(c) Equipment shelter—A 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment at each site.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. A telephone line will be required at each site for remote monitoring and operation.

**Description of Each Site**

The Sturgeon Bay Canal site is located within U.S. Army Corps of Engineers property adjacent to Coast Guard Station Sturgeon Bay. The site will require installation of a 90 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Coast Guard Base Milwaukee site is located on South Lincoln Memorial Drive in southeast Milwaukee, WI. The site will require the installation of a 60 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

Implementation of a DGPS service in the Lake Michigan Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: August 18, 1994.

**G.A. Penington,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 94-20786 Filed 8-23-94; 8:45 am]

BILLING CODE 4910-14-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 163
Wednesday, August 24, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 11:00 a.m., Monday, August 29, 1994.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 19, 1994

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–20907 Filed 8–22–94; 10:04 am]

BILLING CODE 6210–01–P

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## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

**MEETING STATUS:** Open.

**DATE AND TIME:**

September 21, 1994, 10:00 a.m.—4:00 p.m.
September 22, 1994, 10:00 a.m.—4:00 p.m.

**PLACE:**

September 21, 1994: Dirksen Senate Office Building, Room 406, First Street and Constitution Avenue, NE., Washington, DC 20510

September 22, 1994: Dirksen Senate Office Building, Room 106.

**MATTERS CONSIDERED:**

September 21, 1994: Statewide Library Networks. A briefing for the NCLIS with representatives of selected state and local libraries.

September 22, 1994. Discussion on Libraries and the National Information Infrastructure. What do we know and what do we need to know about libraries and information services to plan for and to support their full participation in the National Information Infrastructure?

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: August 18, 1994.

**Peter R. Young,**

*NCLIS Executive Director, Billing Code: 7527–01–M*

[FR Doc. 94–20936 Filed 8–22–94; 12:57 pm]

BILLING CODE 7527–01–M

# Corrections

Federal Register
Vol. 59, No. 163
Wednesday, August 24, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 3

### Ethics Training for Registrants

*Correction*

In proposed rule document 94-17880 beginning on page 37446, in the issue of Friday, July 22, 1994, make the following correction:

On page 37447, in the third column, in the last line, in footnote 17, following the word "of", the words "ethics training providers maintained by a registered futures association if such statement is true in fact and if the effect of such a listing is not misrepresented.'" The effect of this statement is" should be added.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Assumption and Methodology Document for the Spent Nuclear Fuel Managment Cost Evaluation

*Correction*

In notice document 94-20206 beginning on page 42216 in the issue of Wednesday, August 17, 1994, make the following correction:

On page 42216, in the third column, in the last paragraph, the first sentence, beginning with "To define...", should correctly read "Because of the very broad scope associated with complex-wide spent nuclear fuel management and the uncertain nature of some future actions, it is not possible to develop "best estimate" costs at this time. Instead, upper- and lower-range estimates will be provided to define the possible spread of costs for each alternative."

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34477; International Series Release No. 695]

### List of Foreign Issuers Which Have Submitted Information Required by the Exemption Relating to Certain Foreign Securities

*Correction*

In notice document 94-19249 beginning on page 40382 in the issue of Monday, August 8, 1994, in the first column, the Release Number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 80, 82, 84, 87, 88, and 90

[CGD 94-011]

RIN 2115-AE71

### Inland Navigation Rules; Lighting Provisions

*Correction*

In proposed rule document 94-17532 beginning on page 37003 in the issue of Wednesday, July 20, 1994, make the following corrections:

1. On page 37003, in the third column, In the heading, the RIN Number should read as set forth above.

2. On page 37008, in the first column, in the 20th line from the top, the word "barge" should read "group".

BILLING CODE 1505-01-D

federal register

Wednesday
August 24, 1994

# Part II

# Department of Housing and Urban Development

## Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905 et al.

**Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Public and Indian Housing**

**24 CFR Parts 905, 913, 964 and 990**

**[Docket No. R-94-1707; FR-3568-F-03]**

**RIN 2577-AB36**

## Public and Indian Housing Amendment to the Tenant Participation and Tenant Opportunities in Public and Indian Housing

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations on tenant participation in public and Indian housing to provide a comprehensive framework for tenant opportunities programs which includes new policies, procedures and guidelines for tenant participation; revision of the Resident Management Program to the Tenant Opportunities Program; and the addition of regulations to govern the Family Investment Centers (FIC) Program. These changes are being made to provide for new resident programs, as well as to address several weaknesses in the existing regulations which have interfered with successful program implementation.

**EFFECTIVE DATE:** September 23, 1994.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the Public Housing rule contact Dorothy Walker or Marcia Martin, Office of Resident Initiatives, Room 4112, telephone (202) 708-3611, or 708-0850. For Indian Housing, contact Ed Fagan, Office of Native American Programs, Room 4144, telephone (202) 708-2980 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300 (not a toll free number) for information on the program. (The telephone numbers listed above are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

### I. Information Collections

The information collection requirements contained in this 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) and have been approved and assigned OMB number 2577-0127.

### II. Background

Section 20 of the United States Housing Act of 1937, as amended, (42 U.S.C. 1437r) (the "1937 Act") was enacted to encourage increased resident management of public housing projects * * * "to promote formation and development of resident management entities." The Department implemented section 20 by regulations (24 CFR 964 for Public Housing, and 24 CFR Part 905, subpart O for Indian Housing), that governed tenant participation and resident management in public/Indian housing under Section 20 of the 1937 Act.

Section 20 also authorizes funds for technical assistance and training to resident councils (RCs)/resident management corporations (RMCs) to promote increased resident management of public housing. HUD's experience in providing grants to RCs/RMCs under the Public Housing Resident Management Program has revealed that major changes were needed in the provisions of the program. RCs/RMCs and PHAs/IHAs (hereinafter referred to as "HAs") across the country overwhelmingly requested revamping of the program to assist in meeting their residents' need for economic development, education, job training and development, social services, and opportunities for other self-help initiatives.

### III. Overview of Public and Indian Housing Changes

Several weaknesses in the regulations have interfered with successful program implementation. The current regulations fail to establish clear and detailed policy on resident participation and guidance on the structure for public housing resident organizations. Additionally, the current regulations fail to establish specific requirements for resident involvement in public/Indian housing management, and to encourage a strong partnership between HAs and resident councils. [Note that references to resident councils in this overview affect resident organizations in IHAs.]

Internal conflicts between competing resident councils in a development pose serious problems to HUD with respect to program eligibility and participation, as well as with respect to HA recognition. The Department is concerned about the need to provide more details on how resident councils/resident management corporations should be structured and how to broaden tenant involvement in public housing.

The Department recognizes the need to increase the amount of cash contributions for resident council activities (presently limited at three (3) dollars per unit per year) and to compensate resident council officers who are serving as volunteers in the public housing community.

The Secretary established an Interim Resident Advisory Committee consisting of representatives of regional and state resident public housing organizations who developed a Policy Paper on resident involvement in public housing. Public Housing Advocacy Groups [Public Housing Authorities Directors Association (PHADA), Council of Large Public Housing Authorities (CLPHA) and National Association of Housing and Redevelopment Officials (NAHRO)] were given an opportunity to review and comment on the Policy Paper.

Recommendations from the Interim Resident Advisory Committee on Tenant Involvement in Public Housing and requests for changes in the Resident Management Technical Assistance Program are the basis for the comprehensive revision of 24 CFR Part 964.

The major changes in this rule allow for broader, more flexible programs aimed at increasing the capacity of resident entities to participate significantly in all aspects of public housing operations while simultaneously permitting further economic uplift opportunities, to the extent permitted under section 20 of the 1937 Act. Section 20 requires that all activities funded under it be related to improved living conditions and public housing operations. (See §§ 905.967 and 964.205.) The Department has proposed amendments to section 20, as a part of HUD's legislative proposal, to permit funding of a broader range of resident initiative activities to include activities that are not necessarily related to resident management or housing authority operations.

