Zaterman Then those 2 groups would have veto power.
36
37 Ms. Tran Are you proposing that if you or Ms. Sledge vote no, you have veto power.
38 At this point the tenant groups are not treated any differently than other
39 committee members.
40
41 Mr. Cooper Are you speaking as it is written?
42



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- 1 Ms. Tran Yes. Do you object to the current provision?
2
- 3 Mr. Cooper I have an opinion, but not an official objection.
4
- 5 Mr. Russell HUD objects to the final sentence – “All decisions reached during the
6 negotiations are not.....”. Common sense dictates that if the group works to
7 reach consensus on the issue, then that should not be assumed to be a tentative
8 vote. We only have six days. The industry raised concerns that there are a lot
9 of moving parts and if we have reached consensus on an item, we should not
10 go back and adjust a moving part to make it coincide with what we are voting
11 on. We do not think that there should be language to state that every vote is
12 tentative.
13
- 14 Mr. Kaiser The Harvard study is like a jigsaw puzzle. There are parts that intertwine.
15 Support on some issues is contingent on other factors. I agree with Mr.
16 Russell.
17
- 18 Mr. Ramirez I agree with Mr. Russell but the document should state that all agreements
19 reached are assumed to be final subject to redress during continuing
20 negotiations, if necessary. In order to keep the discussion from falling part
21 because a moving part needs to be amended, need to have language.
22
- 23 Mr. Morton We will have a hard enough time to reach agreement. We should try to
24 resolve the issues as quickly as possible.
25
- 26 Ms. Zaterman The concern is the complexity of the negotiations. We need some language
27 that says that we can talk about issues simultaneously. The concern is that we
28 make a decision and we decide something else and it doesn't fit or it works
29 contrary to committee members who did not see the connection between the
30 two issues.
31
- 32 Mr. Ramirez I suggest that whatever votes taken are final but open for redress if necessary
33 if other items come up. It should a least be stipulated as an avenue that may
34 need to be pursued.
35
- 36 Ms. Zaterman If there is a consensus to take up an issue again, then we would honor that
37 consensus to review an approved issue in relation to another issue.
38
- 39 Mr. Liu I think we concur with the general thought that we can reopen thoughts if they
40 need to be addressed. The proposed language should read: “The issues may
41 be reopened subject to the consensus of the committee or at the discretion of
42 the facilitator”.



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1
2 Ms. Tran Agreement? I will take that as a yes. Moving on. [Read Working group].
3 Objections? I will take that as a no. [Read Assistance to Committee
4 Members] Any questions. No? Agreement. [Read Presentation on Cost
5 Study]. Any questions?
6
7 Mr. Russell I think, as I stated before was that our concern was timeliness and procedural
8 aspects. Do we have time to hear from experts other than those around the
9 table? We have a group that understands public housing at the table. If the
10 group feels strongly, if the industry agrees to drop the conflict of interest, then
11 we might be able to consider allowing allotted time for presentations the
12 committee feels needs to be made. If a member feels they have a problem
13 with a conflict of interest they can state that at any time.
14
15 Mr. Kelly What is the relationship between conflict of interest and presentation?
16
17 Mr. Russell Quite frankly, its time.
18
19 Ms. Zaterman I appreciate Mr. Russell's comment about the technical expert and it is critical
20 that this be part of the deliberations. On the conflict of interest, I believe a
21 compromise can be reached. Each member should state his or her interest and
22 how it can affect the negotiations. Every committee member needs to
23 understand the context of comments. From my viewpoint, we don't need a
24 formal process of stating our interest but it would be useful for every member
25 to state who they are and their interests instead of making it part of the formal
26 process. I think that it is important for a technical expert have time to speak
27 and be present.
28
29 Mr. Russell As I stated, there is no need for formal requirement to say who we are, where
30 we are from, and what are interests are, you can do this anyway but I don't
31 think it should be a requirement. If you agree to drop and adopt our language
32 under the agreement, we would allow the other. It should be on the middle of
33 page 3 in the new handout.
34
35 Ms. Tran The intended product is the report to HUD specifying areas where the
36 committee reached consensus. That report will be used to draft the
37 regulation...that's the HUD language.
38
39 Mr. Parker One clarification. Are we proposing to drop any reference to conflict of
40 interest or only last sentence?
41
42 Mr. Russell We are proposing to strike that letter and every thing under it.



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1
2 Mr. Parker Why not keep it in case any member has a serious conflict of interest?
3
4 Mr. Liu I think everyone in this room is a trustworthy and upstanding person. If a
5 taxpayer was looking at the issue, they may say everyone at the table has a
6 conflict of interest. It depends on what perspective we are looking at. While
7 the language is well intentioned, at another time it may create another issue.
8 If subsequent to or during the process, issues of conflict do arise about a
9 particular member or group of members, any member is free to raise that and
10 any member of the public can file comments. The very nature of getting into
11 this type of language, it opens up the whole process to the question, can any of
12 us, given our interest in the process, proceed in good faith? The problem is
13 others who may be watching. We have a limited amount of time. We would
14 like to allocate time to the subject, issues, and if you have others to assist you
15 we are willing to work with you.
16
17 Ms. Scudder Do I understand that when an issue comes up, e.g. Cost Study, that [Mr.
18 Byrne] will abstain from voting.
19
20 Ms Tran No, that is incorrect.
21
22 Ms. Zatterman Let's agree that everyone is here on good faith and committed to an outcome.
23 People will make statements on the cost study and reveal their intents. I am a
24 consultant and I help PHA's do mixed financing. I am a PHA and I receive
25 subsidy. I am a resident and live in public housing.
26
27 Ms. Basgal Can I suggest that we go around the room and reveal our interests. If we
28 reveal our interests then we can drop the conflict of interest statement.
29
30 Mr. Ramirez I agree with Ms. Basgal. I represent an industry group. I also think we need
31 to honor the Assistant Secretary's word. If we find an egregious conflict then
32 we can vote and move on.
33
34 Mr. Liu Our counsel may have words which can assist us in this concern.
35
36 Ms. Acevedo Everyone has already introduced themselves. HUD has selected the
37 membership, and everyone here is a viable member. Let's move on to more
38 substantive issues.
39
40 Mr. Ramirez If there is a conflict, we can vote.
41
42 Mr. Russell I move that we proceed.



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- 1
2 Mr. Ramirez So leave d - the presentations?
3
4 Ms. Basgal I'm not sure we have agreement on the last statement. I do not want to be put
5 in the situation of determining if a member has a conflict. If a member has a
6 conflict then they have a duty to reveal that. I am not in favor of determining
7 if another member has a conflict.
8
9 Mr. Ramirez This will not be in the protocols.
10
11 Ms. Basgal Mr. Liu, please clarify.
12
13 Mr. Liu At any time, a member can raise a concern about another member and that can
14 be a discussion point if the group decides the issue should be taken up. I do
15 feel that this should not be a formal and distinct process to engage in to assess
16 every individual member's background and interest.
17
18 Mr. Ramirez I agree.
19
20 Ms. Tran Can we remove the conflict of interest provision?
21
22 **Consensus. The provision will be removed.**
23
24 Mr. Land Regarding the presentation on the Harvard Cost Study, will there be time
25 limits imposed? It is now 11:25 am and we could spend three to four days
26 looking at data. What time restrictions should be placed so we can move
27 ahead?
28
29 Ms. Tran Are there any recommendations on time limitations?
30
31 Mr. Kaiser I feel that the drafters intended to say that Mr. Byrne has a great deal of
32 expertise and we will want to hear from him. But the groups have engaged
33 the expertise of outside contractors and we want to make sure they are heard
34 as well. This study is based on statistical data and analysis. I am not versed
35 in that field. I think it is imperative that we hear Professor Alex White, who
36 industry groups have engaged to review the statistical validity of the Harvard
37 Study. I don't believe it would be more than an hour of the committee's time.
38 We should hear Mr. White as we will hear Mr. Byrne.
39
40 Ms. Tran The language [from the protocols] also says that the facilitator will allow for
41 technical presentations. I will work with the members to allow time for
42 technical presentations.



