



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Operating Fund Negotiated Rulemaking Advisory Committee

8:30 am to 5:00 pm EST, Westin Peachtree Plaza, Atlanta GA

MINUTES OF THIRD SESSION – FIRST DAY

1

2 May 11, 2004 Session:

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The first meeting of the Negotiated Rulemaking (Neg-Reg) Advisory Committee on the Operating Fund Allocation System (the Committee) was called to order at 8:52 am on Tuesday, May 11, 2004, by Mr. Michael Liu, the Assistant Secretary of Public and Indian Housing. Ms. Tran served as the facilitator. The location of the meeting was the International Room of the Westin Peachtree Plaza; 210 Peachtree Avenue, NW, Atlanta, GA 30303.

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. Jeff Lines	Albany Housing Authority
11	Mr. Rick Parker	Athens Housing Authority
12	Mr. Richard Murray	Housing Authority of East Baton Rouge
13	Mr. Lloyd Strickland	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. Saul Ramirez	National Association of Housing and Redevelopment Officials (NAHRO)
27	Mr. Tim Kaiser	Public Housing Authorities Directors Association (PHADA)
28	Mr. Michael Kelly	National Organization of African Americans in Housing (NOAAH)

11 * Mr. Land was not present for the Third Session.



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1 **Appendix 1** contains the meeting agenda and attendance listing for the Committee members.
2 The committee members were provided with an agenda for the day (See **Appendix 2**), a copy of
3 the approved protocols that were used at the previous sessions (See **Appendix 3**), and a draft of
4 the Operating Fund Interim-Final Rule that was sent to all Committee Members prior to the
5 Third Session (See **Appendix 4**).

6

7 Ms. Tran Welcome to Atlanta. This is the third session of the Operating Fund
8 Negotiated Rulemaking Committee. Before we begin, we have a couple of
9 housekeeping items. Before you is a copy of the protocols, these are the rules
10 that we will be working with. We also provided copies of the operating fund
11 operating rule draft (Operating Fund: Statute, Regulations and Forms
12 package). This includes the current forms and regulations. In the blue book
13 (Operating Fund: Draft Interim-Final Rule) before you is a copy of the draft
14 of the rule that was e-mailed out to everyone on Friday. The 2nd item is that
15 we need to approve the second session meeting minutes that were sent to you
16 over a week ago. You were to provide comments and changes. We did not
17 receive any changes. Can I ask the committee to vote to approve the meeting
18 minutes?
19

19

20 **Supermajority. Motion Passed. Meeting minutes are approved.**

21

22 Ms. Tran Thank you. The 2nd session meeting minutes have been approved. I believe
23 HUD would like to start by going through the draft interim rule. Mr. Liu from
24 HUD.
25

25

26 Mr. Liu Thank you Ms. Tran. Good morning. Welcome everyone to the great city of
27 Atlanta. Mr. Nolan, it's great to be in your town and I'm sure we'll get a lot
28 done. If it is the pleasure of the committee and, Ms. Tran, if it makes sense,
29 we would like Mr. Tamburrino to go over the rule as a starting point and then
30 we can proceed from there going over the rest of the proposed agenda.
31

31

32 Mr. Tamburrino Thank you. I want to walk through our proposed rule, since everyone has a
33 hardcopy of the rule. [See **Appendix 4**]. The rule, as it is constructed, offers
34 an overview, beginning with the supplementary information on pages 3-4 and
35 then a discussion of each of the subparts. I am not going to read that but let
36 me offer a few overriding thoughts. The existing interim rule, as an agent, has
37 been adjusted a number of times and since we have the opportunity now to
38 revise and make changes, we would like to improve this rule. This [proposed
39 rule] has many more subparts and additions and for those that use the rule on a
40 daily basis, it will improve the ease of use and overall organization of the rule.
41 The second point that I would like to make is that in this rule we work from
42 the general to the very specific. Often in Rules, we don't give the reader the



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1 design of the forest, so we are trying to introduce concepts to the reader so
2 they can see the forest from the trees. Third, we removed all the provisions
3 relating to the AEL and replaced them with PEL. Fourth, as indicated in prior
4 negotiations, HUD is interested in simplifying the administration and
5 processing of materials required for distribution of operating funds, and to the
6 extent possible we have converted our language to address those needs. For
7 example, in this rule we now make references to the ‘funding cycle’ or
8 ‘budget cycle’ instead of the PHAs FYE. Another overall principle is to use
9 actual historical data rather than projections. We feel this gives us a more
10 accurate distribution of the operating funds. We also tried to be more explicit
11 in our expectations. Frankly, the existing Rule does not say if you do this, that
12 it is good or bad. We’re trying to show, whenever possible, what we want to
13 happen and what we don’t want to happen. That is a very black and white
14 picture that I just painted, but you get the idea. Now, if you turn your
15 attention to page 11 of the proposed Rule, this is the Table of Contents. I will
16 indicate what the subparts and areas we think that we might have relatively
17 easy agreements and then we can devote the balance of time to the issues that
18 we still need to negotiate.

19
20 Subpart A – Purpose, Applicability, Overview and Definitions. We feel
21 this section is very cut and dry and that we can reach overall agreement
22 fairly quickly.

23
24 Subpart B – Eligibility for Operating Subsidy; Computation of Eligible
25 Unit Months. Much of the language here comes from the existing interim
26 Rule and the definitions of eligible unit months, which is a prime factor of
27 the determination of operating subsidy. We want to make sure people
28 understand the varieties of unit months; we made one change in the area of
29 the addition and deletion of units at the end of the initial operating period.
30 Due to the great number of new units being added due to HOPE IV
31 initiatives we might want to define other ways to recognize units being
32 added and use that as the start date instead of the DOFA or EIOP. We
33 think, overall, Subpart B is relatively non-controversial and if necessary,
34 we can discuss some elements of it and then get it off the table.

35
36 Subpart C – Calculating Formula Expenses. This contains the most
37 significant areas of negotiation – project expense level, utilities and add-
38 ons. We tried to capture the agreements that we had reached in the prior
39 negotiations. We understand that some members had issues about some
40 of the mechanics. These examples are not in the Rule but we have some
41 examples to demonstrate how we will calculate PEL. We will need to
42 have a significant discussion over the use of an annual inflation factor in



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1 the next two days. On the utility expense level, the rule as written is
2 according to the HUD position from the last session. We are going to be
3 offering an alternative proposal that is not included in this Rule; we are
4 drafting new language with respect to utilities and that will be provided
5 later today. Add-ons, specifically the ‘asset repositioning’ add-on will
6 also merit further discussion.
7

8 Subpart D – Calculating Formula Income. This section has been greatly
9 simplified. In contrast to the existing rule, it now addresses rental revenue
10 and we think that this incorporates the freeze on rental income that we
11 agreed to in the last session. We hope to reach agreement on this section
12 quickly.
13

14 Subpart E – Determination and Payment of Operating Subsidy. This
15 completes the calculation for how we distribute operating subsidy and
16 addresses the distribution of the funds. It incorporates the fungibility
17 concepts that we agreed to, but there is a fungibility question that remains
18 open for non-federal units in NY City.
19

20 Subpart F – Transition Policy. We hope this incorporated our previous
21 discussions, however we would like to review this section on the last day
22 and HUD would still like to make some additional adjustments so I
23 suggest that we discuss this later after this morning.
24

25 Subpart G – Appeals. This section wrote itself based on the language we
26 agreed to, however we invite any comments.
27

28 Subpart H – Asset Management. This is another significant area that
29 requires additional input and negotiations. We constructed this section to
30 use the term asset management as the overall role of the PHA. It defines
31 project-based accounting and project-based management as aspects of
32 asset management.
33

34 Subpart I – Operating Subsidy for Properties Managed by Resident
35 Management Corporations (RMCs). We made some adjustments that are
36 related to the processing of the revisions. This section is a work in
37 progress and we suggest that we delay the discussion of this section until
38 tomorrow.
39

40 Subpart J – Financial Management Systems, Monitoring, and Reporting.
41 This is cut and dry and we hope to get this off the table this morning. It
42 incorporates verbatim existing interim rule language.



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Subpart K – Sanctions. We feel it is important to introduce this section called sanctions. This is a work in progress and again we suggest to delay any discussion until tomorrow.

That is a very brisk overview of the proposed rule. If I might suggest to go over the areas that are relatively cut and dry and we can reach agreement fairly quickly: A, B, D, E, and G.

Ms. Tran Did you also want to add subpart J to that list?

Mr. Tamburrino Yes.

Mr. Liu Just to provide you with some background as to why Mr. Tamburrino is now at the plate. As many of you might know, Mr. Kubacki is the father of a new baby girl and he is tending to higher priorities. We appreciate the assistance of Mr. Tamburrino and wish Mr. Kubacki well.

Ms. Tran Are there any questions or comments on Subpart A, page 13?

Silence.

Mr. Liu May I recommend that we put language on screen so everyone can see it. That will be helpful.

Ms. Tran Does the committee want to go through this section by section?

General agreement from the committee members.

Mr. Liu For the record, I would like to read each section word-for-word so there is no confusion.

Ms. Tran read section 990.101 – Purpose.

Ms. Tran Are there any comments or questions?

Silence.

Ms. Tran Since there are no comments, I will move on to the next section.

Ms. Tran read 990.105 – Applicability of the Operating Fund Formula.



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- 1 Ms. Tran Are there any comments?
2
- 3 Ms. Zaterman Is that language from the Interim Rule or is that new language?
4
- 5 Mr. Tamburrino If I may attempt to answer the question, I will need a minute or two.
6
- 7 Ms. Tran It is 990.103 in the current rule. I believe it is the same.
8
- 9 Ms. Zaterman I'm sorry.
10
- 11 Ms. Tran In the current Rule it is located behind tab 3 of the grey packet, on the top of
12 page 17829, 990.103(e) – Financial Management and Reporting, section
13 990.103.
14
- 15 Mr. Tamburrino There is slight modification of the language, but the phrase that you mention
16 is identical.
17
- 18 Ms. Tran Are there any other questions?
19
- 20 Mr. Parker Line 11 on page 14 – I suggest [that after the phrase "...and Section 32
21 homeownership projects"], that the phrase "after the units have been sold"
22 after homeownership in order to clarify the intent.
23
- 24 Ms. Tran So you're suggesting on line 11, the words "after the units have been sold" be
25 added to the text?
26
- 27 Mr. Russell Technically, if it is a Section 32 unit, isn't it already in the Homeownership
28 program. If we refer to this as a Section 32 Homeownership project, then it is
29 no longer a rental unit.
30
- 31 Mr. Parker This is not my comment. I'm reporting on the comment.
32
- 33 Ms. Tran Let's check on this and get back to this. Any other questions?
34
- 35 Mr. Kelly The assumption is that this refers to the U.S. Housing Act of 1937 act, as
36 amended by QHRWA. As we clean up the document, we want to make sure
37 that this is clear.
38
- 39 Mr. Tamburrino In section 990.101, [line 37] the initial sentence, we used the legal
40 paraphrasing, the "(1937 Act)" in reference to the amended version which
41 give us the ability to abbreviate thereafter.
42



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- 1 Ms. Tran Section 990.110 – Overview of the Operating Fund Formula.
2
3 **Ms. Tran read 990.110 – Overview of the Operating Fund Formula.**
4
5 Ms. Tran Any questions or comments on this section?
6
7 Mr. Kaiser Maybe the appropriate time to discuss this is when we address subpart B, but
8 the definition on page 14, paragraph (b) [Eligible Unit Months], this is a major
9 change in policy that is first referenced in terms of Unit Month Available – a
10 change in compass in the draft that was not discussed at the previous sessions.
11 I would like HUD to discuss the rational for the significant change in policy.
12 Jumping around a bit, this part that you just read is an introduction for a later
13 part that deals with Unit Month Available, in subpart B, and we discussed this
14 in the caucus last evening and we all feel very strongly about this issue.
15
16 Mr. Liu Mr. Kaiser, do you have a specific section or language, in subpart B, that
17 gives rise to that concern?
18
19 Mr. Kaiser In subpart B, there is a reference made to funding for occupied units only, if
20 someone wants to jump in with specific part.
21
22 Mr. Liu How does that relate to 990.110(b) Eligible Unit Months?
23
24 Mr. Kaiser It really relates to subpart B, and we can defer this discussion to subpart B.
25
26 Mr. Liu I want to be clear, is there a particular problem with the language in
27 990.110(b)? Are you implying that if there are issues with subpart B, that it
28 will impact this section?
29
30 Mr. Kaiser Yes. This issue is the “unit months eligible for operating subsidy” on page 14,
31 line 29. That specific language is problematic - the definition of eligibility.
32
33 Mr. Liu I believe that this can stand alone because we have qualifying language
34 afterwards that deals with this issue. The phrase “adjusted for changes in
35 inventory” on page 15 [line 1]. The language that we have here could
36 potentially accommodate what we will end up deciding to have in subpart B.
37
38 Mr. Kaiser That is fine, Mr. Liu.
39
40 Ms. Zatterman 990.110 (c) -- Calculating operating subsidy. The last clause “subject to the
41 availability of appropriations” is not relevant to this section. I would suggest
42 that we say “the amount of operating subsidy a PHA is eligible for is based on



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- 1 the eligibility and formula income”. This section does not deal with
2 appropriations.
3
4 Ms. Tran Are you proposing to remove the words “subject to the availability of
5 appropriations” so that the sentence reads: “the amount of eligible operating
6 subsidy that a PHA may receive is the difference between its formula
7 expenses and formula income”?
8
9 Mr. Ramirez As a point of protocol, and following your lead Mr. Secretary, we object to
10 this particular statement because it leads to a broader definition down the
11 road. This does not preclude us from coming back to these statements and
12 trying to capture the essence of what we are agreeing on.
13
14 Mr. Liu I would concur. If there is specific language that members would like to
15 amend, I would like to recommend that we can make those changes and see
16 what it looks like.
17
18 Mr. Ramirez Would that be in the form of a motion and vote?
19
20 Mr. Liu That would be up to Madam Chairwoman.
21
22 Mr. Ramirez I second Ms. Zaterman’s motion to amend the language.
23
24 Ms. Tran We will make the changes to the Rule that you see on the screen. The screen
25 will read: “As a general statement, the amount of eligible operating subsidy
26 that a PHA may receive is the difference between its formula expenses (as
27 calculated under subpart C of this part) and its formula income...”. Is
28 everyone in agreement?
29
30 **Supermajority. Motion passes.**
31
32 Ms. Tran Any other issues with Section 990.110?
33
34 **Silence.**
35
36 **Ms. Tran read Section 990.115 – Definitions.**
37
38 Mr. Ramirez Are we going to read the whole section or go through this page-by-page?
39 Line 15, Eligible Unit Months, the measure is based on actual occupancy, so
40 we are shifting from the current calculation of unit months to actuals.
41



