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 – SECOND DAY

May 12, 2004 Session:

The first meeting of the Negotiated Rulemaking (Neg-Reg) Advisory Committee on the Operating Fund Allocation System (the Committee) was called to order at 9:15 am on Wednesday, May 12, 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. Timothy Vandevour	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. Kevin Marchman	National Organization of African Americans in Housing (NOAAH)

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

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Appendix 1 contains the meeting agenda and attendance listing for the Committee members.

Ms. Tran Good morning. A few housekeeping items; there were a few data requests that we handed out yesterday. Mr. Lines requested the FY 2005 Operating Fund Budget Justification document. Secondly, we passed out revised subparts, B, C, and D for reference purposes. Ms. Sledge and Mr. Cooper asked for the impact of freezing income on the residents and so we provided an illustrative example on the impact for a tenant under the current formula and the proposed formula. To summarize, the following subparts are still outstanding and subject to discussion by the Committee: subparts B, C, F, H, I, and K.

Appendix 2 was distributed – PHA Rental Income and Tenant Rent Example.

Ms. Zaterman The caucus has produced a proposal on asset management and we would like to take that up at this time.

Mr. Ramirez Madame Chair may we put on the screen subpart H and review this subpart.

Ms. Tran Subpart H – Asset Management.

Ms. Tran began to read section 990.245.

Ms. Zaterman Excuse me, Ms. Tran. Can we have Ms. Basgal provide an overview to set the context for the proposal? Perhaps it would be better to set the context before we go into this.

Ms. Basgal This is obviously a significant change for both the PHAs and also for HUD. This is not an easy process. We all want to be successful at the end of the day and so we need to identify the basic principles that we feel are key to ensure that we are successful. This is a sea change and it is critical that the Department has in place the capacity and the systems to perform regulatory actives as we move towards property-centric activities. We would like to hear HUD's plan to develop the appropriate management and operations. We believe that the systems should reflect flexibility in project-based accounting, specially around cost centers and the allocation of costs. Finally the PHAs management plan needs to be part of the PHA plan so it is clear to residents and communities how the PHA intends to manage properties and how a property-centric approach will allow the PHA to manage its properties. These are principles that we would like to put forward and hear feedback from the Department. Mr. Russell, I would like to hear the Department's response.

Mr. Russell On the cost centers issue that you raised I need to know where specifically.

Ms. Basgal We need flexibility - that is evident in the issues that we have raised. There is a long history of management and that there is some recognition of the current systems. The system that we design needs to address the wide variation that exists.

Mr. Russell Can I assume that we will address this more specifically as we move forward?

Ms. Basgal Yes.

Mr. Ramirez Is it, Mr. Secretary, for the sake of moving this forward; is it still your intent to have the entire sections read?

Mr. Liu Yes, it is important for members of the public and for all of us to be clear.

Mr. Ramirez Thank you, sir.

Mr. Ramirez For the sake of continuity and brevity, instead of reading an entire section, if we could divide each section into parts, can we take recommend changes after they are read instead of waiting for the entire section to be read?

Mr. Liu nods yes.

Ms. Tran read section 990.245 – Overview.

Ms. Tran Are there any questions or comments?

Mr. Ramirez We ask that because the most recent version on the screen was not the version that we received, we do not object that changes be made, but that we make changes to the original version, as in accordance with the procedures established yesterday. The caucus made various changes to this subpart, but has designated Mr. Lines, a technician, to articulate the changes, so we have a consistent voice for the changes that have been concurred upon within the caucus so that the changes are captured correctly.

Mr. Lines Consistent with Ms. Basgal's concerns, I would like to start with the first paragraph on line 10 after the word "model" to strike the words "similar to" and replace them with "taking into consideration the". On line 11 after "also" strike "implement" and replace it with "take appropriate steps to move toward" project-based management. At the end of that paragraph, we recommend insert the following sentence "HUD shall develop a management

and operations program for review and public comment to effect appropriate changes in its regulatory and monitoring responsibility to both support and enable PHAs to undertake the above". One of the major findings of the Harvard Cost Study was that there needs to be significant management activities within HUD and we want to be part of those changes.

Mr. Ramirez Can we also take other revisions at the same time, if there is a change to the preamble.

Mr. Byrne Although I have many comments, I would like to see the totality of the changes section before I comment.

Ms. Basgal We would like to know if the Department has any changes.

Mr. Russell The Department has no changes to the preamble.

Ms. Tran Moving to the next section, 990.250 – Applicability.

Ms. Tran read section 990.250(a).

Ms. Tran Any comments on part (a)?

Mr. Ramirez None to offer.

Ms. Tran read section 990.250(b).

Ms. Tran Any comments on part (b)?

Mr. Ramirez None to offer.

Ms. Tran read section 990.250(c).

Ms. Tran Any comments on part (c)?

Mr. Ramirez None to offer.

Ms. Tran read section 990.255 – Definition of a project.

Ms. Tran Any comments?

Mr. Lines On line 5, beginning with "HUD shall approve" we propose to strike the word "approve" and replace it with "accept". On line 6 after "ACC" we propose to

insert "as long as it is consistent with the PHAs management plan, submitted and approved within the PHA's management plan". Also we would like to add the words "such management plan shall demonstrate a property-centric approach to the management of public housing". This introduces the concept of a sound management plan and demonstrates flexibility.

Ms. Tran — Any other edits to this section?

Silence.

Mr. Liu — I would just ask the housing authorities that by adding in this element of a management plan to be approved by HUD, we are not asking for that, do you really want HUD to approve your management plans? This puts us back to the concerns out there that we are already too much into your business as it is.

Mr. Ramirez — We would prefer to take a proactive approach to take a plan that is submitted on a management side, that allows for greater local flexibly to occur in the management of the operations and have the plan submitted to HUD for approval in its entirety instead of in piece meal form. If you don't want to see our management plan, that's fine.

Ms. Zaterman — I think that we should walk through all the changes and that it would be more productive to go through this entire section and then pick it apart.

Mr. Ramirez — Agencies have to submit and agency plan as to what they do with their housing stock and it would be better to cover their plans in moving towards a property-centric model so it is covered in its entirety. As you know, the plan goes through a local public comment period and HUD scrutiny. We are trying to incorporate any existing requirements to move towards a property-centric model, which we support.

Ms. Tran — Let's go though all the edits and then make comments.

Mr. Epstein. — I have a question of clarification. When you use the term *management plan* are you referring to a plan for each separate property or a plan that is the subset of an agency plan?

Mr. Lines — This is an opportunity for the agency to provide an overall comprehensive management plan that references all properties. It's a way to demonstrate that it is in fact property-centric.

Ms. Tran read section 990.260 – Asset Management.

Ms. Tran Are there any comments or edits?

Mr. Lines On line 12 we propose that it read: "the setting of ceiling or flat rents". On line 14, the definition needs to be more complete, so we would like to add after "replacement strategies" the words "along with risk management responsibilities pertaining to regulatory compliance and those otherwise consistent with the PHA's ACC responsibilities'.

Ms. Tran Any other edits? Moving on to section 990.265.

Ms. Tran read section 990.265 – Project-based management.

Ms. Tran Any edits?

Mr. Liens On line 23 at the end of the sentence strike "customarily". On line 24 strike "physically located" and replace it with "charged with the direct oversight of the operations of". On line 24, strike "sometimes" and start the sentence with "property".

Ms. Tran Moving to section 990.270 – Project-based budgeting and accounting.

Ms. Tran read 990.270(a).

Ms. Tran Any edits?