The current regulation on the Tenant Participation and Resident Management Program (24 CFR Part 964) is renamed by this final rule as the "Tenant Participation and Tenant Opportunities in the Public Housing Program" for public housing. This final rule replaces the Resident Management Program under subpart C with the Tenant Opportunities Program (TOP). For Indian housing, the program is named "Resident Participation and Opportunities for Indian Housing." (24 CFR part 905, subpart O).

The revised program (TOP) is designed to (1) Prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, and to move toward financial independence; (2) enable them to choose where they want to live; and

(3) assure meaningful participation in the management of their housing developments. The authority for the TOP program comes from Section 20 of the 1937 Act. Also under Section 20, technical assistance grants are available for "the development of resident-managed entities (including the formation of such entities), the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support." "TOP technical assistance grants" can enable residents to manage their developments or portions of their developments. The results are significant and multifaceted. For example, resident managed activities have resulted in economic development, resident self-sufficiency, improved living conditions, and enhanced social services for residents (e.g., child care and other youth programs).

The Resident Management Program will continue to be an option to resident councils/resident management corporations who are interested in performing management functions in one or more projects of a HA. None of the requirements for the resident management program will be changed. However, some of the provisions are being moved to other HUD regulations or issuances. For example, the requirements under subpart C (§ 964.39) governing the operating subsidy, budget, operating reserves, etc. are being moved to 24 CFR Part 990—Annual Contributions for Operating Subsidy. The Department believes these provisions of § 964.39 are more appropriately placed in that regulation. Also, the requirements for the RMC management contract contents are being removed from subpart C and are contained in HUD Notice PIH 93–56 (HA), which also includes the model management contract.

Subpart A of part 964 is being expanded to add policies on partnerships between HAs and residents. For example, HAs are required to provide office space and meeting facilities to a duly elected resident council, free of charge, for the purposes of conducting resident activities.

Also, the section on definitions (§ 964.7) is being amended by removing terms such as "resident council", "project", and "tenant participation". The eligibility requirements for a voting member of a resident council have been expanded and clarified. The frequency of elections for resident management corporations has been established.

Subpart B of part 964 is being expanded substantially to establish policies and procedures for HAs with respect to resident participation activities. For example, HAs shall provide any funds they receive for resident participation activities to the duly elected resident council. Parts 990 and 905, subpart J, are being amended to require an addition of $25 per unit per year to the HA's operating subsidy calculation for units represented by a duly elected resident council, which will be paid to the HA only if appropriations are available for that purpose. Fifteen dollars of the $25 will fund the duly elected resident councils, the jurisdiction-wide councils and stipends, as discussed further in this preamble. The remaining ten dollars is for the HAs to cover resident-related responsibilities, including but not limited to third party supervision of elections, recalls and arbitrations. The HUD Circular HM 7475.9, dated February 10, 1972, authorized cash contributions for resident council activities for three ($3) dollars per unit per year. The Department believes that an increase of $12 per unit per year is reasonable and, if available, will provide more resources necessary to create a bona fide partnership among the duly elected resident council and the HA. Therefore, this rule replaces any existing guidance or authority including HM 7475.9. Strong partnerships are critical for achieving mutual goals contained in this subpart.

Also, HUD is encouraging HAs to provide stipends in an amount up to $200 per month/per officer to resident council officers who serve as volunteers in the public housing development to carry out these duties and functions as officers of the resident council. The Department believes that such a stipend will enable these volunteers to defray the costs associated with volunteer efforts, such as child care, transportation, special equipment, clothing, etc.

The current Part 964 regulations lack specificity regarding resident elections and organizational policies, and have made it difficult to determine what is a "duly elected resident council," and that has caused conflicts among the residents.

This final rule adds new policies and procedures for resident councils by (1) Defining what is a "duly elected resident council," (2) detailing minimum standards for elections of resident councils, and (3) specifying the relationship between the resident councils and resident management corporations. Resident councils are required to meet HUD's election standards in order to receive official recognition from the HA and HUD and to receive funds in conjunction with the conduct of resident council business. The role of the jurisdiction-wide resident council is established under this rule. The rule also contains provisions that expand the resident participation requirements to strongly support resident participation in all aspects of a HA's management operations, and these requirements give rights to residents to freely organize and represent their interests.

The rule adds a new subpart D to part 964 to establish the Family Investment Center (FIC) Program, as provided for under section 22 of the 1937 Act (42 U.S.C. 1437t) (added by section 515 of the National Affordable Housing Act, Pub. L. 101–625). The Indian Housing FIC Program is found in 24 CFR 905.980. The FIC program provides families living in public housing with better access to educational and employment opportunities. This new subpart is being added to Part 964 to include FIC because it complements the Department's resident participation and self-sufficiency initiatives. The program was proposed by a national association on behalf of numerous housing authorities. Representatives from public/Indian housing authorities, resident councils/resident management corporations and nonprofit housing agencies were convened at the Department to discuss program provisions and provide policy recommendations during the initial program planning stage. Some HAs will combine their FIC and Family Self-Sufficiency (FSS) programs. This final rule provides that Section 8 FSS Program participants are eligible to participate in the FIC program when it is combined with FSS, but that income exclusions that are provided to public housing residents participating in employment training and supportive service programs do not apply to Section 8 FSS families. If a public housing family under FSS is currently putting their funds in an escrow account, they cannot also be eligible for the income exclusion.

Sections 905.985 and 964.320 provide HUD policy on training, employment and contracting of public/Indian housing residents under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). Section 915 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) made significant changes to Section 3. HUD published an interim rule implementing those changes on June 30, 1994. Section 3, as amended, requires that HAs make their best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development, operation and modernization assistance provided pursuant to Sections 5, 9 and 14 of the U.S. Housing Act of 1937, to business concerns which provide economic opportunities to low income persons. As amended, Section 3 establishes an order of priority to which the HA's efforts must be directed. Thus, the first level of priority is to residents of the housing development for which the assistance is provided. This rule includes provisions consistent with the interim Section 3 rule.

The reader should note that combination terms such as "tenant and resident," "tenant council" and "resident council," and "tenant management corporation" and "resident management corporation" are similar terms and may be used interchangeably. Hereafter, for ease of discussion, the rule will use the terms resident, resident council and resident management corporation, as appropriate.

## IV. Public Comments

On April 19, 1994, at 59 FR 18666, the Department published a proposed rule and allowed 30 days for the public to comment. The Department received 31 comments in response to the proposed regulation: 20 from housing authorities, two from housing authority advocacy groups, six from resident councils/ resident organizations, two from residents, one from a HUD field office, and three from private organizations. Following the general comments discussed below, there is a listing of the specific issues raised in the comments and the Department's responses to the issues.

While this final rule applies both to public and Indian housing communities, there are separate regulations for each: Part 964 for Public Housing and Part 905, subpart O for Indian Housing. General and specific comments and responses are grouped by the source of the comment (public housing commenters or Indian housing commenters). In many cases, the comments and responses below are applicable to both.

### *General Public Housing Comments*

Overall, there was widespread support for the concept of resident participation as well as for the new Tenant Opportunities Program (TOP) and the Family Investment Centers (FIC) Programs contained in the proposed rule. Seven commenters stated that the 30-day comment period was too short. However, because consultation took place while the policy was being developed, and comments were submitted by various interested parties, the Department believes that a longer period was unnecessary.

There was also at least one comment on the proliferation on new specialized programs. Because of the rapid growth of new programs, this comprehensive regulation provides a common policy and definition for administering these programs.

There were several comments from housing authorities on the rationale for HUD requiring resident participation with duly-elected resident groups rather than any residents in the public housing community. The Department believes that a clear-cut policy of accountability through the elected resident leaders will assure adequate representation and mitigate criticism of housing authority favoritism. In order to provide time for the public housing community to implement elections, etc. to comply with this duly elected resident council requirement, the Department has determined the date for compliance with this regulation will be April 3, 1995.

There were also concerns that the Department may be providing prescriptive policies on resident participation. The Department has developed policies for the basic resident participation requirements to minimize ambiguity—on resident membership, election frequency and the residents' partnership with the housing authority. However, the regulation provides significant flexibility for the method of implementation. For example, with respect to election standards, the regulation discusses standards but leaves it up to the public housing community regarding the specifics.