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1
2 **Agreement.**
3
4 Ms. Tran Moving on to the next provision [Ms. Tran read the provision]. Are there any
5 questions?
6
7 **None. Agreement.**
8
9 Ms. Tran Open meetings [Ms. Tran read the provision]. Are there any questions?
10
11 **None. Agreement.**
12
13 Ms. Tran Minutes [Ms. Tran read the provision]. Are there any questions?
14
15
16 Mr. Kelly On the timing of preparation and distribution of minutes, is it appropriate to
17 look at some parameter?
18
19 Ms. Tran We planned to have the minutes distributed by the next morning but hold
20 approval until the end. We will take all comments and edits and incorporate
21 them into the minutes, then submit the minutes again to the committee on
22 Thursday. Is that acceptable?
23
24 **Acceptance.**
25
26 Ms. Tran Agenda [Ms. Tran read the provision]. Are there any questions?
27
28 **None. Agreement.**
29
30 Ms. Tran Caucus [Ms. Tran read the provision]. Are there any questions?
31
32 **None. Agreement.**
33
34 Ms. Tran Location [Ms. Tran read the provision]. Are there any questions?
35
36 **None. Agreement.**
37
38 Ms. Tran Time Limits [Ms. Tran read the provision]. Are there any questions?
39
40 **None. Agreement.**
41
42 Ms. Tran Conflict of Interest. – Will be deleted.



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1
2 Ms. Tran Alternates [Ms. Tran read the provision]. Are there any questions?
3
4 Mr. Morton There is a typo.
5
6 **Agreement.**
7
8 Ms. Tran Facilitator [Ms. Tran read the provision]. Are there any questions?
9
10 Mr. Kaiser I am not making an objection, but I would like to state that Ms. Tran did work
11 for OMB and has a great deal of expertise on the Public Housing Operating
12 Fund. Her employment history gave pause to some members of the
13 committee and we have raised issue with the Department. Candidly, some
14 committee members had reservations about Ms. Tran's involvement. She was
15 in some policy making position. We were very concerned that prior to the
16 Neg Reg, she made policy recommendations in general to the Department
17 prior to the rulemaking. We have posed those questions and reservations to
18 Department staff who indicated Ms. Tran's prior involvement has been
19 technical in nature. We were assured that she has not been offering policy
20 recommendations or draft positions to the Department. I felt it was important
21 to put this out for the record. I do feel though, that the facilitator brings a
22 great deal of expertise, which was one of the major recommendations of the
23 committee after the last Negotiated Rulemaking. Therefore, I don't feel it
24 should be made an issue but I thought it important to point out.
25
26 Ms. Tran Are there any other comments?
27
28 **None. Agreement.**
29
30 Ms. Tran Agreement [Ms. Tran read the provision and all 3 alternate statements (a-c)].
31
32 Mr. Pereira I just want to clarify that a, b, and c are not three alternatives but one proposal
33 that was put forth by the industry.
34
35 Ms. Tran Are there any comments?
36
37 Mr. Kelly If we have a July 1 drop dead date, how much room do we have to continue to
38 reach consensus if we do not finish at the end of 6 days?
39
40 Mr. Russell HUD's position is to comply with Congress and produce a rule by July 1. We
41 will try to reach a consensus as much as can be reached. HUD cannot agree to



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1 language in the protocols that negotiations cannot end until consensus is
2 reached on a new rule.
3
4 Ms, Tran Are there any other comments?
5
6 Ms. Zaterman We have two (2) alternatives that we will consider separately.
7
8 Ms. Tran On the HUD proposed protocols, do we have disagreement?
9
10 Ms. Basgal We need clarification before we vote. Is the only objection to the statement
11 that the committee will not adjourn until consensus is reached?
12
13 Mr. Russell I am concerned about a number of textual clauses in a-c. That sentence is not
14 the only sentence that we take issue with.
15
16 Mr. Byrne Before we vote, what are the rules by which we are voting?
17
18 Mr. Pereira We are still deciding by unanimous vote.
19
20 Ms. Zaterman We need to know HUD's other objections are to a-c. I understand about
21 having a stalemate. Is there other language that you propose?
22
23 Mr. Russell We accepted verbatim many of your proposals. We prefer HUD's language
24 and would be happy to hear your objections to it.
25
26 Mr. Ramirez A and c are out of the last Neg Reg, your language. The only change is b. A
27 and c allow us to fine tune points that were not resolved at the end of the day.
28
29 Mr. Russell My understanding from counsel is that the language being proposed in a-c that
30 was used in the past commits HUD to very specific rulemaking procedures
31 and OMB is the final voice in the official procedure. What we propose is that
32 what is reached in the committee will be the basis of the Rule we generate.
33
34 Mr. Ramirez The report will also be sent to Congress?
35
36 Ms. Tran Yes.
37
38 Mr. Morton I suggest we drop b and the last sentence of c.
39
40 Ms. Tran Read the sentence. "in such an event.....promulgation".
41
42 Mr. Russell HUD would like a 10-minute caucus to discuss with counsel.



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1

2 **Caucus granted.**

3

4 Ms. Tran On the overhead is the proposed language. A and b: The industry's language
5 is struck out. Ms. Tran read the revised section c. "The Department of
6 Housing and Urban Development intends to promulgate a rule consistent with
7 the Committee's written agreement, unless new information or comments
8 submitted in response to the Rule require changes in the Rule."
9

10 Mr. Liu We believe this gets at the essence of what we all want to accomplish, a Rule
11 based on consensus agreements which occur in this committee. We felt that
12 based on advice from counsel, because of the vagaries of the rulemaking
13 process, although the statute drives us, there could be other circumstances that
14 puts us in the position of coming out with an interim final that precedes a final
15 rule. Hopefully we can find consensus on this language or something close to.
16

17 Ms. Zaterman We will spend time in this process and invest a lot and if there are departures
18 from the recommendations and report of the committee, we would like an
19 explanation. I understand that you [Mr. Liu] have to send a report to OMB
20 and Congress. We want a final rule that reflects that report of the committee.
21 If there is departure from the report and the work of the committee HUD
22 should justify that.
23

24 Ms. Tran My reading of this is that HUD intends to promulgate a rule that is consistent
25 with committee member agreement. The only time they do not agree to do
26 that would be from comments, perhaps from other regulatory bodies.
27

28 Ms. Zaterman If there are departures from the written recommendations, it should be
29 explained.
30

31 Ms. Tran Any departures will be defined in the preamble of the Rule.
32

33 Mr. Kelly I'm ok with the striking of part b, based on HUD's opening comments.
34

35 Ms. Tran Any other questions or comments?
36

37 **Agreement.**

38

39 Ms. Tran Role of Facilitator. Ms. Tran read the provision. Questions?
40

41 Ms. Zaterman Just to follow on the comments of Mr. Kaiser on the facilitator. I want to
42 compliment you on your work so far. We did ask HUD if the facilitator was



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1 involved in any drafting of a proposed rule, and we have been assured that
2 your role was a technical role in analyzing data.
3
4 Ms. Tran That is correct. And I want to reiterate that my role here is a traffic cop to
5 facilitate the discussion, but decisions are the role of the committee.
6
7 Ms. Basgal What is the word “supposal?”
8
9 Mr. Parker If means ‘what if’.
10
11 Ms. Tran If there are no other objections.
12
13 Mr. Murray If you could add that you can designate someone to appear in your absence.
14
15 Tran It is HUD who designates a facilitator in my absence.
16
17 Mr. Liu We have been assured that Ms. Tran is in top physical health. It is a valid
18 point for us to think about. We will get back to you.
19
20 Ms. Tran We would like to clean up the protocols and a clean copy will be in your chair
21 when you return from lunch and then vote.
22
23 Mr. Russell I would prefer to vote now. Yeah, there are a few typos, but we need to get
24 moving.
25
26 Mr. Morton The issue that was still outstanding was the percentage of consensus.
27
28 Ms. Tran I though the agreement was 2/3 consensus.
29
30 Mr. Morton I thought we put that off.
31
32 Mr. Parker I have the same confusion. In reference to when Mr. Russell wanted to trade
33 one issue for another, I thought we had reached consensus.
34
35 Mr. Russell When I said agreement, I did mean the language at the end [of the protocols],
36 which we have now redrafted. I think we have already voted on the
37 definition of consensus.
38
39 Mr. McInnish Do we need to have a section on the Designated Federal Official? It was in
40 the HUD protocol and I don’t know why it was taken out. Do we also need a
41 section about the media?
42