Mr. Lines Add the words "as defined overall in 24 CFR 990.300".

Ms. Tran Mr. Ramirez.

Mr. Ramirez If I may take a step away from the reading of this, at this juncture, we wrestled with this as a caucus. There are some inconsistencies with some of the parts as we now more forward, we would like to have the Department discuss how they will correct those inconsistencies.

Mr. Lines On the next line "asset and equity data", this requires some discussion. I thought that it might be best to bookmark this and come back to it.

Mr. Ramirez That's fine.

Ms. Tran Any other edits to paragraph (a)?

Mr. Russell Can you repeat the citation of the regulation?

Mr. Lines 24 CFR 990.300. I can give you a copy.

Ms. Tran They have a copy.

Mr. Ramirez It may require a different series of numbers, the section under the current rule is not cited under subpart J as "Record Keeping". We might need to renumber this to avoid further confusion; the Department may feel that it needs to be numbered, however, it needs to be codified with distinctive numbers.

Ms. Tran If there are no edits to paragraph (a) I will move to paragraph (b).

Ms. Tran read section 990.270(b).

Ms. Tran Any edits, Mr. Lines?

Mr. Lines We would like to bookmark this for further discussion.

Ms. Tran Moving to section 990.270(b)(1).

Ms. Tran read section 990.270(b)(1).

Mr. Jain HUD has some changes.

Mr. Parker Could I make a suggestion based on Mr. Ramirez's comments, as I understand it we have a number of questions about this section that may affect the ultimate language recommendations, which may require some give and take. Can we skip to 990.275 and then loop back to a broad discussion of 990.270?

Mr. Lines Mr. Parker we do have other issues that need to be addressed in this section. We are only talking about (b). I think it would be good to bookmark (b) and then come back.

Ms. Tran Skip all of (b) for right now?

Mr. Lines Yes, and then go to 990.270(b)(1).

Ms. Tran read 990.270 (b)(1).

Ms. Tran Mr. Lines, any edits?

Mr. Lines On line 12 strike "PHA or HUD-identified income". On line 13 indicate "as referenced above" at the end of the sentence. It is already covered and we need to say that.

Ms. Tran Moving to paragraph (2).

Ms. Tran read 990.270(b)(2).

Ms. Tran Mr. Lines, any edits?

Mr. Lines We propose to delete this in its entirety. It is already covered and will be covered in subsequent sections.

Mr. Jain HUD has some additions.

Ms. Tran read the revised 990.270(b)(2) reflecting HUD's modifications.

Mr. Lines For line 21, delete "after PHAs may also charge with each project" and insert "following the above provisions shall receive" and then strike line 22 "to fund operations of the central office" and insert "for eligible operating purposes". On line 23 delete "to each project" and line 24 delete "to the project" and delete after the word if "it" and insert "PHA" and after the word following delete "criteria" and insert "the operations of its projects". Also, we propose to delete (3)(i).

Mr. Lines Delete little (i) and (ii) in it's entirety.

Ms. Tran Can you go back to (b)(3). The language that is highlighted in blue.

Ms. Tran read section 990.270(b)(3).

Ms. Tran HUD has a change to 990.270(b)(3).

Ms. Tran read the revised section 990.270(b)(3), with HUD's modifications.

Mr. Byrne Can you color code the changes, Mr. Jain?

Mr. Jain No, but we can use different font.

Ms. Tran Moving on to paragraph (c).

Ms. Tran read section 990.270(c).

Ms. Tran Mr. Lines, any edits?

Mr. Lines On line 31 the word "will" should be replaced with "will also". The word "fees" should be replaced with "proceeds". On the next page at the end of line delete the last sentence.

Ms. Tran Any other edits?

Silence.

Ms. Tran Moving on to paragraph (d).

Ms. Tran read section 990.270(d).

Mr. Lines On line 4 delete "charge each project using a fee-for-service approach" and replace with "establish an appropriate cost center or other means in accordance with the above and reference such method in its management plan".

Ms. Tran Moving on to 990.275 – Records and reports.

Ms. Tran read section 990.275(a).

Ms. Tran Mr. Lines, any edits?

Mr. Lines No.

Ms. Tran HUD, any edits?

Mr. Liu and Mr. Russell indicate that they do not have any edits.

Ms. Tran read section 990.275(b)

Ms. Tran Any edits?

Silence.

Ms. Tran Moving to paragraph (c).

Ms. Tran read section 990.275(c).

Ms. Tran Any edits?

Mr. Lines Strike the sentence on lines 15-16 and replace it with the following: "Following its transition to an asset management system, HUD shall have the right to review project level budgets and financial information upon request for purposes relating to its management and operations program".

Ms. Tran This is in paragraph (c)?

Mr. Lines This replaces paragraph (c).

Ms. Tran Does HUD have any edits?

Mr. Russell and Mr. Liu motion no.

Ms. Tran Moving to the next section.

Ms. Tran read 990.280(a)

Ms. Tran Any edits, Mr. Lines?

Mr. Lines On line 20, strike "demonstrate" substitute "certify". On line 20 strike "fully" and replace it with "adequately". On line 21 strike "by HUD" and replace with "by the criteria established and the PHAs agency plan".

Ms. Tran Does HUD have any edits?

Mr. Jain HUD will insert that later.

Mr. Russell Let's insert that now.

Ms. Tran HUD would like to insert those changes now.

[HUD's changes are being inserted in the version of the rule on the screen].

Ms. Tran The changes to 990.280 would replace the current language. Going back to paragraph (b) on 990.280.

Ms. Tran read section 990.280(b).

Ms. Tran Mr. Lines, do you have any edits?

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Mr. Lines — Yes I do. Following the word "after" insert "the" and then after "January 1st" insert "(no less than 12 months) following HUD's successful implementation of its management and operation program". Next, on line 24 after the word "after" insert the word "the" to read "two years following HUD's successful implementation of its management and operation systems the PHA must be in compliance".

Ms. Tran — Shall we get copies for the committee members?

Mr. Russell — There are a lot of edits that we need to chew on.

Mr. Ramirez — Before we caucus…

Mr. Russell — Mr. Ramirez, I was not finished. We are going to get hardcopies printed to view all the changes and then we can have a discussion on the changes. I have one observation, based on some of the positive comments made by members in their willingness to accept real property-based management. In viewing the changes there now seems to be a desire to stay with the existing regulations. I think that we all realize how meaningless those regulations are. Let me read for everyone how they are defined in 990.305 [of the Current Regulation]: "Cost centers can be delineated by administrative departments or divisions within a PHA by office locations, by individual projects or clusters of communities of projects that consist of one or more of contiguous buildings in an area of contiguous row houses, or scattered-site buildings."

Then, if you skip down to project based accounting 990.310(b) [of the Current Regulation] reads: "…operating income and cost information to be accounted for at a project or cost center level shall include at least rental income and the administrative costs, utilities costs, maintenance costs, repair costs, and such other income and costs identified by the PHA as project-specific for management purposes."

It is not lost on any member what happens when we refer to the existing regulations. You can define anything you want under the existing cost center paradigm. We know that we are all not managing in accordance with real project-based models. I am a little disappointed that there is a push to stick with the status quo, which from my perspective is meaningless.

Mr. Ramirez — We are willing to move towards project-based management and project-based accounting but you don't have to throw out the baby with the bathwater. We have chosen to keep some things that we believe might reduce the problems of the transition to effective project-based management. Mr. Russell, there are

many items in that section that do get to the heart of project-based and there are some items that we have failed to discuss at these meetings. There are some inconsistencies that are in conflict with the regulations in this Rule. We have two members of the committee that would like to address those inconsistencies, specifically to see from HUD to how these will be dealt with. If I may, Mr. Lloyd and Mr. Nolan.