### *Specific Public Housing Comments*

*Comment. Funding Issues:* (§§ 964.115, 964.105, 964.150) One commenter requested more clarity between the Resident Council and the Jurisdiction-Wide Resident Council with respect to which organization would be eligible to receive the $15.00 per unit/per year for resident services. Concern was raised that the operating subsidy funding for resident council activities may be required to provide the funds for resident activities. One commenter requested that "subject to appropriations" be added to § 990.108. Two PHAs expressed concern that the provision of stipends to resident council officers should also be an add-on to the PFS. One tenant organization expressed concern about the impact of withholding for Social Security and income tax on the residents receiving the stipends. One PHA requested clarification on the demand for HAs to provide tenant services funding regardless of the HA financial status.

*Response.* Section 964.150 has been revised to clarify for whom the funding is intended. The duly elected Resident Councils at each development and/or jurisdiction-wide councils are eligible to receive the resident portion of the Tenant Services Account, i.e., $15 per unit per year. Where both organizations exist, the distribution will be agreed upon by the HA and the respective organizations. Dispute resolution procedures are added at § 964.150(c). The resident officer stipends (up to $200 per month/per officer to be determined jointly by the resident council and HA) are also included in the $15 per unit per year funding. The $15 per unit per year is a 500% increase from the current guideline of $3 per unit per year. In addition, the $10 per unit per year—as a new policy—is for the housing authority to cover resident-related responsibilities, including but not limited to third party supervision of elections, recalls and use of mediation/ arbitration services.

With respect to funding for resident services, section 964.150 states that 24 CFR part 990 would provide an addition to the operating subsidy eligibility in the amount of $25 per unit per year for units represented by a duly elected resident council and the provision of these funds is subject to availability of appropriations. The HA and resident council should collaborate on the appropriate use of these funds. The Department is aware that even with this increase, there may be insufficient funds for resident council expenses plus stipends. The provision of stipends is not a requirement and will be decided by the local resident council officers and the HA. If Congress does not appropriate funds, the HA and duly-elected resident council may negotiate funds for tenant services based on the availability of funds.

With respect to how stipends are counted for income tax purposes, the stipends are not a salary but reimbursement for expenses incurred. Under this definition, stipends will not be treated as income by HUD in its programs. The treatment of stipends as income for social security and income tax purposes cannot be addressed by HUD; this issue must be discussed with Social Security Administration and IRS. However, HUD can assure that stipends shall not be treated as income for rent purposes.

*Comment. Funding Issue:* (§ 964.150) Five HA comments agreed with proposed increase of funding for resident participation. Four HA comments and two housing advocacy organizations expressed concern that funding for resident activities may not be sufficient for required activities under the regulation. However, three PHAs oppose an increase in funding for resident participation from $3.00 per unit/per year to $25.00 per unit/per year because resident councils are already receiving substantial funding under the Tenant Opportunities Program/ Technical Assistance Grant, and the Comprehensive Grant Program. One commenter recommended an increase in the $10 per unit/per month for housing authority activities.

*Response.* The Department believes that an increase in support for resident participation activities from $3.00 per unit/per year to $25.00 per unit/per year (of this amount $15.00 will be provided to the duly elected resident council) is reasonable and long overdue to support the increasing activities and community involvement of these organizations. While TOP funds are available for such activities, those funds can only be obtained on a competitive basis, and the availability of CGP Management Improvement Program funds is contingent upon the Public Housing Authorities' priorities to improve management operations. The Department believes that the portion for the PHAs is equitable in light of the functions to be provided under each and the funding available to PHAs.

*Comment. Audit Issue:* (§§ 905.972(a) and 964.230(a)(2)) One commenter requested change to a reference in § 905.972(a) from "audit of books and records" to "audits of financial statements;" and change to a reference in § 964.230(a)(2) from "* * * activities and expenditures * * *" to "* * * financial statements * * *."

*Response.* The above-mentioned provisions will be changed to state review of financial statements. Such a review of the financial statements would include scrutiny of expenditures related to the workplan as well as compliance with the HUD grant agreement.

*Comment. Conflict of Interest Issue:* (§ 964.145) Three tenant organizations objected to the Conflict of Interest policy because it would deplete the executive board of the Resident Council/Advisory Board. It was also noted that over 50 percent of resident leaders are employed by HAs. Two HAs observed that resident employment encourages participation in resident governance and should be encouraged when residents are not employed in supervisory capacities.

*Response.* The conflict of interest policy has been revised to state that "Resident council officers cannot serve as employees in a policy making position at the HA or as a contractor to the HA. However, seasonal, part time or non-supervisory positions at the HA or their contractors which are not involved in policy making work are exempt from the conflict of interest policy."

*Comment. FIC Issue:* (§ 964.305) One PHA objected to the small amount of 15 percent allowed for supportive services and recommends an increase to 25 percent.

*Response.* The cap on supportive services (15 percent) is stipulated in the law. The Department agrees that the current statutory policy is too restrictive and has included in its legislative proposal raising the limit to 30 percent.

*Comment. Threshold Issue:* (§ 964.18) Two HAs suggested that the threshold for applicability of this regulation—i.e., HAs of 100 units—was too low and should be increased to HAs of 250 or even 1250 units.

*Response.* The Department agrees with the commenter that the threshold should be increased to 250 units. This would make the threshold comparable with that of the Comprehensive Grant Program. HAs with fewer than 250 units cannot deny residents the opportunity to organize. This regulation is intended to provide all resident groups with the opportunities available under this regulation.

*Comment. Office Space Issue:* (§ 964.18) One HA objected to the provision of office space for the duly elected resident council especially at smaller complexes and said it should only be required at public housing developments of 250 units and over. Two other commenters felt that there would not be space for resident councils—even at larger authorities—especially when there was a long waiting list. Commenters felt that office space should be covered by operating subsidy.

One housing advocacy organization recommended that flexibility should be granted to the HA and that assistance with alternative locations might be sufficient for small HAs. Another housing advocacy organization suggested that office space be required only in projects above 250 units.

*Response.* The Department agrees with the first commenter that providing office space to resident councils may not be feasible in small HAs without any community space options and few units. In such cases, the HA should make every effort to assist RCs in obtaining space when units are not available. If there is no community or rental space available, a request to approve a vacant rental unit for this non-dwelling use will be considered on a case-by-case basis. Subject to appropriations, these units will be eligible for operating subsidy.

*Comment. Elections Issue:* (§ 964.130) One HA objected to a third party supervision for resident council elections especially in cases where the HA and resident organization are in agreement. Opposition was expressed to three (3) year terms, with two HAs suggesting that shorter terms will solve problems of effective resident representation and the filling of vacancies. Four commenters expressed concern about the requirement in § 964.115 for approval of 51 percent of "voting membership" instead of ⅔ of voters to recall a resident board.

*Response.* A third party supervision, even in cases where the HA and resident organization are in agreement, provides for a neutral monitor to oversee elections and recall procedures. Holding elections at least every three (3) years provides for continuity and allows time for each resident council board to plan and implement any new activities. Resident Council By-Laws must include provisions for recall elections of representatives, including officers. These provisions shall allow for a petition or other means of expression of the voting membership for such a recall vote to be taken. The local resident council voting membership shall determine the threshold for recall. This threshold shall not be less than 10 percent of the voting membership.

*Comment. HA Operations Issue:* (§ 964.135) Two HAs opposed resident participation in all issues and facets of a PHA's operations.

*Response.* Resident participation in all issues and facets provides support to the HA for improved living conditions and resident satisfaction in public housing communities. Residents can provide valuable input regarding the conditions of the property and the performance of employees and contractors.

*Comment. Policy Issue:* (§ 964.12) One interest group opposed changing Resident Management to TOP; however, one commenter supported the new TOP. One RMC objected to the requirement imposed by the regulation for adopting the model contract for RMCs entering into a contract with a HA, and the removal of sections governing the operating subsidy and comprehensive improvement assistance program.