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- 1 Mr. Lines I propose that we modify this in an open but neutral way. I think it should say
2 “eligible unit months are a category of measure of the actual number of PHA
3 units included for the purposes of receiving operating assistance as described
4 under subpart B”. That way you defer the discussion until later.
5
- 6 Mr. Russell If someone is looking at this, we want them to really understand what that
7 means, instead of saying “as defined under subpart B”.
8
- 9 Mr. Lines We should include “within a specified timeframe.”
10
- 11 Ms. Tran Let me read this again “Eligible unit months are a category of measure of the
12 actual number of PHA units included for the purposes of receiving operating
13 assistance within a specified timeframe, as described under subpart B”. Do
14 we have a motion on this language?
15
- 16 Ms. Lott I can support such language, if this is the direction that the committee wants to
17 move, but that is very vague and readers should be able to go to the definition
18 and understand what that is without going to another section. I would
19 recommend that once we flush out subpart B to include that definition here as
20 well.
21
- 22 Ms. Scudder My comment is on Line 19....
23
- 24 Ms. Tran Are we going to go through each section and vote at the end?
25
- 26 Mr. Ramirez May I, if there is a point of contention on any block of changes, that is if any
27 section is controversial, we should vote on each change, vote on all the non-
28 controversial items and then on the controversial items.
29
- 30 Ms. Tran Do we want to continue?
31
- 32 Mr. Ramirez I suggest that we vote, but that is just a suggestion, that if there is a block of
33 changes that would sink because of one controversial issue.
34
- 35 Ms. Scudder Line 20, formula income, I have a question as to the rent formula charged.
36 This should read “divided by the unit months available” not the months
37 leased.
38
- 39 Ms. Zaterman How is this currently calculated?
40
- 41 Mr. Ramirez Based on unit months available.
42



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1 Ms. Zaterman Than this is a change from the rule?

2

3 **Silence.**

4

5 Mr. Russell It should say “units eligible”, because subpart B included units other than
6 leased units.

7

8 Mr. Lines We should add “any other adjustments permitted”. If there were no
9 adjustments that were permitted than it would be zero.

10

11 Ms. Lott Again, I would like to say that we are getting bogged down by the definitions.
12 We need to move through the definitions and get to the critical issues.

13

14 Ms. Tran Would you like to defer to this section and come back to it at the end?

15

16 Ms. Lott Madam Chair that is exactly what I am suggesting.

17

18 Mr. Parker If we have something that is not tied to the definitions but is in this section do
19 we still want to skip over it and come back or do we want to deal with it now?

20

21 Ms. Tran Ms. Lott was suggesting that we discuss the matter of substance and then
22 come back and refine those items.

23

24 Mr. Parker There are definitions that are not tied to other substantive issues.

25

26 Ms. Tran Are you certain that those definitions are not tied to other issues. Perhaps it
27 would be better to address the section as a whole later.

28

29 **Silence.** [The Committee agreed to deter 990.115 – Definitions until later].

30

31 Ms. Tran Moving on to Subpart B, Section 990.120.

32

33 **Ms. Tran read Subpart B – Eligibility for Operating Subsidy; Computation of Eligible Unit**
34 **Months, Section 990.120 –Eligibility of units for operating subsidy.**

35

36 Mr. Parker I would like to state that I was the scribe for the group last night and that I
37 might bring to the table issues that we mentioned last night. On page 16, line
38 30, we should clarify the issues surrounding DOFA. The person that raised
39 that issue might want to come forward and speak.

40

41 Mr. Lam If I could, can we skip this and come back in a few minutes.

42



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- 1 Mr. Nolan We need to clarify the units that are on-line. The units that are eligible should
2 relate to units coming on line instead of overall units. This wording gets lost.
3 The language refers to new units coming on line, and will be calculated when
4 they are occupied instead of waiting for a DOFA or EIOP date. Is that the
5 intent?
6
- 7 Mr. Tamburrino Yes.
8
- 9 Ms. Tran Mr. Nolan, would you like to offer specific language?
10
- 11 Mr. Nolan We should change the title to suggest that these are new units.
12
- 13 Mr. Tamburrino This section is for new units and all units thereafter, so it is not just for new
14 units. We propose the title “When a unit becomes eligible”. We are trying to
15 define the in and out times of when a unit is eligible, instead of using EIOP or
16 DOFA . The stop date is the approval of the demolition which would put it in
17 an add-on category.
18
- 19 Mr. Nolan I like the change, except for the word occupied, which goes back to the
20 discussion of occupancy vs. availability.
21
- 22 Mr. Liu We anticipated this discussion. HUD’s view is that we want to incent
23 agencies to as quickly as possible bring units back on-line, and more or less,
24 that is what PHAs want to do as they reposition their inventory. We have
25 concerns about providing the full PEL, subject to appropriations, for units that
26 are vacant. We are willing to engage in a discussion or thoughts from folks
27 around the table about what the actual cost items are for vacant units, short of
28 the full PEL. There may be a consensus for costs for water, electricity, gas
29 may be significant, but other costs should not apply to vacant units, regardless
30 of the length of time that they are vacant. There may be other comments, but
31 we may want to caucus to discuss this issue in greater detail to allow this to
32 permeate our thoughts.
33
- 34 Mr. Kaiser I raised this issue initially and it is critically important, and we are
35 disappointed that this is being raised now at the last session. It is not included
36 in the Harvard Cost Study and has major ramifications for all the PHAs across
37 the country. We feel that we should have been notified of this before. All of
38 the data runs that we did before were based on this definition, and a change to
39 this definition was not factored into the calculations that were run for the
40 committee and were not factored into the decision-making process. We are
41 somewhat hampered that this is being raised in the last session.
42



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- 1 Mr. Parker I would like to echo what Mr. Kaiser just said. As addressed in section
2 990.120, what happens when new properties come on-line and old properties
3 come off-line? There are not a lot of new properties coming on-line, but it
4 would create a subsidy stream that would vary for every single unit, but if you
5 are attempting to lease a property during an economic down-turn...I
6 understand the Department's desire to move expeditiously on these things,
7 but it creates a cash flow problem.
8
- 9 Mr. Lam The issue I want to raise is with respect to the 1st and 2nd sentence – defines
10 units and calculation of operating subsidy and what is not clear, is how this
11 relates to the coefficients on page 22, 990.155 [Subpart C], age of property
12 and the calculation of op subsidy a property is eligible for. Our concern is the
13 potential for operating subsidy that would not take into consideration a
14 property that was older than the date that it was placed under the ACC; that is
15 an older property that was added to the ACC at a later date.
16
- 17 Mr. Ramirez The calculation itself, the UMA and the 3% variance, was carefully discussed
18 and negotiated in the last Operating Fund Rulemaking to deal with the issues
19 that Mr. Parker pointed out in his earlier comments. This language creates a
20 cut of 3%, in essence, of the funds an agency will be receiving, and this is on
21 top of, unlike the private sector, PHAs do not get 100% of funding every year
22 and this would have serious repercussions on a day to day basis. For the
23 Department to expect 100% occupancy is unrealistic. And to discount any
24 vacancy is unrealistic.
25
- 26 Ms. Zaterman This is a significant departure from the current policy. My understanding is
27 that HUD is proposing that no vacant unit receives operating subsidy,
28 regardless of why it is vacant or how long it is vacant. Amongst some other
29 psychological shifts, when do we take on the big issues? This is a deal
30 breaker. How do we go about debating this?
31
- 32 Mr. Liu I think we need to go back to the language and see what we are talking about.
33 This is a two-pronged test -- it has to be vacant and approved for demolition
34 and disposition. If you have those factors, then we are essentially in status
35 quo. Read the words.
36
- 37 Mr. Ramirez Why not insert the existing language that talks about available unit months.
38 The existing language talks about UMA.
39
- 40 Mr. Liu Our intent is to tighten up the current definition so that it is clearer. Based on
41 the language, it has to be vacant AND approved by HUD for demolition and
42 disposition. You must meet those requirements.



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- 1
2 Mr. Ramirez The existing interim Rule brings greater clarity on what is eligible and the
3 amounts that you get for those units. If it is the intent of the Department to
4 maintain the status quo, then why not use the old language?
5
6 Ms. Zaterman Can you articulate your intent. In 990.110, my reading of the language, is it
7 your intent that subsidy is available for vacant units under lease or only
8 occupied units?
9
10 Ms. Basgal An easy way to get this clarified, is if HUD could tell us if there is a change to
11 the occupancy percentage form HUD-527238. Is there a change to this form?
12
13 Mr. Russell A couple of things – my understanding of the PEL database is that it built in a
14 5% vacancy rate in the model. We don't want to assume an additional 3%
15 vacancy rate so we want to start from x number of units – including occupied
16 units, specific use units, and dwelling units with approved vacancies such as
17 units approved for rehabilitation or demolition/disposition, so we don't have
18 all these huge forms to fill out and we don't assume the 97% up front. Those
19 units are eligible and everything else is not eligible.
20
21 Mr. Ramirez What is eligible? If you read the current formula, and I'm not sure where the
22 8% came from, and I don't understand if you intend to give the authority 5%
23 instead of 3% but we were never hoping for 8%. What would qualify as a
24 vacant unit? To further amplify the Secretary's point, that if the intent is not
25 to deviate from the current rule, and Ms. Basgal, the form can be modified at
26 any time. We hope to maintain the same form, but we would like to insert the
27 language into the rule. As Ms. Lott said, we don't want ambiguity.
28
29 Ms. Basgal I'm not proposing to use the form I just want to know what changes in the
30 calculations based on the new language if it starts with 100% not 97%.
31
32 Mr. Lines There are two concerns. The 1st issue is defining vacancy and unit months.
33 HUD needs to understand what others feel is an appropriate way to treat this
34 issue. We should say that "a unit is otherwise included for the proposed of
35 operating subsidy" expect for limited circumstances, for demolition or
36 disposition, as defined in 990.105" we don't want to acknowledge or accept
37 those changes yet. We just want to say that units that are not eligible are not
38 eligible.
39
40 Mr. Nolan Can we change the title to say "Units Available for Operating Subsidy?"
41
42 Mr. Russell I would like to propose a 10-15 minute caucus.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Operating Fund Negotiated Rulemaking Advisory Committee

8:30 am to 5:00 pm EST, Westin Peachtree Plaza, Atlanta GA

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Mr. Ramirez Before we caucus, the proposal as written is that 3% is eliminated and it is at 100% but there is 5% included in the FHA model.

Mr. Russell That is my understanding. Let me state this simply. As I understand it, in 990.110 it does talk about the vacant units available.

Ms. Tran Let's reconvene at 10:30 am.

Break granted at 10:05 am. The committee reconvened at 11:28 am.

[Mr. Russell is serving as the Designated Federal Officer and Mr. Tamburrino is serving as the HUD representative.]

Ms. Tran Everyone, if you would please take your seats. Mr. Russell.

Mr. Russell There is no agreement on subpart B at this time, so in keeping with the agenda in the interest of time, we should try to go through the other subparts. The next subpart would be D.

Ms. Zaterman It would be very helpful to get a sense of the costs attributable to the current policy and the suggested policy on the vacant unit discussion.

Mr. Russell In keeping with our existing protocols, if you have a specific data request, please fill out the data request form.

Mr. Lines You did a proforma in the FY2005 budget request, if we could have those numbers.

Ms. Tran We will look at that in your data request. Moving to subpart D.

Mr. Ramirez Did we put subpart C aside?

Ms. Tran Yes. Subpart D, Section 990.180.

Ms. Tran read Subpart D – Calculating Formula Income, section 990.180 – Treatment and computation of formula income.

[Mr. Liu is now serving as the Federal Designated Officer and Mr. Russell is serving as the HUD representative.]



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- 1 Ms. Tran Any comments, questions?
2
- 3 Ms. Sledge My comment relates to ‘frozen at FY 2004 levels’, which goes back to the
4 question we talked about over the past six days, I still have in the back of my
5 mind “incentiving rent” I would still like a definition of “incentivizing rents”.
6
- 7 Mr. Russell Basically, we are saying that whatever rents the PHA collected in FY 2004 we
8 would freeze at that level for 3 years. There are rent laws in place, the
9 BROOKE amendment, and that would not change. The policy right now is
10 that if there are any rent increases, a PHA only keeps a portion of that in the
11 1st year and then HUD decreases the subsidy proportionally. So there is an
12 incentive to calculate rents properly, to help PHAs provide additional revenue
13 to their projects. We are essentially freezing it for 3 years.
14
- 15 Mr. Sledge I think I understand what you are saying, but there is some concern in this
16 Rule, is there a need to make this change. If rents can be raised in a creative
17 way, I don’t remember agreeing to raise rents.
18
- 19 Mr. Russell There were different discussions, and the simplified way was to freeze the FY
20 2004 rent levels and do that. We are aware from talking to PHAs that have
21 not increased rents over a period of years that there is a disincentive to adjust
22 rents, and overtime rents are adjusted due to inflation and other costs and there
23 is a disincentive to do that because then HUD takes back their subsidy.
24
- 25 Mr. Ramirez My recollection was to freeze the FY 2004 levels for the sake of creating the
26 base to calculate the formula, and one of the items that were still up for
27 discussion was the item of inflations. That is still an open question. We are
28 not talking about the inflation in section C. My other concern, is that on lines
29 12-14 there is a sentence, and I would like to know if that was included in the
30 existing rule.
31
- 32 Ms. Tran You are referring to 990.190 and we are not there yet.
33
- 34 Mr. Kelly To Ms. Lott’s comment, the definition [of formula income] here is different
35 than the definition in the definitions section. It should be verbatim.
36
- 37 Ms. Tran Let’s hold that definition aside.
38
- 39 Mr. Ramirez Can we highlight that.
40
- 41 Ms. Tran Yes.
42



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1 Ms. Tran Section 990.185.