Mr. Nolan — We are looking for clarification and we have a number of questions around the balance sheet accounting, the current reporting requirements that cover multiple programs, including the Capital Fund and Section 8. When you move to project-based financial statements and include the financial sheet - you are maintaining a self-balancing ledger. To then go back and create a balance sheet for the programs becomes very difficult if not impossible. So you now report a balance sheet for each program and then construct a balance sheet for each property. You end up with a two dimensional reporting system. The reporting regulations required by HUD then becomes very problematic. Specifically for the Capital Fund there are no current regulations for that program since its creation in 1998. Field Offices use outdated handbooks and have not received much guidance. At the practical level we still have to identify line items and do reports that may or may not be on the balance sheet. Trying to accommodate that level of reporting is very difficult on the balance sheet site. You still have to maintain equity and liabilities. I could be accounting for three or four open grants for one property, so at best this mushrooms the number of accounts inside a ledger and mushrooms the size of the accounting system and will require PHAs to revamp their Chart of Accounts. If we move in this direction, we need HUD to move with us and collapse some of their requirements. I don't know how we are going to comply with theses regulations. Have you thought about this? I would love to see a demonstration.

Mr. Strickland — There is also the issue of allocating central costs. There is only one example of a balance sheet item – tenant account receivable – which is the easiest example because you know where the tenant lives. In the multifamily environment a property has assets and liabilities but they really belong to the management agency and they don't belong to the project. We are two different animals. We are trying to make this conform to the multifamily side, but it is those central costs that create a big problem on what method of allocation you use. Also, it came up on page 40 lines 14-31 and then page 41 on line1. The term property management fee and asset management fee seem to flip flop in lines 18-23. On line 31 it talks about both. Are we talking about, the $4 PUM or property fees in additional to the asset management fee or just the $4 PUM? I'm a little confused.

Mr. Anderson There are two distinct figures.

Mr. Parker It would be in addition to the $4 PUM?

Mr. Liu nods yes.

Mr. Strickland We are talking about charging property management fees and asset management fees. The asset management fee is PUM. It is not a fee for that specific property.

Mr. Epstein On the income site there is the $4 PUM and the way the rule is written, if there is net cash flow after operations you then take an additional asset management fee but you have to take it from cash flow. You can also charge an asset management fee within the PEL to cover central office expenses.

Mr. Strickland The central expenses are not charged to a fee. Is this an additional fee?

Mr. Epstein Yes. You can also charge a management fee, which is part of the PEL.

Mr. Strickland So central office expenses would be allocated…

Mr. Epstein If you are running a central office then you would take the direct costs for project A and allocate them to that property. It is a direct frontline cost. You get $4 PUM asset management fee and a property management fee, which will be determined by HUD based on certain parameters, which you would use that to cover indirect expenses, not frontline expenses – not central office expenses.

Mr. Lam First, with respect to the public housing industry, I feel that it is an unfair characterization for the Department to state that the current regulations are meaningless. There are a number of PHAs that take the current regulations very seriously and we produce meaningful statements that we used to submit to HUD and they are quite detailed. Secondly, on page 40 lines 4-9, I am completely supportive of project-based budgeting and project-based management and tracking and reporting income and expenses, even profit and losses at a project level, but there are certain problems in the application of the rule in the reality of the terms and accounting issues. For large PHAs with large diverse portfolio it is very difficult, not impossible, but unreasonable, to expect a large property balance sheet in its real meaning that can stand up to the test of an audit for each property. At NYCHA our daily cash management is centralized. It is more than unreasonable to expect us to divide all those

accounts to a specific level and withstand an audit. Another central example is our risk management program. We pool our risks and as a result the price of our insurance vehicles are much more favorable because of that. There is a whole litany of expenses that need to be excluded. There is way too much variety in the industry to do that.

Mr. Jones On lines 29-30 there was some attempt to address that concern.

Mr. Lam I appreciate that effort. My concern is based on the language on line 6 of section 99.275(a): "financial statements prepared in accordance with GAAP". That is fine, but then it gets even more narrow - assets, liabilities and equity data is the problem - those are very specific accounts.

Mr. Nolan In response, line 6, my interpretation, is it HUD's intent that each property be treated as a stand alone business so it has its own ledger that balances out and then a separate ledger for the PHA to capture the management company?

Mr. Liu We appreciate these comments. There is flexibility within this regulation, and Mr. Nolan, that is one way to read the provision. Many of you have experience in this and as you said, it would be difficult but not impossible. Many things seem difficult on the onset. There are ways to deal with the issue whether you are involved in property management or product development. If you are involved in product development every item from insurance to risk management to space is plotted out so you understand what is going into that product. From my personal experience and I have worked with firms that have that type of model, Mr. Nolan, but I have also worked with entities that have other models, where certain goods and services are purchased on a group basis. You may have to go to other companies to purchase those products. We are going to have to work with private sector vendors and work together so we all understand what you are doing. This is not totally new. There is similarity and a match to other types of affordable housing.

Mr. Strickland On line 29, if we can establish a profit loss cost center, why can't we have a central office balance sheet? The idea of allocation to separate properties for balance sheet accounts, we do get RSI and then you get into auditor judgment, materiality, and that leaves us dangling to be kicked. On lines 5-6, GAAP, most reporting is done under generally accepted accounting principles in the U.S. We call it GAAP but we don't write it out. The idea of the Single Audit Act was to bring public entities under one audit to simplify the audit and reporting processes. The PHA is still one single entity. From an audit standpoint I support one audit.

Mr. Lines Sometimes I speak for the group and sometimes I speak for myself. I hope that Mr. Russell was speaking for himself. I have done 29 PHA fiscal year operating budgets in a row. I have overseen private management operations and there is a lot of flexibility. This is essential for a property management-centric approach be successful. The concept of a management plan is more important than how the beans are set out. Financial information must relate to management information. I ask that as you review theses changes, you keep that in mind. We are committed to making this a successful endeavor.

Mr. Liu We appreciate those comments. Mr. Russell was expressing a concern we believe is consistent with the current regulations to continue to allow the industry in certain sectors not to move along, because there is a notion of the cost center as described and defined in that regulation. We will discuss that point. The notion of cost centers in the current rule has allowed PHAs to resist the move towards project-based management.

Mr. Lines I am grateful for those comments and would like to make one point. One problem with project-based accounting is that it was never enforced by HUD. We have to make sure it will work.

Mr. Kaiser This is not my area of expertise, but that has never stopped me before. Having said that, in trying to obtain information useful for this dialogue, we have asked Mr. Lines to conduct a survey of private management firms, and I would like him to outline the survey results. We saw that private firms managing real estate did develop cost centers, similar to those that we have been discussing.

Mr. Lines This is hot off the press. Basically, I had two staff members who were in charge of an asset management project conduct a survey of over 175,000 property management firms. We will give you the survey results and the names of those that participated in the survey. One of the things that I recall from when I managed public housing is that there are services and items in the regulatory environment that are central and centric-site. So that we have a practical view, there are regulatory issues, contract issues, regional management issues, skilled service delivery issues. To the credit of the Rule, there was a recognition of off-site services. Mr. Epstein and Mr. Byrne will recognize all the names in this survey. The distinction between site and central regional base will be helpful for the group during the deliberation. I will now pass this out to folks.

See Appendix 3 – Survey of Private Property Management Firms – was distributed.

