

Recommendations of the Resident Participation Focus Group of the Public Housing Administrative Reform Initiative.

September 14, 2007

Focus Group Members:

Ronald Ashford, HUD Headquarters
Victor Bach, Community Service Society
Melosan Bell, HUD Headquarters
Willie Mae Bennett-Bradley, Committee on Boston Public Housing
Valerie Buchand, Janie Poe Resident Council
Jack Cooper, Massachusetts Union of Public Housing Tenants
Deb Crockett, Muskegon Housing Commission
Joe Feuerherd, Council of Large Public Housing Authorities
Sam Finkelstein, National Training & Information Center
Kathryn Greenspan, HUD Headquarters
Joy Johnson, Public Housing Association of Residents
Marianne Nazarro, HUD Headquarters
Crystal Palmer, Central Advisory Council/Chicago Housing Authority
Mary Rone, New Jersey Association of Public & Subsidized Housing
Lillian Scales, Englewood Housing Authority
Margaret Skiff, HUD Phoenix
Lorriane Walls, HUD Huston
May Wiggins, Central Advisory Council/Chicago Housing Authority
Glenda Wright, New Jersey Association of Public & Subsidized Housing

Introduction:

As part of the Public Housing Administrative Reform Initiative, the Resident Involvement Focus Group has developed the following recommendations for asset management. While it must be stated that these recommendations were not based on a total consensus within the group, the residents and advocates of the group were consistently in favor of preserving and strengthening the regulations governing resident organizing and participation. The following principles were adopted by the group early on in the process:

1. Promote Effective Resident Participation

We affirm that resident participation is a critical component of public housing (and other federal housing) programs. Effective resident participation contributes to higher housing quality, better management, lower costs, healthier communities, and better decision-making.

2. Preserve and Strengthen Resident Rights Provided Under the 964 Regulations

Nothing recommended by this group is intended, or should be used by HUD, to abridge any resident rights or prerogatives provided under the 964 regulations. This group seeks to sustain and strengthen resident rights and prerogatives provided under the existing regulations.

3. Freeze Any Further HUD Waivers of 964 Regulations

Until the work of this group is completed under this HUD administrative reform process, HUD should refrain from any further waivers of the 964 regulations (for example, under the March 1st notice concerning regulatory waivers under the transition to asset management.)

Maintaining and strengthening full and genuine resident involvement, bolstered by the features of Section 964 and other regulations governing resident organizing and participation, is critical to ensuring that the interests of current and future low income residents of public housing are balanced against those of the PHA and other parties.

The Basics in Section 964

There are a number of provisions currently in Section 964 which express an overall value about resident involvement and which provide minimum thresholds regarding resident involvement. Those provisions warrant highlighting here.

Overall Policy

- **Section 964.11 HUD Policy On Tenant Participation.** HUD promotes resident participation and active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests....the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA.

The emphasis here is on the comprehensive nature of resident involvement: it pertains to "all aspects" of a PHA's overall mission and operation – including thinking, planning, and carrying out any and all aspects of any demolition, disposition, or HOPE VI activities.

- **Section 964.14 HUD Policy On Partnerships.** HUD promotes partnerships between residents and HAs which is an essential component to building, strengthening, and improving public housing.

The emphasis here is the "essential" nature of a partnership with residents in order to strengthen public housing.

Specific Roles

- **Section 964.18(a)(4)** A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.
- **Section 964.18(a)(8)** The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident committees to work on issues and planning.
- **Section 964.18(a)(9)** The resident council shall hold frequent meetings with the residents to ensure that residents have input and are aware and actively involved in HA management-resident council decisions and activities.

(Recommendations specific to strengthening of 964 will be sent as an addendum on September 24, 2007.)

Resident Participation under Asset Management

A key components of overall asset management includes decision-making on topics such as review of physical stock, the long-term viability of properties, property repositioning and replacement strategies [24 CFR 990.270] – all of directly relates to demolition, disposition, or HOPE VI demolition/redevelopment.

In the spirit of Section 964.11 and 964.14, PHA policies should ensure that residents have a genuine role in such asset management. This requires open communication and frequent meetings and active encouragement of residents (not passive, grudging “opportunities”) to work on planning and issues. As subsection (a)(9) implies, not just formal resident organizations but all residents must be fully informed and engaged in decision-making.