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1 Mr. Russell The provision on the media is in our charter, and we would like to keep that
2 language.
3
4 Mr. Kaiser I think we should vote and then come back from lunch and get into the
5 substance.
6
7 Ms. Basgal I am still unclear as to the issue Mr. Cooper raised.
8
9 Mr. Cooper I was in fear that the resident votes would not be taken as seriously as the
10 other votes. When the facilitator asked if I could be in agreement with the
11 2/3 as stated, I said yes.
12
13 Ms. Siska I want to go back to section C. Add a sentence about a preamble. Can we
14 firm up that language before we vote? Can we say, “Any proposed changes
15 from the written report will be identified and explained in the preamble in the
16 rule?”
17
18 Ms. Zatterman It should be in the body of the rule.
19
20 Ms. Tran The body of the rule should only contain components of the rule.
21 Explanations should only be included in preamble, it is customary.
22
23 Mr. Pereira The preamble is published in the Federal Register
24
25 Ms. Siska Could you publish changes earlier?
26
27 Mr. Morton How could changes be published prior? As long as changes are clearly
28 addressed, that’s all we can expect.
29
30 Mr. Kaiser At the risk of agreeing with HUD again, I think we should accept the
31 agreement and go to lunch.
32
33 Mr. Lam With all that is at stake and the lack of clarity, it seems prudent that a final
34 draft be circulated so that we can vote on it as a final document.
35
36 Mr. Myers I disagree with Mr. Lam. I feel we have gone over this quite thoroughly and
37 have detailed notes and we would like to vote so that we can go to lunch. Do
38 we have agreement as discussed?
39
40 Ms. Tran We have taken good notes, will make changes, and would like to vote. We
41 will make the protocols available to you after lunch. Do we have agreement
42 on the protocols? A show of hands? Any disagreement?



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Show of hands. No hands went up in disagreement.

Break for lunch. The committee reconvened at 1:45 pm.

Ms. Tran On your desk is a copy of the agreed protocols. I suggest that you read these during the next break and afterwards if anyone has issues, I can schedule time to revisit these issues.

Agreement.

Ms. Tran Tab 2 [of the Committee member binders] is the 1st Session Agenda and Tab 3 is the 2nd Session Agenda. We tried to cover all the topics that are relevant to the Neg Reg. If there are areas where we cannot reach consensus immediately, we will come back to those issues. This is organized into two areas: areas where Harvard has a specific recommendation, e.g. PEL and the add-ons (other eligible expenses that are currently outside the formula) and areas that Harvard did not address.

If you look at page 3, day 2 of the agenda you will see these items, then rental income and utilities. It is up to the members to determine what is covered under each of these items. If no members have issues, we will have more time for other topics. If you turn to tab 3 – 2nd Session Agenda, there is discussion of transition and appeal policies and how these will be constructed, then we go into implementation in a more detailed fashion. Implementation will probably also be discussed during PEL and project-based.

One topic that we do need to talk about is carryover time allotted to topics, which was not included in the revised protocols. Do members want to allot a specific amount of time to each topic?

Ms. Zatterman I think that there are fundamental issues, where if we don't reach consensus, we need to stay at the table and reach consensus without stopping and returning later.

Ms. Tran The downside with that is that we may not cover all the topics.

Ms. Zatterman The facilitator can play a role in guiding the members.

Ms. Tran It's a game time decision, in other words.



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- 1 Ms. Zaterman There is an issue of the estimating process—how HUD determines the budget
2 request, the appropriation request. Is that part of the agenda? If not, I think it
3 should be.
4
- 5 Ms. Tran Can someone from HUD speak on this? I don't think that we thought about
6 this in the draft of the agendas.
7
- 8 Mr. Russell The formula, the rule which will be the basis of what we negotiate, will be the
9 basis on which we distribute annual appropriations to PHAs and the basis on
10 which we develop our budgets. However, these discussions will not and can
11 not serve as a budgeting protocol for this administration, future
12 administrations, or Congress.
13
- 14 Ms. Zaterman An allocation system based on an 85% proration or 100% can be very
15 different. While we had an allocation system under PFS, we did not have
16 budget requests that support that. They are inextricably tied together, the
17 allocation system and the budget request. It is important to discuss them in
18 context. I do not want to delay the proceedings, but I do want a group
19 consensus regarding if this is an important topic.
20
- 21 Mr. Kaiser I'm going to disagree with HUD now and agree with Ms. Zaterman. The PFS
22 methodology was suspect with OMB, HUD and the housing community. The
23 main rationale of the study was to determine what it costs to operate "well-run"
24 public housing. As Ms. Zaterman said, the allocation and funding system are
25 tied, and we need to have a dialogue on how HUD will pursue its budget
26 requests in future years, otherwise the cost to run public housing will not be
27 addressed.
28
- 29 Mr. Russell With all due respect to Mr. Kaiser and Ms. Zaterman, the formula will serve
30 as a means to distribute funds that are allocated from Congress and will serve
31 as a basis for what is requested from Congress. But I won't here, nor will I
32 ever, say this will always serve as a basis for what is requested from Congress.
33 I do agree we don't have a lot of confidence with the AELs and this can be
34 improved upon with the Harvard Study, and we understand that Harvard
35 recommends additional subsidy. But I'm not going to say this will be the
36 basis on which this administration and others will request funds from
37 Congress, it will be the basis of how funds are distributed. This is not an
38 entitlement program, and there is no guaranteed funding amount each year. It
39 is up to HUD to make requests through OMB to Congress with a lot of input
40 from you guys, but it is subject to appropriations each year.
41



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- 1 Mr. Anderson The appropriation is certainly part of the formula as is the AEL and PEL. The
2 other part is the local effort. That's something we have not touched on. Other
3 approaches such as regulatory relief and balancing resources and
4 requirements.
5
- 6 Ms. Zaterman I am not trying to serve the role of Congress. We are searching for a way that
7 is clear to recipients of Operating Subsidy, of how we estimate need. If we
8 have a formula that says PEL – Income x Units, and we have a need. The
9 basis of the request to Congress should be transparent. This should be an
10 agenda item.
11
- 12 Ms. Tran Could we add this item under implementation?
13
- 14 Mr. Russell Let me concur with Ms. Zaterman regarding transparency. With no
15 disrespect to the current rule, I don't think it is very transparent. There are
16 very complicated things and multiplication factors that are 10 decimal places
17 long. The rule should be very simple and easy to understand. At the end of
18 the day, we can say to Congress, this is our request, this is how it reflects the
19 need. I agree, I hope we can come up with a transparent, easy to understand
20 rule.
21
- 22 Ms. Tran We have agreement that the HUD 52723, everyone should be able to fill out
23 that form and right now people would be unable to do so. If we could move
24 on, the topic on hand is the meeting agenda. Can we begin our discussions on
25 PEL and discuss appropriations under implementation? Mr. Kaiser asked for
26 time for a technical presentation. Mr. White will not be available until
27 tomorrow.
28
- 29 Mr. Kaiser Mr. White has been commissioned by all four industry groups to do a
30 presentation, and I think that you [the committee] will find it informing. We
31 do now have the data requested, the confidence intervals, and will have new
32 information for the committee. He will be available all tomorrow morning.
33
- 34 Ms. Tran We will revise the agenda to:
35 1. Add appropriations to implementation.
36 2. Add time for Mr. White on Day 2 during the morning session.
37
- 38 Ms. Basgal Do we need a half hour break in the morning and afternoon? Can it be 15
39 minutes?
40
- 41 **Agreement on 15 minute breaks.**
42



