HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JUNE 21-22, 1999 MEETING SUMMARY

I. INTRODUCTION

The HUD Housing Certificate Fund Negotiated Rulemaking Advisory Committee held its second meeting on June 21 and 22, 1999. The Committee was established by HUD as required by the Quality Housing and Work Responsibility Act of 1998. It is chartered as an Advisory Committee under the Federal Advisory Committee Act, and its procedures are governed by the Negotiated Rulemaking Act of 1990.

The Charter for the Committee states "The purpose of the Committee is to discuss and negotiate a rule that would change the current method of distributing funds to public housing agencies (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program. The committee will consist of persons representing stakeholder interests in the outcome of the rule."

The Committee's thirty-one members include representatives of public housing agencies (20); national associations of public housing agencies (4); public interest groups representing the interests of low-income households and Section 8 residents (4); independent public accountants who assist PHAs in meeting HUD Section 8 program budget and accounting requirements.

The Committee's work is being facilitated by the Consensus Building Institute, a neutral non-profit organization that assists stakeholders in reaching consensus on public policy issues, under a cooperative agreement with HUD. The Committee is also being assisted by Andersen Consulting, which will model and analyze data on renewal funding issues under contract with HUD.

This draft meeting summary was prepared by the Consensus Building Institute; it has not been fully reviewed or accepted by HUD or any other stakeholder. It is intended to summarize the range of views on each topic that the Committee discussed, points of agreement and disagreement, and action items. It is not intended to be a transcript of the meeting, Individuals making presentations to the Committee are identified by name. Views expressed during the Committee's discussions are summarized either without attribution, or with attribution to individuals as members of a stakeholder group.

II. INTRODUCTIONS and AGENDA REVIEW

No new members or observers were present, so the group spent a few minutes on agenda review and administrative issues. All committee members were (and are) reminded to make reservations for the next committee meeting on July 21 and 22 at the Hilton Dulles.

See Attachment 1, Attendance List.

III. ANDERSEN: COST ADJUSTMENT FACTORS PRESENTATION

Several members of the Andersen team made a detailed presentation on types of data that could affect actual cost, and their “validity” and usefulness for predicting actual costs. This included much information that the working group had received at their meeting on June 14, but also included some new analyses and was a slightly more in-depth presentation overall.

A booklet of the explanatory charts and graphs was mailed out to all contacts on the contact list (committee members, alternates, and observers), and handed out to everyone present at the meeting, to facilitate discussion of Andersen’s findings.

Briefly, the Andersen team summarized from their analyses that using either a 2-year average or a 3-year average of ACPU was a fairly good predictor for future actual costs in any PHA. Also, Andersen concluded that an analysis of the relationships between Tenant Contribution, Tenant Income, Bedroom Size, Total Poverty, Annual Adjustment Factor, Welfare, and Wages does not increase the accuracy of predicting future ACPU. They explained this is probably due to the fact that they have insufficient data from fairly low MTCS reporting from the past 3 years. HUD Staff and Andersen believe that if MTCS reporting continues at its current high rate from all Housing Authorities, using these factors to help predict ACPU could be viable in another 2 or 3 years. Gloria Cousar and Robert Dalzell confirmed that according to Bob Gray, in the HUD office of policy analysis, MTCS reporting is up substantially and will continue to get easier to report, even for large PHAs who have had trouble submitting data in the past.

One committee commented also that all the data used in the analysis was several years old, so none of the results could be considered very accurate. Another commented that since the analysis specifically excluded people with disabilities and elderly residents of S.8 housing, the results regarding tenant income and contribution would not address the most extreme cases for many PHAs. Another comment addressed that the years Andersen analyzed are very different from the coming years, since there is a transition from certificates to vouchers which will probably make costs vary considerably from any recent years.

Joe Reilly, of HUD, commented that although the average ACPU method Andersen presented was good at predicting future costs, he believes that the current system, which utilizes AAFs, is even better at predicting costs. He pointed out that the Andersen team's model had a 93% correlation, which meant that it would be expected for a PHA to vary in their predictions by as much as 7% (either overrun or underrun), and most PHAs would be very unhappy if they were underfunded by that much, and under the current system almost no PHAs have deviated that much from predicted costs.