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Ms. Tran — Does the committee want to caucus at this point?

Ms. Zaterman — It would be helpful to understand where our points of departure are. We understand that there are concerns for relying on existing regulations. Are there specific points that we should be focusing on?

Mr. Liu — We both have edits. I will underscore our concern of the general reference to the current regulations and the notion of cost centers in the current regulation. I feel that we can move forwards to reach an agreement.

Mr. Ramirez — It is encouraging to hear those comments. As you know there are other components of the existing Rule that can be useful in providing a clear guide path to get us to a property-centric model. Those kinds of concerns can be very helpful in moving us towards closing any gaps.

Mr. Kaiser — Can we get something on paper on utilities before the caucus?

Mr. Russell — The new utilities language will also be distributed.

Mr. Kaiser — Can we keep the time period as limited as possible, since the hour is getting late?

Ms. Tran — We will have copies made and will deliver them to you.

Ms. Basgal — Let's break until 12:15 pm.

Ms. Zaterman — Can we caucus and then come back. We still have to discuss utilities, the inflation factor and asset management.

Mr. Lines — And sanctions.

Mr. Anderson — And subpart B.

Mr. Kaiser — Instead of 12:15 pm, I proposed that we come back at 12:30 pm having either eaten or bringing something with them so we don't have to break for lunch. So we can get started promptly at 12:30 pm.

Break granted at 11:30 pm. The committee reconvened at 12:58 pm.

See Appendix 4 – Amendment #1 to Subpart H: Asset Management (5/12/04 @ 11:11AM) was distributed.

Ms. Tran Everyone should have already seen the amended utilities proposal. How would the committee like to proceed? Shall we start with subpart H?

Ms. Tran read section 990.245 (See Appendix 4).

Mr. Liu I would like to make a few general comments. We appreciate the industry's work to look at the proposal and the comments made before we went to break. We reviewed the amendments and recommendations and there is some agreement but the crux is in the overall approach is. …we believe that we are not that far apart. We do hold to our changes and that should serve as the basis for moving forward, rather than using the current rule, which is not all bad, but we think in the interest in moving ahead in the direction we want to move, we don't want to refer to the current rule and secondly to address the concerns about balance sheet issues and cost center issues, let me underscore that HUD is fully aware that there are central office things, fax machines, photocopy machines, that will go towards central functions. Not every single item would have to be allocated to a specific project. We will work with you on that based on your unique circumstances. There is flexibility within our proposed rule. We are striving towards a starting point. There will be some commonality and accepted standards for ways of doing things. We will work with the accountants to get us to project-based accounting and project-based management. We appreciate your time.

Ms. Zaterman I'm at a momentary loss. It would be helpful to understand the objections to the language changes. You want to go with your changes and we want to go with our changes. Are there programmatic underpinnings that we can resolve? We need a dialogue as to what your concerns are so that we can come closer. We have some responses to the language you proposed.

Mr. Liu The primary concern is referring back to the current rule 24 CFR 990.300 and the reiterations in 990.305 and 990.310 is wide open door which has given PHAs the choice of moving towards project-based OR, and it's a big 'or' which allow agencies to define and allocate their accounting towards cost centers and unfortunately that is the majority of the cases. That is our fundamental concern. We can break away from that by using our proposal. As I mentioned in my opening comments there are some specific needs that will be addressed. We get there through our proposals, but there are some areas where we will agree with your recommendations. Generally, we think that most of what has been proposed, frankly, will not facilitate moving us towards the direction we want to go in the timeframe we need to adhere to. Much is based on what has occurred for those currently involved in project-based accounting. Again if we look at the substance of what we are offering

and you look at the current Rule you will see that there are some resemblances in some areas but it is also a clean break in other areas.

Mr. Ramirez — If it is the concern of the Department to address the cost center questions, since that is at the heart of your concern, let's address it, but why throw out all the other elements that are clearly articulated, and benchmarked that can point us towards effective asset management and include those as part of this process. That is all we are proposing to do.

Mr. Liu — Again, it is our belief that our proposal does in fact do that. It preserves what makes sense, what many PHAs are practicing right now and it's clearer in the policy that we are endorsing and the direction we want to go. There's less room for questions.

Mr. Parker — Thank you for giving us some insight. This helps to move the debate forward and to share some ideas of the crux of the industry's concerns. Is the Department open to the concept of some level of local flexibility where issues get resolved in the same way as they do in small rural PHA and in the large urban west PHAs? That is a concern around the table. The multifamily world, they are allowed to do things as long as it meets the generally accepted accounting principles (GAAP). There are lots of different cost allocation methods used within the multifamily environment. Can you share your thoughts in terms of flexibility?

Mr. Liu — In the interim Rule we are giving flexibility to PHAs that have less than 250 units. The accommodation for most small PHAs is there. But we would like to work with them between now and 5 years from now to develop the best methods for the small agencies. We will work within this context to become more project-based, just as we have in other areas. There is a law of diminishing returns when you get to a certain level. The answer is yes.

Ms. Lott — Madame Chair, in the interest of time, I suggest than we walk through this subpart, because there are other subparts that we want to address.

Ms. Tran — Should we go through this section by section?

Ms. Lott — Let's just go through the key changes. There are some areas where HUD will consider our changes and other areas where they will not consider our changes.

Ms. Tran — Does it makes sense to start with 990.245?

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Several committee members shouted to start at the beginning.

Ms. Tran Section 990.245 - all the changes were proposed by the industry.

Mr. Russell Okay. In the overview section, 990.245, we will not accept the changes on lines 8 and 9. We will offer a change to the word "similar" and insert "consistent with". On line 10, we will stay with the word "implement" and we not accept the additional language on line 10. We will also strike lines 16-18 (See **Appendix 4**).

Mr. Lines Can we ask why?

Mr. Russell We have already talked about the system changes that we started to undertake and we also started to procure contract assistance to develop training methodology at Headquarters and in the field. This is a significant change for HUD as well, but that does not need to go through a formal comment and review period. As Mr. Liu mentioned, there is intended flexibility on how we define cost centers, so there is a benefit to both the industry and HUD to have this as an evolving definition instead of spelling out what that system is going to be.

Mr. Liu As a practical matter, this process will be watched very closely by committee members and Hill staff, and we need a rule by July 1, 2004 and it would be unfortunate if language is looked at by folks as an opportunity to slow the process down and prevent getting something implemented. I am not opposed to the sentiment, but it would open the doors up to misinterpretation.

Ms. Tran Any other comments on section 990.245?

Mr. Russell I would like to state for the record that we certainly recognize that there are various regulations and assessment systems that will have to be changed to be congruent with the way the industry transitions. We are working with the industry in deregulation efforts and we are sincere about them. We look forward to working with the industry on that.

Ms. Tran In section 990.250 there are no changes. In section 990.255 all the changes were recommended by the industry.

Mr. Russell HUD will keep the word "approve" and the reason for striking out lines 9-12 is that there is no capacity for dealing with additional management plan requirements and I'm not sure that all the members here want to get into additional management requirements.

Mr. Parker Do you anticipate that the approval would occur at the local level or in Washington? You are going to get 34,000 groups for how they will define property. How do you envision this process working?

Mr. Liu We have already allocated resources for staff training and in the near term to start the process to acquire assistance to outside contractors to work with the field to familiarize themselves with what we are doing here. We will look at what makes senses from a consistency standpoint while allowing flexibility. Our local offices, with the right training and continued communication with agencies, will be able to do a good job.

Mr. Parker We would propose and HUD would approve them?