Under asset management, decisions are to be made “in the best interests of the project.” Sometimes the best interests of the project may be different than the best interest of the residents who reside in that project. For example, the best interest of the property may be to increase the rents – while this would clearly not be in the best interest of the residents. In order to balance the interest of the bricks and mortar with that of the residents, it is essential that residents are having a key role in the implementation of asset management. Resident organizing and participation must be strengthened under asset management as opposed to weakened.

Recommendations:

- 24 CFR 5.110 and 24 CFR 990.255(b) shall not be applicable to 24 CFR 964 or any other regulation governing resident organizing and/or participation.
- Residents shall be meaningfully involved in the creation of all regulations and Guidance related to the implementation of asset management.
- Residents shall be meaningfully involved in developing the policies and procedures under which Asset Management Projects (AMPs) will operate.
- Public housing agencies subject to the asset management requirements, shall at all relevant times explain the requirements under asset management and consider and respond to the concerns of residents regarding the requirements.
- At least once a year, the public housing agency shall conduct a public hearing regarding current and future issues presented by the asset management requirements.
- Public housing agencies that contract for management services shall provide a priority in contracting to the following businesses in the order listed.
 1. Public housing resident management corporations, as defined 1437r.
 2. Business concerns owned by residents of housing developments owned or operated by the PHA.
 3. Business concerns that provide economic opportunities for residents of the affected housing developments.
 4. Business concerns that provide economic opportunities for residents of other housing developments owned or operated by the PHA.
 5. Business concerns that provide economic opportunities for very low and extremely low income persons, including Housing Choice Voucher participants, residing in the area of the development or the jurisdiction of the PHA.

Resident Participation under Demolition & Disposition

The Demolition/Disposition statute [42 USC 1437p] and regulations [24 CFR 970] contain a number of provisions that interrelate to Section 964 resident involvement values. Without a strong set of resident involvement features in Section 964, the requirements of the Demo/Dispo law and regulations would be more difficult to adhere to and the goals and protections in them could be jeopardized.

Approval of Demolition or Disposition

Resident Consultation

- **Section 1437p(b)(2)** of the Demolition/Disposition statute limits approval of demolition or disposition of public housing to applications which have been developed in consultation with residents and with resident councils and RABs.
- **Section 970.9(b)** of the regs sets out specific requirements about resident participation and requires consultation with all affected residents, resident organizations, PHA-wide resident organizations, and the RAB. Any comments received must be attached.
- **Section 970.7(a)(7)** of the regs requires a description of resident consultation.
- **Section 970.29(b)** of the regs echoes the fact that an application can be disapproved if residents and resident councils were not consulted..

Consistent Information

- **Section 1437p(b)(1)** of the statute allows disapproval of an application which has information that is “clearly inconsistent” with available information.
- **970.29(b)** of the regulations echoes this inconsistent information disapproval provision.

Clearly, without the features of Section 964 cited above, the “consultation” will be weak and less meaningful, and residents would not have adequate opportunities to challenge any inconsistent information.

Additional Features

- **Section 1437p(a)(2)(A) of the statute and Section 979.17(a) and (b) of the regs** call for a PHA to certify that:
 - disposition of public housing is “in the best interests” of residents;
 - conditions in the surrounding area have a negative impact on the health and safety of residents; and,
 - disposition will result in other properties becoming available for low income public housing.

Unless Section 964 exists and provides for full and genuine resident involvement, there will not be meaningful opportunities for residents to express:

- What is truly in their best interests;
- What the real impacts of the surrounding neighborhood are on residents; or,
- Whether the disposition will provide newly acquired or rehabbed properties that actually can serve the pre-disposition residents (as opposed to higher income “low income” residents).

Unless Section 964 exists and provides for complete and meaningful resident involvement, residents will not be guaranteed a chance to have their say about other provisions of the law and regulations such as:

- **Section 1437p(a)(1)(A) statute, Section 970.15 regs:** The certification that public housing proposed to be demolished is in fact “obsolete” and that there is no reasonable program of cost-effective modifications.
- **Section 1437p(a)(3) statute, Section 970.29(a)(1) and Section 979.17(c) regs:** The certification that the proposed demolition or disposition is specifically authorized in the PHA Plan and consistent with it.
- **Section 1437p(a)(4),** The certification that residents have gotten the appropriate notification, been offered comparable replacement housing, received relocation compensation, received counseling, and that demolition hasn’t started until all residents have been relocated.
- **Section 1437p(a)(5),** The certification that the money gained from the disposition of public housing will be used to provide public housing for pre-disposition residents (instead of people with much higher incomes).
- **Section 1437p(c),** Offering public housing for sale to a resident organization.