*Response.* Resident councils, resident management corporations, and HAs across the country requested that HUD revamp the Resident Management

Technical Assistant Grant Program (RM TAG) to meet the residents' needs for economic development, education, job training and development, social services and other self-help opportunities. The residents still have the option to undertake property management, if they desire. The expanded range of activities provided by TOP will meet the residents needs. The language in the proposed rule stated that the model contract in HUD Notice PIH 93–56 must be followed unless HUD approves a requested change. It should be noted that there are minimum statutory and regulatory requirements in the model contract which must be used and any other provisions would be considered voluntary or advisory. The section on operating subsidy is being moved to Part 990 so that all procedures covering operating subsidy are contained in the same regulation. Information on CIAP/CGP has been inserted in the resident management requirements section of this final regulation in § 964.225.

*Comment. Voting Issue:* (§ 964.115(c)) Two HAs requested clarification on the voting membership.

*Response.* The voting membership is limited to designated heads of households (any age) and other members of a household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

*Comment. RC/RMC Clarification Issue:* (§ 964.120(f)) One HA requested clarification on RMC recognition in the instance where a resident organization (RO) is formed after an RMC is established. For example, must the new RO and the voting membership or all of the residents approve the establishment of such an organization.

*Response.* The newly formed duly elected resident council and the RMC should work together to establish a method of documenting, i.e., through a resident council board resolution, the approval of the duly elected representative body for resident management.

*Comment. Resident Training Issue:* (§ 964.140) One resident organization, one advocacy organization, and one HA each expressed concern that there is insufficient funding to adequately train interested residents in overall policy development and direction of HA operations.

*Response.* The Department is requesting $85 million for the TOP Program for FY 1995, which represents a three-fold increase from FY 1994 funding to provide additional training for residents. The option also exists to use several other resources available to train the residents, such as: (1) the HA staff, (2) CGP/CIAP, (3) operating subsidies, (4) TOP TAG and (5) Section 8 administrative fees. In addition, the RC/RMC together with the HA could form a partnership with other local and community organizations to provide the support for training.

*Comment. Partnerships Issue:* (§ 964.14) One HA supports partnerships but is concerned that outside partnerships may become the governing entity. The commenter believes that the primary partnerships should be fostered between RCs and HAs.

*Response.* HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. However, strong partnerships with other organizations are also critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community. However, these outside partners cannot be recognized or assume the role of the duly-elected governing entity.

*Comment. Expanding Resident Council Issue:* (§ 964.105) One HA comment requested clarification about whether an HA with an existing jurisdiction-wide resident council can help establish new resident councils in scattered sites or separate groups of buildings.

*Response.* The Department encourages the development of new resident councils, or revival of inactive resident councils, at all housing developments including scattered sites.

*General Indian Housing Comments*

The Department received 18 comments specifically related to 24 CFR Part 905, Subpart O—Resident Participation and Opportunities for Indian housing. Eleven were from Field Offices of Native American Programs, four from an Indian housing authority, one from a public housing authority, one from an advocacy group and one from a private organization.

*Comment.* Replace the term "tenant" with "resident" since it can be applied appropriately to all program participants, rental and homeownership. In Indian housing, resident implies a sense of ownership and permanence which are important attitudes to convey in order to accomplish the mission of the Office of Native American Programs (ONAP).

*Response.* The Department agrees with the comment for the Indian housing program. The only reference to tenant will remain in the title of the Tenant Opportunities Program. This new title reflects the revised program created to provide more program flexibility to address the needs in communities to improve living conditions and housing operations.

*Specific Indian Housing Comments*

Section 905.102(2)(viii)(D) Stipends

*Comment:* One commenter stated: Currently there is no limit to the number of officers of a resident organization or the number of organizations. Some large IHAs have over 50 resident organizations. The cost involved for stipends could be substantial if each RO has 5 officers who receive $200 per month, with 50 ROs the cost equals $600,000. It could be very difficult to determine who should receive funding and IHAs could be forced to use operating reserves. For instance, an IHA with 14,000 units will receive $140,000 although stipends amount to $600,000. The inability to pay stipends could cause potential problems between the IHA and RO.

Several commenters requested clarification on how the stipend is to be paid. Is it paid from the $25 per unit per year? Is it from the IHA $10 per unit per year or the RO $15 per unit per year?

Another commenter recommended that the words "excluding training costs" should be added to the end of the eligible activities for stipend use. The commenter felt that the maximum stipend amount should not limit training that ONAP and the IHA determine is important for resident leaders to attend.

One commenter supported the stipend stating it was extremely important because it recognizes the economic position of many resident leaders and the need to avoid out of pocket expenses from resident leaders.

*Response:* It is intended that the $15 per unit per year for resident participation activities of the resident organization will be used to fund stipends. Section 905.965 is revised to clarify questions raised regarding the funding for stipends. Also, the Department is aware that even with this increase, there may be insufficient funds for resident organization expenses plus stipends. The provision of stipends is not a requirement and will be decided by the local resident organization and the IHA. If there is no appropriation for this additional cost item under the operating subsidy, the IHA and resident organizations must determine how to use existing funds to accomplish priority resident activities.

Regarding the third comment, the stipend is intended to cover costs related to officer volunteer efforts. It does not limit funding to resident organizations for training. These costs can be covered under 905.965 which would provide $15 per unit per year for resident participation activities of the RO. IHAs may use other resources for resident participation activities.

Section 905.720 Other Costs

*Comment:* A commenter expressed concerns about the cost of stipends to the IHA. Also, will stipends be eligible even if there are no appropriations to fund the cost? Another commenter suggested that consideration must be given for higher cost areas, especially in Alaska where village travel is by airplane.

*Response:* If there are no appropriations to fund resident participation, stipends will still be an eligible cost; however, the IHA and RO must determine if resources are available. The issue of higher travel costs in Alaska can be resolved by waiver requests since the provision is regulatory, not statutory.

Section 905.962 Definition of RO

*Comment:* One commenter recommended that HUD require each IHA to adopt a policy and procedure to formally recognize resident organizations based on the referenced definition.

*Response:* Only one comment was received requesting that recognition of an RO be mandatory. The Department does not believe this is sufficient to change the current regulatory requirements which provide for local decision making between the IHA and RO.

Section 905.963 HUD's Role in Activities Under This Subpart

*Comment:* The form and extent of resident participation or resident management are local decisions to be made jointly by ROs and IHAs. The regulation discusses the duty to bargain, but if either party does not, there is no consequence for not doing so. If an RO isn't organized, it is not eligible for the $15 per unit funding. Therefore, control of whatever negotiation there might be is in the hands of the IHA. This is an unfair advantage for the IHA.

*Response:* A resident organization can organize without IHA involvement and can also be eligible for funding if it meets the requirements in accordance with § 905.962. However, HUD strongly recommends a partnership between the resident organization and the IHA. The IHA and the duly elected resident organization shall collaborate on how funds will be distributed. A mechanism to address disputes on funding decisions is provided for in the rule. The payment of stipends to resident organization officers will be funded from the $15 per unit per year for resident participation activities.

Section 905.964 Resident Participation Requirements

*Comment:* Section 905.964 (a)(1) should be revised to state that an IHA must provide residents with current information concerning the IHA's policies on resident participation in management, "development and modernization" in order to cover all aspects of the IHA's programs.

*Response:* Subpart O only deals with resident participation in management. Both the subparts on development and modernization contain specific regulatory requirements regarding resident participation. This language is consistent with subpart O and, therefore, we are keeping the language as currently stated.

Section 905.969 Resident Management Requirements

*Comment:* Several resident organizations in the State of Alaska have questioned whether or not a recognized Tribal government in the community may act in the capacity of the resident organization. In most of the Alaskan Native communities, the tribal government represents the Native residents. Most tribal organizations already have mechanisms in place that would allow greater resident participation, which could lead to expedience in communities becoming self-sufficient. Where the majority of residents in a community request that the Tribal Government act in the capacity as the RO with the IHA, a Memorandum of Agreement might be executed to establish such a relationship.

*Response:* If a tribal government wishes to assume the responsibilities of an RO or RMC, an entity must be created that meets the requirements of 24 CFR 905.962. The tribal government may not act as an RO or RMC without complying with those requirements. This does not prevent the tribal government from authorizing or creating such an entity under tribal law.