A final comment from the committee highlighted that Andersen's model may not predict the change (delta) in ACPU, but merely if the actual ACPU is close to the predicted ACPU. PHAs need to know by how much their ACPU is going to change (up or down), not just how much the ACPU will be.

III. HYBRID SYSTEM PRESENTATION:

Ophelia Basgal and Roy Ziegler, both members of the Working Group, briefly presented the current state of a proposed "hybrid" system for allocation and how it might work better than a pure unit-based or dollar-based systems. They passed out a Draft proposal for discussion and revision by the Committee, highlighting that the goal was to discover an allocation process which meets the concerns of all PHAs without resorting to separate or unique systems of appeals for different circumstances.

A committee member commented that their proposal seemed tailored for NYC's individual circumstance, since it gave flexibility beyond the date of 10-1-97 to determine a baseline.

Gloria commented that the terminology "by approved HUD budgets subsequent to that date" was unacceptable to HUD, and would have to be revised. Deborah Hernandez pointed out that, in fact, some PHAs LOST units after the 10-1-97 date, and the draft recommendations would have to address any PHAs who had voluntarily given up units since 10-1-97, too.

Discussion about the exact wording and what each section should cover continued, and ultimately resulted in a new Draft Allocation System which was distributed to the Committee and further revised. In particular, discussion centered around the best way to account for reserve use at each PHA. Several strategies were proposed, summarized as:

1. PHAs get up to 10% of reserves as of right
2. PHAs get up to 30% of reserves as of right, 60% with notification to HUD, and up to 90% with authorization from HUD.
3. separate 50% reserve limit for "smaller" PHAs (define "smaller", e.g. 250 units or less)

See Attachment 2, Committee's Draft Allocation System.

IV. POTENTIAL CONGRESSIONAL CUTS AND BUDGET REDUCTION PROTOCOL

Gloria asked the Committee to recognize the matter of the limitations in refining the system. Although she felt that accuracy and finely tuned details are a good goal, the techniques must be practical enough that HUD can actually make them happen, implement changes, and still do all their other work. She reiterated that no PHAs or other housing programs should be harmed, and no residents displaced, but suggested that a trade-off between amount of flexibility each PHA can have and the amount of time it takes to implement changes may be necessary. Finally, she reminded the Committee that it may be necessary to consider HUD response in the event of a substantial budget cut or reduction in Congressional appropriation.

Several committee members voiced the desire to be proactive in such an event, and for HUD to have a sense of how it might implement a budget cut – e.g. pro rata distribution evenly across all PHAs, or cutting dollars to underperformers (or PHAs with unleased units) at a greater percentage than PHAs with unmet need. In response, several commented that tying in budget cuts or allocations with performance issues was too risky, and unfair. The committee decided to form a Working Group to propose some guidelines for HUD to adhere to *if* Congress cuts funding for HUD.

IV. PRESENTATION BY DAVE GIBBONS

At the beginning of Day 2, Dave Gibbons, Director of the Department's Budget Office, and interim Chief Financial Officer, gave a presentation on how money is appropriated to HUD and accounted for in his office. The Committee found his presentation extremely helpful and enlightening, and many commented that it would have been well placed much earlier in the Neg Reg, such as on the first day. Discussion also addressed the possible concession that forming a central reserve, where money is shuttled between PHAs according to need and/or performance, may not be feasible.

Summarized, Dave's presentation reminded everyone that all the budget authority for PHAs was "subject to appropriation" from Congress. He also suggested that the more closely the Committee's recommendations reflect the way his office processes the budget, the more likely they are to be implemented successfully.

Key components of his presentation include:

Two key pressures:

- CAPS – legal limitations on the total amount of spending by the government. In 1999, the cap has dropped significantly. Section 8 is 50% of HUD's annual budget. Section 8 comprises about 30% of the Congressional HUD and VA committee's appropriation. So extra money spent on S.8 will be taken from other HUD/VA programs, because the cap is set and the total amount is limited.

• Budget Enforcement Act (BEA): Has “scoring” rules, subject to “PAYGO”, which is “Pay as you Go”. If you implement a new / more expensive program, you must pay for it out of your budget, as you go, by offsetting it with other funds within your program.

OMB uses a 5-year estimate for all aspects of this regulation. They take a snapshot in time for the next 5 years of every rule. And they are required to use the inflation factors provided by OMB.

