

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Public and Indian Housing****24 CFR Parts 950 and 990**

[Docket No. FR-3647-P-04]

RIN 2577-AB44

**Low-Income Public and Indian Housing—Vacancy Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish new conditions under which a Public Housing Agency (PHA), an Indian Housing Authority (IHA), or Resident Management Corporation (RMC) could include vacant units in its computation of eligibility under the Performance Funding System (PFS). (Note: The term housing authority (HA) will be used in this proposed rule when referring to both PHAs and IHAs.) The proposed rule would give greater recognition to units that are vacant for reasons beyond the HA's control, make changes in the current treatment of vacant units that are part of a modernization program, and, under certain circumstances, have HAs exclude long-term vacant units from their inventory of units available for occupancy. The changes being proposed are based on the recommendations of a regulatory negotiation advisory committee composed of persons who represent the interests affected by the current vacancy rule.

**DATES:** Comments due date: August 18, 1995.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted 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:** Mr. John T. Comerford, Director, Financial Management Division, Public and Indian Housing, Room 4210, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202)

708-1872. Hearing- or speech-impaired individuals may call HUD's TDD number: (202) 708-0850. [These telephone numbers are not toll-free.]

**SUPPLEMENTARY INFORMATION:****Paperwork Reduction Act Statement**

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410-0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

**Justification for Shortened Comment Period**

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. By statute, the rule cannot become effective unless it is in place at the beginning of the housing authority's (HA's) fiscal year. Because a number of HAs affected by this rule have fiscal years beginning on October 1, 1995, the Department wants to publish a final rule, which is not permitted to become effective for 30 days after publication, so that it will be effective by that date. The Department believes that because the rule has been developed by a consensus process, there is not likely to be much objection to its general provisions and that, therefore,

the 30 days allowed for comment will be sufficient.

**Regulatory Review Initiative**

This proposed rule has been developed through negotiated rulemaking, sometimes referred to as regulatory negotiations or "reg-neg." Negotiated rulemaking is a relatively new process for the Federal government and this was the first use of the process at HUD. The basic concept of reg-neg is to have the agency that is considering drafting a rule bring together representatives of affected interests for formal 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. As such, this proposed rule represents a serious effort by Department and affected interests to draft a clear, comprehensive rule that meets the needs of the program and its participants.

Consistent with Executive Order 12866 and the President's memorandum of March 4, 1995, to all Federal Departments and Agencies on the subject of Regulatory Reinvention, the Department is reviewing each of its regulations to determine whether the regulation is a candidate for elimination, streamlining, or consolidation. As part of this review, at the final rule stage this rule may undergo revisions in accordance with the President's regulatory reform initiatives. Therefore, in addition to comments on the substance of this proposed rule, the Department welcomes comments on ways, if any, that the rule may be made more understandable and less burdensome, while still assuring the goals of the Performance Funding System (PFS).

**Background**

HUD uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to housing agencies. A regulatory description of the PFS can be found at 24 CFR parts 950, subpart J, and 990. Although somewhat oversimplified, the amount of subsidy received by an HA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. HAs 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 an HA. In 1994, HUD distributed over \$2.6 billion in operating subsidies to HAs.