

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 990**

[Docket No. FR-5108-P-01]

RIN 2577-AC73

Public Housing Operating Fund Program; Revised Transition Funding Schedule for Fiscal Year 2008 Through Fiscal Year 2012

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. For PHAs experiencing a decline in operating subsidy as a result of the new formula, the September 19, 2005, final rule phases in the reduction over a period of years. This proposed rule would revise the schedule for those PHAs that will experience a decline in funding, by extending the transition phase-in period an additional year.

DATES: *Comment Due Date:* January 23, 2007.

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 <http://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 <http://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.

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."

Through two proposed rules, HUD would alter the transition phase-in schedule established in the September 19, 2005, final rule and Correction Notice. HUD has previously published a proposed rule to cap losses, for federal fiscal year (FFY) 2007, at 5 percent of the difference between the two funding levels. As explained in the preamble to the previous proposed rule, HUD has proposed this cap due to increased utility costs in public housing, which have resulted in reduced funding levels relative to total eligibility. This proposed rule would modify subsidy reduction schedule for the years after FFY 2007.

PHAs that will experience a gain under the new formula would receive 50 percent of their gain in FY2007 and the full amount of the gain in FY2008. 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 that developed the revised Operating Fund formula.

II. This Proposed Rule

This proposed rule would revise the schedule for those PHAs that will experience a decline in funding, by extending the transition phase-in period an additional year. The proposed regulatory change reflects HUD's proposal to cap subsidy losses at 5 percent for FFY 2007 only. The revised schedule that would be established by this proposed rule would result in a 24 percent reduction in FFY 2008, 43 percent in FFY 2009, 61 percent 2010, and 81 percent in 2011. The phase-in would conclude with the full reduction being experienced in FFY 2012. This transition phase-in schedule is intended to provide PHAs experiencing a reduction in operating subsidy with adequate time to plan and prepare their budget and management operations. All other provisions of the September 19, 2005, final rule and the Correction Notice would remain unchanged and in effect.

III. 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. In § 990.230, revise paragraphs (a), (b), and (c) and the chart in paragraph (e) to read as follows:

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

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

(2) 24 percent of the difference between the two funding levels in the second year of implementation of the formula contained in this part;

(3) 43 percent of the difference between the two levels in the third year of implementation of the formula contained in this part;

(4) 62 percent of the difference between the two levels in the fourth year of implementation of the formula contained in this part; and

(5) 81 percent of the difference between the two levels in the fifth year of implementation of the formula contained in this part.

(b) The full amount of the reduction in the operating subsidy level shall be realized in the sixth year of implementation of the formula contained in this part.

(c) For example, a PHA has a subsidy reduction from \$1 million under the formula in effect prior to

implementation of the formula contained in this part to \$900,000 under the formula contained in this part using FY 2004 data. The difference would be calculated at \$100,000 (\$1 million – \$900,000 = \$100,000). In the first year, the subsidy reduction would be limited to \$5,000 (5 percent of the difference).

Thus, the PHA will receive an operating subsidy amount of this rule plus a transition-funding amount of \$95,000 (the \$100,000 difference between the two subsidy amounts minus the \$5,000 reduction limit).

* * * * *

(e) * * *

Funding period	Demonstration date	Reduction limited to
Prior to year 1	October 1, 2006	5 percent of the difference between the two funding levels.
Year 1	October 1, 2007	5 percent of the difference.
Year 2	October 1, 2008	24 percent of the difference.
Year 3	October 1, 2009	43 percent of the difference.
Year 4	October 1, 2010	62 percent of the difference.
Year 5	October 1, 2011	81 percent of the difference.
Year 6	October 1, 2012	Full reduction reached.

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Dated: October 20, 2006.

Paula O. Blunt,
General Deputy Assistant Secretary for Public and Indian Housing.

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