Section 905.972(b) TOP Audit

*Comment:* The references to "audit of books and records" in the title of proposed sections 905.972(a) and 905.972(b) should be changed to "audit of financial statements" because independent auditors audit financial statements, not "books and records."

The proposed rule should specify the basis of accounting to be used in preparing the financial statements. We recommend that the financial statements be prepared in accordance with generally accepted accounting principles (GAAP).

The final rule should state that an audit conducted in accordance with the Single Audit Act or OMB Circular A–133, if applicable, would satisfy the audit requirement.

*Response:* The sections have been changed to reflect the comment on review of financial statements. Such a review of the financial statements would include scrutiny of expenditures related to the workplan as well as compliance with the HUD grant agreement.

Section 905.980 FIC General

*Comment:* Remove the following language from the responsibilities of a FIC Coordinator, "mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding."

*Response:* This language is statutory (Section 515 of National Affordable Housing Act) and therefore cannot be removed without legislative change.

*Comment:* There is no reference to determine eligibility for program participants.

*Response:* The only eligible applicants are IHAs based on the statute. Eligibility is documented in 905.982. IHA is defined in 905.102 of 24 CFR part 905.

Section 905.982 FIC Eligibility

*Comment:* Under this program and any other programs that are created to directly associate with residents, eligible applicants should be extended to include the Tribal governments. Recommend using the word "improved" in place of "Better" since "improved" is used in other parts of this document. Also, add the word "support" in reference to services being provided.

*Response:* The provision that eligible applicants are public or Indian housing authorities is statutory and cannot be changed without legislation.

Section 905.983 FIC Activities

*Comment:* The new activities such as new construction or acquisition have not been added yet as indicated in the NOFA.

*Response:* The Public and Indian Housing regulation is changed to reflect eligibility for new construction and acquisition.

**V. Section-By-Section Changes Made By This Final Rule**

*A. Public Housing Changes—Part 964*

1. Subpart A is amended as follows:

a. Section 964.1 *Purpose* is streamlined.

b. Section 964.3 *Applicability and scope* remains unchanged.

c. Section 964.7 *Definitions* is amended by removing several definitions such as project and tenant participation; by moving terms such as Resident Council and Resident Management Corporation to a more appropriate section under subpart B, and by expanding definitions; and by adding new terms which relate to the FIC program.

d. Section 964.11 *HUD policy on tenant participation* is amended to strongly support tenant participation in all the functions of an HA's management operations and give rights to residents to freely organize and represent their interests.

e. Section 964.12 *HUD policy on Tenant Opportunities Program (TOP)* provides HUD's policy on the Tenant Opportunities Program. Subpart C of the current regulation is changed from "Resident Management Program" to "Tenant Opportunities Program" (TOP). The name is being changed to TOP because it reflects the evolution of the program over time, to enhance resident capacity in a variety of ways, including job training, economic development, and self-sufficiency activities carried out by resident councils/resident management corporations in public housing. Resident management is a component of TOP and resident councils/resident management corporations may continue to engage in activities relative to public housing management. Tenant opportunities programs are proven to be effective in facilitating economic uplift as well as in improving the overall conditions in public housing.

f. Section 964.14 *HUD policy on partnerships* is added to provide HUD policy on partnerships between HAs and residents. Strong partnerships between HAs and resident councils/resident management corporations are key to the success of program objectives, and critical for achieving specific and mutual goals and creating positive change for residents in public housing.

g. Section 964.15 *HUD policy on resident management* remains unchanged. This section states HUD's support for resident councils/resident management corporations who are interested in managing various businesses in the public housing community; e.g., lawn service maintenance or day care.

h. Section 964.16 *HUD role in activities under this part—Monitoring* is added to describe HUD's proactive responsibility for promoting tenant participation and tenant opportunities in public housing. It provides that HUD will monitor program progress to ensure efficient and effective operations pursuant to this rule.

i. Section 964.18 *HA role in activities under subparts B&C* establishes a stronger HA role under this subpart. HAs shall, upon request, provide office space to a duly elected resident council and shall negotiate in good faith usage of community space for meetings and other activities for residents. HAs have a responsibility to negotiate such usage of space with the duly elected resident council.

j. Section 964.24 *HUD policy on FIC program* provides HUD's policy and support for the FIC program.

k. Section 964.30 *Other program requirements* provides Civil Rights compliance requirements and all other Federal laws, executive orders, regulations and policies for programs conducted and administered under this rule.

2. Subpart B is amended as follows:

a. Section 964.100 *Role of resident council* which establishes the role of a resident council and § 964.105 *Role of the jurisdiction-wide resident council* which establishes the role of a jurisdiction-wide resident council are added to the rule.

b. Section 964.110 *Resident membership on HA Board of Commissioners* encourages resident membership on HA Board of Commissioners.

c. Section 964.115 *Resident council requirements* describes the provisions necessary for the Resident Council to receive official recognition from the HA and HUD. In the previous rule, this provision was included in the definitions section, and in this rule it becomes a separate section.

d. Section 964.117 *Resident council partnerships* is added to encourage and promote partnerships between the resident councils and public/private organizations. While the Department encourages partnerships to complement council activities, such organizations must not become the governing entity of the resident council.

e. Section 964.120 *Resident management corporation requirements* establishes characteristics in order to receive formal recognition by the HA and HUD. In the previous rule, this was included in the definitions section and in this rule, it becomes a separate section.

f. Section 964.125 *Eligibility for resident council membership* is added to provide guidance on eligibility for council membership. This section establishes that any member of a household, whose name is on the lease, may be a member of a resident council. However, in order to be a voting member of the resident council, a person's name must appear on the lease of a unit in the public housing development, and he/she must be: (1) a legal head of household (means the member of the family who is the head of the household for purposes of determining income eligibility and rent), or (2) 18 years of age or older.

g. Section 964.130 *Election procedures and standards* is added to provide minimum standards for resident council elections including the requirement for supervision by an independent third party. HAs shall monitor the resident council's elections to ensure compliance with HUD's minimum standards.

h. Section 964.135 *Resident involvement in HA management* is added to provide policy on resident involvement in HA management operations. Residents shall participate fully in the overall policy development, as well as in operations of an HA.

i. Section 964.140 *Resident training* is added to encourage HAs to take the lead in providing training opportunities for public housing residents. If residents are willing, they may receive training from the HA and become involved in implementing various Federal programs.

j. Section 964.145 *Conflict of interest* is added to provide policy on resident council officers serving as contractors or as employees of an HA.

k. Section 964.150 *Funding tenant participation* is added to establish policy on funding duly elected resident councils. Subject to appropriations, HAs shall provide funds to the duly elected resident council for tenant participation activities. This rule also makes an amendment to 24 CFR Part 990 for tenant services to include up to $25 per unit per year, subject to the availability of appropriations, as an add-on to the Performance Funding System (PFS).

3. Subpart C is amended as follows:

a. Section 964.200 *General* is added to provide information on the provisions of the TOP.

b. Section 964.205 *Eligibility* is added to define who is eligible to apply and receive a technical assistance grant, and to outline eligible activities under TOP.

c. Section 964.210 *Announcement of funding availability* is added to describe notification of funding availability for obtaining funds to participate in TOP.

d. Section 964.215 *Grant agreement* provides the terms of the grant agreement for the proposed activities under the TOP program.

e. Section 964.220 *Technical assistance* describes HUD's commitment to fund TOP activities.

f. Section 964.225 *Resident management requirements* provides minimal guidelines for HAs and residents for the performance of management functions.

g. Section 964.230 *Audit and administrative requirements* provides audit and administrative guidelines for recipients of TOP grant funds and resident management corporations contracting with an HA for management responsibilities.