Outlays:
To project their annual outlays, HUD assumes every unit under payment will be renewed every year, at an inflated rate. If the number of units under payment goes up, the baseline is adjusted up and all those units will be renewed. But if there’s chronic underleasing, the baseline is adjusted down, and only those (reduced) number of units will be renewed in the estimated budget.

Budget Authority:
HUD wants to ask for enough money from Congress to fully fund all units under contract. If PHAs are chronically underleasing, HUD is asking for money that PHAs don’t really need to run their program. At the end of every year, HUD does a “sweep”, where they recapture unused funds from programs. So if Congress sees that a billion dollars is being recaptured every year, they will see that they’re overfunding, and won’t believe the numbers and requests that HUD presents every year. In 1998, they “swept” $1.3 billion, unspent, from Section 8 alone. That’s out of an $8 billion program, and doesn’t include reserves. HUD assumes reserves will be untouched, and lie in waiting.

The recaptured sweep amount has gone down in recent years, mostly based on using an actual cost calculation (as opposed to the previously used FMR basis). Last year was a transition year, so the $1.3 billion was a function of estimates made with different kinds of assumptions and projections.

If this committee decides on a re-allocation process, or central reserve fund (where money is transferred from one PHA directly to another), it should occur in mid-year, so Congress / HUD Budget office won’t see it at the end of the year and assume it’s a cushion fund that’s unused and adjust accordingly

Conclusion:
The recommendations and rule should contain some provision for reducing outlays, because HUD is very unlikely to continue to support all renewals. The caps, and the pressures to cut costs, are too strong.

V. CURRENT RESERVE POLICY

Mary Conway of HUD gave a brief presentation on HUD’s current reserve policy.

According to the November 1997 notice, a PHA can continue to use reserves to support additional lease-up until that unit turned over “organically” (not forcing the tenants to leave the unit or the program). When that unit turned over, unless your Annual Budget Authority (ABA) could support it, you had to abandon that unit.

EXAMPLE: A PHA has 105 units under lease, 100 by contract and 5 supported with reserve funds. Those five units turned over time. Then, the local plant closes, and the ABA won’t support even the 100 units. A PHA CANNOT use reserves to support even the 100 contracted units, but must attrit to lower than the 100 units using only its ABA.

Maintaining a 2-month reserve is a HUD policy, and is not mandated by Congress.

VI. ACPU SCENARIOS

Robert Dalzell distributed a set of 4 spreadsheets and charts which demonstrate how a fictional PHAs units under lease are affected by changes in actual cost, and if/how that PHAs reserve funds would have to be accessed.

See Attachment 3, ACPU Scenarios

The committee found the four scenarios very helpful and illustrative of the types of questions they’d been asking. Specifically several committee members suggested that interested PHAs plug their actual numbers into the spreadsheet, to get a sense of how their programs would have been affected by such a “hybrid” allocation. Robert promised to send each committee member an electronic version of the excel file he used to create the charts.

VII. RE-ALLOCATION AND WORKING GROUP FORMATION

A committee member suggested that in light of all the new information, and the growing understanding that forming a central reserve may not be possible, it may be better to consider keeping the current system (unit-based allocations and renewals) with some adjustments necessary to minimize the “rubber band” effect, such as quarterly budgets or monthly budgets.

It was agreed that the concept of re-allocation, central reserve, and performance-linked funding would be the basis for a new Working Group, to discuss if and how re-allocating money among PHAs could potentially be organized and implemented. The members of the Baseline Working Group all volunteered to remain involved in this next Re-allocation Working Group, with the addition of Joe Wheeler. Other committee members were (and still are) invited to participate in this working group, as well.

Gloria clarified that the Working Group meetings would continue to be held as Teleconference meetings, after a committee member inquired whether it would be possible to have a conference meeting.

VIII. PUBLIC COMMENT AND ADJOURN

There were no comments from the public (either Day 1 or Day 2), and the meeting adjourned with the understanding that members of the CBI team would be in contact with information on the two new working groups and possible dates/times for a telephone meeting.