Resident Participation under HOPE VI

There are no regulations for HOPE VI. The various NOFAs announcing funding for HOPE VI competitions over the years created different criteria which act like regs. The statute creating HOPE VI is at 42 USC 1437v.

Purpose of HOPE VI

Section 1437v, Subsection (a)(1) The first **purpose** of HOPE VI listed in the statute is “**improving the living environment for public housing residents.**”

Criteria for Awarding HOPE VI

Primary Criteria

Section 1437v, Subsection (e)(2) sets out the criteria for selecting a HOPE VI application for funding. Key criteria include:

(D) The extent of resident involvement in the development and ongoing implementation of a HOPE VI revitalization program. HUD cannot award HOPE VI money to a PHA unless public housing residents have been involved at the beginning and during the planning process before the HOPE VI application was submitted to HUD.

(I) The extent current residents who want to return to the new HOPE VI units will be able to do so.

(K) The extent the HOPE VI will give existing residents priority for occupying the new HOPE VI units.

(J) The extent to which HOPE VI keeps the same number of public housing units or creates more public housing units.

Without strong resident provisions in Section 964 it will be difficult to comply with (D), and as has been proven at far to many HOPE VI projects in the past, residents will not be able to return, will not have priority for returning, and there will be far fewer public housing units than existed before the HOPE VI money was awarded.

Other Criteria

Section 1437v, Subsection (e)(2)(A) The HOPE VI must be consistent with the PHA Plan and must enhance economic opportunities for residents.

Section 1437v, Subsection (b) describes eligible uses of HOPE VI funds. In general it is to be used to revitalize “severely distressed” public housing.

Subsection (j)(2) This subsection defines “severely distressed”.

Without strong resident participation provided through Part 964, residents are not able to challenge definitions of severely distressed, judge whether a project could provide meaningful economic opportunities, or whether a HOPE VI is consistent with the PHA Plan.

The Focus Group’s Recommendations Relating to Demolition, Disposition, and HOPE VI

Observations:

- The housing authority may not be able to locate residents that have been relocated, so those residents are losing their right to return to the revitalized development. Displaced residents do not always know how to access satellite offices.
- Section 8 database (which should have a record of all residents who are using vouchers) does not always seem to be linked with the housing authority.
- Residents may not meet the site-specific criteria, and are therefore unable to return to the development.
- Some residents lose their voucher because they are not used to living in the community (eg, paying utilities, etc.).
- Families are not always able to find suitable housing with a voucher, and sometimes lose the voucher because it takes so long to find a unit.
- Returning families may earn an income that is above the income guidelines for a tax credit unit.

Recommendations:

- Residents must be central to decisions about whether or not a property is considered severely distressed and/or eligible for redevelopment or demolition.
- Residents’ comments must be binding and required at all phases of redevelopment.

- Housing authorities should work with residents that are being displaced before they are actually displaced and throughout the entire displacement process. Housing authorities should either provide services themselves, or work with service providers, to provide services to residents throughout the entire displacement process.
- Residents should know the site-specific requirements to return before they are displaced so they know what to work towards as the development is being revitalized.
- In order for the resident organization to be able to provide services and track residents throughout the displacement, they should be provided with the off-site addresses of all displaced residents.
- There should be a priority for all previous residents to return to the development.
- Housing authority should demonstrate that they have made their best effort to track all of the residents and have provided follow-up services. Tracking systems of all resident programs should be revisited to determine what works and what the areas for improvement are. Resident organizations should be involved in this process.

Resident Participation in the PHA Plan

The PHA Plan statute and regulations stress the role of the RAB; consequently, there is insufficient attention given to direction regarding full and genuine involvement by residents and resident organizations in the PHA Plan process.

Resident participation in the PHA Plan process must be improved by requiring that resident councils, particularly PHA-wide resident councils, as well as other resident organizations (including organizations of HCV residents) be fully and genuinely involved in developing the PHA Plan and any significant amendments.