2

3 **Ms. Tran read section 990.185 – Calculation of formula income.**

4

5 Mr. Parker The industry groups last night, highlighted the sentence on lines 7-8
6 containing the phrase with “unit months leased”. [Lines 7-8 reads as follows:
7 for the purpose of the Operating Fund Formula this revenue is equal to the
8 amount of rent charged to tenants minus any applicable utility allowance
9 divided by the respective *unit months leased*.]

10

11 Ms. Tran That sentence has now been highlighted.

12

13 Mr. Kaiser One point I want to mention, that Mr. Ramirez brought up. When we discuss
14 freezing of the rent, some of us expressed fears on economic hardship, and the
15 language is very good, but with the voucher program we are seeing states,
16 such as Minnesota, we are seeing cuts in the state programs. I have a question
17 on line 10 regarding using FY 2006 -2008, what is the intent? What is
18 HUD’s plan after FY 2008?

19

20 Mr. Russell To look at the reported revenue at that time and to see if we need to make any
21 adjustments, re-benchmark it or add an inflation factor. If your rental income
22 is growing at a huge clip, then we need to adjust your operating subsidy.

23

24 Mr. Ramirez I have already made my point on inflation, but Mr. Russell’s response to the
25 recalibration of rental income after 3 years, did I understand you to say that in
26 the 3-year period, an inflation factor would be made up? If the increased rents
27 are keeping up with inflation, and if only certain severe economic hardships
28 are getting the inflation factor, then a lot of the inflation taken up by increases
29 in income, will there be any credit applied to inflation rate, so there is a real
30 number that is taken into consideration, since you are not taking inflation into
31 account?

32

33 Mr. Russell I’m confused, but right now the proposal is, as we discussed, for 3 years there
34 will not be an inflation factor applied. After 3 years we may want to apply an
35 inflation factor, but it would not be retroactive.

36

37 Mr. Ramirez I am not asking for anything retroactive. For 3 years the inflation factor
38 would not be considered. Afterwards, your language says at the project level
39 there would be an inflation factor, but if there is an inflation factor, because
40 the federal government uses inflation factors, would it be applied to get to a
41 net effect? As is the practice now, any inflation is absorbed by rent increases.

42



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- 1 Mr. Russell Are you proposing that we do something? It might be helpful if you have an
2 example.
3
- 4 Mr. Ramirez Let's say that if you charge \$1 in rent and have a 1% inflation factor for 3
5 years, then you have \$3 that you don't get. And let's say that your rent has
6 gone up by \$5 in that 3-year period, will the PHA be able to take that money
7 for the \$1 of inflation for that 3-year period as it relates to the calculation?
8
- 9 Mr. Russell It's going to be whatever it's going to be. It will be expenses minus frozen
10 income. We have not addressed inflation factors for the PEL.
11
- 12 Mr. Ramirez We don't address this in this Rule.
13
- 14 Mr. Russell You are right.
15
- 16 Mr. Ramirez We are trying to bring some perspective as to what will happen after 3 years.
17 It will be here quickly. I would like to have a discussion down the road to
18 bring some actual perspective as to what will happen after three years. The
19 Rule is silent as to what will occur then. I would like to know what the
20 Department's intent is.
21
- 22 Mr. Russell I would like to offer that the sentence that starts on line 12 is probably
23 unnecessary and might be leading to some confusion. [Line 12 reads as
24 follows: HUD retains the right to review formula income on both a national or
25 individual property level and recalculate the formula income if necessary.]
26
- 27 **General agreement to remove that sentence.**
28
- 29 Ms. Zaterman Good. That was easy. Getting back to Mr. Ramirez's point, that we can get
30 into this in our FY 2008 Negotiated Rulemaking Session, but we need some
31 notice from HUD to give PHAs some advance warning of how to deal with
32 rent at that time.
33
- 34 Mr. Morton It would be helpful to spell out some of those parameters, give some limits or
35 provide some clarification to ease some of the committee members' fears.
36
- 37 Ms. Sledge Again, I would like to know how this would impact residents. I did send a
38 letter to the Department with some questions, and I appreciate that Ms.
39 Lehmann-Kim came down to Jacksonville to explain some things. This Rule
40 does not explain how this will impact residents. I need an example. I can't
41 explain something that I don't know about. Before we take a vote I need
42 clarification.



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- 1
2 Mr. Russell An example could be if a PHA has a minimum rent policy in place and they
3 have done minimal adjustments, there would be no change. If a PHA has a \$0
4 rent minimum policy they might implement a \$25 minimum rent policy, and
5 the revenue generated would be able to help fund the operations of that
6 property. The PHA would keep that money. If rents in the marketplace have
7 been going up in the last 5 years the PHA might make some minor
8 adjustments to their rent levels. I don't think that anyone wants to or plans to
9 increase rents for residents. It just gives management a little more flexibility.
10
11 Ms. Sledge This change in this Rule is to put the squeeze on PHAs so there is no
12 operating subsidy down the road. There is some selfishness in this. I can't
13 digest the answer that you gave me.
14
15 Mr. Russell It is not the intent to put the squeeze on PHAs and have higher rents. That
16 would not be the effect of this Rule. I feel bad that you feel that someone will
17 be hurt under this but I don't think that anyone will be hurt. If rents are
18 increased slightly over time we are not reducing operating subsidy so it will
19 help to improve operating conditions over time. If they raise rents now, we
20 won't reduce subsidy. If residents pay more money and we take more money
21 away that is not good for the residents. I know there was agreement on this in
22 the last sessions. We don't want to hurt anyone.
23
24 Mr. Morton There are some minor ways that rents may go up, for PHAs that did not do
25 minimum rents, there are ways that rents could increase, but it would be
26 marginal. There is nothing in the statute that would change. That process is
27 not there. We are taking about minor changes, if any. There are also positive
28 things that PHAs can do, such as helping people get jobs. There are some
29 positives to this for the PHAs, but I can't say that there won't be some
30 increases in rents in some cases.
31
32 Ms. Scudder If we are allowed to raise minimum rents, will the hardship waiver for
33 minimum rents go away?
34
35 Mr. Russell Can you clarify that?
36
37 Ms. Scudder Currently we have regulations that state that if there is a hardship for someone
38 they don't have to pay that minimum rent.
39
40 Mr. Russell HUD is not proposing that this is changed.
41
42 Ms. Scudder So we operate with \$0.



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- 1
2 Mr. Cooper Ms. Sledge is concerned that HUD has not been receiving its full subsidy for
3 quite a few years now, and the future does not look that bright today, maybe it
4 will look better tomorrow, If there are not enough dollars to support the
5 formula, they have to come from someone. We have also sent letters
6 requesting data runs requesting Moving-to-Work (MTW) programs to see if
7 buildings would stand on their own and what would there cost be if you gave
8 a block grant to a PHA, what are those results? We didn't get any data runs
9 on that. Do you have the data to make the agreement that the formula will
10 work without impacting residents?
11
12 Mr. Russell I will contact my office to see if we did attempt to do those data runs. Part of
13 the problem with the MTW program is that we do not have lots of quantifiable
14 data. Under the Urban Institute they do have information, and they did meet
15 with a number of residents, that if residents did pay a little more, they felt it
16 was more fair. In an environment where we may not get full funding, the way
17 it is now, if the PHA needs to make up for some of that by trying to generate
18 more revenue via rental revenue or other possibilities, we take away the
19 subsidy so it's a vicious model. If the PHA did do small increases in rents, the
20 PHA would have more money to manage their property. If you have concerns
21 on this policy, and you are proposing to go back to the old policy, we should
22 have a discussion and debate on that.
23
24 Mr. Liu This is a major shift in how we do business. If there is fundamental
25 disagreement then we should all go home right now. If we can't agree to base
26 the formula on the AEL and this is a firm no-go situation, given our best
27 attempts to explain our intentions, we can close up shop right now and go
28 home.
29
30 Mr. Cooper Thank you, Mr. Secretary. That is not what we are asking. We are asking
31 what is the difference between the AEL and the PEL. Our job is to make sure
32 that housing is affordable and to protect the residents.
33
34 Ms. Basgal The concern is because we are talking about an increase in rental income and
35 residents are concerned about paying more. There is nothing in the Rule that
36 changes the way tenants pay rent. They pay 30% of their income.
37
38 Ms. Sledge Yes, I think that would express not only to me but to PHAs that the bottom
39 line is not the Rule, it is statutory. So it may be helpful if in the Rule, the 30%
40 provision is spelled out and the same with the hardship provision. That would
41 lessen the burden on the residents because it's self-explanatory.
42



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- 1 Ms. Basgal The section of the Rule that deals with this is in another section. To reiterate,
2 if a PHA currently does not have a minimum rent policy, they can implement
3 one, but they can do that under the current statute. It is not creating more
4 opportunities for PHAs to increase rent. It does not change the current
5 system.
6
- 7 Mr. Morton This does not change anything, Ms. Sledge. You have not given PHAs one
8 iota of additional power to change anything by adopting this. You might give
9 them more incentives, but you are not giving them more power.
10
- 11 Mr. Murray Part of the process of how we do things at the local level, if there are policy
12 changes, is that you have a way of commenting through your PHA to help
13 PHA develop their policies, you have a right to work with your agency.
14 Explain that you have a right to comment on any plans that an agency is
15 planning on implementing.
16
- 17 Mr. Nolan I move that we vote on this section, as amended on the screen.
18
- 19 Mr. Ramirez We still have a question on the “unit months leased”. And I don’t know if we
20 should vote on Section B, the HUD change.
21
- 22 Ms. Tran Should we.....
23
- 24 Mr. Parker I think we are in relative agreement except on that one part “unit months
25 leased”
26
- 27 Ms. Tran Can we second the motion to vote on subpart D, all those in favor please raise
28 their hands.
29
- 30 **Supermajority. Motion passed. Subpart D is approved.**
31
- 32 Ms. Tran We are now adjourned until 1:30 pm.
33
- 34 **Break granted at 12:14 pm. The committee reconvened at 1:53 pm.**
35
- 36 Ms. Tran Can everyone please take your seats. Shall we continue with the next section,
37 subpart E – Determination and Payment of Operating Subsidy.
38
- 39 **Appendix 5 was distributed to the committee members – FY 2005 Operating Fund --**
40 **Summary Statement and Initiatives (i.e., FY 2005 Budget Justifications for Operating**
41 **Fund).**
42



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1 **Ms. Tran read Section 990.190 – Determination of formula amount.**

2

3 Ms. Tran Are there any questions or comments?

4

5 Mr. Parker Recounting some of the work of the industry last night, there were concerns
6 on line 25, that the availability of appropriations does not determine the
7 amount of the formula amount and we suggest striking the phrase “subject to
8 the availability of appropriations”. There were also concerns on the last
9 sentence, lines 30-31. The group was also concerned about lines 5, 6, 7, and 8
10 on page 34. I will let the group speak to that.

11

12 Ms. Tran With respect to page 33, line 25. We did strike the phrase “subject to the
13 availability of appropriations” earlier.

14

15 Mr. Byrne We also said to say that the “PHA may be eligible”.

16

17 Mr. Martin In terms of reference to operating expenses vs. formula expense, we should
18 make this consistent with the language we used before.

19

20 Ms. Tran So we are calling these formula expenses. Mr. Parker raised other concerns.
21 Would anyone like to speak?

22

23 Mr. Parker Page 33, lines 30-31 and on page 34, lines 5-8. I stepped out of the room last
24 night, so I didn’t take notes on what the issues were.

25

26 Ms. Scudder On line 30 [Sentence reads as follows: HUD shall *over time* use its databases
27 to calculate operating subsidy at a project level], the concern was that we
28 wanted to identify the time frame instead of using the words “over time”.

29

30 Mr. Ramirez Regarding the “database” referenced, what database is HUD talking about?

31

32 Ms. Zatterman I understand that HUD expressed long term goals for reaching project-based
33 accounting in the last session and I think that including language in this Rule
34 opens a lot of questions on how to do it and when to do it. I think that this
35 raises more questions than it answers.

36

37 Mr. Russell We could probably do without this language, but we are trying to say that we
38 are developing systems so that the data that you submit will be of high quality,
39 instead of you filling out handwritten forms that you fax to the field offices
40 and the field offices faxes them to HUD. That process is very paper intensive
41 and prone to transcription errors. If you submit the data once that should be
42 good enough. You should not have to report the data twice.



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1

2 Mr. Ramirez Is the suggestion to eliminate all of paragraph (b) [of 990.190]?

3

4 Mr. Russell Just the last sentence.

5

6 Mr. Ramirez Just the last sentence?

7

8 **Group motions yes. [Last sentence of paragraph (b) of 990.190 as follows, was eliminated:**
9 **“HUD shall over time use its databases to calculate operating subsidy at a project level.”]**

10

11 Mr. Parker As a reminder to the group, this has to do with HUD and the industry working
12 together to resolve data issues.

13

14 Mr. Ramirez If I recall the discussion, when we were looking over the situation, agencies
15 right now, if there is an error created due to a math error, clerical or
16 information system related due to HUD the agency is still penalized. The
17 adjustment of those errors should be a mutual point of discussion. The
18 penalty is imposed on the agency until the error is corrected.

19

20 Mr. Russell We propose to strike the sentence on line 5 ending on line 6 on page 34
21 [Sentence reads as follows: “In such cases, HUD will not consider PHA
22 appeals relating to errors in such information”], but we retain the right to
23 make adjustments and this is all predicated on the premise that PHAs are
24 providing accurate data.