Attachment 1

HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JUNE 21-22, 1999 MEETING
LIST OF ATTENDEES

COMMITTEE MEMBERS AND ALTERNATES

Robert Dalzell (Committee Secretary)
Gloria Cousar
Greg Kern
Roy Ziegler
Ophelia Basgal
Barbara Sard
Julio Barreto
Joe Wheeler
Helen Lang
Virgil Tinklenberg
Becca Vaughn
Marlene Kwitowski
Gary Coates
Linda Campbell
Nancy Lynchild
Steve Renahan
Gary Leblanc
Larry Valencic
Cheyl Wegner
Glen Redding
Paul Dettman
Betty Bjork
Patty Lane Lesniak
Bob Cohen
Booker Jones
Wanda Montgomery
John Pettis

NON-COMMITTEE MEMBERS AND OBSERVERS

Garth Rieman

HUD STAFF:
Almas Azzim
Deborah Hernandez
Mary Conway
Jerry Benoit
Joe Reilly

ANDERSEN CONSULTING TEAM:
Shawn Pride
Allie Arrien
Amanda Dougherty
Cassandra Holley

FACILITATION TEAM:
Tom Fee
Michael Lewis
Kelly Davenport

Attachment 2

HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JUNE 2-3, 1999 MEETING
COMMITTEE DRAFT ALLOCATION SYSTEM – REVISED JUNE 22,1999

Under the QWHRP enacted by Congress in 1998, PHAs should be encouraged to manage their Section 8 programs in an efficient manner that allows them to serve the maximum number of families within their budget allocation. In light of this, the Committee, having reviewed several unit- and dollar-based renewal funding systems, proposes the following refinement of the existing HUD allocation system. The following recommendations shall not be construed to mean that HUD is obligated to provide funding beyond its congressional appropriation. The proposed system has five parts.

1. Minimum number of families served

Each PHA must continue to be supported at a level sufficient to serve, at a minimum, the number of families that it was serving as of 10/1/97 based on the higher of contracted or leased certificates plus the higher of contracted or leased vouchers (after all PHAs have had an opportunity to review the numbers, request corrections, etc.) and adjust for any changes, whether increasing or decreasing, in incremental units according to ACCs issued after 10-1-97.

2. Initial Annual Allocation

A budget would be established in the first PHA fiscal year using the new renewal calculations by multiplying the baseline units (holding harmless the budget authority for unexpired multi-year contracts) by actual cost figures from the PHA's most recent approved fiscal year-end statement, and then by inflating that amount by the adjustment factor(s) to the effective date of the renewal.

3. Budget Allocations

In all years subsequent to its initial annual allocation, the PHA will have its budget allocation adjusted by the adjustment factor. If a PHA will not be able to support its 10-1-97 baseline number of families (including adjustments), the PHA's reserves may be used to meet the increased costs of its baseline program needs.

4. Budget Allocation Revisions and Reserves

The intent of this section is to establish a method for the use and replenishment of each PHA's 2-month budget reserve for the upcoming fiscal year.

If a non-troubled authority will not be able to support its 10-1-97 baseline (including adjustments), the PHA's reserves shall be used to meet the increased cost of its basline program needs.

PHAs may access their reserves by submitting a budget revision to HUD.

A PHA may automatically access up to [50%] of its total reserves if it has 250 units or less, and up to [20%] of its total reserves if it has more than 250 units. Up to their designated threshold [50% or 20%], the PHA's reserves will be replenished by HUD at the beginning of its next fiscal year.

If a PHA desires additional reserve dollars beyond the threshold amounts (20% and 50%) of its total reserves, the PHA will work with HUD Field Office staff to determine why the PHA's costs have deviated from projections and possible alternatives (such as management efficiencies) to address rising costs. In this case, HUD cannot guarantee that the PHA's reserves will be replenished automatically at the beginning of the next fiscal year, but will be replenished subject to a review by HUD.

[If the PHA experiences severe cost aberrations, HUD will recalculate the budget allocation amount using actual costs per unit, and re-benchmark that PHA for the upcoming fiscal year. – *note this is still under consideration by the committee*]

5. No entitlement to support for additional units or households

Even if PHAs are able, through efficient management, to serve additional households in any given year (above their approved baseline), those additional units would not become part of any PHA's baseline allocation or HUD responsibility.

Attachment 3

HUD HOUSING CERTIFICATE FUND
NEGOTIATED RULEMAKING ADVISORY COMMITTEE
JUNE 2-3, 1999 MEETING
ACPU SCENARIOS – FROM ROBERT DALZELL