Mr. Liu There would not be a formal plan. If someone had issues, we would work with them but there would not be an official approval process. You would submit them to HUD and if you don't hear anything, then you are good to go.

Mr. Lines In the preamble of the rule could we not state HUD's intentions. That everyone realizes this is a sea change and we are all on the same sea. You know that other folks would take that well. The PHAs would still be expected to have a plan but HUD would not review it?

Mr. Liu We would still have a PHA plan but we do not want a separate management plan for all the properties because if an agency is moving towards project-based management, it is a locally driven agency driven day-to day thing. We don't need to review every single plan, we would like to see what you are doing, but unless we have objections you should not have to wait to hear from HUD. There should not be a formal approval process. It is very different from the way HUD has functioned in the past but it is similar to the voucher program. We will monitor this and we will be available if people have complaints but this is not a process that should have an intensive review.

Mr. Lines You are not discouraging management plans because you have to do it anyway but you are saying that you are not reviewing them.

Mr. Liu I don't want to give the impression and I want to be cautious - we do not want to be in the business of overseeing management plans or require different plans.

Ms. Lott — I'm confused. Mr. Liu's verbal remarks are not consistent with the language on the screen it says "HUD shall approve" but Mr. Liu you are saying that no formal approval is required.

Mr. Liu — That is the approach that we intend to take, which is a form of approval, that is you do not get disapproval.

Ms. Zaterman — I'm intrigued by your remarks, that is, not wanting to review the plans. How do we define compliance so housing authorities know what is expected of them? Is this your test of an outcome of project-based budgeting and project-based accounting? The financial statements, is that how you intend to assess the outcome?

Mr. Russell — Yes. This is getting to efficient project-based accounting and project-based management. At the end of the day where are we if we go though all these hoops with plans. The only way to know is to say after 5 years, come look at my books, I'm allocating my costs effectively, I don't have huge central costs, I've got central cash flow. This is not a pro forma thing. The proof is in the pudding.

Ms. Zaterman — HUD's ability to determine if one has arrived is looking at the books, not where the manager sits and the services are provide.

Mr. Russell — That can be assessed by a third party expert who is familiar with your local area. They can see if you are doing it in a rational efficient manner.

Ms. Zaterman — How will you develop the protocols for a reasonable way to go about doing this?

Mr. Russell — There are models out there. We are not reinventing the wheel. A lot of entities, state finance agencies….

Ms. Zaterman — I know there are entities that do this but what are they looking for? Is this a "you know it when you see it" or is there something specific that you had in mind.

Mr. Byrne — There are two issues here. At some point you're asking for an appeal of your costs to see if those costs are reasonable and then evolve out of the system. Otherwise, how do you know if your costs are reasonable? The second issue is: Are you evaluating us on how we look as an organization or on performance? This is about performance. There are some systems. Is the property running well? What are the operating costs? My view is that if the

property is running well and you have true costs I don't care where the manager sits. The most important thing is if the property is running well. There is a bias towards this, but in general HUD should not to get into that game. Instead HUD should look at whether you are performing. and if you have central costs, then I want to make sure those costs are reasonable.

Mr. Epstein I underscore what Mr. Byrne just mentioned. This is property-centric based on financial and managerial criteria and physical criteria outside the public housing world, that is how housing is evaluated. This will make public housing more consistent with the multifamily rental industry norms.

Mr. Lines Whether it be development or management, the degree to which you can reduce your uncertainty; we are trying to reduce uncertainty. The last part of your comment, the issue of central office management fees. I know what it means in the non-public housing world and I know what overhead means. I know what those mean because I own a business, but explain to me what you mean because there is a lot of interpretation out there. We need some certainty.

Mr. Byrne There is not a unanimous consensus on this but there are fairly accepted rules in the non-public housing world. A PHA gets two fees: the property management fee and an asset management fee for being the entity that is the owner. They cover non-direct costs. If you do enforcement, maintenance, those are not part of the management fee – it covers the supervisions, regional management, corporate, financial reporting. The other costs the agency chose to do centrally gets funded out of something else. It would be done on a fee-for-services basis. Does that help?

Mr. Lines There is overhead for everything. I want to make sure that concept is there. How will the fee be set? Is there a range? HUD's safe harbor is 6% of market rents, would it based on PEL?

Mr. Byrne The regulation says that it would be prescribed by the Department. In the FHA world, HUD prescribes fees for the local market, let's say $45 in Boston and $30 in Sioux Falls. I would assume that would fall under standard industry metrics.

Mr. Epstein On the FHA side each field office has prescribed fees which are generally based on a percent of rent collected but fit within a certain unit per month range. That is out there, based on a survey that is done by the HUD field offices, updated periodically, including flexibility for add-ons. There are those in the housing finance world that use a prescribed percentage of income.

This is something that HUD will have to work through in determining the direction on how to move forward.

Mr. Lines — The concern is that it would be benchmarked to the FHA per unit per month standards so a variety of central agency activities would not be considered under that scenario.

Mr. Byrne — I think that the Rule says that you have $4 PUM as an add-on and references that a PHA can charge an asset management fee, within a range. The exception is that you can charge more than $4 PUM if you have enough money at the bottom to pay for it. It would not necessarily be capped at $4.

Mr. Nolan — I agree with that.

Ms. Tran — Can we move on?

Mr. Parker — I want to make sure that we don't gloss this over and say 'don't worry just set the fee'. You could also say let's just set the PEL wherever you want. Part of this negotiation is to negotiate the limits, yes there are industry practices and cost allocation methods in the world, but agreeing to the approach that HUD will set some number in the future is not an inconsequential item. It seems that there should be local flexibility in keeping with the generally accepted accounting standards but we should be in the business of prescribing what PHA should get.

Mr. Byrne — I agree that there should be flexibility and there may be different ways to devise the fees the Department should be considering, as long as the cost is reasonable you should be allowed that flexibility. There should be standards established but those should be different then the standards established for the central management fees. I think that is a pretty evolved art. People do understand what is covered under the management fee. Maybe we need language that stays consistent with the norms in industry standards.

Ms. Tran — Can we move on?

Mr. Strickland — Briefly, we need to remember that built into the PEL is a 10% non profit coefficient, we can allocate central costs to that project, since we get paid for that in the PEL, so we need to be careful when we focus on the multifamily world.

Ms. Tran — Section 990.260 - all the changes were recommended by the industry.

Mr. Russell HUD accepts these changes.

Ms. Tran Section 990.265 - all the changes were recommended by the industry.

Mr. Russell HUD accepts the changes on lines 30 and 31. And the change on line 1.

Ms. Tran Section 990.270(a) - all the changes were recommended by the industry.

Mr. Russell Section 990.270(a) – HUD does not accept "as defined overall in 990.300".

Mr. Lines Going back to Mr. Liu's earlier comment, if we were able to offer a cost center definition for the project that might solve the issue. If we could do that then you would have a prescriptive accounting system on the books. Would that be helpful?

Mr. Russell I request that we finish 990.270 and then we can discuss any concerns about the definitions for cost centers.

Ms. Tran Section 990.270(b) - all the changes were recommended by HUD.

Mr. Russell In our discussions we added at the end of line 17 and 18 we added the words "and approved central office cost centers". Instead of "approved" we could use "HUD accepted" so there is not a formal approval process.

Ms. Tran Section 990.270(b)(1) - all the changes were recommended by the industry.

Mr. Parker Earlier we had a question regarding what the timing was or implied about "upon completion". What would the date be? However, before you answer that question, I have a technical change. It would be best to make that plural, "central office cost centers".