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- 1 Ms. Tran HUD wants to present background on the formula.
2
- 3 **Mr. Russell is now Mr. Liu’s designee and Mr. Kubacki is now Mr. Russell’s designee.**
4 **HUD distributed copies of the Background Materials PowerPoint presentation. [This was**
5 **provided to each committee member prior to today’s session].**
6
- 7 Mr. Kubacki Page 9. This is the general formula and is what is submitted on the HUD-
8 52723 form. We begin with the AEL (PUM) and it buys a basket of goods.
9 Then we add the utility expense level, subtract out income and add in “add-
10 on’s” and that becomes the eligible operating subsidy for that PHA. We then
11 look at the appropriation and will fund all PHA’s at the same level based on
12 the appropriation.
13
- 14 The AEL was developed in 1975 using actual cost data of PHA’s and we have
15 been inflating that over time. In 2001, we did some adjustments under the
16 Interim Operating Fund Formula – which we are using today.
17
- 18 Page 14 – Utilities. We use two forms referred to as the 22A and 22B. The
19 22A gets at the weighted rolling base of three years of consumption,
20 multiplied by the current rate in effect per each utility. The 22B comes in and
21 looks at actual data from two years ago and adjusts it for your consumption,
22 it’s a 75-25 split, and we multiply it by your actual average rate for the year
23 for that utility. Right now we have appropriation language saying we should
24 no longer be paying these utility adjustments.
25
- 26 Tenant Rental Income Slide. Done at the PUM and provides the 50/50
27 incentive, that is if a PHA raises rent, they would keep 50%, so PHAs have an
28 incentive to raise rent.
29
- 30 Add-on Slide. Expenses not covered by AEL/PEL, e.g. FICA, reported in
31 whole dollars.
32
- 33 Page 40 - Interim vs. Harvard. The column called “Interim” is the formula
34 we are using today. The other column is what Harvard has done or said. For
35 example, on units Harvard was silent. On the AEL, Harvard recommended
36 that HUD benchmark to FHA portfolio and use property level data. But the
37 PEL will act like the AEL – it will buy a basket of goods.
38
- 39 Mr. Kubacki listed the items Harvard recommended to be inside the PEL.
40 Elderly Service coordinator has been replaced by Family Self Sufficiency.
41 Harvard recommends including Payments in Lieu of Taxes (PILOT) as an



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1 add-on. Revenue – no change. That really becomes a new formula under
2 Harvard.
3
4 Ms. Tran Any questions?
5
6 Mr. Kaiser Maybe Mr. Byrne would be most appropriate to answer. On revenue, you
7 (Kubacki) say that Harvard did not recommend a change. Our understanding
8 is that rental income and investment income will no longer be protected.
9
10 Mr. Russell I think that Greg should address that. That provision is provided under
11 QWHRA, thus it is not under the purview of the committee to change any
12 laws. To accept Harvard's recommendation it would have to be approved by
13 Congress
14
15 Mr. Kaiser It is presented that Harvard recommended no changes.
16
17 Mr. Russell Harvard did recommend a change but it is not germane to this discussion.
18
19 Mr. Kaiser I agree with HUD.
20
21 Mr. Land Will the 22B no longer be funded?
22
23 Mr. Kubacki Currently it is general appropriation law that does not allow us to go back 2
24 years and pay for that liability with this year's funding. We are at a stumbling
25 block with what we are able to do until we find a funding mechanism that
26 works.
27
28 Mr. Land How will we handle utility cost and consumption?
29
30 Ms. Tran We will cover utilities as a separate agenda topic. However the next item is
31 project expense level.
32
33 Mr. Gomez My question is directed at HUD and Mr. Byrne as well. When the AEL was
34 first estimated, was it contemplated that the expense level would cover
35 operations of the authority and overhead expenses?
36
37 Mr. Byrne My memory is that the original PFS was based on authority and not
38 properties. It was looking at what people were already spending. Our model
39 looks as expenses in the FHA inventory that charges a management fee and
40 our model captures the management fee as a proxy.
41



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- 1 Mr. Gomez While the management fee is an important part of a private property manager's
2 income, you will not find many private property managers that only take in
3 the fee. They may also take into account the cash flow from the property or
4 are large enough so that they generate economies of scale. We cannot be
5 assured that the 5% management fee is enough to cover the overhead of
6 property management.
7
- 8 Mr. Epstein I would respectfully disagree. Most private managers in FHA private
9 inventory, even if they are identity of interest because most deals have been
10 syndicated, they get a small portion of cash flow for limited dividend so they
11 really do survive on the management fee irrespective of whether the owner
12 owns 4,000 units or 500 units.
13
- 14 Mr. Gomez Owners earn a fee when any financing is put in place, I believe that partially
15 offsets. I just want to point out there are other sources of revenue. Private
16 managers don't run properties that don't produce any cash flow. Show me a
17 private company that runs like that.
18
- 19 Mr. Epstein Developer fees, almost 100%, never go to the management companies.
20 Management companies are self-sufficient. Management companies that run
21 many properties get the profit from the management fee. The big difference is
22 how the properties are managed – FHA versus public housing.
23
- 24 Mr. Byrne Management companies run a wide gambit, some live completely off the
25 management fees. We did a case study in Phoenix of a small management
26 company that administered 1,000 units. This was a bond financing firm,
27 which contracted out to one management company and the management
28 company survived only on the fees.
29
- 30 Mr. Gomez It would be helpful if the Committee member has this information. It would
31 help some of us understand what are the real differences between private fee
32 only manager and public housing.
33
- 34 Mr. Parker My comment is more summary in nature than this debate. Interesting, if you
35 look at page 9 of the slide on the board regarding the Operating Subsidy
36 overview, unless I have missed something, primarily, we are proposing to
37 keep the same system we've always had. PEL + Utilities -Income + Add-ons,
38 only difference is instead of AEL is aggregate, we have the PEL. Simply
39 substituting more current data for the expense level, based on what I've heard
40 so far. Are those assumptions incorrect?
41



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- 1 Ms. Scudder I came from the private sector where properties received a certain level of rent
2 and if not, requisitioned the rest. Under Operating Subsidy, we operate as
3 PHAs on minimum rents and then operating subsidy pays expenses. Also
4 private employees did not often receive benefits.
5
- 6 Mr. Epstein I am familiar with FHA and management companies. In terms of benefits,
7 they do offer benefits although I do not know if they pay the same benefits as
8 that in public housing. In terms of rent levels, on the Section 8 portfolio, one
9 can voucher for vacancies at 80% of the rent for three months. If you have a
10 Section 236 project that does not have Section 8, you can't voucher for it.
11
- 12 Ms. Zatterman My understanding from people, is that the original AEL system, was for
13 individual properties and did not account for costs to manage overall portfolio.
14 I think this is something to keep in mind.
15
- 16 Mr. Kelly One of the issues is property versus project-based, property manager has a
17 responsibility to know the costs of what it is to run a property. It is very
18 difficult at best, to provide for types of expenses of larger, older properties.
19
- 20 Ms. Tran I believe you are talking about fungibility between projects. If you turn to
21 page 39 in the slides, you will see a list of the 10 coefficients that make up the
22 model. The other book before you is reference materials for the Operating
23 Subsidy program. I was thinking that the committee could throw out there
24 issues on the PEL so that we could address them one-by-one.
25
- 26 Mr. Nolan To piggy-back off of something Rick Parker asked. Is it's HUD intent to
27 follow the same approach using PEL, or are we going to step back and look at
28 possibly the larger picture which would include rent reform?
29
- 30 Mr. Russell We are very interested in rent reform. I have met with some of the industry
31 representatives briefly but I don't see it as being a really germane topic. I
32 would agree with the parameters as laid out, we are not looking at totally
33 reinventing the wheel in terms of how the formula gets calculated.
34
- 35 Mr. Kaiser Are you asking-talking about the Study's findings and how they are
36 calculated. I think that there are number of issues that we should discuss that
37 will be part of Mr. White's discussion.
38
- 39 Mr. Russell At the very least we can talk about what issues within the PEL we would like
40 to discuss.
41



