

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 990

[Docket No. FR-4425-N-01]

#### Operating Fund Rule; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of intent to establish a negotiated Rulemaking Advisory Committee and notice of first meeting.

**SUMMARY:** The Department of Housing and Urban Development (HUD) is establishing a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act. The establishment of the committee is required by the Quality Housing and Work Opportunity Act of 1998, which requires issuance of regulations under the Negotiated Rulemaking Act of 1990. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The Committee will consist of representatives with a definable stake in the outcome of a proposed rule. In accordance with section 564 of the Negotiated Rulemaking Act of 1990, this notice: (1) Advises the public of the establishment of the committee; (2) provides the public with information regarding the committee; (3) solicits public comment on the proposed membership of the committee; and (4) explains how persons may be nominated for membership on the committee.

**DATES:** Comment due date: March 5, 1999. HUD's tentative plan is to hold the first meeting of the Committee on March 23–March 25, 1999.

**ADDRESSES:** HUD plans to hold the first meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

Interested persons are invited to submit comments regarding the Committee and its proposed members to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410-0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. The docket will be available for public

inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the PFS can be found at 24 CFR 990. Generally, the amount of subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. PHAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy can represent a substantial amount of revenue to a PHA. For example, in 1998, HUD distributed over \$2.9 billion in operating subsidies to PHAs.

On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). QHWRA makes sweeping changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The assistance to be made available from that fund is to be determined using a formula developed through negotiated rule-making procedures. The general effective date of the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999. Section 519(n)(f) of QHWRA, however, permits HUD to extend the effective date for up to six months beyond the general effective date.

##### II. Regulatory Negotiation

Negotiated rulemaking, or "neg-reg," is a relatively new process for HUD. The basic concept of neg-reg is to have the

agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

In anticipation of possible Congressional action, HUD entered into an interagency agreement in June 1998 with the Federal Mediation and Conciliation Service (FMCS) for convening and facilitation services associated with a negotiated rulemaking regarding a possible operating fund proposed rule. FMCS submitted its Convening Report in November 1998. The report concluded that it was feasible to assemble the committee, and provided a list of individual PHAs and organizations, representing a wide range of interests, that are willing and able to work within a consensus framework on a new Operating Fund formula. A copy of the Convening Report is available for review by contacting the Regulations Division, Office of General Counsel, at the phone number listed in the **ADDRESSES** section of this notice.

##### III. Committee Membership

The FMCS conveners consulted and interviewed over 40 officials of various organizations that would be affected by the operating fund rule. The goal was to develop a committee whose membership reflects a balanced representation of interested organizations and individuals. Three national PHA associations—the Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Renewal Officials (NAHRO), and the Public Housing Authority Directors Association (PHADA) worked together to suggest executive directors of PHAs for committee membership that would reflect the diversity of PHAs in terms of size, location, and special circumstances. The national associations also indicated a willingness to serve on the committee.

After reviewing the recommendations of the FMCS conveners, HUD has tentatively identified the following list of possible interests and parties. This list should be considered tentative, and the final list of participants may not include all of these parties. HUD will decide on the final list of participants, based upon comments on this Notice, as well as its own efforts to identify other entities having an interest in the outcome of this rulemaking.

- Housing Agencies
  1. Oakland Housing Authority, Oakland, CA
  2. Indianapolis Housing Authority, Indianapolis, IN
  3. Pittsburgh Housing Authority, Pittsburgh, PA
  4. New York City Housing Authority, NYC, NY
  5. Reno Housing Authority, Reno, NV
  6. Littleton Housing Authority, Littleton, CO
  7. Akron Metro Housing Authority, Akron, OH
  8. Chicago Housing Authority, Chicago, IL
  9. Atlanta Housing Authority, Atlanta, GA
  10. Athens Housing Authority, Athens, GA
  11. Puerto Rico Public Housing Authority, San Juan, PR
  12. Seattle Housing Authority, Seattle, WA
  13. Wilmington Housing Authority, Wilmington, DE
  14. York Housing Authority, York, NE
- Tenant Organizations
  1. Massachusetts Union of Public Housing Tenants, Needham, MA
  2. New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ
- Public Interest Groups
  1. National Low Income Housing Coalition, Washington, DC
  2. Housing and Development Law Institute, Washington, DC
  3. Center for Community Change, Washington, DC
- National PHA Associations
  1. Public Housing Authority Directors Association (PHADA)
  2. National Association of Housing and Renewal Officials (NAHRO)
  3. Council of Large Public Housing Authorities (CLPHA)
- Federal Government
  1. U.S. Department of Housing and Urban Development

We invite you to give us comments and suggestions on this tentative list of committee members. We do not believe that each potentially affected organization or individual must necessarily have its own representative.

However, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Accordingly, the composition of the final list will likely be different from this tentative list. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

#### IV. Neighborhood and Community Based Groups

In particular, HUD welcomes and solicits expressions of interest or nominations from any groups or individuals that operate on behalf of the communities and neighborhoods served by public housing, and organizations that represent local officials.

#### V. Requests for Representation

If you are interested in serving as a member of the committee or in nominating another person to serve as a member of the committee, you must submit a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice. Your nomination for membership on the committee must include:

- (1) The name of your nominee and a description of the interests the nominee would represent;
- (2) Evidence that your nominee is authorized to represent parties with the interests the nominee would represent;
- (3) A written commitment that the nominee will actively participate in good faith in the development of the rule; and
- (4) The reasons that the parties listed in this notice do not adequately represent your interests.

HUD will determine, in consultation with the FMCS conveners, whether a proposed member should be included in the makeup of the committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule and whether the interest of the proposed member could be represented adequately by other members.

#### VI. Substantive Issues for Negotiation

The subject and scope of the proposed rule to be considered is the

development of an operating fund for the purpose of making assistance available to PHAs for the operation and management of public housing in accordance with the criteria outlined in section 519 of QHWRA.

#### VII. Final Notice Regarding Committee Establishment

After reviewing any comments on this Notice and any requests for representation, HUD will issue a final notice. That notice will announce the final composition of the Negotiated Rulemaking Advisory Committee and the firm date, time, and place of the initial meeting.

#### VIII. Tentative Schedule

At this time, HUD's tentative plan is to hold the first meeting of the committee on March 23–March 25, 1999. On March 23, 1999, the meeting is expected to start at 10:00 a.m. and run until completion; on March 24, 1999, the meeting is expected to start at 9:00 a.m. and run until completion; and on March 25, 1999, the meeting will start at 9:00 a.m. and run until approximately 3:00 p.m. We plan to hold the meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024. The purpose of the meeting will be to orient members to the neg-reg process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. This meeting will be open to the public. In the event that the date and times of these meetings are changed, HUD will advise the public through **Federal Register** notice.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

Dated: January 19, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

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