Mr. Russell I have it plural in my notes; we can make it plural. As for the date for the accounting aspects, this would be FY 2007.

Ms. Tran Section 990.270(b)(1) - all the changes were made by industry.

Mr. Russell We propose to cross out the words "referenced above" on line 21.

Ms. Tran Section 990.270(b)(2) - the industry recommends to strike this paragraph. HUD has provided modified language.

Mr. Jain HUD wants to keep the language and add new language.

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Mr. Russell On 990.270(b)(2) HUD proposes to keep the existing language - lines 22 through 28 and add additional language at the bottom of the paragraph so that it reads: "If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company a fee that is reasonable to fund operations of the central office and other eligible purposes". Before we go onto page 4, are we clear with page 3?

Mr. Parker I have a comment that I think reflects the concerns of everyone at the table. Mr. Byrne's statements struck at the crux of the matter. If the property is performing well it is not HUD's desire to be overly prescriptive on how you are doing your job. The ceiling amount does that. It is unclear to me how that would be differentiated between Ms. Scudder's needs and Ms. Lott's needs and my needs. I have much less objections to the language in number 2 and the rational for establishing ceiling amounts if the real issue is if the property is performing well. This should be a matter of local control.

Mr. Epstein In terms of going back to Mr. Byrne's comments, he said that if the costs and if how you are apportioning them are reasonable, it's okay. As you look at the Rule, at the end of the day there will be an independent evaluation to ensure that the costs are reasonable. The key element is the management fee. Housing finance agencies, FHA housing and in conventional real estate there are ranges of fees. It is not a one size fits all; it looks at the local factors. There is not one fee being dictated by Washington, there are ceilings on those fees because those ceilings are consistent with the norms that have been established in the private multifamily housing. There are ranges so it takes into account project size and the difficulty of managing a property.

Mr. Parker What it does do is set up a fee-for-service arrangement instead of using the range of cost allocation methods that are available under GAAP. I believe that this is a prescriptive methodology, unless I'm missing something.

Mr. Nolan Would you like to address that Mr. Byrne? I think that a fee-for-service arrangement may solve a lot of problems in terms of the subjectivity of cost allocation. The proposed language, we propose that the last sentence where it says "amount above the ceiling" be changed to "to be used for any low income housing purpose". This is how it would be viewed in the private sector; it would not be limited to only operating costs. If we could make that change.

Mr. Epstein That is a good suggestion.

Mr. Liu nods yes.

Mr. Nolan The sentence would read: "…the established ceiling to use for any low-income housing purpose".

Mr. Russell I want to point out that there is very similar language to the new proposed number 3. [Mr. Russell reviews the revised 990.270]. Well, I guess it is not in there. On (ii), we did add language that is consistent with that concept. We should say for any "eligible purposes" and delete "low- income purposes".

Mr. Byrne I know that Mr. Nolan wants to address this issue in a caucus. Let me just say that I would hold my comments until the end of this section, but I think that this is so fundamental that it needs to be addressed. Fee-for-service, what goes with this is that PHAs today many of them have to develop very elaborate allocation systems and having to in many cases rig those systems. This would get away from that game altogether. You charge $X amount per month for the fee and throw the allocation systems away. Whatever it costs you to run the IT systems is your business; it is not the business of HUD, and not the silliness that you go through now. If you do caucus, this is worth spending some time thinking about this.

Mr. Line What is the difference between that and the Section 8 administrative fee? Would we derive a fee, keep that fee and utilize it? I operated a project for 28 years and then one day I woke up and that fee was not there anymore. How do we have some level of comfort that a reasonable threshold can be used?

Mr. Russell That was a change made by law by Congress. This Rule will always be subject to Congress.

Mr. Strickland If at the end of the day it is determined that a $50 cost is reasonable but we have a ceiling of $40, how does that reasonableness come into play?

Mr. Kaiser In response to Mr. Byrne's comments it seems to me that there are valid arguments on both sides but we don't want a prescriptive system. We want flexibly and it seems that this administration is very responsive to that. However, what we heard earlier and what was supported in the survey's results is that there does not seem to be unanimous consent in the traditional real estate market to use the fee-for-service approach. Instead there is some allocation methodologies used by private real estate market. We are concerned about locking into something very prescriptive when there is

disagreement in the private real estate markets about using the methodology that you are suggesting. There seems to be disagreement about if that is the best way to go in the markets that you reference, which is why we are asking for flexibility.

Mr. Epstein Let me take a shot at this. There are two issues with respect to the management fee, as Mr. Byrne described. One, you are paid a fee based on certain factors, to be determined later, consistent with norms and different locals, and the management responsibility is to ensure that the site performs well. Within the allowed costs and what is charged to the projects and the fees there are well defined in protocol that both FHA and housing finance agencies have laid out. Those activities will be charged to the development, they are direct expenses that will be charged to the management fee. That's how it works in the multifamily world. In fee-for-service, that Mr. Lines was talking about, and I don't think he meant that everything is an acceptable expense, some are charged to the fee and some are charged to the project, at the end of the day the entire operating budget will be reviewed by an independent evaluator to see if the budget is reasonable. In a worst case example, let's say a PHA had enormous costs, the property was poorly managed, that they took those costs and allocated them out to the total number of units, let's say 5,000 units. Theoretically they could say that they have project-based budgeting, and I have seen this many times, at then end of the day here, someone will look at those costs and say you are at $600 PUM but it could be done for $300 PUM what is going on? They would not be able to certify that you have achieved a project-based model. In FHA and in other worlds the operating budgets are reviewed every year to see if costs are reasonable. Many times projects are losing money; maybe they are spending too much money. You have lots of flexibility, but you have to be cost effective because at the end of the day you will be reviewed to make sure those costs are reasonable. That's what happens in the private sector.

Mr. Kaiser What is giving me the most difficultly is the issue of ceilings and they have been referenced a few times now. It has been mentioned that there are standard industry practices that define allowable costs, but there is no specific information to make an informed decision to see if this is indeed workable. That is the quandary. I can not make an informed decision. I can not agree to a ceiling that has yet to be defined. We have not seen an explanation.

Mr. Strickland In relation to management fees, profitably fees, and tax compliance fees, in the multi-family world they get an asset management fee and a profitably fee up to 25% of the gross rental income. Would the ceiling be set that high?

Ms. Tran Let's move to paragraph (3)(b)?

Mr. Kaiser Ms. Tran, we would like a response to the question we posed regarding the specific thresholds mentioned. This is an important issue.

Mr. Liu We understand some of the concerns out there but this is new territory for both PIH and the PHAs, notwithstanding that there is a considerable amount of expertise in out there in other sectors. We can be more flexible for this period and we will remove any references to "ceiling" and work on language. There is an overall body of information based on the independent assessment of housing authorities and after two or three years HUD will have the ability to prescribe certain service fee levels, but maybe ceiling is not the appropriate term. We are willing to explore that.

Mr. Kaiser Thank you.

Mr. Russell Moving to the next paragraph, (3)(b). There should be the word "may" after "PHAs" and HUD did propose a new number 3. Ms. Tran, will you please read that.

Mr. Kaiser Is it my understanding that all references to the word ceiling will be stricken? The word does appear in multiple locations.

Mr. Russell We want to craft different language for where we see the word ceiling to substitute that term.

Ms. Tran Paragraph (3)(b).

Ms. Tran read section 990.270(3)(b).

Mr. Russell We also agreed to remove the words "to each project" after the words "can be charged".

Ms. Tran The sentence will be read "can be charged to the asset-management fee".