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- 1 Mr. Kaiser Regarding use of the non profit coefficient, Harvard found that nonprofits cost
2 12 percent more but it was reduced to 10 percent with no explanation. A
3 number of ceilings and floors established at the conclusion of the study after
4 all the meetings were conducted. We feel there was not ample documentation
5 to support those changes. Also the 4% reduction was never justified. Mr.
6 White advised us that a study that is so reliant on data, should have 4 or 5
7 pages of rationale for these decisions. The industry agrees that there should
8 be consideration that the housing stock is older than FHA. The regulatory
9 environment that PHAs operate in is different from the FHA stock. Harvard
10 findings are minimal with respect to IT and resident participation. Harvard is
11 dismissive of costs of resident participation and services. Ask Cooper and
12 others. Compensation needs further review. Asset management fees will need
13 to be brought up. These issues become more important when we look at the
14 statistical underpinnings of the study.
15
- 16 Ms. Tran Are there any other comments?
- 17
- 18 Ms. Basgal I could not tell how the age of the property of an acquired property was
19 determined.
20
- 21 Ms. Tran Date of first occupancy, but there were 3 other types. Mr. Byrne do you want
22 to comment?
23
- 24 Mr. Byrne Will go back and read but believe it is date of occupancy.
25
- 26 Ms. Basgal We acquired some older properties for which the date of occupancy is after
27 the date the building was built.
28
- 29 Mr. Byrne Acquired with or without with rehab?
30
- 31 Ms. Basgal No, acquired without rehabilitation.
32
- 33 Mr. Lam Couple of things. Date of first availability is also an important issue. If left in
34 the formula, needs to be correct data indicator. In my case I have many
35 properties where the DOFA is not a good indicator. Mr. Russell had
36 addressed an issue raised by Atlanta – rent. We should keep an open mind
37 about rent.
38
- 39 Mr. Morton To add to the list – geographical area. Particularly for areas without a lot of
40 FHA properties.
41



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- 1 Ms. Zaterman I concur with Lam and Morton. Include scattered site and distressed
2 properties, and geographic coefficient.
3
- 4 Ms. Siska Discrepancies with unit size between public housing and FHA. PHA units are
5 larger and have more bedrooms. Also building type and properties that are
6 located in rural areas and non-metropolitan areas and how they were counted.
7 There are a lot of small agencies that lose money. Ownership type – PHA’s
8 deemed comparable to nonprofit ownership. But government ownership is
9 even more expensive than nonprofit which goes to the 10 percent rather than
10 12%.
11
- 12 Mr. Parker At what point in the property-based discussed should we address fungibility?
13
- 14 Ms. Tran Unless the committee feels otherwise, fungibility should fit well into this area
15 of the discussion.
16
- 17 Mr. Parker Christine hinted at the issue of very small PHAs and small PHA error. Model
18 works well with large and very large PHAs but not as good with one property
19 PHAs.
20
- 21 Ms. Siska The model does better at the agency-level than property-level.
22
- 23 Mr. Nolan What will be the measure of performance for a property? In the private world,
24 they monitor net operating income –the bottom line – cash flow. Our
25 shortcoming is that we only look at expenses. What are we going to measure?
26 Should we discuss that now or during implementation? When we talk about
27 fungibility, need to discuss evaluation.
28
- 29 Mr. Kaiser Modernization. Harvard deducts \$25 million from total operating fund
30 budget, thinking that PHA properties have been modernized.
31
- 32 Ms. Tran On the question of performance, can put that as part of the discussion here but
33 also in implementation?
34
- 35 Ms. Zaterman PEL results in drastic cuts for PHAs in certain geographic areas. When will
36 we discuss the impact on operations for PEL?
37
- 38 Mr. Kubacki We are looking at coming up with the correct PEL, what is the correct funding
39 for a PHA, and then on April 13th we will talk about transition and appeals
40 and if you are at a funding level today and you need to move up or down how
41 do you get there.
42



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- 1 Mr. Lam There were no objections to rent, I assume still an issue on the table. Unit
2 count is another issue. There are discrepancies between units counted by
3 Harvard and the actual units that we have. There should be some means of
4 addressing this. The other issue is the comparison between public housing
5 and FHA. The impact on cost of running public housing is the yearly
6 variations in appropriations and in years where a proration occurs this, over
7 time, has an impact on running operations and maintenance is cut.
8
- 9 Ms. Tran Rental income is proposed as part of the agenda, contingent that we get
10 through the other topics. Verification of data should be flushed out more fully
11 in implementation.
12
- 13 Mr. Byrne Indeed, data problems will be corrected. We should not assess the entire
14 formula based on data problems. This will be rectified.
15
- 16 Mr. Cooper I understand that the Harvard Study on the PEL assigned no real number to
17 funding of resident mandates under QHWRA. I'm concerned that may get
18 lost when we are talking about cost per unit. If we look at total costs, we must
19 look at other legal costs as a result of mandates under law. I am concerned
20 about what resident participation may cost.
21
- 22 Ms. Tran Resident participation is \$25 per unit add-on that Harvard proposed be
23 included in PEL. Could we wait and include this in the add-on discussion.
24
- 25 Mr. Cooper That's fine.
26
- 27 Mr. Kaiser Regulatory differences should at least be discussed in this forum, it did not
28 make it up on the list on the screen. We want to check verbiage in the actual
29 study. Harvard said resident services are nice things but public housing
30 should be focused on property management. This is a whole sea change
31 proposed in the Harvard Study. I think the Report was rather dismissive in
32 terms of mandates currently in terms of resident participation and services.
33 This is an important question that has not been resolved.
34
- 35 Ms. Tran Resident participation can be discussed as part of PEL.
36
- 37 Ms. Zaterman We have made requests on a number of occasions for accuracy and updating
38 of information. It gets to the ability for individual PHAs to evaluate
39 appropriate funding level, if model used inaccurate unit counts, it is hard to
40 determine what PEL is. The evaluation of who gains and loses does not take
41 into account add-ons and how this should be treated. An important consensus



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1 of the industry groups is accurate unit count, accurate AEL, and add-ons. This
2 would go a long way to aid the analysis of our study.
3
4 Mr. Russell We are willing to share our unit data as we have today, as well as data on add-
5 ons. We also share a similar concern in terms of accuracy of unit counts, and
6 are working on that.
7
8 Mr. Land Are we talking on AEL regardless of size or PEL regardless of size, or is it a
9 foregone conclusion all PHAs are run under project-based accounting. If I'm
10 thinking project-based, I'm thinking on one level, agency-based on another.
11
12 Mr. Russell HUD very much supports not only Harvard's recommendation but the
13 Millennial Housing Commission and Urban Institute recently indicated
14 supportive of that direction as well. HUD understands a shift to this will
15 require changes both on PHAs part and HUD's part, and these changes are
16 going to take some time to accomplish, but it's the direction we very much
17 intend to go in. We don't see the rule laying out all of the finite details of how
18 to implement, we will look to industry leaders who are in process or have
19 already gone to asset based management. We won't hammer out all details
20 here but it is the direction HUD desires to go in.
21
22 Mr. Land PBA and asset management is not a new concept. However, HUD in its
23 wisdom went to agency based. Has any thought been given to size of
24 property? Have 26 unit housing authority with 3 sites, to do PBA is not very
25 effective. What are we looking at size-wise, number of units. Need to look at
26 cost benefit.
27
28 Mr. Anderson Land and others touched on regulatory relief. Might make sense for rest of
29 agenda if look at Appendix H, changing public housings regulatory
30 environment. Might be usefully grouped and treated with a
31 transition/implementation.
32
33 Mr. Byrne Quick note on unit count and AEL data. PILOT also reflects distribution.
34
35 Ms. Tran We do have data request forms if members need data.
36
37 Mr. Kubacki To touch on what Mr. Land said, does size matter, the answer is yes. Right
38 now we talk about 250 units and less. This may not be the correct number
39 anymore. We need to discuss when we get into project-based. What is a
40 project, is it a project as on the ACC, or project as the PHA is going to
41 manage which has nothing to do with the ACC?
42