Reasonable resources must be provided to resident organizations (including organizations of HCV residents), resident councils, and any PHA-wide resident council to assure their informed involvement.

PHA staff (or other technical assistance providers such as legal services personnel or other advocates) must provide reasonable means for resident organizations (including organizations of HCV residents), resident councils, and PHA-wide resident councils to become informed about the various programs covered by the PHA Plan.

The PHA must encourage meetings of resident organizations (including organizations of HCV residents) and resident councils (including any PHA-wide resident council) so that residents can communicate with them about needs and priorities relating to the programs covered by the PHA Plan.

The PHA must consider the recommendations not only of the RAB, but also of resident organizations (including organizations of HCV residents) and resident councils (including any PHA-wide resident council) in preparing a proposed PHA Plan or significant amendment or a final PHA Plan or significant amendment.

The comments of resident organizations (including organizations of HCV residents) and resident councils (including any PHA-wide resident council) should be attached to the final PHA Plan, along with the PHA's description of the manner in which the PHA addressed them.

For the required public hearings, the PHA should invite and encourage the participation by residents (both public housing and HCV), resident organizations (including organizations of HCV residents), and resident councils (including any PHA-wide resident council).

The proposed PHA Plan, required attachments, and documents related to the plans should be available for inspection by residents at locations in addition to the PHA's principal office so that it is relatively easy and less expensive for residents to read, study, and assess. For example, complete proposed PHA Plans could be at resident council offices, community centers, project offices, neighborhood libraries. Access to the proposed PHA Plan must also be made available at several places during non-business hours to accommodate residents who work during normal business hours.

The public hearing(s) for proposed PHA Plans or any significant amendments should be at times and places conducive to maximum participation by residents.

Given the transition to asset management, public hearings should be conducted not only at the principal offices of the PHA, but at AMPs or groups of AMPs.

Notice of the availability of a proposed PHA Plan and any significant amendment must be provided in easy to understand language should go to all residents (both public housing and HCV), resident organizations (including organizations of HCV residents), and resident councils (including any PHA-wide resident council).

Free copies of the non-streamlined PHA Plan template should be provided to any residents (both public housing and HCV), resident organizations, and resident councils (including any PHA-wide resident council) requesting a copy. Free copies of any required attachments should also be provided upon request.

The PHA should conduct active, affirmative outreach to residents (both public housing and HCV), resident organizations, and resident councils (including any PHA-wide resident council) encouraging their participation at hearings.

The PHA Plan template, as utilized up through FY07, should not be streamlined in order to maintain a minimal outline of the basic requirements of the full PHA Plan so that residents have an indication of all 19 required elements and the potential nature and content of those elements.

Given the transition to asset management, the PHA Plan template should require an inventory of each public housing development by name, address, and the number of public housing units (both occupied and vacant at the time of Plan submission), as well as the number of vouchers (both available and leased up). This information should be provided for each of the three preceding years in order to show trends.

Below is the addendum to the recommendations submitted by the Resident Involvement Focus Group of the Public Housing Administrative Reform Initiative, sub 9/15/07.

**RECOMMENDATIONS:
RE CHANGES IN THE 964 REGULATIONS**

September 24th, 2007

Preamble:

These recommendations are made in the spirit of the original 964 regulations: “The purpose...is to recognize the importance of resident involvement in creating a positive living environment and in actively participating in the overall mission of public housing.” (964.1)

Democratic participation is an important value in our society. In public housing, effective resident participation is also productive: It produces better housing conditions, lower costs, better management, and a healthier, more vital community. These housing benefits outweigh the immediate costs attached to resident participation.

The importance of the 964 regulations was statutorily underlined in the 1998 QHWRA Act. The Act assured retention of the regulations, even as it put forward the principles of asset management.

Revised regulations should preserve and strengthen resident rights now provided under the 964 regulations, enabling residents to organize and effectively participate at both the development level and the jurisdiction-wide level.

This preamble underlies all of the recommendations made below.

1. Purpose of the New Regulations.

Retain 964.1.

Why: See preamble.

2. Applicability and Scope. Definitions.

Retain 964.3 and 964.7 with the following exceptions:

Update and revise 964.3 (c)(1), relevant parts of 964.7 definitions, 964.12, and Subpart C to reflect the shift from the TOP program to the ROSS programs.

