DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–5105–P–01]

RIN 2577–AC72

Public Housing Operating Fund Program; Revised Transition Funding Provision for Federal Fiscal Year 2007

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify HUD's regulations for transition funding under the Operating Fund Program. The Operating Fund Program, as revised by a September 19, 2005, final rule, adopted a new formula for determining the payment of operating subsidy to public housing agencies (PHAs). Transition funding is based on the difference in subsidy levels between the new formula and the formula in effect prior to the implementation of the September 19, 2005, final rule. As a result of the new formula PHAs may experience either an increase or decrease in the amount of funding that they receive. This proposed rule would revise the transition-funding schedule for those PHAs that will experience a decline in funding. For federal fiscal year (FFY) 2007 only, the transition funding percentage loss for all PHAs will be capped at five percent of the difference between the two funding levels.

DATES: Comment Due Date: December 26, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276 Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Deputy Assistant Secretary, Departmental Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2000; Washington, DC 20410; telephone (202) 475–7949 (this is not a toll-free number). Individuals with speech or hearing challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2005, (70 FR 54984), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, to provide a new formula for distributing operating subsidy to public housing agencies (PHAs) and to establish requirements for PHAs to convert to asset management. More detailed information about this rule can be found in the preamble to the September 19, 2005, final rule. Additionally, on October 24, 2005 (70 FR 61366), HUD published a technical correction (Correction Notice) correcting the September 19, 2005, final rule to provide that the revised allocation formula is to be implemented for calendar year 2007, and adjusting the related dates specified in the rule to reflect the corrected implementation date.

II. This Proposed Rule

In accordance with both the September 19, 2005, final rule and the Correction Notice, the new Operating Fund formula for determining public housing operating subsidies goes into effect in calendar year 2007. As a result of the new formula PHAs may experience either an increase or decrease in the amount of funding that they receive. HUD has posted tables on its Web site providing information on the fiscal impact of this change for PHAs under the new Operating Fund formula. The tables may be accessed at *http://www.hud.gov*.

For PHAs experiencing a decline in operating subsidy as a result of the new formula, the September 19, 2005, final rule limits that reduction. Under the current regulations a PHA subject to a decline would have their subsidy reduced by 24 percent of the difference between the old and new funding levels in the first year following implementation. In each of the following three years the subsidy will be reduced by 43, 62, and 81 percent of the difference, respectively. In the last year of the implementation phase-in PHAs will be subject to the full decrease. The phase-in of the reduction in subsidy is designed to lessen the impact of the decline in funding, assisting PHAs with the conversion to asset management while continuing PHAs' ability to perform necessary functions and provide services. A PHA subject to a decline in operating subsidy may stop its losses by successfully demonstrating a conversion to asset management, commonly referred to as ''stop loss.'' PHAs that will experience a gain under the new formula would receive 50 percent of their gain in FY 2007 and the full amount of the gain in FY 2008.

Because of increased utility costs in public housing, which have resulted in reduced funding levels relative to total eligibility, HUD is proposing, for federal fiscal year (FFY) 2007, to implement a five percent difference phase-in for PHAs with declining funding. The September 19, 2005, final rule, was the product of negotiated rulemaking. The negotiated rulemaking committee discussed the phase-in of reductions at length and agreed upon the schedule established in the September 19, 2005, final rule. Implementation of a difference of 24 percent at this time, given current utility costs, would in effect result in subsidy losses greater than the agreed upon 24 percent. This proposed rule, by limiting the loss to five percent of the difference between

the two formulas, more closely reflects the impact of the transition funding that was agreed upon by the negotiated rulemaking committee. Assuming no change in appropriations, HUD estimates that PHAs experiencing a subsidy increase under the new formula will have their subsidy reduced by approximately 0.7 percent as a result of the extended transition schedule established by the proposed rule. While these PHAs have also experienced an increase in utility costs, the overall effect of this proposed rule is to more closely match the agreements reached during the negotiated rulemaking process.

HUD will soon be publishing a separate proposed rule to modify the transition phase-in schedule for the years following FFY 2007 to reflect the one-time five percent cap that would be established by this proposed rule, and to afford PHAs, public housing residents, and other interested members of the public with the opportunity to provide additional input on the schedule for transition funding.

III. Justification for Reduced Comment Period

For proposed rules issued for public comment, it is HUD's policy to afford the public ''not less than sixty days for submission of comments'' (24 CFR 10.1). In cases in which HUD determines that a shorter public comment period may be appropriate, it is also HUD's policy to provide an explanation of why the public comment period has been abbreviated. For the following reasons, HUD believes that a reduced 30-day comment period is justified for this proposed rulemaking.

This proposed rule is designed to benefit PHAs experiencing a decline in operating subsidy for FFY 2007. One of the goals in implementing the new Operating Fund program was to produce more efficient and focused management of PHAs and their individual projects. Management of this kind requires adequate time to plan and allocate resources. PHAs experiencing a decline in operating subsidy will have to compensate for their loss in subsidy.

A reduced comment period for this rule is justified because, to fully realize the benefits of this proposed change, PHAs must be able to rely on the one time five percent cap in formulating their FFY 2007 budget and operations. Until this proposed rule is finalized and takes effect, PHAs (whether experiencing an increase or decrease in operating subsidy) have a fiduciary responsibility to budget and plan based on the transition-funding schedule codified in the current part 990 regulations. This situation may require PHAs preparing budgets based on estimated operating subsidies reduced by 24 percent of the difference between the old and new formulas, to effect personnel changes, cancel or modify contracts, or take other necessary actions to conform their budgets to the codified transition funding schedule. To achieve the management objectives outlined in the September 19, 2005, final rule, PHAs should plan according to the actual subsidy that they are to receive. The reduced comment period will facilitate the issuance of a final rule that may take effect prior to or concurrent with PHA budget planning activities.

Additionally, the shortened comment period is justified because the proposed regulatory change will relieve a budgetary constraint and does not impose additional regulatory requirements on PHAs. HUD believes that this proposed rule reflects the intent of the negotiated rulemaking committee to implement a reasonable transition funding schedule. The modification that would be made by this proposed rule benefits PHAs by accounting for the increased cost of utilities in the subsidy reduction that PHAs will face.

Although HUD has determined that good cause exists to issue this proposed rule with a reduced public comment period, HUD recognizes the value of public comment in the rulemaking process, and is therefore seeking public comments for a period of 30 days. To ensure, however, receipt of the benefit of views from industry and other interested members of the public on this subject, HUD will consider comments that are received after the 30-day requested comment deadline up until issuance of the final rule. Although HUD ask commenters to strive to submit comments within 30-days of publication, HUD also seeks to ensure no important issues are overlooked as a result of the abbreviated public comment period.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Environmental Impact

This proposed rule provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

Further, this proposed rule modifies the transition funding percentage for FFY 2007 for PHAs experiencing a decline in funding between the old and new funding formulas, easing the transition for PHAs of all sizes.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that

will meet HUD's objectives as described in the preamble to this rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number is 14.850.

List of Subjects in 24 CFR Part 990

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 990 to read as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

1. The authority citation for 24 CFR part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

2. Revise § 990.230(a)(1) to read as set forth below and in § 990.230(e), revise the third column in the second row of the chart to read ''5 percent of the difference.''

§ 990.230 PHAs that will experience a subsidy reduction.

(a) * * *

(1) 5 percent of the difference between the two funding levels in the first year of implementation of the formula contained in this part;

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Dated: October 20, 2006.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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