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- 1 Ms. Zaterman I want to clarify a statement of Mr. Russell’s because it affects how much
2 time we spend. The study makes a recommendation on a PEL that is not
3 fungible, and also says HUD does not have the infrastructure to manage. Do
4 we now have a rolled-up PEL that would be fungible? Is that what we’re
5 talking about for the immediate future? This would make a considerable
6 difference on how we proceed.
7
- 8 Mr. Kubacki This is a stop-gap measure until we get to project-based, or whatever term.
9 We want to set up a Rule that over time doesn’t conflict with where we
10 ultimately want to be, having project costs determine operating subsidy. How
11 quick is the turnaround? We will discuss this under implementation.
12
- 13 Ms. Zaterman I understand your response to say that over time we may have project-level
14 funding, but immediately there may not be much difference in how subsidy is
15 distributed.
16
- 17 Mr. Kubacki Correct.
18
- 19 Mr. Byrne This affects issues of fungibility, and depends on how HUD sees moving
20 towards a project-based system. If PHAs will continue as they exist today,
21 then fungibility may be more permissible/allowable in the short run. How
22 closely does the model predict at the property level? How far down the road
23 are we talking about, if there is consensus to move? How soon?
24
- 25 Mr. Kubacki When talking about this movement, there are two distinct issues. One is the
26 project-based accounting approach, which this regulation sets up. From
27 HUD’s perspective, how quickly could a PHA convert if today all the
28 guidance was out. How long does it take a PHA to convert and HUD to
29 change its system. The other part is project-based management. How do we
30 look at projects, how are they assessed. These are longer term issues. I don’t
31 want to say it will take 1 year, 2 years, 5 years.
32
- 33 Mr. Kaiser I am glad to hear Chris say that. So much of the study is contingent upon
34 statistical validity of the model predictions. Harvard predicts a level of
35 funding for every PHA project in the country. You get x amount for property
36 x and no more fungibility. I mentioned that just yesterday we received the
37 confidence interval information. It tells the error for 12,000+ properties. It is
38 too soon to discuss a transition to project-based when we haven’t even
39 determined the validity of the model.
40
- 41 Ms. Tran If no one has any additional topics...
42



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1 Mr. Lam One more item. This seems to me consistent with issues on the screen and
2 discussion on the difficulties with data collection. Information technology
3 costs—I don't know about FHA, but for many PHAs information technology
4 is very important for management decisions, and information technology can
5 be very expensive for some of us, especially as we deal with the possibility of
6 project-based appropriations and project-based accounting.

7
8 Mr. Gomez There is a distinction between project-based expense levels and authority-
9 based expense levels. Will the committee consider further discussion on costs
10 for running an authority? I support the idea of PBA and in fact we have
11 converted and know what it costs to run family properties, senior properties,
12 etc. Harvard doesn't address the cost of the budget for running the authority,
13 especially as an MTW agency entering an agreement with HUD to completely
14 rehabilitate its entire portfolio. I think it is worth a discussion of why we have
15 the cost structure the way we do. This data is not difficult to obtain.

16
17 Ms. Tran We will add that to the list. We would like to take the list and during the
18 break, group it into common sense groupings.

19
20 Mr. Kubacki After break, we have the controller for REAC here to discuss reimbursement
21 for travel.

22
23 **Break until 3:35 pm. Discussion on travel reimbursement.**

24
25 Ms. Tran Let's discuss the rest of today's schedule. We reserved 30 minutes today for
26 members of public to speak, and will do so at 5pm. We also need to vote on me
27 as the facilitator, and will do so at 4:35.

28
29 **General discussion that Ms. Tran as facilitator was already approved during protocols.**

30
31 Ms. Tran Did everyone get a copy of the data request form? In terms of topics, we tried
32 to group the issue into several buckets: statistical methodology (we will try to
33 hold until tomorrow when Professor White can attend), project-based
34 accounting (timing of funding versus timing of requirements), data
35 consistency issues (geographic coefficient, unit count). Does everyone have a
36 copy of the PEL agenda topics?

37
38 Mr. Parker We've been talking at this end of the table. In general, I think things are in
39 the right categories. But in statistical methodology, are things falling under
40 other items that really are items in themselves? Information technology costs
41 raised by Mr. Lam does not fall into the non-profit coefficient, neither does
42 resident participation. Fungibility between properties doesn't necessarily



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- 1 have to do with confidence intervals. Those are just a couple of examples, we
2 need a little more polishing on whether something is an item or a sub-item.
3
4 Ms. Tran As our guiding principle, we tried to take where those items were discussed in
5 the Harvard Study. For example, the information technology costs, Harvard
6 talked about the information and regulatory environment as part of the non-
7 profit coefficient. That is the thinking behind why it was organized in that
8 fashion.
9
10 Mr. Kubacki This was just a way of organizing, we have no problem with pulling any item
11 out as a free-standing number. There were just a lot of topics.
12
13 Mr. Parker As long as they are all dealt with in the final analysis, that's fine.
14
15 Ms. Tran Let's go through the topics under methodology just to see if they are properly
16 organized. **(See Appendix 6).**

17
18 Statistical Methodology:

- 19 1. Floors and ceilings were in both the draft and final Harvard Study, the
20 question by the committee is what is the justification for them.
21 2. The second item is the 4% reduction for properties with \$325 or over. In the
22 final Harvard report, Harvard added the 4% reduction.
23 3. The third item was the age of property age coefficient. What do we do with
24 public housing properties that are older than properties in the FHA portfolio?
25 I believe the FHA portfolio went to 35 years of age, and public housing
26 properties may be older. Harvard talked about modernization costs. How is it
27 defined for public housing and for FHA?
28 4. The other coefficient is the type of property, the Harvard study talks about
29 family, elderly, and high rise. What was brought up today is how are
30 scattered site and distressed properties addressed by Harvard?
31 5. A couple people talked about the asset management fee, so we grouped that
32 under statistical methodology.
33 6. The committee members have also talked about confidence intervals, the
34 model predictions for small PHAs with one or two properties. We grouped
35 fungibility in a couple places to capture the essence of a couple peoples'
36 thoughts. If the model is not precise, the committee could allow for some
37 fungibility between properties. We tackle that again under project-based.
38 7. The other issue is the non-profit coefficient and the explanation of the
39 reduction from 12% to 10%. Members stated that there are operational
40 differences between public housing and FHA. We also spoke about resident
41 participation, not only as an add-on but as part of the operational environment.
42 We talked about information technology costs.



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Project-based:

- 8. There was a lot of discussion on project-based funding and timing, or if it is PHA level funding,
- 9. Project-based accounting,
- 10. Who would be subject (by units, properties),
- 11. Fungibility, and
- 12. Measuring performance for properties.

Implementation:

- 13. Verification of unit count,
- 14. Transparency of formula calculation, and
- 15. Geographic coefficient.

Does that fully capture the list?

- Mr. Kelley Will we continue the discussion of add-ons tomorrow?
- Ms. Tran I think it will nicely flow into the add-on discussion tomorrow.
- Ms. Zaterman One point of clarification on transparency, it involves both estimating the individual subsidy level for PHAs but also the aggregate amount and estimating the need for Operating Subsidy at a system wide level.
- Mr. Epstein There's an issue in terms of approach to management that relates to how PHAs manage sites and how FHA properties are managed. That might be an appropriate additional topic. If we're discussing differences in cost, that certainly has an impact.
- Mr. Nolan In addition to project-based management, project-based expenses also need to be defined, which can guide us to an allocation methodology.
- Mr. Cooper I just wanted to be sure that tenant services were also included.
- Mr. Kaiser On the same line, I would require resident satisfaction. Harvard recommends no funding be provided for resident satisfaction even though it is mandated under the PHAS rule.
- Ms. Tran We talked about deferring discussion on statistical methodology until Mr. White can be here. That leaves project-based, do we want to start discussing this?



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1 Mr. Parker You can't possibly know what type of problems we'll run into with
2 implementation until we know the final details of the formula so I think that
3 will have to wait until last.
4
5 Ms. Tran Do you want to speak about project-based.
6
7 Mr. Nolan In terms of timing of project-based funding. The formula as stated is a
8 formula going to an agency rather than by project, so from our perspective,
9 should we be approaching as if we should receive as an agency for the next 2-
10 3 years, or is it the Department's contention we will receive by property in the
11 near future?
12
13 Mr. Russell I think our assumption at this point since the industry is not in an asset based
14 management or accounting position, the PELs would be essentially rolled-up
15 and given to the agency on that basis, at least initially.
16
17 Mr. Ramirez If talking about proceeding to PBA, what type of resources are contemplated
18 to help make this transition, or are we expected to absorb the cost as part of
19 operation.
20
21 Mr. Russell That's a topic that needs to be discussed. I'd like to hear from the industry
22 about their thoughts.
23
24 Mr. Myers I know that there are significant costs regarding staff training and staff re-
25 training, especially when you need to change staff culture and have a [labor]
26 union. That will impact transition costs.
27
28 Mr. Nolan Would there be an opportunity to get reimbursed for those [PHA's] that have
29 already pursued this strategy?
30
31 Mr. Land Just put it on your travel voucher.
32
33 Mr. Ramirez May I suggest that we add an item No.13 [to the list] called "cost of transition
34 and or reimbursement"?
35
36 Ms. Scudder That's what I want to add. It costs a great deal to do the transition.
37
38 Mr. Gomez I think that Mr. Nolan was being facetious about getting reimbursement from
39 HUD, but I'm not. I think that Mr. Nolan and I can show you how much it
40 costs to run an Authority. And suppose we get cut by 23%? We were only
41 able to make the transition because of fungibility. What accommodations are
42 you going to make for MTWs and the agreements signed in 2000?