25

26 **[Sentence on lines 5-6 of paragraph (c) 990.190 was stricken].**

27

28 Ms. Tran Any other comments or questions on this section?

29

30 Silence.

31

32 Ms. Tran Moving to the next section.

33

34 **Ms. Tran read 990.200 – Fungibility of operating subsidy between projects.**

35

36 Mr. Ramirez I feel that this section will cause a lot of debate, I motion to vote on section
37 990.190.

38

39 Ms. Tran Motion to vote granted.

40

41 **Supermajority. Motion passed. Section 990.190 is approved. [Continue with discussion on**
42 **Section 990.200].S**



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1
2 Mr. Parker The industry recommends striking line 15 on page 34 [sentence reads as
3 follows: “Reserves from a project may only be transferred to another project
4 upon approval by HUD”].
5
6 Mr. Lines At the end of line 14 add “at the discussion of the PHA”. We should get to
7 the crux of the issues. One the notion of establishes project-based expenses
8 levels, but the Rule and it starts here is far too descriptive. One of the most
9 important findings of the Harvard Cost Study was that the lack of a predictive
10 Capital Fund program made the need for flexibility essential. This does
11 represent major change; moving towards a property-centric management
12 system. One of the issues reflected is that this is a one-sided transaction, what
13 is absent is what HUD’s changes are going to be. I would strongly suggest
14 that we discuss how HUD will make reforms to adapt to a project-based
15 mode. The decisions that we leave until later on, to give PHAs time to get
16 ready but also for HUD to take steps to get ready, and those should be
17 included in the rule as much as the PHAs actions.
18
19 Ms. Tran Where do you want the language added?
20
21 Mr. Lines At the end of line 14, following “excess cash flows”.
22
23 Ms. Tran Any other comments or questions?
24
25 **Silence.**
26
27 Mr. Ramirez I have not seen the changes incorporated.
28
29 Ms. Tran Mr. Jain will you please incorporate those changes on the screen.
30
31
32 Mr. Ramirez Can you point me to the part in the Rule as to how and when PHAs will have
33 the discretion for fungibility.
34
35 Ms. Tran We are on 990.200 fungibility between projects. What is on the screen are the
36 suggested changes to this section.
37
38 Mr. Russell Can you repeat the question.
39
40 Mr. Ramirez The question is that this section does not address how and when fungibility
41 would occur and how the PHA would deal with day-to-day operations. There
42 is a section that talks about emergencies, but not the day-to-day functions.



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1
2 Mr. Lines Can we move “excess cash flow” to the middle of sentence. It would be more
3 clear if it is there.
4
5 Ms. Tran Mr. Jain, will you please add “at the discretion and determination of the
6 PHA”. Thank you.
7
8 Ms. Zaterman This refers to financial information. I would like to make a reference to line
9 15, to a bigger issue, which will permeate our discussion. What does HUD
10 see as its role in the day-to-day operation of the properties? What happens to
11 the reserves if it is subject to HUD’s approval? This is important because it
12 speaks to the relation of the property and the management decisions, and I
13 don’t believe that we addressed cash flows at the last session.
14
15 Mr. Liu HUD generally concurs with that statement, and would consider taking that
16 last statement out. We want a more definitive benchmark for PHAs to use to
17 exercise their discretion. When we talk about project’s financial information
18 that is provided in the latest audit or financial statement, not necessarily an
19 audited statement, it is at least something to look at.
20
21 Mr. Ramirez That begs the question, as we transform the industry to a more project-based
22 environment, there are reserves that are not there right now that need to be
23 created. Recognizing that we are working off the Harvard Cost Study’s
24 template, there is close to a 50% variance of the number, so there will be a
25 flux for PHAs to make that transition. The language is more restrictive, but it
26 shifts the role of overseer and regulator to day-to-day manager, because it is
27 not full fungibility to the authorities, which is what is needed to make the
28 transition. It is a question of how and when.
29
30 Mr. Liu I don’t think that we are disagreeing on anything. My comment was to
31 provide some further description for what information the PHA should make
32 its decision on, i.e. financial statements. Perhaps Mr. Epstein can help. In the
33 private sector, I know from personal experience, that you can look at financial
34 statements. Nevertheless, you have to look at something.
35
36 Mr. Ramirez There is no question about that. I don’t think that we are saying different
37 things, we are saying the same thing differently. As we transform ourselves
38 into a project-based operation, the how and when becomes very important. In
39 the private sector there are projections, forecasts, in this case, it is repairing
40 and retooling the plane as it is flying. We need to have discretion to set those
41 benchmarks. If we look at an annual view of financials, the first couple of
42 years of moving a property to project-based you might see that you are losing



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- 1 money, and you are limited to charge rent, how do you adjust for that so you
2 don't find yourself with a huge deficit at the end of the year. All I need is an
3 answer.
4
- 5 Mr. Lines I would like to offer two suggestions: First on line 13, strike the word "only"
6 and then on the issue of financial information have it read "financial
7 information as described in 990.270"
8
- 9 Ms. Tran After the word "information", it should read "as described more fully in
10 section 990.270".
11
- 12 Mr. Lines That is correct.
13
- 14 Mr. Russell We can accept that.
15
- 16 Ms. Tran Let's repeat that.
17
- 18 **Ms. Tran read the revised Section 990.200. [Section 990.200 is revised as follows: "(a)**
19 **General. Operating subsidy shall remain fully fungible between ACC projects until**
20 **operating subsidy is calculated by HUD at a project level. Once subsidy is calculated at a**
21 **project level, operating subsidy can be transferred to another ACC project if a project's**
22 **financial information, as described more fully in §990.270 produces excess cash flow, at the**
23 **discretion and determination of the PHA, and only in the amount up to those excess cash**
24 **flows."]**
25
- 26 Ms. Scudder In addition to that paragraph, does that still allow small PHAs full fungibility,
27 PHAs with up to 250 units?
28
- 29 Mr. Russell On line 14, instead of the word reveals, we should say "produces".
30
- 31 Ms. Tran Ms. Scudder, would you like to repeat your question?
32
- 33 Ms. Scudder Does that still allow small PHAs full fungibility?
34
- 35 Mr. Russell Yes.
36
- 37 Mr. Murray The last line, 15, we took out the notion of reserves, how would we deal with
38 using reserves. Are we now not allowed to use reserves. We talked about
39 excess cash.
40
- 41 Mr. Lines We struck out line 15.
42



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Operating Fund Negotiated Rulemaking Advisory Committee

8:30 am to 5:00 pm EST, Westin Peachtree Plaza, Atlanta GA

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- 1 Mr. Murray Are we now not allowed to use our reserves?
2
- 3 Mr. Ramirez The point that Mr. Murray is making is that there needs to be an affirmative
4 point on the use of reserves, so it is clear that reserves are fungible.
5
- 6 Mr. Nolan It appears that there are two types of reserves: The operating fund reserves
7 and the project reserves. If HUD could explore with us what they anticipate a
8 project does with each reserve.
9
- 10 Mr. Epstein This might be an issue of clarification. I don't know that what we are doing is
11 funding project-based reserve accounts. That was not part of the Harvard
12 Cost Study. In some cases a PHA could fund a project replacement. Any
13 funding of project replacement reserve accounts should come from the Capital
14 Fund account and that is beyond our scope here. There are PHA reserves that
15 PHAs can use to fund working capital reserves.
16
- 17 Ms. Zatterman If we are voting to fund reserves with a separate appropriation I would vote on
18 that. We are not raising the issue of fungibility of reserves, we have not
19 talked about the restriction of those uses. I would rather have it silent, as that
20 would indicate that it would be permissive. The long-term goals are going to
21 arise in our discussions about asset management. I understand Mr. Murray's
22 concern about doing something and then having the lawyers come back and
23 say that you can't do that.
24
- 25 Mr. Parker I second Ms. Zatterman. Perhaps that comes under the clause, "at the
26 discretion of the PHA" those are duly set-aside monies to be used for
27 unforeseen circumstances and should remain at the discretion of the PHA.
28
- 29 Mr. Kaiser Ditto. Let's move on. That's a motion.
30
- 31 Mr. Lam Before we vote and move on, the changes are just fine but NYCHA's unique
32 situation, I didn't want this vote of accepting 990.200 to exclude NYCHA. If
33 we could caucus, I request that we hold off of voting.
34
- 35 Mr. Ramirez It was one of the 5 points that we were going to hammer out in Atlanta, and it
36 would be appropriate to get a response from HUD.
37
- 38 Mr. Liu I did discuss this with NY representatives today, I don't think that discussion
39 would preclude a vote here. If there is any kind of accommodation, it would
40 be with respect to NY and addressed in that fashion.
41



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- 1 Ms. Tran All those in favor of 990.200, as presented on the screen, please raise your
2 hands.
3
- 4 **Supermajority. Motion passed. Section 990.200 is approved.**
5
- 6 **Ms. Tran read Section 990.205 – Payment of operating subsidy.**
7
- 8 Ms. Tran Any questions or comments?
9
- 10 Mr. Kaiser We discussed this in caucus last night. The concern is that Continuing
11 Resolutions (CR's) tend to be regular practice. The FY 2003 Appropriations
12 Act was signed in March and this year's Appropriation CR was signed in
13 February. In FY 1995, we were operating under CR for 4 or 5 months. We
14 have some concerns about the draft language. In the Current Rule, the
15 provision, specifies that in the event that there is less than 100% allocated...
16 which is the case all too often. We prefer the Current Rule language, even
17 though we are not all too enthused with this.
18
- 19 Ms. Tran Do you have the citation from the current rule?
20
- 21 Mr. Kaiser No, but it says that HUD has discretion if there is less than 100%.
22
- 23 Ms. Tran It is 990.112, page 17297 on the last column of the current rule: "(c)
24 Availability of funds. In the event that insufficient funds are available to
25 make payments approvable under the Operating Fund Formula for operating
26 subsidy payable by HUD, HUD shall have complete discretion to revise, on a
27 pro rata basis or other basis established by HUD, the amounts of operating
28 subsidy to be paid to PHAs".
29
- 30 Mr. Russell I move that we remove (b) and (c) and substitute 990.112 that was just read
31 before the committee.
32
- 33 Mr. Ramirez Are we including (d)? Or is that covered somewhere else?
34
- 35 Ms. Tran Payments under (a)? Are you talking about (b) payments and procedures
36 under the current rule. In the absence of current appropriations, HUD would
37 be able to provide funds.
38
- 39 Mr. Ramirez We are taking that out, yes?
40
- 41 Ms. Tran Correct.
42



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- 1 **Silence.**
2
3 Mr. Russell Would the committee be more comfortable with taking out all off 990.205 and
4 substituting it for 990.112?
5
6 Ms. Zaterman The concern is lack of funding availability, PHAs were informed that their
7 proration would be 70% and it was difficult for HUD and PHAs. The ideas
8 that the proration can be set at any level and any time without any
9 transparency, is difficult. Are we now using the language from section
10 990.112 instead of the proposed language?
11
12 Ms. Tran That is correct.
13
14 Mr. Morton I did not have any trouble with what we had before. Actually the original
15 wording seems better. In one case, the wording now says “complete
16 discretion” before it said “discretion”.
17
18 Mr. Ramirez By removing (d) which created additional uncertainty that would suffice. To
19 add some brevity, which is needed in this rule, but we don’t want the
20 Department to stop funding at will if we are under a Continuing Resolution.
21
22 Ms. Zaterman, Under a Continuing Resolution, payments shall be based on historical with
23 every effort to provide full funding?
24
25 Mr. Russell HUD would be more comfortable striking (b) and (c) and replacing it with
26 990.112, which could be an issue under a Continuing Resolution.
27
28 Mr. Ramirez In the substitution, would HUD be amenable to revise the availability of funds
29 definition to strike the word “at your discretion” and strike out “other basis”
30 and just make it distribution.
31
32 Ms. Tran To substitute the current language of (b) and (c) and after the comma under
33 (c), the proposal is to remove the word “complete” and the words ‘or other
34 basis’?
35
36 Mr. Russell HUD can accept that and we are eager to move on.
37
38 Mr. Kaiser I concur.
39
40 Mr. Kelly Under the proposed (a), payments are on a set schedule, set by HUD, but
41 PHAs that have higher payments at the beginning of the year and lower
42 payments at the end of the year.



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- 1
2 Mr. Russell Please repeat your last statement.
3
4 Mr. Kelly Strike “set schedule to be determined by HUD” and replace it with “schedule
5 set by PHA.
6
7 Ms. Tran It should read “submitted by the PHA and approved by HUD”?
8
9 Mr. Lines I am a little confused. I would like to ask for a 5 minute break to make sure
10 everyone understands what we are proposing.
11
12 Ms. Tran The substitution is for 990.105 to replace (b) and (c) with section 990.112 of
13 the Current Regulation, except for the following changes under (c) to remove
14 the word “complete” and delete “and or other basis”. There is motion to
15 break for 5 minutes. Let’s break for cookies.
16
17 **Break granted at 2:50 pm. The committee reconvened at 3:12 pm.**
18
19 Ms. Tran Let’s continue. We have on the screen the revised language for 990.205. For
20 (a) we are substituting a large part of what is in the 990.112 (a) of the Current
21 Regulation.
22
23 **Ms. Tran read the revised 990.205(a).**
24
25 Ms. Tran We are substituting part (b) with 990.112 (b) of the Current Regulation.
26
27 **Ms. Tran read the revised 990.205(b) and 990.205(c).**
28
29 Mr. Lines Can we revisit (a)? At the end of (a) can we add “to ensure the timely
30 payment of operating subsidy for each property”.
31
32 Mr. Liu Although, HUD shares the same sentiment, we do not concur.
33
34 Mr. Parker In that case I move that we accept the language.
35
36 Ms. Tran All those that agree, please raise your hands.
37
38 **Supermajority. Motion passed. Section 990.205 is approved.**
39
40 Ms. Tran Moving on to section 990.210 – Payments of operating subsidy conditioned
41 upon reexamination of income of families in occupancy.
42



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- 1 **Ms. Tran read 990.210 – Payments of operating subsidy conditioned upon reexamination of**
2 **income of families in occupancy.**
3
4 Ms. Tran Any questions or comments?
5
6 Mr. Kaiser I have a question and a comment. Can we get an explanation from the
7 Department for the rationale for this new language? It is significantly different
8 from the existing rule.
9
10 Ms. Tran The section Mr. Kaiser is referring to is in 990.113 of the current Rule.
11
12 Mr. Tamburrino It is significantly different in what way? I am looking at the current Rule
13 990.113.
14
15 Mr. Kaiser There are specific sanctions that are referenced that are moved from under the
16 territory of the public housing, those should be addressed there and not under
17 the Operating Fund.
18
19 Ms. Tran Sections (a), (b) and (c) of the Current Regulation are very similar to the
20 proposed regulation. That is Mr. Tamburrino’s point.
21
22 Ms. Basgal The most significant changes are in (a), and they added “in accordance with
23 the provision of the ACC” and “accurate and timely” the rest is verbatim.
24
25 Ms. Zatterman Can we add in (a) “or a PHA’s MTW agreement”, so for those PHAs that
26 have other arrangements. Also, [in paragraph (c) – A PHA not in
27 compliance], I understand that it is similar to the current rule, but this only
28 identified one method of compliance. One way to simplify this is to certify
29 that in the annual plan to certify compliance. The point is not to punish
30 residents of housing authorities, but to ensure that PHAs are in compliance
31 and there are steps taken to ensure PHAs move to become compliant as soon
32 as possible.
33
34 Ms. Tran Please give line numbers
35
36 Ms. Zatterman In paragraph (c)..
37
38 Mr. Byrne Remove the financial penalty part?
39
40 Ms. Zatterman Yes.
41
42 Mr. Byrne You either have to be 100% certified or you don’t get your subsidy.