Mr. Strickland I'm confused about the term asset management fee. Is that the $4 PUM or is that the additional property management fee that may have a ceiling in the next few years? This is in addition to the $4 PUM?

Mr. Russell In the first sentence, if you have an asset management fee and it states these are the uses. The $4 PUM will be used to support asset management.

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Mr. Strickland I thought you have additional $4 PUM to pay for asset management?

Mr. Vandevour It should be asset management fee.

Mr. Strickland We are mixing terms here.

Mr. Liu If you have excess cash flow even after you get your $4 PUM you can still allocate it to the asset management fee.

Mr. Vanedevour You substitute "project" for "asset" in section (ii).

Mr. Nolan For the $4 PUM – you should call that an "asset management add-on". It never goes to the property and is not recorded on the ledger and the asset management fee referenced here is over and above that.

Mr. Gomez On (ii), what happens in the transition period to excess cash flow? Let's say that you have not transitioned to asset-based accounting, does the cash flow get trapped at the project? What would occur as you work towards project-based standards before you are ready to certify that you are there?

Mr. Liu This is not mandatory, if you have excess cash flow you may use it for other purposes If you have excess cash flow and want to use the dollars for other purposes we could say "other eligible purposes".

Mr. Gomez On line 16, having that language implies that the definition of this asset, management fee can only be applied if you are doing certain things. Why do we need this additional language, because during the transition period you can use excess cash flow for eligible purposes any way?

Mr. Liu This is for when you are at asset management, it is at the point in time that you are there.

Mr. Russell The PEL funding needs to be used first and foremost for the operating needs of the property. If there is excess, then these are the other uses but you can't do fungibilty unless you have excess cash flow. We talked about this in the first two sessions. This is not new.

Mr. Nolan From my view, the project reserve is restricted except for theses purposes and they carry over to the following year. We will have to be in negative cash flow to use those reserves.

Mr. Byrne You could move it to another project but you could not use it for asset management.

Mr. Nolan If all your properties are at break even, then you are accumulating reserves at a project level that you can't use.

Mr. Byrne Or you could move it to another property.

Mr. Epstein We have not dealt with this. In the FHA world reserves are generally restricted and under the control of HUD after a dividend is paid and it then becomes residual receipts. The uses are restricted, but I am not suggesting that this be adopted here. If everyone is in that situation, the system would work quite well.

Ms. Tran Moving on to paragraph (c). All of the changes in this section were recommended by the industry.

Mr. Russell The sentence that starts with "these costs" HUD proposes to insert "shall be funded" and then keep the word "fees" and not "proceeds" and we can strike the last sentence.

Ms. Tran Moving on to paragraph (d). All of the changes in this section were recommended by the industry.

Mr. Russell HUD proposes on the second line to keep "charge each project using a fee-for-service approach" and reject the additional language at the end of the sentence.

Ms. Tran Moving on to Section 990.275. There are no changes to paragraph (a) or paragraph (b).

Mr. Russell HUD proposes to retain the original language.

Mr. Nolan Could we strike all of paragraph (c) since it is retained in the ACC language?

Mr. Russell So, in that case it would not hurt to keep it.

Ms. Tran Section 990.280. In paragraph (a) all the changes were proposed by the industry.

Mr. Russell On the second line under (a) we want it to say. We did propose a new paragraph (a), (b), (c) and (d). We did talk about it, but that is not reflected.

In the first sentence of the new part (a) where it says "A PHA is considered in compliance with asset management requirements if it can demonstrate…" if we could add the word "substantially" at the end of that sentence.

Ms. Tran — We have now just gone through subpart H. The time is 2:30 pm, how would the committee like to proceed?

Mr. Russell — I would like to move to vote on this, unless we still need a brief discussion.

Mr. Kaiser — I would like to request a 20 minute caucus.

Ms. Tran — The committee would then reconvene at 2:45 pm.

Mr. Russell — Is it acceptable to vote on these changes when we return, in the interest of moving to other important sections?

Mr. Parker — That is the intention of caucusing, to determine where we want to go. Until we caucus I cannot tell you where we want to go when we return. We want to deal with the issue.

Mr. Russell — How we deal with the issue remains to be seen, but we would like to address this section promptly when we return.

Mr. Parker — The Department has made many changes and we would like to review these changes and react to them in order to deal with this subpart.

Ms. Tran — We will provide you these language changes in the caucus room. Let's try to return at 2:50 pm.

Break granted at 2:33 pm the committee reconvened at 4:13 pm.

See Appendix 5 – Amendment #2 to Subpart H: Asset Management (5/12/04 @ 2:38PM) was distributed during the break.

Ms. Tran — Can we get started. Mr. Parker.

Mr. Parker — Thank you. First, I want to thank the Department for their work and the changes they brought into the caucus. It would be helpful if those were recorded in the proceedings to make sure that we are on the same page. If you could share those, put those on the screen.

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Mr. Russell The latest version – 2:38PM version – subpart H is now on the screen. Regarding the preamble, as was mentioned, HUD is willing to add some language at the end of the preamble after the sentence ending with "private sector entities". The sentence will read: "HUD recognizes that appropriate changes in it's regulatory and monitoring programs will be needed to support PHAs to undertake the above". If we can move onto page 3, number 2, line 18.

Ms. Tran Section 990.270(2) line 18.

Mr. Russell Starting with the words "HUD will establish" we propose to strike "HUD will establish ceiling" and capitalize the letter "A". After that sentence, after the word "fee" we propose to insert the words "must be reasonable". The next change is to the phrase "and the established ceiling" replace that with "a fee that is reasonable". Now moving to the new section 3, HUD will strike the current (ii), "funding for the project reserves" and replace with "other eligible purposes".

Mr. Ramirez There was also a mention of ceilings in (b)(2). Will the reference to ceilings also be changed?

Mr. Russell Where was that?

Ms. Tran Section 990.270(b)(2).

Mr. Russell Okay, we do need to rework (ii), the first line, line 5 to read "charging each project a reasonable asset management fee" and then delete the next sentence starting with "HUD will establish". Towards the end on the last section, letter (b)(1) and (b)(2), it was brought to our attention that it was redundant to require a PHA to have an independent assessment and then have another independent assessment. We recognize that there will be cases were a PHA may need support to prepare for an independent assessment, but we do not want to require that.

Ms. Tran What is the change?

Mr. Russell Delete (b)(1) and (b)(2).

Mr. Ramirez Make (b)(3) number (1).

Mr. Russell Yes.

Mr. Ramirez — Is the assessment to be reviewed or is this the appeal assessment?

Mr. Russell — This will be the assessment at the 5-year point to make sure a PHA is project-based compliant.

Mr. Nolan — Is this a one time assessment or an ongoing assessment?

Mr. Russell — This is a one time assessment. But there will need to be an annual review of the projects budget and finances, whether by HUD or a contractor but this would happen at that 5 year point.

Mr. Strickland — The new number one says "reviewed by", we feel it should say "prepared by".

Mr. Russell — We could say "conducted by".

Mr. Ramirez — All the changes that you brought to the caucus, there were several items rejected by the Department and there were very few concessions that were made. Can we remove the items that were rejected from the screen for clarity purposes?

Mr. Kaiser — Thank you for our patience while we were caucusing. For those of us who work in Washington we believe that sometimes Congress acts too hastily, even with the best intentions when they enact housing legislation and sometimes there are unforeseen events and unintended negative consequences as a result. We want to be as deliberative and thoughtful as possible when we develop this regulation. The devil is in the detail and we are making progress but under the circumstances we have not discussed transition funding, sanctions, vacancy, asset repositioning and a number of other important things. It is painfully obvious that we will need another working session and we hope that HUD will consider that. On the issue at hand, we do want to demonstrate that we are acting in good faith. We have a motion that Ms. Lott will read and hope that the Department will seriously consider the motion and then we can get to the other major issues in a subsequent working session; one that we feel is absolutely necessary.