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- 1
2 Mr. Russell In terms of when would be an appropriate time to shift away, based on an
3 appeal, from the Harvard PEL, is something we will be discussing. It depends
4 to the extent on which a PHA has gone to an asset-based accounting model
5 and the quality of the data. What does it cost? That was a conundrum faced
6 during the last Neg Reg. What are the actual costs? HUD does not foresee
7 the Harvard PEL in existence in the long term. As long as we go to asset-
8 based model and have accurate project-based data we can say these are the
9 real costs and then we can move away from the Harvard PEL. That may not
10 happen for some time and it may not happen for all of an agencies properties.
11 When can we get way from the Harvard AEL?
12
- 13 Mr. Parker I commend the department. Their thinking is on target. We do need to
14 differentiate between project-based accounting and what it costs to run a
15 property. I may submit, that the task might be impossible without
16 benchmarking to some outside entity. We do not have a market-based model.
17 The circularity that exists is the reason that the FHA database was selected as
18 a benchmark. We always manage [properties] to the number [subsidy
19 amount] that is provided by the federal government. That number is the
20 expense level – what the customer can pay. We are going to be forced to
21 manage to that number whether it's an inadequate number or a number that
22 leaves us swimming in resources. The difference with the Harvard model is
23 that the model is outside of the public housing environment and it isn't tainted
24 by the circularity problem. I would like to hear Mr. Byrne's thoughts, but I
25 assume that is why he used the FHA database.
26
- 27 Mr. Byrne From what I've heard in the last couple of comments, in terms of timing, we
28 need to move towards project-based accounting system before moving
29 towards a project-based funding system. It may be a while before a property
30 is funded using a project-based funding system. However, PHA's should track
31 their expenses on a project basis. The second general comment that I would
32 like to make is the subject of where you draw the line. There was not enough
33 focus on properties. We can get caught up in the discussion of whether a
34 property is 10 units or 200 units. Let's just say a reasonable number of units.
35 Thirdly, it would be nice if there was an incentive and a timeframe that says
36 we want PHAs to be at this point in year 3 and if they get there in year 2 the
37 PHAs get something for that. The forth point that I would like to make is how
38 do you [HUD] fund this? I remember when we did our utility work, the rates
39 continued to go up and up. What FHA did during the spikes was to allow
40 PHAs project-based rent increases, if they could prove hardship. While
41 QHWRA states that investment income is off the table there is still a lot of



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1 money on the table and there are costs for this and the cost is greater for those
2 that have been underfunded by the formula over the years.
3
4 Mr. Land Another cost consideration is what additional reporting burden PHAs are
5 going to have. How will HUD review the project-based budgeting and
6 accounting data? Who will say “I agree with the PHA that these units should
7 be in this project, etc.?” Who will make those kinds of decisions?
8
9 Mr. Nolan To add to Mr. Parker’s point...we do manage our properties based on what
10 they get [amount of subsidy]. We need to look at the condition of the
11 properties and you will see that they vary drastically as a result of differences
12 in funding levels. It is hard to define a “well-run” property. I want to add
13 mixed income properties to the property type discussion. Generally, if there
14 are public housing units in a mixed-income property we do not manage those
15 properties. Related to property-based accounting, we also need to consider
16 the Capital Fund and other funding sources.
17
18 Mr. Ramirez That was my point. We did not go into this. Project-based accounting is one
19 thing and funding is something else in real dollars, it’s a whole other dynamic
20 that’s played out. We should be very clear if we talk about project-based
21 accounting or projected-based management. Accounting is on the financial
22 side. There is money that is not put on the table when we talk about asset
23 management fees. Investment income is not on the table, but we should talk
24 about other income and if there are not going to be utility adjustments we need
25 to talk about other income. It cuts both ways, this thing about money left on
26 the table.
27
28 Mr. Gomez Regressing to my earlier point, I would like to paraphrase Mr. Russell’s initial
29 response. Some agencies may be able to provide more real-time data. I think
30 you said that you would look at that and factor that in. Secondly, how will
31 this affect MTWs?
32
33 Mr. Russell No, I did not respond to the MTW question, but it is an agenda item.
34 Regarding real-time data, if we have real-time project-based accounting data,
35 when do we want to discuss this and how it will be appropriate to replace the
36 Harvard PEL?
37
38 Mr. Longo Do we have data concerning the condition of the FHA housing stock? Does
39 that same data exist for multifamily properties?
40
41 Mr. Kubacki We [HUD] have data on the condition of the FHA housing stock. REAC uses
42 the same protocols to examine FHA properties and FHA properties receives



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1 similar scores. Generally, multifamily properties score higher than public
2 housing stock and that is industry wide.
3
4 Mr. Epstein I would like to comment on project-based accounting and management.
5 PHAs are set up to perform centralized management functions. How do the
6 majority of PHAs allocate centralized costs to individual projects? A number
7 of PHAs have gone through that process and it is not easy. In project-based
8 accounting a more decentralized means of management is a way that costs can
9 be reduced. Once you have done that and add up the costs, you might find
10 that it costs less to run those properties than it costs to run a centrally managed
11 property. The question is what HUD wants to do regarding the
12 implementation of a decentralized management system. This is an area where
13 costs may be reduced. This is what many PHAs will find out when they
14 allocate the costs. In terms of asset management fees to the great lament of
15 many FHA owners, they do not get an asset management fee. In fact some
16 owners with 3rd party management fees tried to split the fee with the agents.
17 HUD does not allow that, which resulted in a legal action against those
18 owners. The majority of the dividend went to the limited partners; the owner
19 gets very little. FHA owners have argued for many years that they deserve an
20 asset management fee.
21
22 Mr. Ramirez Maybe I misspoke.
23
24 Mr. Epstein Regarding the six (6) percent dividend of profit restriction - most of it went to
25 the limited partners; the management company receives none of it. Mark-to-
26 Market program owners are the only universe that gets an incentive
27 performance fee out of cash flow.
28
29 Mr. Ramirez The point is that the asset management fee is an expense to the FHA
30 properties. There is a six (6) percent dividend of profit and normally
31 management fees pay twenty two (22) to twenty five (25) percent, depending
32 on the property, but it is still an expense that the owner cannot participate in.
33 It's apples and oranges.
34
35 Mr. Epstein I am only commenting on FHA properties. Owners do not get an asset
36 management fee. To the extent that owners have a third party manager, they
37 do not get the management fee. For third-party fee managers, and many are,
38 the management fee throws off a significant amount of profit. It's a simple
39 fact.
40
41 Mr. Byrne I think that we are getting too far into particulars of project-based accounting.
42 I would like to get a poll to see if the group wants to move towards a project-