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- 1
2 Mr. Epstein You are suggesting substituting extra training or something for certification.
3 Sanctions happen within the FHA portfolio.
4
5 Mr. Ramirez We are talking about creating a system where HUD can withhold funds for
6 PHAs that are noncompliant. Certification will occur on a project-by-project
7 basis. Is it the suggestion that what would be retained is that one project? If
8 that is the case, then the language needs to be clarified. If payment is
9 withheld and you have one development that is non-compliant, then all
10 subsidy is held back. That defeats the purpose of going to project-based
11 management.
12
13 Mr. Morton I was most upset by this last night. In reality, this has been in the regulations
14 the whole time and in good conscience, I can't oppose this.
15
16 Mr. Ramirez I do not disagree, but the distinction needs to be made that this applies on a
17 project-by-project basis and not to the entire property.
18
19 Mr. Morton If you look at the last sentence, it is there.
20
21 Mr. Ramirez For the sake of clarity, if we are moving towards project-based development,
22 this does say that it is your entire subsidy that is being held back.
23
24 **Chorus of No from the committee.**
25
26 Ms. Lott I move that we accept this section.
27
28 Ms. Sledge I would like to add language under (a) line 7 [The sentence reads as follows:
29 "A PHA's calculations of rent and utility allowances shall be accurate and
30 timely"], to also say "upon the most recent available utility prices". Can we
31 change the language?
32
33 Mr. Morton It is not appropriate. If it is accurate and timely, then it must reflect the most
34 accurate prices. I don't see any need to change this, you are protected.
35
36 Ms. Sledge It's not that I don't feel protected but 10 or 15 years goes by and there are no
37 changes.
38
39 Ms. Tran Any other comments?
40
41 Mr. Cooper What Ms. Sledge is referring to "accurate and timely" does "annually" get to
42 this more directly. This is more a connotation issue.



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1
2 Mr. Morton You are better off with their wording than the Current Regulation.
3
4 Ms. Tran There is a motion to vote on this section. All those in favor please raise your
5 hands.
6
7 **Supermajority. Motion passed. Section 990.210 is approved.**
8
9 Ms. Tran We are now done with subpart E. Moving to subpart G – Appeals.
10
11 **Ms. Tran read 990.230 – General.**
12
13 Ms. Tran Are there any questions on this section?
14
15 Mr. Lines You skipped subpart F.
16
17 Mr. Tamburrino This is as we suggested this morning, we recommended to skip subpart F until
18 later.
19
20 Ms. Scudder I am bringing this up for several PHAs in Texas, in reference to page 37, item
21 3, can we change “6,600” to “5,000” to cover some other PHAs, at the
22 Secretary’s discretion.
23
24 **Silence.**
25
26 Mr. Russell We need a few minutes to consider that, can we come back?
27
28 Mr. Parker A few other comments. The 2% holdback, is it’s HUD’s intention to have 2%
29 years in the future, such as in year 5, but after the first few years then you
30 don’t have to have a holdback? Also the timing of when the 2% holdback
31 would be added back into the pot based on the determination of the appeals.
32
33 Mr. Russell On the number of year’s questions, we are open to suggestion. It doesn’t need
34 to be forever.
35
36 Mr. Parker Our recommendation is the first 2 years.
37
38 Mr. Russell FY 2006 and FY 2007.
39
40 Ms. Zaterman The appeal should be an additional amount as requested by appropriations.
41 Historically, PFS appeals were separate appropriations. I think that answers
42 our problem. We need a separate appropriation request.



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- 1 Mr. Russell HUD supports Mr. Parker's suggestion for 2 years 2% holdback, the
2 remainder would be redistributed within that fiscal year, at the discretion of
3 HUD.
4
- 5 Mr. Parker Would you state that in the Rule.
6
- 7 Ms. Tran Would you like to include FY 2006 and FY 2007 in the rule, would you like
8 to be that specific?
9
- 10 Mr. Parker Yes.
11
- 12 Ms. Tran “For each of FY 2006 and FY 2007 “and then “for funds not utilized will be
13 added back to the formula within each of the affected fiscal years”.
14
- 15 Mr. Russell HUD is also willing to accept the change to page 37 to make it 5,000.
16
- 17 Ms. Scudder Thank you.
18
- 19 Mr. Lines Ms. Zaterman’s suggestion is very important. We should request a separate
20 appropriation for appeals and we should not add to the cannibalization of
21 operating subsidy and we should vote on this.
22
- 23 Ms. Tran Mr. Lines can you show us where you would like to add that language.
24
- 25 Mr. Lines At the end of line 30 “for FY subsequent to FY 2007 a separate appropriation
26 request will be made to fund appeals.”
27
- 28 Ms. Tran Any other comments? Is there a second to that motion.
29
- 30 Ms. Zaterman I second the motion.
31
- 32 **Ms. Tran All those in favor please raise your hands.**
33
- 34 **Motion fails.**
35
- 36 Ms. Lott We should consider the language before the last sentence was added.
37
- 38 Ms. Basgal I second that motion.
39
- 40 Ms. Tran Let’s vote on that version.
41
- 42 **Supermajority. Motion passed. Section 990.230 passed.**



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1

2 **Ms. Tran read section 990.235 – Types of appeals.**

3

4 Ms. Tran Any questions or comments?

5

6 Ms. Lott I would like to motion that we accept this section as read.

7

8 Mr. Morton I second.

9

10 **Supermajority. Motion passed. Section 990.235 is approved.**

11

12 **Ms. Tran read 990.240 – Requirements for certain types of appeals.**

13

14 Ms. Tran Any questions or comments?

15

16 Mr. Parker This is a personal question. I want to clarify something. I am concerned that
17 a small PHA with only one or two properties, with the variances of the
18 Harvard Cost Study with ± 40 , then in the 1st year that PHA would get an
19 independent cost assessment with an independent assessor to look at FHA
20 properties and other factors and they could be considered for a new PEL.

21

22 Mr. Russell I believe that you are referring to the transition type of appeal.

23

24 Mr. Parker Number (c): the intent that that type of situation would fall under (c) [Appeal
25 for specific local conditions.]

26

27 Mr. Russell Our intent for (c) was that there could be specific local conditions where the
28 model is not accurate but that is different that a PHA that wants to stop its
29 decreases by substituting project-based data.

30

31 Mr. Parker You are not going to have 2 years worth of project-based data in year one. So
32 you would bring in an expert to look at the number being produced by
33 Harvard to see if it is a model prediction error.

34

35 Mr. Russell These are discrete model prediction errors.

36

37 Mr. Parker Thank you.

38

39 Mr. Liu If you want to personally plead your case, we will listen.

40

41 Mr. Lam With respect to 990.230 – appeals must be submitted within 1 year of the rule,
42 maybe we should make that 2 years, consistent with the holdback.



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- 1
2 Mr. Parker Just to point out a typographical error, the first line [of 990.240], refers to
3 “990.230” it should be “990.235”.
4
5 Mr. Russell In terms of Mr. Lam’s recommendation, I think that we are saying that if there
6 are discrete perceived errors with the model we want to deal with those
7 quickly. So that’s why we have one year and not have it stretch into multiple
8 years. If the Rule is published by July 1 and does not take effect until FY
9 2006 that gives you ample time to determine if the model has a serious flaw.
10
11 Ms. Zaterman On line 27, “(ii) The cost of services for the independent cost assessment is to
12 be paid by the appellant PHA”, this is an an eligible use operating subsidy?
13
14 Mr. Russell That is true.
15
16 Mr. Strickland In reference to “coming forward quickly”, what is the point of the 2 year 2%
17 holdback?
18
19 Ms. Tran Any other comments or questions? Mr. Morton would you like to make a
20 motion.
21
22 Mr. Morton Yes.
23
24 Ms. Tran All those in favor please raise your hands.
25
26 **Supermajority. Motion passed. Section 990.240 is approved.**
27
28 Mr. Russell I would like to propose a 60 second recess – Neg Reg time.
29
30 Ms. Tran Let’s have a 5 minute break and reconvene at 4:00 pm.
31
32 **Break granted at 3:57pm. The committee reconvened at 4:22 pm.**
33
34 Ms. Tran Please take your seats.
35
36 Mr. Russell We want to revisit subpart B – Eligibility of Operating Subsidy; Computation
37 of Eligible Unit Months.
38
39 Ms. Tran Page 16 of the proposed Rule.
40
41 **[Subpart B as amended by HUD is shown on the screen].**
42



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- 1 Mr. Russell On second thought, I guess we are not ready for prime time, because we did
2 not address the two preceding sections, 990.120 and 990.125.
3
- 4 Ms. Tran Should we cover subpart J – Financial Management Systems, Monitoring and
5 Reporting?
6
- 7 Mr. Russell We understand that the committee members have not had a chance to review
8 subpart J fully at this time. Can we walk through this together at this time, or
9 do the members need some time to review this section? Is there an agreement
10 to go through subpart J?
11
- 12 Mr. Kaiser I have not read subpart J in great detail and I am told by Counsel that we
13 might want to discuss some issues in caucus. I would advise other committee
14 members to discuss this. As a counter, because we want to maximize our
15 time, that we can get into utilities. Can we spend the time going through that
16 proposal?
17
- 18 Mr. Russell I think that Mr. Kubacki has been working on a re-draft of that proposal, but
19 we can discuss it in broad terms without getting into the detailed language.
20
- 21 Mr. Kaiser I think that is fine.
22
- 23 Mr. Russell What we are trying to do is to get the most recent rate data that we can to
24 avoid the projection business and the need to make adjustments. We are
25 proposing to take the most recent 12 months rate and consumption data – July
26 through June – and use that as the basis to pay PHAs for their utilities for the
27 coming calendar year. We are also willing to holdback a small amount of
28 money, similar to the Capital Fund emergency disaster fund, if there are
29 significant spikes in an area of the country to deal with those spikes during
30 that year, so we have a small set aside to address that need, and if it is unused
31 it would be redistributed. We have seen some proposals, and so we would
32 always be paying actuals with a small lag, to avoid the need to pay
33 adjustments.
34
- 35 Mr. Lines One of the concerns has to do with the issue of rates. The real estate industry
36 projects rates based on historical information. If you talk to industries and
37 you project rates, especially for gas and electricity, and if you cannot forecast
38 accurately, you will always...I suggest allowing forecast based on industry
39 standards.
40



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- 1 Mr. Morton That sounds great, but you don't allow residents to do that, you pay on
2 actuals. This is a real good faith effort. This eliminates the objections raised
3 in the past. I applaud HUD.
4
- 5 Mr. Ramirez Will the proposal be brought to us in Rule form?
6
- 7 Mr. Russell Yes.
8
- 9 Mr. Kaiser We would need to see the proposal. The industry will also have a specific
10 proposal as well.
11
- 12 Mr. Lam In the brief description, you would take July-June actual costs and then in
13 October you would formula an appropriation request.
14
- 15 Mr. Russell In October when we are collecting and reviewing the data to see how much
16 subsidy everyone gets on January 1, as of October the most recent data would
17 be July-June, to pay actuals, if there were significant rate changes we would
18 take that into consideration as well. It would be a cyclical annual cycle.
19
- 20 Mr. Lam It would be one year behind, so it is much more simple than what was
21 originally proposed, there would not be averaging of periods.
22
- 23 Mr. Cooper I like it because you are applying the same standard used for the residents.
24
- 25 Mr. Kaiser Given Mr. Kubacki's status, will we see that language in the next several
26 hours or tomorrow?
27
- 28 Mr. Russell Mr. Kubacki has been in the office, but he could not travel with us.
29
- 30 Mr. Nolan Could someone speak to the transition period for PHAs that are not on a
31 calendar year?
32
- 33 Mr. Russell We are currently funding that way under the Capital Fund and under Section
34 8, it does not necessitate that you change your fiscal year but it simplifies our
35 funding cycle.
36
- 37 Mr. Nolan I am funded on a June 30 year-end and I want to know how I will be affected.
38
- 39 Mr. Russell Mr. Kubacki has walked me through that and I would need to show you the
40 diagram.
41



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1 Ms. Tran One of the items on the agenda is time for public comment. Can we open the
2 floor to the public at this time?

3

4 **General agreement by the committee members. The floor was opened to members of the**
5 **public.**

6

7 **Larry Keeting, a professor at Georgia Technical Institute, came forward.**

8

9 Mr. Keeting I would like to comment on the longevity of public housing, which I have
10 studied housing for many years with Jim Stockard. The central thing is that
11 housing markets don't work for low income families. That is a longstanding
12 observation. Durable goods are substantial. Housing in this country is
13 heavily subsidized by the government. The subsidy does not stay with the units
14 and that is why the quality declines, the price declines. On the demand side
15 there are not enough sufficient jobs or pay for people to pay for housing.
16 Over 35% of households in the city live in substandard housing. Housing is a
17 tertiary good – there is no right to housing. If we are to serve low income
18 families, then we have lost over 1/3 of the supply of public housing over 10
19 years it is a reduction in our society to serve low income people. There are
20 other arguments, such as mixed income, in Atlanta, if you want to see mixed
21 income properties look around, it is the only stable housing in the cities.
22 However, the concentration of low income people will soon become islands of
23 low income people. It is a tragedy to lose housing stock. At Techwood – the
24 first Hope VI project in the country, the redevelopment of Techwood's 11,000
25 units was replaced by 525 units, and 165 off site units – it is similar to the
26 urban renewal period. Only 78 of the original households were able to return.
27 I will leave you with a paper on the transformation of Techwood. (See
28 [Appendix 6](#)).