4. Subpart D is added to the Part 964 as follows:

a. Section 964.300 *General* provides the purpose and program provisions of the FIC program. FIC provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

b. Section 964.305 *Eligibility for FIC* provides eligible activities and requirements under the FIC program.

c. Section 964.308 *Supportive services requirements for FIC* provides supportive services requirements essential for families living with children in public housing.

d. Section 964.310 *Audit/ Compliance Requirements for FIC* provides audit and compliance requirements governing the program.

e. Section 964.315 *HAs role in FIC activities under this part* provides the process required to assure that HA residents are informed about FIC.

f. Section 964.320 *HUD policy on training, employment, contracting and subcontracting of public/Indian housing residents under FIC* states HUD's policy on resident training, employment and contracting under FIC.

g. Section 964.325 *Announcement of funding availability for FIC* indicates that the Notice of Funding Availability (NOFA) will be published periodically and contain specific information, regarding eligibility, funding criteria, etc.

h. Section 964.330 *Grant set-aside assistance for FIC* states HUD's policy of permitting up to five percent (5%) of amounts available in any fiscal year to augment grants previously awarded under this program.

i. Section 964.335 *Grant agreement for FIC* provides the grant agreement term.

j. Section 964.340 *Resident compensation for FIC* provides guidelines governing employment compensation under this program.

k. Section 964.45 *Treatment of income* provides provisions for income exclusions for any resident participating in the FIC program.

l. Section 964.350 *Administrative Requirements for FIC* provides administrative and reporting requirements governing the FIC program.

### *B. Indian Housing Changes—Part 905*

The rule also revises 24 CFR 905, subpart O, "Resident Participation and Opportunities." The Indian housing section is similar to its public housing counterpart, but does not contain some of the provisions in 24 CFR Part 964 in an effort to tailor them specifically to the generally smaller size of most Indian Housing Authorities (IHA). However, all activities, functions and benefits permitted under any public housing resident programs will remain eligible activities, functions and benefits for Indian housing resident programs.

The major changes in the rule allow for broader, more flexible programs aimed at increasing the capacity of Indian housing resident organizations and resident management corporations to carry out their organizational functions in a more structured manner while simultaneously permitting further economic uplift opportunities.

Within the subpart there is a general section; a Tenant Opportunities Program (TOP) section; and a Family Investment Centers Program section. The current Indian Housing Resident Management Program under existing regulations is viable and remains an option under TOP. None of the requirements for the resident management program are changed; however, some sections are being moved to other sections of the 905 regulations or HUD handbooks.

### *C. Miscellaneous Conforming Changes*

Changes that have been made to other parts are (1) the exclusion from income of stipends to RC officers and of training grants under the FIC program that are added to 905 and 913; (2) the provision for payments to duly elected resident organization officers, and the inclusion of requirements governing the RMC Operating subsidy, budget, operating reserves, etc., that are made to 990; and 3) changes for the resident participation subpart that are made in part 905 to parallel changes in part 964.

## Other Matters

### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides substantial revisions to the regulations concerning Tenant Participation and Management in Public Housing under which resident councils/ resident management corporations receive funding on a competitive basis. HUD does not anticipate a significant economic impact on small entities since resident councils/resident management corporations will continue to obtain by contract technical assistance to carry out program activities.

### *Environmental Impact*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

### *Executive Order 12866*

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC.

### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The revised rule is consistent with federalism principles since it reduces unnecessary burdens on resident organizations. Since participation by resident organizations is discretionary, this rule lacks the direct and substantial effects on resident organizations required for a policy with federalism implications under the Order.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has a beneficial effect on the family, and thus, does not require further review. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Regulatory Agenda*

This rule was listed as Item No. 1685 in the Department's Semiannual Agenda of Regulations published on April 25, 1994, (59 FR 20424, 20469) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.853.

**List of Subjects**

*24 CFR Part 905*

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 913*

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

*24 CFR Part 964*

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

*24 CFR Part 990*

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

Accordingly, parts 905, 913, 964, and 990 of title 24 of the Code of Federal Regulations are amended as follows:

## PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 is revised to read as follows:

**Authority:** 25 U.S.C. 450e(b); 42 U.S.C. 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee and 3535(d).

2. In § 905.102, the definition of *Annual income* is amended by:

a. Removing the word "or" at the end of paragraph (2)(viii)(B);

b. Adding the word "or" at the end of paragraph (2)(viii)(C);

c. Adding a new paragraph (2)(viii)(D);

d. Removing the word "or" at the end of paragraph (2)(x);

e. Redesignating paragraph (2)(xi) as paragraph (2)(xii); and

f. Adding a new paragraph (2)(xi), to read as follows:

**§ 905.102. Definitions.**

* * * * *

*Annual income*.

* * * * *

(2) * * *

(viii) * * *

(D) A resident stipend, but only if the resident stipend does not exceed $200 per month per officer to resident organization officers. Stipends are intended to cover costs related to officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment and special clothing.

* * * * *

(xi) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xi), the following definitions apply:

(A) *Comparable Federal, State, Tribal or Local law* means a program providing employment training and supportive services that—

(*1*) Is authorized by a Federal, State, Tribal or local law;

(*2*) Is funded by Federal, State, Tribal or local government;

(*3*) Is operated or administered by a public agency; and

(*4*) Has as its objective to assist participants in acquiring job skills.

(B) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(C) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job; or

* * * * *

3. In § 905.434, a new paragraph (b)(7) is added, to read as follows:

**§ 905.434 Operating subsidy.**

* * * * *

(b) * * *

(7) Subject to appropriations, in accordance with the provisions of subpart O of this part and procedures determined by HUD, each IHA shall receive $25 per unit per year for units represented by a duly elected resident organization for resident participation activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected ROs including but not limited to stipends. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

* * * * *

4. In § 905.720, a new paragraph (g) is added, to read as follows:

**§ 905.720 Other costs.**

* * * * *

(g) *Funding for resident organization expenses.* In accordance with the provisions of 24 CFR Part 905, subpart O and procedures determined by HUD, each IHA with a duly elected resident organization shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly-elected resident organization in support of the duly elected resident organization's activities.

* * * * *

5. Subpart O of Part 905 is revised to read as follows:

### Subpart O—Resident Participation and Opportunities General Provisions

Sec.
905.960 Purpose.
905.961 Applicability and scope.
905.962 Definitions.
905.963 HUD's role in activities under this subpart.
905.964 Resident participation requirements.
905.965 Funding Resident Participation.

**Tenant Opportunities Program**

905.966 General.
905.967 Eligible TOP Activities.
905.968 Technical assistance.
905.969 Resident management requirements.
905.970 Management specialist.
905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

905.972 TOP Audit and administrative requirements.

### Family Investment Centers (FIC) Program

905.980 General.
905.982 Eligibility.
905.983 FIC Activities.
905.984 IHA role in activities under this part.
905.985 HUD Policy on training, employment, contracting and subcontracting of Indian housing residents.
905.986 Grant Set-Aside Assistance.
905.987 Resident compensation.
905.988 Administrative requirements.

## Subpart O—Resident Participation and Opportunities General Provisions

### § 905.960 Purpose.

The purpose of this subpart is to recognize the importance of involving residents in creating a positive living environment and in contributing to the successful operation of Indian housing.

### § 905.961 Applicability and scope.

(a) This subpart applies to any Indian housing authority (IHA) that has an Annual Contributions Contract (ACC) with the Department. This subpart does not apply to housing assistance payments under section 8 of the U.S. Housing Act of 1937.

(b) This subpart contains HUD's policies, procedures, and requirements for the participation of Indian housing residents in Indian housing management.

(c) This subpart is designed to encourage increased resident participation in Indian housing.

(d) This subpart is not intended to negate any pre-existing arrangements for resident management in Indian housing between an IHA and a resident management corporation.

(e) This subpart includes requirements for the Family Investment Centers (FIC) Program, which was established by Section 515 of the National Affordable Housing Act, which created a new Section 22 of the Act. The FIC program is designed to provide families living in Indian housing with better access to educational and employment opportunities.

### § 905.962 Definitions.

*Family Investment Center.* A facility in or near Indian housing which provides families living in Indian housing with better access to educational and employment opportunities to achieve self sufficiency and independence.

*Management.* All activities for which the IHA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

*Management contract.* A written agreement between a resident management corporation and an IHA, as provided by § 905.969.

*Project.* For purposes of this subpart, any of the following could be the subject of a management contract:

(1) One or more contiguous buildings.

