

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 990

[Docket No. FR-4874-N-02]

#### Operating Fund Program; 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 (Committee) under the Federal Advisory Committee Act. The purpose of the Committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study" (Harvard Cost Study). In accordance with the Negotiated Rulemaking Act of 1990, this document: Advises the public of the establishment of the Committee; provides the public with information regarding the Committee; solicits public comment on the proposed membership of the Committee; and explains how persons may be nominated for membership on the Committee.

**DATES:** *Comment Due Date:* February 27, 2004.

**ADDRESSES:** 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, 451 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 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Kubacki, Director, Funding and Financial Management Division, Public and Indian Housing—Real Estate Assessment Center, Suite 800, Department of Housing and Urban Development, 1280 Maryland Ave, SW., Washington, DC 20024-2135; telephone

(202) 708-4932 (this telephone numbers is not toll-free). Individuals with speech or hearing impairments may access this number through 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 Operating Fund Formula to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the Operating Fund Formula can be found at 24 CFR part 990. Generally, the amount of subsidy received by a PHA is the difference between an "allowable expense level" and projected rental income, with the Operating Fund Formula regulations detailing how these projections will be made. "Allowable expense level" is defined in 24 CFR part 990 and does not necessarily reflect the actual cost of operating public housing properties. PHAs calculate their Operating Fund Formula eligibility annually and submit a request for funding as part of their budget process. The amount of subsidy can vary from one year to the next as a result of the annual appropriations process and accounts for approximately 57 percent of a PHA's total operating revenue, the balance coming from rents and other sources, e.g., fees. For fiscal year 2003, HUD distributed over \$3.34 billion in operating subsidies to PHAs.

On October 21, 1998, Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). Section 519 of QHWRA established an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing and required the amount of assistance made available to a PHA to be determined using a formula developed through negotiated rule-making procedures. Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and resulted in a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

During the negotiated rulemaking for the Operating Fund Formula, Congress in the Conference Report (H.Rept. 106-379, October 13, 1999) accompanying HUD's Fiscal Year (FY) 2000 Appropriation Act (Pub. L. 106-74, approved October 20, 1999) directed HUD to contract with the Harvard

University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. A Final Report, the Harvard Cost Study, was issued by Harvard GSD on June 6, 2003.

HUD is publishing this notice to announce it intends to establish a negotiated rulemaking committee that will provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard Cost Study.

##### II. Regulatory Negotiation

The basic concept of negotiated rulemaking 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. The Committee's role will be advisory and the Committee's goal will be to provide "consensus" recommendations to HUD. "Consensus" will be defined in the initial meeting of the Committee. The Committee will consist of representatives of the various interests that are potentially affected by the rulemaking. Members may include public housing agencies, tenant organizations, elected officials, community based organizations, national organizations representing the interests of these entities, other interested parties, and HUD. Members will serve at HUD's discretion.

##### III. Committee Membership

HUD has tentatively identified the following list of possible interests and parties. 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. The Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570) provides, at 5 U.S.C. 565(b), that the membership of a negotiated rulemaking committee should generally be limited to 25 members. In this instance, the Committee's proposed membership is greater than 25 members, since HUD has determined that a greater number of members may be required to adequately represent the interests affected by changes to the Public Housing Operating Fund Program.

##### *Housing Agencies*

1. Atlanta Housing Authority, Atlanta, GA

2. New York City Housing Authority, NYC, NY
3. Puerto Rico Housing Authority, San Juan, PR
4. Chicago Housing Authority, Chicago, IL
5. Dallas Housing Authority, Dallas, TX
6. Anne Arundel Housing Authority, Anne Arundel, MD
7. Indianapolis Housing Authority, Indianapolis, IN
8. Albany Housing Authority, Albany, NY
9. Jackson Housing Authority, Jackson, MS
10. Boise City/Ada County Housing Authority, Boise City, ID
11. Reno Housing Authority, Reno, NV
12. Alameda Housing Authority, Alameda, CA
13. Athens Housing Authority, Athens, GA
14. Housing Authority of East Baton Rouge, Baton Rouge, LA
15. Housing Authority of the City of Montgomery, Montgomery, AL

#### *Tenant Organizations*

1. Jack Cooper, Massachusetts Union of Public Housing Tenants, Needham, MA

#### *Other Interests/Policy Groups*

1. Ned Epstein, Housing Partners, Inc.
2. Howard Husock, Director of Kenney School Case Program
3. Greg Byrne, Project Director for Harvard Cost Study
4. Dan Anderson, Bank of America
5. David Land, Lindsey and Company
6. Council of Large Public Housing Agencies
7. National Association of Housing and Redevelopment Officials
8. Public Housing Authorities Directors Association
9. National Organization of African Americans in Housing

#### *Federal Government*

1. Assistant Secretary Michael Liu, U.S. Department of Housing and Urban Development
2. Deputy Assistant Secretary William Russell, 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 may 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 sessions and communicate informally with members of the Committee.

#### **IV. 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 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.

#### **V. Final Notice Regarding Committee Establishment**

After reviewing any comments on this notice and any requests for representation, HUD will publish a notice in the **Federal Register** that will announce the final composition of the Committee and the firm date, time, and place of the initial meeting.

#### **VI. Tentative Schedule**

At this time, HUD's tentative plan is to hold the first meeting of the Committee on March 23–March 25, 2004. All meetings are expected to start at 8:30 a.m. and run until approximately 5 p.m. unless the Committee agrees otherwise. HUD plans to hold the meetings at the Real Estate Assessment Center, 1280 Maryland Ave, SW., Suite 800, Washington, DC 20024. The purpose of the first meeting will be to orient members to the negotiated rulemaking 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**.

#### **VII. Administrative Support**

HUD will take steps to ensure that the Committee has the dedicated resources it requires to conduct its work in a timely fashion, consistent with the requirements of the Negotiated Rulemaking Act of 1990.

Dated: January 14, 2004.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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