29

30 **John Cummerford, a consultant to Ameresco, came forward.**

31

32 Mr. Cummerford The original structure of the PFS was developed based on the premises that
33 there were two elements beyond the control of the PHA, one being rates and
34 the one being weather. The 3-year rolling base does not take into account the
35 impact of weather in a given year. The language in the Appropriations Act
36 can be addressed by the fact that the Department can define the current year
37 any way it wants. We should do a true up and then apply the 3 year rolling
38 base to consumption. Otherwise you are leaving one piece out. The other
39 issue is the impossibility or difficulty of benchmarking the current utility –
40 given the plethora of utility delivery systems – the idea of coming up with a
41 benchmarking system is a daunting task. There is one real element of public



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1 housing and that was utilities. It would be beneficial to retain the elements
2 that deal with reality.

3

4 **Max Creighton, the Executive Director of the Community Design Center, came forward.**

5

6 Mr. Creighton We did research in Atlanta regarding housing needs and socioeconomic
7 profiles, and I would to comment on the realignment of public housing.
8 According to our research, which included consolidated plans and other plans
9 used by the city and FY 2000 censuses data, 62,000 people are at less than
10 95% of medium income. There are three major housing problems: cost
11 burden, overcrowding, and a lack of plumbing. The primary problem is cost
12 affordability. The most striking aspect is that 2 of every 5 renters, 62,000
13 households measured by the census, 88% were cost burdened. Overcrowding
14 is the next prevalent problem. There are 12,149 households that the census
15 identified as overcrowded, this represents 40% and black households are more
16 likely to have problems than white households. The socioeconomic
17 characteristics of those households in poverty were: ½ were low-income: 0-
18 30% of medium income. The message is clear: housing problems affect the
19 poor. Of the 62,000, 44,000 households were renters. Renters are 2.2 times
20 more likely to have problems than homeowners. 77% of households with
21 problems are black. Those with housing problems that are renters medium
22 age is 36. Low educational levels are also a factor. 62.5% of housing
23 problems have a high school degree or less. Thank you.

24

25 **Wayne Sherwood from the MA Union of Public Housing Tenants came forward.**

26

27 Mr. Sherwood Utility allowances, section 990.210, line 7 has to do with utility allowances.
28 This is not something that has to be dealt with someplace else, it is in this
29 Rule. “Accurate and timely” people say that is enough. When we get to
30 PHA calculations, HUD stipulates that it’s important to use the most recent
31 rate and consumption data to assess utilities. HUD’s proposal is to get the
32 most recent data and not rely on projections. We need the most recent and up
33 to date cost data, I think that it would be easy for the committee to put into the
34 Rule that PHAs must recalculate utility allowances on an annual basis. To say
35 that this is off in some other Rule, well the reality is that this is not happening
36 and you have the chance to strengthen this Rule.

37

38 **Renee Boyland from the Public Housing Agency of Baltimore City came forward.**

39

40 Ms. Boyland Will this new Rule make a difference on the units being demolished and
41 disposed. Yes. This will have a major impact on Baltimore, especially the 3-



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1 year phase down subsidy amounts. But units being disposed get nothing. Will
2 there be any discussion on this and will the PHA be able to recoup this?
3

4 **Lillian Kamalay from the Citizens Consensus, a subsidiary of Ameresco, came forward.**

5
6 Ms. Kamalay In working with utilities for the past 19 years as I have done and as Mr.
7 Cummerford said, the reality of the system is very different than the way
8 utilities were structured in 1975 and there is very little to hang your hat on.
9 Now by trying to restructure this, you might be throwing out the baby with the
10 bath water. Attempting to move to actuals on the basis of historical data, the
11 year-end adjustment may work but please take care. Many of the incentives
12 have leveraged private capital from the private sector that are friends of the
13 industry and understand the way the books are kept and understand this
14 process very well. Please take care.
15

16 Ms. Tran Are there any other comments?
17

18 **Silence.**
19

20 Ms. Tran The public comment period has now ended. One reminder, the public may file
21 written statements to be available as part of the public record.
22

23 Mr. Russell Let's try this again. Subpart B. We have discussed the issue of eligible units
24 with members of the committee and other experts and we think we have come
25 up with a compromise. I would like to walk through this, if I can. In the first
26 section [990.120 – Eligibility of Units for Operating Subsidy], we made a
27 small change, instead of “occupied” it says that “it meets one of the
28 definitions of eligible unit months”. [The first sentence under 990.120 is
29 revised as follows: “A public housing unit is eligible for operating subsidy
30 beginning on the date the unit is placed under the ACC and meets one of the
31 definitions of eligible unit months”]. If we refer to section 990.125, in the
32 first sentence, we added the phrase “a limited number of vacancies as defined
33 in 990.135 or a unit approved for demolition as defined in 990.140”. [The
34 first sentence under 990.125 is revised as follows: “(a) A public housing unit
35 may receive operating subsidy for each occupied dwelling unit or a limited
36 number of vacancies (as defined in § 990.135, or a dwelling unit with an
37 approved vacancy (as defined in § 990.140)”.] We are making copies of this.
38 Regarding section 990.130 we deleted it and drafted a new 990.135. Ms.
39 Tran, will you read that for the committee.
40

41 **Ms. Tran read the revised section 990.135.**
42



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- 1 Mr. Russell Okay....
- 2
- 3 Mr. Parker Should we ask questions now?
- 4
- 5 Mr. Russell Sure.
- 6
- 7 Mr. Parker What definition of small PHAs are you using? Is it 100 or 250 units?
- 8
- 9 Mr. Tamburrino This doesn't apply until you get down to 100 units.
- 10
- 11 Mr. Russell We should be more specific and say "100 units" and not "small". The old
- 12 990.135 is stricken. Section 990.140 covers approved vacancies. Essentially,
- 13 the industry did make powerful arguments for the vacancy rate, but we don't
- 14 want a long litany of other issues, so our compromise is to keep the 3% but
- 15 limit it to only three categories. This language is similar to the current Rule:
- 16 (1) Units covered by litigation, (2) Units approved for demolition or
- 17 disposition and (3) natural disasters. All other vacancies are assumed under
- 18 the 3%.
- 19
- 20 Mr. Parker I am trying to capture some of the comments from the caucus last night. On
- 21 page 19, line 8, vacant units for resident participation, there was a concern that
- 22 resident participation is not defined in this Act, although we know what we
- 23 are talking about. We might want to add some definitions.
- 24
- 25 Mr. Cooper I would like to propose that on line 10 where it says "the use of one or more
- 26 vacant public housing units...to add in brackets "(See 24 CFR 905)".
- 27
- 28 Mr. Russell We want to clarify something. We struck out this exception as an approved
- 29 vacant unit. We are not defining what it is or not in the Rule. This does not
- 30 mean that you can't have a set aside. We are picking up an assumed 3%
- 31 vacancy and any other units that we would pay for would be units undergoing
- 32 modernization, etc.
- 33
- 34 Mr. Morton Mr. Russell is taking a totally different approach. The 100% vs. the 97% was
- 35 a deal-breaker. This is a situation we can work with. This is a far better
- 36 proposal and one that most of us can support.
- 37
- 38 Mr. Ramirez Item number 2 under laws, that is now excluded. When there is a mandate to
- 39 meet certain expectations that are reaffirmed via legislation, the process of
- 40 meeting expectations required by law, for us not to recognize there might be
- 41 laws in affect that should not be attributed to the 3%.
- 42



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1 Mr. Russell Is there a specific law that concerns you or is this hypothetical?

2

3 **Appendix 7** was distributed to the committee members – revised subpart B.

4

5 Mr. Ramirez Let's say the Department is under judgment for something in Texas, and there
6 are circumstances within that litigation and that decision is reaffirmed by state
7 or federal government statute, because it has been reaffirmed, what redress is
8 there?

9

10 Mr. Russell I will have to refer to Counsel, but if there is a law that says that HUD has not
11 addressed specific regulations or met certain conditions, HUD would have to
12 comply with that law. I don't see a case where state law would require the
13 federal government to change their regulations.

14

15 Mr. Ramirez There was just a case in NY and the ability to deal with state law, it may
16 require a PHA to create a greater vacancy than the 3% and there is no redress.

17

18 Mr. Russell I am not aware of that and that is not affecting NYCHA at this point. If there
19 were a state law, it would only be pursuant to an agreement reached by the
20 housing authority.

21

22 Mr. Lam One example is on page 3 of the handout (See **Appendix 6**). Local lead
23 abatement laws are more strict than federal regulations, and we are required to
24 follow the more stricter laws and that may have a very real impact on the
25 vacancy rate. One proposal might be that a unit undergoing modernization be
26 under compliance with local law.

27

28 Mr. Russell. I am aware of NY's stringent lead laws. But if the law does not allow a
29 family with kids to occupy the unit, that would work under that definition.

30

31 Mr. Lam That's why I mentioned not only federal law but local law.

32

33 Mr. Byrne Is the allowable vacancy on a PHA-wide basis or property-by-property basis?
34 I would support the latter.

35

36 Mr. Russell Property-by-Property.

37

38 Mr. Parker Page 4 of line 28, in the case of NY there was a natural disaster that affected
39 units on 9/11, rather than natural disaster but other types of disasters, maybe
40 other disasters as defined by HUD, or a major casualty loss, would that be
41 modernization? If not, what would happen if there was a major fire that



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- 1 consumed several buildings, it's not really a natural disaster. Terrorism has
2 serious implications.
- 3
- 4 Mr. Russell We will have to refer to our Counsel, but we might be able to add a "federally
5 declared disaster".
- 6
- 7 Mr. Parker What about large casualty losses?
- 8
- 9 Mr. Russell That would be picked up under modernization and in the annual plan. That
10 would be an understandable modernization need.
- 11
- 12 Mr. Kaiser On the last point, if it is picked up under modernization, why would there be a
13 separate paragraph on units lost as a result of a casualty situation [990.140 (c)
14 (6) Casualty loss]. You have situations where PHAs have fires, tornados,
15 flooding, etc. I don't think that the declaration of a federal disaster area would
16 suffice. I have real concerns that we are setting up a whole new standard and
17 this is a departure from PHAS. If you were at 97% you were considered a
18 high occupancy PHA. You are changing the standard. Units that are eligible
19 for self-sufficiency on line 25, units that are eligible for resident participation
20 are stricken, my concern with this new standard is that PHAs will have to
21 monitor their turnover and they will be very conservative of how they
22 designate those units. I am concerned about the language. This is a step
23 forward, but there are some major issues. I'm not so sure that we have been
24 told by HUD what the rational is. Under the existing regulation, a PHA with
25 97% is a high occupancy PHA. No one expects rental properties in the private
26 or public sector to be at 100%. There are some significant problems still.
- 27
- 28 Mr. Russell You are exaggerating the change. We are keeping the 97% standard, we are
29 keeping the 3%, that is not a departure from current policy. We just don't
30 want a long litany of other vacant units that we are paying on. We are trying
31 to meet you half way. Instead of zero we went back to 97% and we added 3
32 additional circumstances.
- 33
- 34 Mr. Ramirez There are some activities that are inherent to the operations of public housing
35 that would need to classify a PHA as vacant, that are covered by statute that
36 would prevent a PHA to ever claim those units, for us to exclude those as a
37 category and bundle those up in the 3% is unfair.
- 38
- 39 Mr. Morton On the national disasters, if you only use federally declared disaster you
40 exclude local disasters, which could have a huge affect.
- 41
- 42 Mr. Russell I did not intend to modify that section.



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- 1
2 Ms. Zaterman I am very encouraged that HUD can be persuaded by a powerful argument. I
3 feel that a caucus is in order. I will start with how you identify vacancies.
4 Crime prevention programs, police officers, job training, GED classes, etc. all
5 the things that we should be doing to encourage self-sufficiency, this is in
6 direct conflict. You are also eliminating vacancies beyond the control of the
7 PHA, certainly there are management problems and that is a legitimate reason,
8 but for provisions beyond the control of the PHA, I don't understand why
9 HUD would eliminate those provisions. There are issues beyond the control
10 of the PHA, we could fix this to add those back in or to address those units by
11 an adjustment to the 97%.
12
- 13 Ms. Scudder I would like to touch on the effect on rural PHAs for removing vacant units
14 beyond the control of the PHA. It would hurt a lot of small rural PHAs, and
15 we have tried to be high performers.
16
- 17 Mr. Parker I applaud the issue of not only funding occupied units, there are a number of
18 things that concern me. There are a number of categories that units were
19 allowed to be removed. For example, we have a number of day care centers
20 and they operate under a lease under the PHA and it is a stable relationships,
21 and as I understand that they would not come out of the 3%. If you include
22 those units then you reduce the 3% to a slim margin, where it would be units
23 that we engaged in good faith services under the prior Rule, and I would not
24 want to discontinue those services.
25
- 26 Mr. Cooper I agree with Ms. Zaterman and Mr. Parker. In your competitive grant
27 programs, such as ROSS, and other programs, one of the conditions to be
28 eligible to compete and provide those services is there is a location to host
29 those services. If there is not a community room then you can't hold the GED
30 services, resident coordinator services, and other services. It might be only
31 one or 2 units more and it might be over the 3% but it's a place for folks to go
32 to get services and for residents to meet for capacity building and for resident
33 services.
34
- 35 Ms. Sledge I think I remember reading the Harvard Cost Study on page 53 that the
36 mission was to go to asset management. On page 18, is that the real Rule?
37 We need to know today if residents are going to have resident participation.
38 Are these rules going to change? If so, then there will be no resident
39 participation. I need to know that.
40
- 41 Ms. Basgal The transition to project-based units, how does that apply to PHAs with less
42 than 250 units? Will you treat everything as a single property? On the



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- 1 casualty loss, how do insurance companies deal with casualty loss? In cases
2 where there was a major fire that burned down a building, there was a loss of
3 4-5 months over the rebuilding of the building. I don't think that counts as
4 modernization.
5
- 6 Mr. Byrne This Rule prevents you from doing day care centers, if you are leasing the
7 space out for commercial use, then what is your cost for that space, why can't
8 you charge others for the use for that space?
9
- 10 Mr. Morton I have a child care center and my units were deprogrammed years ago. It is
11 not appropriate to be receiving subsidy for those units.
12
- 13 Mr. Liu Let me add some additional perspective that not all committee members are
14 aware of. Within the PEL there is a cost factor related to vacancies, in
15 anticipation of a reasonable vacancy level. It is 5%. We have had battles with
16 the Inspector General's Office regarding whether or not agencies that know
17 their vacancy rate should be asking for subsidy for the full 3%. I have had to
18 personally deal with that issue and the perspective is that PHAs that do this
19 are defrauding the federal government. We believe that there are agencies
20 that have taken advantage of this policy, but there is a strong difference in
21 opinion.
22
- 23 Ms. Scudder Thank you for the explanation. On FHA properties, on vacancies, do they
24 receive 80% [of subsidy] for their vacant units?
25
- 26 Mr. Epstein Certain types of FHA properties, under certain conditions, can voucher for
27 Section 8 and they get 80% for 2 months if they can prove that it was beyond
28 their control. If it is vacant for more than 2 months the management agent
29 loses their contracts. Unassisted units, uninsured FHA properties don't get
30 any funding for vacant units.
31
- 32 Mr. Kaiser In particular, the casualty loss issue, the definition of undergoing
33 modernization, on page 3 number 1 and number 2, the construction has to be
34 on schedule with a HUD approved PHA plan, that takes time to develop a
35 plan, approve the plan, etc. I don't know.
36
- 37 Ms. Basgal Normally HUD is not involved in casualty loss.
38
- 39 Mr. Kaiser That is why casualty should be covered.
40
- 41 Mr. Morton Maybe we need to redefine disaster situations, such as a fire. If we could
42 broaden natural disaster to include those categories.