(2) An area of contiguous row houses.

(3) Scattered site buildings.

(4) Scattered site single-family units.

*Resident management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the IHA.

*Resident Management Corporation (RMC).* A Resident Management Corporation is an entity that proposes to enter into, or enters into, a contract to manage IHA property. The corporation must have each of the following characteristics:

(1) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(2) It may be established by more than one resident organization, so long as each such organization both approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

(3) It must have an elected Board of Directors.

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization involved in establishing the corporation.

(5) Its voting members are required to be residents of the project or projects it manages.

(6) It must be approved by the resident organization. If there is no organization, a majority of the households of the project or projects must approve the establishment of such an organization.

*Resident Organization (RO).* A Resident Organization (or "Resident Council" as defined in section 20 of the Act) is an incorporated or unincorporated nonprofit organization or association that meets each of the following criteria:

(1) It must consist of residents only, and only residents may vote.

(2) If it represents residents in more than one development or in all of the developments of an IHA, it must fairly represent residents from each development that it represents.

(3) It must adopt written procedures providing for the election of specific officers on a regular basis.

(4) It must have a democratically elected governing board. The voting membership of the board shall consist solely of the residents of the development or developments that the RO represents.

*Resident-owned business.* Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

*Resident participation.* A process of consultation between residents and the IHA concerning matters affecting the management of Indian housing.

### § 905.963 HUD's role in activities under this subpart.

(a) *General.* Subject to the requirements of this part and other requirements imposed on IHAs by the ACC, statute or regulation, the form and extent of resident participation or resident management are local decisions to be made jointly by ROs and the IHAs.

(b) *Duty to bargain in good faith.* If an IHA refuses to negotiate with a RMC in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the IHA to respond with a report stating the IHA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

### § 905.964 Resident participation requirements.

(a) *IHA responsibilities.* (1) An IHA must provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management, including guidance on information and recognition of a RO, and, where appropriate, a RMC.

(2) An IHA must consult with residents or resident organizations (if they exist), to determine the extent to which residents desire to participate in the management of their housing and the specific methods that may be mutually agreeable to the IHA and the residents.

(3) When requested by residents, an IHA must provide appropriate guidance to residents to assist them in establishing and maintaining a RO, and, where appropriate, a RMC.

(b) *Recognition.* A resident organization may request that it be recognized as the official organization representing the residents in meetings with the IHA or with other entities.

(c) *Written understanding.* At a minimum, the IHA and the RO shall put in writing their understanding concerning the elements of their relationship.

(d) *Conflict of interest.* Resident council officers cannot serve as contractors or employees if they are in policy making or supervisory positions at the IHA.

### § 905.965 Funding resident participation.

Funding will be provided under subpart J of this part, for the following:

(a) *Resident Organizations.* (1) Subject to appropriations, the IHA shall provide funds to ROs for resident participation activities. Eligibility to receive operating subsidy for duly elected RO activities at $25 per unit per year is an additional category of subsidy eligibility for units represented by a duly elected resident organization under the Performance Funding System. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected ROs. Ten dollars per unit per year shall fund IHA costs incurred in carrying out resident participation activities.

(2) The IHA and the duly elected resident organization at each development shall collaborate on how the funds will be distributed for resident participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the HUD Headquarters for intervention. HUD Headquarters may require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of renegotiation, Headquarters shall take appropriate actions to settle the dispute in a fair and equitable manner.

(b) *Stipends.* (1) IHAs may provide stipends to officers of the duly elected RO. The stipend, which may be up to $200 per month per officer, shall be decided locally by the ROs and the IHA. Subject to appropriations, the stipends will be funded from the portion of the operating subsidy funding for RO expenses ($15.00 per unit per year). (See definition of annual income in § 905.102 for exclusion for these stipends.)

(2) Funding provided by an IHA to a duly elected RO may be made only under a written agreement between the IHA and a RO, which includes a RO budget and assurance that all RO expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement must require the local RO to account to the IHA for the use of the funds and permit the IHA to inspect and audit the resident council's financial records related to the agreement.

## Tenant Opportunities Program

### § 905.966 General.

The Indian Tenant Opportunities Program (TOP) (which is the program similar to the public housing TOP for public housing residents) provides technical assistance for various activities including resident management for ROs/RMCs as authorized by Section 20 of the Act. The TOP provides opportunities for RO/RMCs to improve living conditions and resident satisfaction in Indian housing communities.

### § 905.967 Eligible TOP activities.

Activities to be funded and carried out by an eligible RO or resident management corporation, as defined in subpart B of this part, must improve the living conditions and Indian housing operations and may include any combination of, but are not limited to, the following:

(a) *Resident Capacity Building.* (1) Training Board members in community organizing, Board development, and leadership training;

(2) Determining the feasibility of resident management enablement for a specific project or projects; and

(3) Assisting in the actual creation of a RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(b) *Resident Management.* (1) Training residents, as potential employees of a RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(2) Training of residents with respect to fair housing requirements; and

(3) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(c) *Resident Management Business Development.* (1) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(2) Technical assistance and training in resident managed business development through:

(i) Feasibility and market studies;

(ii) Development of business plans;

(iii) Outreach activities; and

(iv) Innovative financing methods including revolving loan funds.

(3) Legal advice in establishing a resident managed business entity.

(d) *Social Support Needs (such as self-sufficiency and youth initiatives).* (1) Feasibility studies to determine training and social services needs;

(2) Training in management-related trade skills, computer skills, etc;

(3) Management-related employment training and counseling;

(4) Coordination of support services;

(5) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs; and

(6) Training programs on health, nutrition and safety.

(7) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident organizations on youth initiatives and program activities.

(8) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas; and

(e) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(f) *General.* (1) Required training on HUD regulations and policies governing the operation of low-income public and Indian housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the development and property management;

(2) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(3) Training in accessing other funding sources; and

(4) Hiring trainers or other experts. RO/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the IHA, or other sources knowledgeable about the program.

§ 905.968 Technical assistance.

To the extent that grant authority is available, HUD shall provide financial assistance to ROs or RMCs that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of these entities; the development of the management capabilities of newly formed or existing entities; the identification of the social support needs of residents of projects, and the securing of this support; and a wide range of activities to further the purposes of this subpart.

§ 905.969 Resident management requirements.

The following requirements apply when an IHA and its residents are interested in providing for resident performance of management functions in one or more projects under this subpart.

(a) *Resident management corporation.* Residents interested in contracting with an IHA must establish a RMC that meets the requirements for such a corporation, as specified in this subpart.

(b) *Management Contract.* (1) A management contract between the IHA and a RMC is required for resident management. The IHA and the corporation may agree to the performance by the corporation of any or all management functions for which the IHA is responsible to HUD under the ACC, and any other functions not inconsistent with the ACC and applicable laws and regulations. The management contract must be in conformance with the minimum requirements established by HUD.

(2) The management contract may include specific provisions governing management personnel; compensation for maintenance laborers and mechanics and administrative employees employed in the operation of the project, except that the amount of this compensation must meet applicable labor standard requirements of Federal law; rent collection procedures; resident income verification; resident eligibility determinations; resident eviction; the acquisition of supplies and materials; and such other matters as the IHA and the corporation determine to be appropriate, and as HUD may specify in administrative instructions.

(3) The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the IHA is subject.

(4) Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of an IHA to contract with a RMC.

(c) *Prohibited activities.* An IHA may not contract for assumption by the RMC of the IHA's underlying responsibilities to HUD under the ACC.

(d) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the IHA) to protect HUD and the IHA against loss, theft, embezzlement, or fraudulent acts on the part of the corporation or its employees.

§ 905.970 Management specialist.

The RO must select, in consultation with the IHA, a qualified Indian housing management specialist to assist in determining the feasibility of, and to help establish, a RMC and to provide training and other duties in connection with operating the TOP project. The Housing Management Specialist (Trainer) can be a non-profit organization, the IHA or a consultant.

§ 905.971 Operating subsidy, preparation of operating budget, operating reserves and retention of excess revenues.