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1 based system. And then, not just accounting but also management. Is there
2 some unanimity on that?
3
4 Mr. Ramirez I would like some clarification on that. Is the direction first accounting and
5 then management?
6
7 Mr. Byrne Yes.
8 Mr. Lam The Department mentioned that REAC might have data on FHA properties vs.
9 public housing properties. If that data exists, it could be very useful for the
10 committee members and I would encourage you to share such data.
11
12 Ms. Tran Please fill out the data request form.
13
14 Mr. Parker In response to Mr. Byrne's question I would like to share my personal
15 observations. These are not on behalf of PHADA or the members in my state.
16 It occurs to me that we would be hard pressed as an industry to say that we do
17 not want accurate data on the properties we manage. To take a stand against
18 more accurate data on the properties we manage would be hard. Moving
19 towards a more accurate data system is desirable. We are moving towards
20 project-based system since Harvard based the formula on project-based
21 funding. The issue is whether or not the Department wants to provide funding
22 to each property based on Harvard's recommendations. I never want to give
23 up that local responsibility. I want to decide if a property should be
24 abandoned or if you should keep it and in five (5) years it might be the best
25 property you own. Only persons at the local level can make those decisions;
26 the federal level cannot make those community level decisions. Can I have
27 the flexibility to make those decisions or will it be dictated by a computer
28 program?
29
30 Mr. Longo We are getting dangerously close to the level of funding where we can do
31 project-based budgeting and we have a glimpse with our mixed finance deals
32 and we cannot support the regulatory work that is required by HUD. It's here
33 in black and white.
34
35 Ms. Zaterman I would like to echo Mr. Parker regarding flexibility. No one tells FHA
36 owners whether or not to have a central or decentralized office. This should be
37 included in our discussion of project-based management. FHA property
38 owners know the level of subsidy that they will receive from year to year and
39 they do not have to predict their funding levels. Proration does not apply.
40 That will be a key component of the project-based accounting system.
41 Regarding regulatory costs, it's hard to get an aggregate national number -
42 there are costs that a public entity has that private owners don't have. Every



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1 decision must be open and transparent. At a phone call a PHA might have to
2 disclose information. We can get into a discussion about the expectations of
3 how public housing entities should function. Unlike private owners they are
4 social providers and providing housing to



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1 low-income residents has an impact on neighborhoods. Clearly, we should be
2 accountable for the quality of management, but it is important to
3 realize that subsidy levels should reflect actual costs.
4

5 Mr. McInnish Mr. Byrne can you define project-based accounting? Does that mean
6 that separate audit and financial statements should be prepared every
7 year or are we talking about reporting estimated costs?
8

9 Mr. Byrne Certainly I favor a system that is more accurate. We should find a way
10 to allocate everything to the property and find ways to truly capture the
11 costs. This should be discussed as part of the implementation issues.
12

13 Mr. McInnish How are we going to go about doing that?
14

15 Mr. Ramirez On the other point, we focused on operations and accounting of those
16 operations, but another factor to get to a project-based formula is that
17 one of the reasons we used FHA data, in particular property age,
18 public housing properties are much older than FHA properties and
19 traditionally funded through the Capital Fund for modernization
20 efforts. Where on the FHA side there is a reserve that is collected for
21 modernization efforts. So when we talk about project-based
22 accounting we need to consider how the industry deals with
23 modernization efforts, which lags behind because they were funded via
24 the Capital Fund.
25

26 Mr. Kubacki On project-based accounting, where do we want to go? Recently I
27 took the position of Director of the Financial Management Division
28 and I found files older than me about project-based accounting. We
29 [FMD] also visited PHA's that were doing project-based accounting.
30 There is not much difference about what was in the reports from the
31 1970's and what we want to do today. We know that the person in
32 each apartment pays x dollars in rent and that is fifty (50) percent of
33 the revenue stream. Then you have Operating Subsidy to make up the
34 difference. That is ninety (90) percent of the revenue data.
35 Maintenance costs should be tracked by property; utilities should also
36 be tracked by property and that should not be hard because your
37 properties are metered. It is the thirty (30) percent administrative
38 costs that pose an issue. How do you allocate them? This is not as
39 major change. This Rule does not intend to deal with the allocation
40 method, this Rule deals with moving toward project-based accounting.
41 We [The Department] want revenue, expenses, and fixed asset data.
42 This summer HUD wants to meet with the experts and talk about the



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1 indirect costs and the methods to distribute the indirect costs. We
2 want the industry's comments.

3
4 Ms. Tran There are five (5) minutes left. Let's vote on what Mr. Byrne
5 suggested. Who agrees to move towards project-based accounting?
6

7 **18 hands were raised in agreement.**

8
9 Mr. Ramirez. What do we gain on the 1st day to talk about implementing a project-
10 based accounting system if this is not germane to this discussion?
11 Before we build on this, there are questions that need to be answered.
12 I would like to see the reports.
13

14 Mr. Russell My assumption is that what Mr. Byrne was proposing was not whether
15 or not we have something on project-based accounting in the Rule, but
16 whether or not we want to move in that direction. Is this a point of
17 contention? It is the concept of moving towards project-based
18 accounting; it is not a question of how we get there, what are the
19 requirements, nor when are we going to get there. Are there people in
20 the industry that are opposed to this concept?
21

22 Mr. Kaiser I don't think we should deal with this question five minutes before we
23 turn the discussion over to members of the public. If we think in
24 general terms that PHA's should track their expenses at the property
25 level, and if you read the papers that Mr. Byrne has authored, if
26 properties don't make money they should be privatized or disposed of.
27 The context from which people are approaching this question may be
28 different from what people think. There needs to be a more thorough
29 deliberation of what constitutes project-based accounting and
30 management.
31

32 Ms. Tran We would now like to open the floor to the public.
33

34 **Mr. Wayne Sherwood, an assistant to Mr. Jack Cooper and a member of the Mass.**
35 **Union of Public Housing, approached the table.**
36

37 Mr. Sherwood The Harvard Cost Study does not provide us with the answers
38 regarding the cost to run public housing. Where is this going? Will
39 there be another study or will we collect data from the field. This is a
40 chicken and an egg thing. How long will the PEL be in
41 place? It sounds like project-based accounting will result in Agencies
42 serving higher income people, and then you will wonder what



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1 standards apply, what cost levels apply. If the PEL becomes becomes
2 obsolete once the PHA changes the income levels and occupancy
3 requirements, where is this going?
4

5 Ms. Tran Would any committee member like to respond or address that? Are
6 there any other members of the public that would like to speak at this
7 time?
8

9 **No other members of the public came forward.**

10
11 Ms. Basgal Part of the issue is small PHA's. In my portfolio I own 24
12 condominiums that are all in different associations. The rest of my
13 properties are small scattered site properties. I have 4 units here and 6
14 there and they are all in different cities. If you aggregate them how
15 much do you really know about project-based? It doesn't add
16 anything to the knowledge basis. I would like everyone to keep in
17 mind that we are not just all large PHAs.
18

19 Ms. Tran Are there any other comments?
20

21 **[List of committee members were handed out to all the participants**
22 **(See Appendix 7).]**

23
24 **Silence.**

25
26 Ms. Tran If not, let's adjourn. Please hand me all data request forms.
27

28 **The committee adjourned at 5:06 pm.**
29
30
31
32



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- 1 **List of Appendices for the March 30, 2004 Session:**
2
3 1. Sign-in sheet for committee members, guests of committee members and
4 members of the public.
5
6 2. Negotiated Rulemaking Advisory Committee on Operating Fund
7 Allocation Proposed Protocols for Negotiated Rulemaking.
8
9 3. Operating Fund Negotiated Rulemaking Committee Request for Technical
10 Information Sample Form.
11
12 4. Negotiated Rulemaking Advisory Committee on Operating Fund
13 Allocation – Ground Rules for Negotiated Rulemaking.
14
15 5. Negotiated Rulemaking Advisory Committee on Operating Fund
16 Allocation Protocols for Negotiated Rulemaking.
17
18 6. PEL Issues.
19
20 7. List of Committee Members.
21



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Consensus Items for the March 30, 2004 Session:

1. Operating Fund Negotiated Rulemaking Advisory Committee – Protocols

The protocols were approved with the following note on consensus.

- Consensus. The Committee will operate by consensus of Committee members present. Consensus must include the concurrence of the HUD representatives plus 2/3rd of Committee members present. All agreements reached during negotiations are assumed to be final, subject to redress as consented by the Committee.

2. Operating Fund Negotiated Rulemaking Sessions 1 & 2 – Agendas.

The agendas were approved with the following changes:

- The Committee will deliberate on each topic in the order that it is placed on the agenda until discussions are completed and not necessarily in the time allotted according to the agenda.
- Session breaks will be 15 minutes in length as opposed to 30 minutes.