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- 1
2 Mr. Liu We believe the comments made regarding catastrophic and casualty losses, we
3 will put back casualty losses, so that might shorten your caucus.
4
5 Mr. Lines We covered in our earlier discussion how FHA pro forma. There are two
6 issue. The first issue is that pro forma properties are based on what you think
7 your income will be. The second fundamental issue is that properties that
8 cannot deal with occupancy. Limiting the number of units is counter to the
9 current methodology and counter to how we are trying to treat the asset.
10 Being restrictive with the way we count units is counter to the FHA model.
11
12 Mr. Kelly This was brought up on day one. Harvard was pretty clear about getting
13 resident participation. After the drug elimination was no longer available, the
14 power of real estate to attract quality providers to provide facilities became a
15 way to compensate. I recognize what Mr. Byrne is saying. The price of our
16 real estate was a way to attract others.
17
18 Ms. Tran Ms. Zaterman, would you like to caucus? What are the plans for the rest of
19 our time together, since we are enjoying this some much. Where do we go
20 from here?
21
22 Mr. Russell Since this is so enjoyable, we propose to take a break until 7:30 pm then come
23 back and try to find resolution to subpart B and then go through the transition
24 policy to cover the details. That would leave a realistic window for us to
25 discuss the other subjects tomorrow.
26
27 Mr. Ramirez Instead of resolving subpart B this evening, we should discuss other pieces
28 that have not been put on the table, such as utilities, section J is something that
29 we could dispense with this evening. We should look at other components.
30
31 Mr. Russell Let me ask this, is the committee willing to return at 7:30 pm to dispense with
32 something?
33
34 **Chorus of YES from the committee members.**
35
36 Mr. Russell The idea is to return at 7:30 pm and try to knock out a few more things.
37
38 Mr. Kaiser If we could caucus for 15 minutes before we go off to dinner.
39
40 Ms. Tran We are adjourned until 7:30 pm.
41
42 **Break granted at 5:54 pm. The committee reconvened at 7:55 pm.**



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- 1
2 Ms. Tran Please take your seats.
3
4 Mr. Russell We are not quite finished with the utility language, so we propose that we take
5 that up with subpart C and the subpart that deals with project-based
6 management tomorrow. In light of that and in light of the fact that we do not
7 have a lot of time left, we propose to return to subpart B and debate it, take a
8 vote and then revisit this if necessary tomorrow when we see the final product.
9 We need to knock this out tonight so we can get to the major issues tomorrow.
10 So we would like to get through subpart B and J tonight.
11
12 Mr. Parker On subpart B, I have a question, is it the intention to apply the 97% standard
13 on a property-by-property basis? So if a property has 100% occupancy would
14 the 5 unit methodology be applied?
15
16 **Silence.**
17
18 Mr. Russell No, I think the position is that the 5 unit would only apply to very small
19 PHAs, if we apply that to every PHA with less than 100 units, we would have
20 a very different definition of occupancy than we have now.
21
22 Mr. Parker There is no statistical basis for this standard. I don't understand the statistical
23 basis for that, either that or you treat vacancies on an authority-wide basis or
24 as a property-by-property basis.
25
26 Mr. Liu There is a recognized capacity basis for agencies of 100 units or 1,000 units.
27 Even though you are a large agency with 5,000 scattered site units, you should
28 be able to handle a reasonable vacancy rate. Smaller PHAs, their capacity and
29 issues, the practical nature with working with percentages when you get to a
30 certain level of total units.
31
32 Mr. Parker The proposal is to spread the vacancy rate over the total number of units. As a
33 result, you run into the same problem if you are a large PHA that owns a small
34 property or a small PHA that has one large property. It is the same statistical
35 problem. The Department intends to enforce that on a property-by-property
36 basis; it still impacts that property.
37
38 Mr. Liu What you are leaving out are the other factors that relate to the large PHAs
39 and their environmental settings. If you have a large PHA in an urban setting,
40 with greater demand and ability to minimize vacancies vs. a small rural PHA
41 with less ability to mitigate those factors, then to some extent we are



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- 1 recognizing those differences. You can't compare those PHAs. There are
2 other factors here.
3
- 4 Mr. Parker The impact on a 25 unit property is the same. It is not on the PHA.
5
- 6 Mr. Anderson The impact is at the authority level, you have a smoothing effect that
7 decreases the effectiveness, as a portfolio becomes smaller and smaller, 100
8 units is a reasonable threshold to determine different treatment.
9
- 10 Mr. Parker This affects the subsidy.
11
- 12 Mr. Anderson In a portfolio context one property in a large PHA is of very different
13 significance than if it is the only property owned by the agency.
14
- 15 Mr. Ramirez If were moving towards property-by-property accounting and subsidy is based
16 on an individual properties vacancy, expenses and income levels than a small
17 property in a big portfolio is impacted in the same fashion that a large
18 portfolio. Is this 3% vacancy on a property-by-property basis? The blending
19 is not going to impact the subsidy the property will not receive for not being
20 in compliance with the 97% rule.
21
- 22 Mr. Liu Should we apply the 97% across the board and make it even?
23
- 24 Mr. Ramirez Yes.
25
- 26 Mr. Epstein That is the way you should do it.
27
- 28 Mr. Ramirez There are changes that impact small properties.
29
- 30 Mr. Epstein I thought you would apply the 3% to all the properties. Otherwise it is a
31 nightmare if you are moving towards project-based management.
32
- 33 Mr. Kaiser I'm confused. The way I read the language, in the second line, the annual
34 vacancy rate is for the PHA – the language references the PHA as a whole.
35 The discussion has moved on to a property-by-property basis. We have spent
36 a lot of time on this issue alone and this was not contemplated in the tentative
37 agreement. I'm concerned that too much time has been devoted to this new
38 issue given all the other critical issues still up for debate. The language is for
39 the PHA, PHA-wide is that not the intent?
40
- 41 Ms. Zaterman We did have a caucus, and my understanding is that we were not ready to deal
42 with this issue because it is tied to other issues. We propose to go through



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1 section J before people pass out and then discuss the treatment of inflation
2 factor on the PEL. I recommend to move to subpart J.
3
4 Mr. Nolan If we could also consider B as part of the discussion with C, then the
5 committee would feel better about that.
6
7 Ms. Tran Should we move to subpart J?
8
9 Mr. Russell I would like to propose a technical amendment. The intent was to apply this
10 on a project-by-project basis, so instead of the word “PHA” we should replace
11 that with the word “project” (section 990.135).
12
13 Ms. Zatterman Now we have a proposal that is very different than the original proposal and I
14 propose we move to subpart J.
15
16 Mr. Russell HUD wants to move on as well, however if we keep putting off difficult
17 issues until the next day or the day after, we will not get anything done. I
18 have talked with individuals that seem to understand this issue and I don’t
19 understand what this is contingent on. These are all important individual
20 sections and we need to knock them out one by one. Let’s debate this for a
21 few more minutes and then move on.
22
23 Mr. Kaiser This is an entirely new proposal. It is clear that HUD is not even sure of its
24 intent until just now and it is not prudent to vote on this. I don’t think that this
25 is inconsistent to move to subpart J and then come back to this. I think we can
26 spend a few more minutes on this issue, but we are not going to get resolution,
27 so we should move on to subpart J.
28
29 Ms. Basgal I think it might be helpful if we explain what we would like to see in totality.
30 We are just as anxious to get this rapped up. We feel that we still need to see
31 the utilities proposal and discuss asset management. If we can be sure that we
32 have all our questions answered. I’m not sure where we are with casualty
33 loss.
34
35 Mr. Anderson It was put back in.
36
37 Ms. Tran Casualty is not back in, but it was the agreement that it would be added to the
38 natural disaster section.
39
40 Mr. Ramirez I don’t believe that is what happened. The question on natural disaster is:
41 What would constitute a disaster? As I understood the Secretary, the casualty
42 issue was reinserted in its totality back into the original proposal.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Operating Fund Negotiated Rulemaking Advisory Committee

8:30 am to 5:00 pm EST, Westin Peachtree Plaza, Atlanta GA

MINUTES OF THIRD SESSION – FIRST DAY

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Mr. Liu nods yes.

Ms. Tran Casualty loss is back in.

Ms. Zaterman This last technical amendment, changing “PHA” to “property”. Vacancies are applied by development and are not blended across the entire portfolio.

Mr. Russell nods yes.

Ms. Zaterman That is a significant change

Ms. Tran Are there any other comments?

Mr. Russell If we are moving towards project-based management and there is so much heartburn on this, what is the industry proposing as an acceptable vacancy rate?

Mr. Parker My question earlier is what we are agreeing to? The “PHA” reference is being changed in line 2 but not in line 10 or 12. Are we talking on a property-by-property basis or are we talking about across the PHA portfolio? If we talking about doing this on property-by-property basis, then the references should be changed. Before we can vote, we have to be sure we know what we are voting on. If you are going to be consistent, either everything is on a property-by-property basis or across the portfolio.

Mr. Russell Again, for PHAs with less than 250 units, it is different. If the committee does not want to show difference to PHAs with less than 250 units, we can consider that.

Mr. Parker The 5 units existed in the old vacancy rule because of the statistical anomaly for one vacancy in a small amount vs. one vacancy in a large amount. This was included in there for a statistical reason. In a small town one homicide from one year to the next would leave you with a 100% increase. For small numbers, percentages don’t work as well.

Mr. Kaiser To answer your question, we were never put on notice that this was an issue, so we don’t have a proposal because HUD’s regulation stipulate that an authority with 97% occupancy rate is a high occupancy PHA. HUD’s existing standards codify what is in place and this is a major sea change. We are not prepared to consider this in an isolated instance without knowing the answers to other key issues, such as inflation factor, utilities, etc. We have one more



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- 1 day to go, we have not seen the utility proposal and we have less than 24
2 hours.
- 3
- 4 Mr. Lines We are looking at a vacancy rule that has changed a number of times, and
5 during a side discussion, and when I spoke with Mr. Russell earlier he said
6 that he understood the regulations and now we have revised proposal and we
7 don't have a definition of a project or project-based management. These
8 others issues are not mutually exclusive. I request that we return to this
9 tomorrow.
- 10
- 11 Ms. Zatterman Ditto. We can spend all our time this evening debating why we are not going
12 to vote on subpart B or we can move to subpart J and make decisions.
- 13
- 14 Mr. Anderson Project is defined in the Rule.
- 15
- 16 Mr. Lines But we have not discussed this.
- 17
- 18 Mr. Anderson Yes, we have not discussed this, but we have not discussed a lot of things and
19 it seems that you have not read this Rule.
- 20
- 21 Mr. Lines I developed the last definition of project and I'm well aware that we need to
22 redefine this definition.
- 23
- 24 Ms. Zatterman The issue of project definition is a very critical issue and is no means a simple
25 topic and needs to be explored before financial implications take place. I
26 don't understand why we can't move on. I hope that the hour growing late
27 makes our spirit grow rather than diminish.
- 28
- 29 Mr. Ramirez If we can move to subpart J and talk about a few other issues that weigh on
30 subpart B. We need to know where the Department stands on the inflation
31 factor and how that relates to income and expenses on eligibility and the
32 computation on the subsidy itself. In the spirit of cooperation, this discussion
33 was kicked off that so that certain difficult section be held and we were okay
34 with that. We need to move on to topics that need greater clarity, specifically
35 inflation factor and how that plays into income and expense.
- 36
- 37 Mr. Liu We believe that by dealing with this issue, and we have spend a lot of time on
38 this today, then we can deal with issues that we have other concerns about.
39 This is not rocket science. This is vacancy rate, occupancy rate. If the
40 individual or representative of the group would like to speak, please do so. If
41 the proposal fails, then we can restructure the language.
- 42



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- 1 Ms. Zaterman I would like to call for a caucus.
2
3 Ms. Tran Caucus is granted. The committee will reconvene at 8:45 pm.
4
5 **Break granted at 8:33 pm. The committee reconvened at 9:08 pm.**
6
7 Ms. Zaterman This is a preamble that. This issue was not treated in any of the previous
8 discussions and we assumed that the exiting definition would remain, and at
9 this time and at this late hour, we will provide a motion, but with the
10 understanding that we were not prepared. I would like to move that Rule
11 dealing with eligible unit months, be what it is in the current Rule.
12
13 Ms. Tran Will you please clarify.
14
15 Ms. Zaterman We propose to use the language in the current Rule that we assumed that
16 would not be touched.
17
18 Mr. Kaiser 24 CFR page 6769, section 990.104
19
20 Mr. Ramirez For the record, as previously agreed upon.
21
22 Ms. Tran The motion is to retain the existing language in 990.104. For the record we
23 need 2/3 majority plus HUD's votes for the motion to pass.
24
25 Mr. Russell One comment before we vote. HUD does not agree that this existing
26 provision was agreed to in the previous sessions.
27
28 Ms. Zaterman My understanding was that we agreed to a list of issues to be dealt with in this
29 final session, and this was not on that list.
30
31 Mr. Ramirez There are no statistical record that there are deficiencies in dealing with
32 vacancies. This method has been tested by time and we don't find it
33 inadequate in this 11th hour.
34
35 Mr. Epstein Can we vote?
36
37 Ms. Zaterman The references are scattered throughout section 990 to include 990.102 and
38 990.109. I want to make sure that all mention of the language in 990.102 and
39 990.109 be included.
40
41 Mr. Ramirez I concur.
42



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1 Ms. Tran The vote is to include sections 990.104, 990.102 and 990.109.