Ms. Lott — "We move to adopt the language in subpart H with the amendment of striking the 3rd sentence in section 990.255 which reads "HUD shall approve all grouping of buildings into projects including those already on the ACC and hold in advance section 990.280 until a full consideration of subpart K and other related matters and subject to the appointment of a working group to further clarify 990.270 dealing with assets, liabilities and equities."

Mr. Ramirez I second the motion.

Ms. Tran There is a motion to vote.

Mr. Parker It is customary to allow for some discussion after a motion is made to ensure that all parties understand what was said before we vote. Some period of discussion might be in order.

Ms. Zaterman The purpose of the working group is not to make this process longer but to make it shorter. Part of the dragging out of this is having 30 people draft language. Further work could be accomplished better and faster by a smaller working group.

Mr. Liu One of the obstacles for us to respond at this time is the issue of another session, I understand Mr. Kaiser's comments, however HUD is not prepared to respond. We have to run some things by our Counsel before we can talk about another session, so that makes it problematic for us to approve the motion. Can I ruminate for a few minutes.

Ms. Zaterman There are several people that have had conversations with folks on the Hill and we have said that both parties are negotiating in good faith and it would not be difficult to get agreement from key people on the Hill to get more time. The deadline should not be viewed as a deadline.

Mr. Liu I appreciate those comments, however we have also been in contact with folks on the Hill and they have some concerns and provided us with some feedback, although the contact continues as we speak.

Mr. Ramirez As a point of clarification, we appreciate that you are trying to consider the deadline and it is clear that the Departments intent is to go to final rule and if we look at the time table to implement the final rule and having it submitted as a final rule and working our way back from the July deadline imposed by Congress from that point to today there is ample opportunity to have a thorough and concluding discussion on the matter and still be able to meet this deadline and so I hope that in your ruminating on this issue that this also be taken into consideration and that things will accelerate from this point forwards, this is a crux from which other items will be hammered out.

Ms. Tran Will a 15 minute break be sufficient?

Mr. Liu and Mr. Russell nod yes.

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Break granted at 4:36pm. The committee reconvened at 5:10 pm.

Ms. Tran Let's resume. Mr. Liu.

See Appendix 6 – Amendment #3 to Subpart H: Asset Management (5/12/04 @ 5:05PM) was distributed during the break.

Mr. Liu HUD would like to amend the prior motion, but before we do we would like to make some general comments. We would like to adjust some language in response to Ms. Lott's motion and the concerns with section 990.205 and we would only move forward to support the rest of the motion if there is a further amendment to that part of the motion holding in advance, 990.270 and 990.280. HUD feels very strongly that we need to come to closure to this issue today prior to making an issue to committing to working groups and more sessions.

Mr. Ramirez Wouldn't the prudent path be, or perhaps, HUD feels that there is enough clarity for HUD and the industry to pursue the mutual goal of pursing project-based budgeting, project-based accounting and project-based management.

Mr. Liu HUD does believe that with the amendment to 990.255 and what we have offered during the day and the revised subpart H that we have enough clarity in the proposed section to move forward.

Mr. Ramirez The amendment is to do what?

Mr. Liu The revised language has to do with the ACC and a PHA's designation of a "project".

Mr. Ramirez The vote than, the second is the one that concurs to the amends, following Roberts rules. I will look to the maker of the motion, since that is the concern of Ms. Lott.

Ms. Lott That does satisfy my concerns.

Mr. Ramirez We feel that there needs to be additional clarity in the sections that will be addressed via working groups, recognizing that Mr. Kaiser articulated that those sections have yet to be hammered out. We are at a disadvantage if we are unwilling to recognize the comments made. Which were positive, but I know that all too well administrations change and if things are not put in writing, verbal agreements are not carried out and we would like to codify your commitment and Mr. Russell's commitment. But if circumstances

change and you are no longer the Secretary and if Mr. Russell is no longer employed by HUD, if we go though the entire reading of the rule then than would move the process further along.

Ms. Zaterman Did we hear the full amendment to the motion?

Mr. Liu The only language change is to section 990.255.

Mr. Ramirez Just for clarity, the request to amend the motion that is the language to further clarify those other sections be removed from the motion but then again reiterate that a lot of the positive that came out of that section will be stated as a verbal agreement.

Mr. Liu It is our belief that in looking at the proposed language in 990.270 and 990.280, we are willing to pass out the section K issue regarding sanctions to give some assurance that we do have the context to move forward. It provides the flexibility to both the department regardless of who is sitting in this chair to hammer out all the details. We are not going to come out with a rule, and nor should we, that will enunciate every single step.

Mr. Ramirez There is no disagreement there. Is there a commitment of the Department to reconvene to discuss this?

Mr. Liu Yes, if we are willing to move on this section for all those that are here and those that are watching and then to set up working groups to set up other issues so working groups can be effective.

Mr. Ramirez Then I would like to make one final point and then I will yield my time to Ms. Zaterman. We are still working off the understanding that the final rule in its entirety will then be considered and voted on.

Mr. Liu Yes.

Ms. Zaterman I understand the issue of committing to resolve these issues and then move to the nest issues than if there is a need to have compliance or stop loss compliance and if there are additional sections that are needed then that could be arranged. If there is a need for further clarification then let's do that.

Ms. Lott I would like to amend my motion to that affect.

Mr. Liu *Mutual agreement.* Those are the operative words. Anything is possible if you have mutual agreement.

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Mr. Parker We said we would vote on the language as it stands with the understanding that we would clarify any issues that are mutually expectable to both parties and to then amend the language if both parties were in agreement.

Mr. Liu That principle can be extended to anything. By mutual agreement we can override protocols and reconsider almost anything.

Ramirez Ms. Tran, I call again.

Several committee members shout "we are ready to vote".

Ms. Tran We assume…

Ms. Lott All in favor…

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

Supermajority. Motion passes.

Ms. Tran It looks unanimous.

Mr. Liu For the time being let's think of a two-day session. HUD shall coordinate working groups for the other major sections that we have to deal with and will work on that as soon as possible. We will also try to give dates and locations for the next session as soon as possible, but we can not name those at this time.

Mr. Ramirez Hopefully in Washington, but not in the HUD basement.

Ms. Sledge Can you come to Florida?

Mr. Ramirez For the record, that vote was not unanimous. Not everyone voted.

Ms. Tran That will be noted for the record. We are adjourned.

The committee adjourned at 5:26 pm.

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List of Appendices for the May 12, 2004 Session:

1. Sign-in sheet for committee members, guests of committee members and members of the public.

2. PHA Rental Income and Tenant Rent Example: Freezing of Rental Income.

3. Survey of Private Property Management Firms**.**

4. Amendment #1 to Subpart H: Asset Management (5/12/04 @ 11:11AM)

5. Amendment #2 to Subpart H: Asset Management (5/12/04 @ 2:38PM)

6. Amendment #3 to Subpart H: Asset Management (5/12/04 @ 5:05PM) – Version adopted by the Committee.

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

Subpart H – Asset Management

990.245 Overview.
990.250 Applicability.
990.255 Definition of project.
990.260 Asset Management.
990.265 Project-based management.
990.270 Project-based budgeting and accounting.
990.275 Records and reports.
990.280 Compliance with asset management requirements.