Revise or eliminate 964.3 (d), relevant parts of 964.7 definitions, 964.24, and Subpart D to reflect the current status of Family Investment Center (FIC) programs.

Expand 964.3 and 964.7 to include public housing residents in mixed-finance developments. Other changes concerning resident participation in these developments are recommended in later parts of this report.

Expand the scope of the regulations to ensure that all resident councils—development and jurisdiction-wide—that are affected by PHA demolition, disposition, and redevelopment plans/implementation, be included as participants in PHA decision-making.

3. HUD Policy on Tenant Participation, Partnerships, and Resident Management.

Retain 964.11, 964.14, 964.15. Why: See preamble.

4. HUD Role in Activities Under These Regulations

Expand 964.16 to include provision for HUD enforcement of the regulations.

Why:

In disputes between HAs and resident councils, there may be no mechanism for resolving the difference fairly. HUD should have a stronger presence in enforcing the regulations and resolving the dispute. For example, HUD can facilitate a negotiated agreement, or HUD can appoint an appropriate arbitrator—agreeable to the HA and the council—whose decisions are binding, or HUD can oversee the creation of a local ombudsman mechanism.

5. Tenant Participation (Subpart B)

Retain Subpart B, subject to the following recommendations. Why: See preamble

HUD should not offer or approve waivers of 964 regulations, or of regulations succeeding them, for any purpose including the transition to asset management procedures. (The HUD March 1, 1007 Notice on *Regulatory Waivers for Public Housing Programs to Assist with Transition to Asset Management*, offered to waive 964 regulations, particularly the role of jurisdiction-wide resident councils and the PHA role in overseeing resident participation.)

Why:

Even under asset management principles, resident councils at both the development and jurisdiction-wide levels play a critical role. Also see preamble.

Note on the importance of jurisdiction-wide resident councils:

The March 1st HUD notice offering to waive jurisdiction-wide councils overlooks their uniquely important role. While resident councils at the development level must address conditions, management, and practices that specifically affect their communities, jurisdiction-wide level resident councils must address PHA policies and practices that affect all developments (regardless of asset management procedures.) These policies include: rent-setting, tenant selection and admission procedures, grievance procedures, budget allocations including tenant participation funds, programs for resident employment, training, and services.

The Resident Advisory Board (RAB) is not a suitable replacement for a jurisdiction-wide council. Under the 1998 QHWRA Act, the RAB is mandated only to participate in the preparation of the PHA Annual Plan. It has no continuity from year to year. It is not necessarily elected by residents; it can be appointed by the PHA from year to year. Resident representation should be elected, not appointed. In contrast, the jurisdiction-wide council is an elected body representing all residents. It has greater continuity over time to build up experience and expertise on jurisdiction-wide policy issues and decisions facing the HA. It has greater accountability to the entire resident constituency in the PHA's scope.

The new regulations should permit appropriate intermediary organizations at the local level to take on the role now played by PHAs in overseeing and guiding resident participation.

Why:

The HUD March 1st notice seeks to relieve PHAs of their role in resident participation. If PHAs prefer not to play that role, it should be passed on to a trusted intermediary organization, jointly agreed upon by the PHA and the resident councils. The intermediary should be sufficiently funded, directly through HUD tenant participation funds, to enable it to promote effective resident organization and participation at both the development and jurisdiction-wide levels.

Revise 964.150 to reflect current HUD funding of tenant participation at a rate of \$25 per occupied unit per year.

Why:

The negotiated rule-making process mandated by the 1998 QHWRA ruled that tenant participation funding of \$25 per occupied unit be allocated to each PHA, as an add-on expense, for direct allocation to resident councils.

Revise 964.150 to enable PHAs and resident councils, which have not been able to reach agreement on the local allocation of HUD resident participation funds, to agree to an appropriate intermediary organization to oversee the process for allocating and using these funds for their intended purposes.

Why:

In some localities, PHAs and resident councils have not been able to reach agreement on the allocation and use of HUD resident participation funds. As a result, the funds are underutilized or expended for other purposes. HUD's intent is that the funds support and strengthen resident participation—an intermediary organization may be more effective at carrying out that intent.

6. Resident Board Members (Subpart E)

Retain Subpart E.

Why: See preamble.