2

3 Mr. Ramirez I ask that vote be recorded by yay or nay.

4

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

6

7 **20 out of 27, without HUD. Motion Fails.**

8

9 Ms. Zaterman I would like to offer a counterproposal, given that we do not have HUD's
10 concurrence. But I would like to do that after the committee as a whole
11 discusses the inflation factor, utilities and the definition of asset
12 management/project-based management. These are critical issues and I
13 understand that we want to come to conclusion on this. I think we could have
14 a thoughtful counterproposal to these items.

15

16 Mr. Epstein I would like to vote on subpart B as amended.

17

18 Mr. Anderson I second.

19

20 Mr. Kaiser That is fine. I want to make something clear. I don't think our request is
21 unreasonable that issues be taken in lump form. Before we take a vote on this
22 issue on a sea change, we should be informed of the Department's position on
23 the main issues. I ask that we are given the courtesies that we gave to the
24 Department early on.

25

26 Mr. Anderson What this is about, and this is no secret, there is no way that we can avoid the
27 outcome without concurrence of the HUD. And to reject this because this is a
28 sea change fails to recognize the salience that this is all about. Project-based
29 is something everyone is going to have to engage with. Resisting pay-for-
30 performance is not going to pass the political brush test.

31

32 Mr. Ramirez We are not opposed to project-based management, project-based accounting
33 or project-based budgeting. This is not indicative of any resistance to change,
34 but determining what constitutes an adequate vacancy rate for any given
35 project. For a project under 100 units in a rural setting is no different than a
36 100 unit project in an urban setting. There have been no statistical
37 information or data scores that reflect that the current methodology is ill
38 conceived or ill fated.

39

40 Mr. Kaiser I don't think, Mr. Anderson, that we are being resistant to this rule. We are
41 negotiating in good faith and we narrowed the issues down to 5 or 6 and we



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- 1 are resisting that a new issue has been put on the table; we are trying to work
2 towards a resolution.
3
4 Mr. Epstein Can we vote?
5
6 Mr. Ramirez What rules of order are prevailing. Is there a free for all on motions? The
7 defeated side should make a counter
8
9 Mr. Epstein You made a motion that failed and I made a motion.
10
11 Mr. Russell There was a motion made, and it was seconded, we need to vote.
12
13 Ms. Tran The motion is to vote on subpart B, as presented on the screen.
14
15 **Six out of twenty-seven (including HUD) members voted to pass the motion. The motion**
16 **failed.**
17
18 Mr. Parker I would like to reiterate that the industry is prepared to bring back a
19 countermotion once we understand the bigger picture.
20
21 Ms. Tran Let's move on to subpart J, page 45.
22
23
24 **Ms. Tran read section 990.310 – Purpose – General policy on financial management,**
25 **monitoring, and reporting.**
26
27
28 Ms. Tran Any comments or questions?
29
30 **Silence.**
31
32 Ms. Tran Moving on to the next section.
33
34 **Ms. Tran read section 990.315 – Applicability.**
35
36 Ms. Tran Any comments or questions?
37
38 **Silence.**
39
40
41 **Ms. Tran read section 990.320 – Submission and approval of operating budgets.**
42



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- 1 Ms. Tran Any comments or questions?
2
- 3 Mr. Lam On page 45, line 24, I do not understand what the word “serviceability”
4 means.
5
- 6 Mr. Tamburrino This particular phrase is language from the existing interim rule, and that
7 language has no more particular definitions, and we have not added
8
- 9 Ms. Basgal He is asking for a definition of the word.
10
- 11 Mr. Liu Lacking a specific definition in the rule, we would go to a dictionary. There is
12 no other definition.
13
- 14 Ms. Zaterman It means it is serviceable.
15
- 16 Mr. Lam 990.320 (c) Compliance with environmental review requirements, I’m not
17 sure what the means in relation to the subsequent language. Could we have an
18 example?
19
- 20 Mr. Tamburrino My response is identical to the response on serviceability. This was language
21 from the existing rule.
22
- 23 Mr. Ramirez Is this necessary language, or was this cut and pasted?
24
- 25 Mr. Liu I second that motion.
26
- 27 Ms. Tran We are striking section (c).
28
- 29 Mr. Ramirez We should have done this one earlier.
30
- 31 Mr. Parker My apologies, but line 17 on page 45, can we clarify that a PHA should
32 prepare a budget and submit this to HUD, so if you are a high performer, you
33 would be exempted from submitting a budget.
34
- 35 Mr. Ramirez We decided to strike everything under (c).
36
- 37 Mr. Russell Mr. Parker, that is correct.
38
- 39 Mr. Gomez Lines 23 and 30 says that a “PHA has failed to achieve certain standards”, is
40 that a defined term?
41



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- 1 Mr. Liu Mr. Gomez brings up a good point, and the language in the ACC that covers
2 breaches and PHAs do have to follow all state and local laws, if it is Mr.
3 Gomez's recommendation, we could delete that clause.
4
- 5 Ms. Tran It would read...
- 6
- 7 Mr. Liu We would delete "specified operating standards". All you need to do is
8 submit your budget for review and be in compliance with the ACC, the ACC
9 has language that covers other areas.
10
- 11 Mr. Gomez You would end the sentence after the word budget, on line 30?
12
- 13 Mr. Liu Right.
14
- 15 **Chorus of No.**
16
- 17 Mr. Liu You would delete (b).
18
- 19 Mr. Gomez Line 23 has the same reference.
20
- 21 Mr. Parker If you delete line 23 between the commas.
22
- 23 Mr. Russell On line 22 beginning with the word "has" ending with "standards" on line 23,
24 has been deleted.
25
- 26 Mr. Byrne Since we are talking about budgets, line 18, does that mean property-based
27 budget, a budget for every property?
28
- 29 Mr. Nolan I thought we were striking all of (b)?
30
- 31 Ms. Tran Are we striking all of (b) – HUD operating budget review?
32
- 33 Mr. Russell Number 2 on page 46 is now (a)(3).
34
- 35 Ms. Tran We are striking all of (b). Are there any other comments? Do we have a
36 motion to approve this section?
37
- 38 **Shouts from the committee to approve the section. Section 990.320 approved.**
39 **Ms. Tran read section 990.325 – Audits.**
40
- 41 Ms. Tran Are there any comments or questions?
42



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- 1 Mr. Strickland The issue on item (c) is tied to SAS professional standards that requires that
2 the auditor should gain understanding of the systems via a visit to the fee
3 accountant and completing of a checklist and obtaining a SAS letter. The fee
4 accountant is not required to produce a SAS letter. If you have a small fee
5 accountant, an auditor may review the internal control review and you would
6 not have to pay for the SAS review. They are very expensive.
7
- 8 Mr. Nolan I would further add that would be extremely limiting to find someone that can
9 serve as a fee accountant. If they have to comply with this standard, it would
10 be hard to find someone to bid on our work. If the audit is in compliance with
11 A-133, why would we need to reiterate this again?
12
- 13 Mr. Ramirez We refer to an independent auditor that meets AICPA and follows the
14 GAGAS standards of the OMB circular as amended, earlier we refer to GAAP
15 as the standard for accounting. Is this a different standard? If so, that is fine,
16 but if we are asking for GAAP why not ask for a GAAP audits?
17
- 18 Mr. Strickland They are two different things. GAAP is the standard for accounting and
19 GAGAS is the standard for auditing.
20
- 21 Ms. Zaterman On page 47 lines 5-7, does HUD intend to have additional standards for the
22 audit than those stated? Are you contemplating something beyond what is in
23 there?
24
- 25 Mr. Parker That represents a small change. The original Rule has the language “if a PHA
26 fails to submit an acceptable audit on a timely basis”. It would be better to go
27 back to the original Rule.
28
- 29 Ms. Zaterman Could we substitute the words comply with the audit requirements in 24 CFR
30 85.26?
31
- 32 **Silence.**
33
- 34 Mr. Liu Hopefully, this may address some of the concerns. We propose to amend
35 990.325 so that 990.325 would read “all PHAs that receive financial
36 assistance shall submit an acceptable audit and comply with the audit
37 requirements in 24 CFR 84.26” and delete everything else.
38
- 39 Mr. Ramirez I think that is a great suggestion.
40
- 41 Mr. Liu There is an issue as to whether 24 CFR 85.26 actually requires an acceptable
42 audit. There has been some discussion over this and we want to clarify with



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1 everyone here that we have an acceptable audit; it is in everyone’s best
2 interests.
3
4 Mr. Ramirez Can you define “acceptable”?
5
6 Mr. Liu Acceptable means that it meets standard accounting standards.
7
8 Mr. Lines My concern is that how will auditors know what is acceptable, is there an
9 audit guide?
10
11 Mr. Parker Like the previous statement the Secretary made, you defer to the dictionary.
12 The term ‘acceptable audit’ occurs several times in the current Rule, we may
13 want to define it now but that problem has not arisen.
14
15 Mr. Strickland An acceptable audit is done under professional standards with all the
16 documentation. That is the general idea of what is acceptable.
17
18 Ms. Tran Are there any other comments?
19
20 **General murmurs to move on to the next section.**
21
22 **Ms. Tran read section 990.330 – Record retention requirements.**
23
24 Ms. Tran Are there any comments or questions?
25
26 **Silence.**
27
28 Ms. Tran We are at the end of subpart J. Move to vote to approve subpart J as
29 amended.
30
31 **Supermajority. Motion passes.**
32
33 Ms. Tran What time would the committee like to meet tomorrow?
34
35 Mr. Kaiser I know that it is late, but we would like to get a synopsis on the Department’s
36 position on the issue of inflation factor. It would be helpful to get a cursory
37 explanation on the inflation factor.
38
39 Mr. Liu HUD is open to recommendations that are transparent; where you will not
40 have to reference other written bodies so that someone reading this Rule will
41 understand what the inflation factor is.
42



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- 1 Mr. Kaiser The notice that is in our packet, PIH 2003-1, that references local inflation
2 factors, is this not acceptable?
3
- 4 Mr. Liu That is not specific enough. The notion of using local factors is fine, but we
5 would like to see greater specificity. We have to work a little harder. What
6 those factors or sources may be to make sure that we are going to the same
7 source.
8
- 9 Mr. Russell It requires an office within HUD to do calculations that are not readily
10 apparent.
11
- 12 Mr. Ramirez I think that this is a possibility, but we need go to caucus. Can we work
13 backwards. What time is the earliest departure from this committee. Who has
14 to leave by 3, 4, 5?
15
- 16 Ms. Basgal I have to leave at 5:20pm.
17
- 18 Mr. Ramirez We need to leave by 6:00 pm.
19
- 20 Mr. Russell Can we get started at 8:00 am.
21
- 22 Mr. Ramirez We would like to spend 90 minutes tomorrow morning to caucus on the big
23 issues. In keeping with the time table, we have been operating on Neg Reg
24 time, and we say that we start at 8:30 but start at 9:15 anyway, so if we start at
25 9:15 then we could caucus in the morning.
26
- 27 Ms. Zaterman We should caucus tonight.
28
- 29 Mr. Russell 9:00 am - real time.
30
- 31 Mr. Kaiser We will caucus at 7:30 am. Please be prompt. Attendance is mandatory.
32
- 33 Mr. Russell HUD will caucus at 8:00 am. Attendance is mandatory.
34
- 35 **Committee adjourned at 10:06 pm.**
36
37



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List of Appendices for the May 11, 2004 Session:

1. Sign-in sheet for committee members, guests of committee members and members of the public.
2. Negotiated Rulemaking Advisory Committee on Operating Fund Allocation Protocols for Negotiated Rulemaking.
3. Negotiated Rulemaking Advisory Committee on Operating Fund Agenda for May 11, 2004 Session.
4. Pre-3rd Session Draft Operating Fund Interim Rule (as provided to Committee Members via e-mail on 5/6/04).
5. FY 2005 Operating Fund -- Summary Statement and Initiatives (i.e., FY 2005 Budget Justifications for Operating Fund).
6. Sixty and Out: Techwood Homes Transformed by Enemies and Friends.
7. 24 CFR 990 Subpart B – Eligibility for Operating Subsidy; Computation of Eligible Unit Months, as revised by the Committee.



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1 **Consensus Agreement: The following sections were approved ‘as is’, or modified and then**
2 **approved. Refer to the Post 3rd Session Draft Operating Fund Interim-Final Rule (as e-**
3 **mailed to Committee Members on 5/18/04) to view the accepted, revised language.**

4
5
6 **PART 990 – THE PUBLIC HOUSING OPERATING FUND PROGRAM**

7
8 **Subpart A – Purpose, Applicability, Overview and Definitions**

- 9
10 990.101 Purpose.
11 990.105 Applicability of the Operating Fund Formula.
12 990.110 Overview of the Operating Fund Formula.

13
14 **Subpart D – Calculating Formula Income**

- 15
16 990.180 Treatment and computation of formula income.
17 990.185 Calculation of formula income.

18
19 **Subpart E – Determination and Payment of Operating Subsidy**

- 20
21 990.190 Determination of formula amount.
22 990.200 Fungibility of operating subsidy between projects.
23 990.205 Payment of operating subsidy.
24 990.210 Payment of operating subsidy conditioned upon re-examination of income of
25 families in occupancy.

26
27 **Subpart G – Appeals**

- 28
29 990.230 General.
30 990.235 Types of appeals.
31 990.240 Requirements for certain appeals.

32
33 **Subpart J – Financial Management Systems, Monitoring, and Reporting**

- 34
35 990.310 Purpose – General policy on financial management, monitoring, and reporting.
36 990.315 Applicability.
37 990.320 Submission and approval of operating budgets.
38 990.325 Audits.
39 990.330 Record retention requirements.