

would permit the HA to seek a waiver to deal with this situation.

The Committee also discussed the treatment of Resident Management Corporations (RMCs) that have responsibility for administering modernization programs, but are dependent upon the HA to provide funding. The Committee found that there are parallels between requests made by HAs for Comprehensive Improvement Assistance Program (CIAP) funds and requests made by RMCs for CGP funds, in that an otherwise approvable application or request could be denied because of insufficient funding. The Committee agreed to language that would treat this situation as a circumstance or action that was beyond the RMC's control.

The Committee then began a section-by-section review of the proposed rule language that had been prepared by HUD staff based on the agreements reached at the first meeting. Edits and clarifications were proffered for incorporation into a new draft. The Committee then followed the same process in its review of the preamble material.

A copy of the approved minutes is available for public inspection and copying from the Department's Rules Docket Clerk (see ADDRESSES in this preamble).

Components of Proposed Rule

The following elements of the proposed rule evolved from the consensus-seeking process applied in the reg-neg Committee. Although the Committee recognized that there are anomalies that will not be reached by the general elements of this proposed rule, its provisions were developed to address the majority of the situations facing HAs.

(1) The standard for expected occupancy will continue to be 97%. The proposed rule would also maintain the five-unit exception, as in the current regulation, for small HAs where small numbers of vacant units would make it extremely difficult to attain a 97% occupancy rate.

(2) HAs will be allowed to take into consideration circumstances and actions beyond the HA's control that prohibit the HA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating, or modernizing vacant units. Such circumstances and actions are limited to:

(a) *Litigation*, such as a court order or settlement agreement that is legally enforceable. Units that are being held vacant as part of a court-ordered or

HUD-approved desegregation effort would be an example.

(b) *Laws*. Federal, Tribal, or State laws of general applicability, or their implementing regulations. For example, demolition or disposition requirements that have the effect of preventing an HA from taking action to remove unusable units from its inventory may be considered a circumstance beyond the HA's control. However, units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(c) *Changing market conditions*. For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the HA has taken aggressive marketing and outreach measures.

(d) *Natural disasters*.

(e) *Insufficient funding* for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds.

(f) *RMC Funding*. The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding.

(g) *Casualty Losses*. Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

(3) An HA with vacant units in a project that is otherwise viable, but is undergoing modernization that includes work necessary to reoccupy the vacant units will not be penalized for the vacancies when the HA determines its operating subsidy eligibility, if one of the following conditions is met:

(a) The vacant units are under construction (i.e., construction contract awarded or force account work started); or

(b) Treatment of the vacant units is included in a HUD-approved modernization budget (e.g., an approved Annual Statement for the Comprehensive Grant Program (CGP) or CIAP Budget), but the time period for placing the vacant units under construction has not yet expired. The HA must place the vacant units under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved. For example, if the HA receives HUD approval for the modernization budget in FFY 1996, the HA must start construction on the vacant units by September 30, 1998. If the HA fails to place the vacant units under construction within this 2-year time

frame, the units will be treated as long-term vacancies and the HA is eligible for limited subsidy for those units.

The 2-year provision to place vacant units under construction will not be extended. Failure to meet this provision affects subsidy eligibility only, not the use of the modernization funds, which are governed by a modernization implementation schedule that may be longer than 2 years.

Because of the funding cycle for modernization funds, HAs with FYs beginning January 1 or April 1 may not have approved modernization budgets at the time they develop operating budgets for those years. These HAs would use their current approved modernization budget to determine their subsidy eligibility, but would be permitted to submit an operating budget revision when the modernization budget had been approved.

(4) Any HA that estimates it will have vacant units in its requested budget year in excess of 3% of the units available for occupancy (and in excess of five vacant units), after adjusting for units that are vacant for reasons beyond its control (as described in item 2 under this heading), and vacant units that are covered by funded modernization (as described in item 3 under this heading), will receive less than full operating subsidy for these vacant units. If a unit has been vacant for longer than 12 months, it will be removed from the HA's calculation of units available for occupancy and subsidy eligibility will be limited to 20% of the Allowable Expense Level. Units that are vacant for 12 months or less will be included in the HA's calculation of units available for occupancy, but the HA will have to presume dwelling rental income will be generated by these units.

(5) Provisions in the current vacancy rule relating to Comprehensive Occupancy Plans (COPs) will be eliminated. An HA that has a HUD-approved COP at the time the new vacancy rule becomes effective may choose to determine its PFS eligibility under the existing rule or to terminate its COP and become subject to the new rule.

(6) Because the 2-year provision to place vacant units under construction is new, the proposed rule contains a transition section to address the treatment of units already under an approved modernization budget at the time the new rule becomes effective. Such units may have a longer time period, if already approved by HUD.

(7) The new vacancy rule would permit the granting of waivers to HAs or RMCs when necessary to address unusual situations. HUD will establish