(a) *Calculation of operating subsidy.* Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the IHA in accordance with subpart J of this part, with the following exceptions:

(1) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized IHA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned Indian housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects, in accordance with subpart J of this part.

(2) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of resident income used in calculating PFS subsidy.

(3) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities of the corporation or facilities operated by the corporation.

(4) Any reduction in the subsidy of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA shall not affect the subsidy calculation for the resident management corporation project.

(b) *Calculation of total income and preparation of operating budget. No reduction.* (1) Subject to paragraph (c) of this section, the amount of funds provided by an IHA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on the date a resident management corporation first assumes management responsibility for the project.

(2) *Treatment of technical assistance.* For purposes of determining the amount of funds provided to a project under paragraph (b)(1) of this section, the provision of technical assistance by the IHA to the resident management corporation will not be included.

(3) *Operating budget.* The resident management corporation and the IHA shall submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with paragraph (a) of this section, for the project managed by a resident management corporation to HUD for approval. This budget will

reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to functions which will continue to be performed by the IHA.

(4) *Operating reserves.* (i) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host IHA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available in the IHA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the IHA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(ii) The use of the reserve will be subject to all administrative procedures generally applicable to the Indian housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(iii) Investment of funds held in the reserve will be in accordance with the provisions of chapter 4 of the Financial Management Handbook, 7475.1 REV, and interest generated will be included in the calculation of operating subsidy in accordance with subpart J of this part.

(c) *Adjustments to total income.* (1) Operating subsidy will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the project.

(2) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with paragraph (a) of this section, the contract may specify that income be provided to the project from other sources of income of the IHA.

(3) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(i) Any reduction in the total income of an IHA that occurs as a result of fraud, waste, or mismanagement by the IHA; or

(ii) Any change in the total income of an IHA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

(d) *Retention of excess revenues.* Any income generated by a resident management corporation that exceeds the income estimated for the income category involved must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to an IHA under subpart J of this part; and

(2) The funds provided by the IHA to the resident management corporation.

(e) *Use of retained revenues.* Any revenues retained by a resident management corporation under paragraph (d) of this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of Indian housing, or acquiring additional dwelling units for low-income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

### § 905.972 TOP audit and administrative requirements.

(a) *Annual audit of financial statements.* The financial statements of a RMC managing a project under this subpart must be audited annually by a licensed certified public accountant, designated by the RMC, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the IHA within 30 days of issuance.

(b) *Relationship to other authorities.* The requirements of paragraph (a) of this section are in addition to any other Federal law or other requirement that would apply to the availability and audit of financial statements of RMCs under this part.

(c) *General administrative requirements.* Except as modified by this part, RMCs must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

## Family Investment Centers (FIC) Program

### § 905.980 General.

(a) *The Family Investment Centers (FIC) Program.* This program provides families living in Indian housing with better access to educational and employment opportunities by:

(1) Developing facilities in or near Indian housing for training and support services;

(2) Mobilizing public and private resources to expand and improve the delivery of such services;

(3) Providing funding for such essential training and support services that cannot otherwise be funded; and

(4) Improving the capacity of management to assess the training and service needs of families, coordinating the provision of training and services that meet such needs, and ensuring the long-term provision of such training and services.

(b) *Supportive Services.* New or significantly expanded services essential to providing families in Indian housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. IHAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(1) Child care;

(2) Employment training and counseling;

(3) Computer skills training;

(4) Education including remedial education; literacy training; completion of secondary or post secondary education and assistance in the attainment of certificates of high school equivalency;

(5) Business, entrepreneurial training and counseling;

(6) Transportation necessary to enable any participating family member to receive available services or to commute to his/her place of employment;

(7) Personal welfare (e.g. substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(8) Supportive Health Care Services (e.g., outreach and referral services); and

(9) Any other services and resources, including case management, determined to be appropriate in assisting eligible residents.

(c) *FIC Service Coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be serviced by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding;

(5) Monitoring and evaluating the delivery, impact and effectiveness of any supportive service funded with capital or operating assistance under the FIC program.

(6) Coordinating the development and implementation of the FIC Program with other self-sufficiency, educational and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

**§ 905.982 Eligibility.**

An IHA may apply to establish one or more FICs for more than one Indian housing development. An IHA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

**§ 905.983 FIC activities.**

Activities that may be funded and carried out by an eligible IHA may include:

(a) The renovation, conversion, or combination of vacant dwelling units to create common areas to accommodate the provision of supportive services;

(b) The renovation of existing common areas to accommodate the provision of supportive services;

(c) The acquisition, construction, or renovation of facilities located near the premises of one or more IHA developments to accommodate the provision of supportive services;

(d) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the IHA or by contract or lease through other appropriate agencies or providers), but only if the IHA demonstrates that:

(1) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(2) The IHA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(e) The employment of service coordinators.

**§ 905.984 IHA role in activities under this part.**

An IHA shall develop a process that ensures that RO/RMC representatives and residents are fully informed of, and have an opportunity to comment on, the contents of the application and activities at all stages of the application and grant award process. The IHA shall give full and fair consideration to the comments and concerns of the residents.

**§ 905.985 HUD policy on training, employment, contracting and subcontracting of Indian housing residents.**

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, IHAs, their contractors and subcontractors shall use best efforts, consistent with existing Federal, State, Tribal and local laws and regulations (including Section 7(b) of the Indian Self-Determination and Education Assistance Act), to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance.

**§ 905.986 Grant Set-Aside Assistance.**

HUD may set-aside five percent of any amounts available in each fiscal year (subsequent to the first funding cycle) to supplement grants previously awarded under this program. These supplemental grants would be awarded to IHAs that demonstrate that funds cannot otherwise be obtained and are needed to provide adequate service levels to residents.

**§ 905.987 Resident compensation.**

Residents employed pursuant to a FIC grant shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employee under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident was not exempt under section 13 of the FLSA;

(b) The State, local or Tribal minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

**§ 905.988 Administrative requirements.**

Each IHA receiving a grant shall submit to the HUD Field Office an annual progress report describing and evaluating the use of grant amounts received under this program.

## PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

6. The authority citation for part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

7. In § 913.106, paragraph (c) is amended by:

a. Removing the word "or" from the end of paragraph (c)(8)(ii);

b. Adding the word "or" at the end of paragraph (c)(8)(iii);

c. Adding a new paragraph (c)(8)(iv);

d. Removing the word "or" from the end of paragraph (c)(10);

e. Redesignating paragraph (c)(11) as paragraph (c)(12); and

f. Adding a new paragraph (c)(11), to read as follows:

**§ 913.106 Annual income.**

* * * * *

(c) * * *

(8) * * *

(iv) A resident service stipend, but only if the resident service stipend does not exceed $200 per month/per officer to resident council officers. Stipends are intended to cover costs related to officers' volunteer efforts and include but are not limited to the following items: child care, transportation, special equipment and special clothing.

* * * * *

(11) The earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937, or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or Local law* means a program providing employment training and supportive services that—

(A) Is authorized by a federal, state or local law;

(B) Is funded by federal, state or local government;

(C) Is operated or administered by a public agency; and

(D) Has as its objective to assist participants in acquiring job skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job.

(This provision does not apply to residents participating in the Family Self-Sufficiency Program who are utilizing the escrow account.)

* * * * *

8. Part 964, consisting of §§ 964.1 through 964.350, is revised in its entirety, to read as follows:

## PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

### Subpart A—General Provisions

Sec.
964.1 Purpose.
964.3 Applicability and scope.
964.7 Definitions.
964.11 HUD policy on tenant participation.
964.12 HUD policy on the Tenant Opportunities Program (TOP).
964.14 HUD policy on partnerships.
964.15 HUD policy on resident management.
964.16 HUD role in activities under this part.
964.18 HA role in activities under subparts B & C.
964.24 HUD policy on FIC Program.
964.30 Other Program requirements.

### Subpart B—Tenant Participation

964.100 Role of resident council.
964.105 Role of the Jurisdiction-Wide Resident Council.
964.110 Resident membership on HA Board of Commissioners.
964.115 Resident council requirements.
964.117 Resident council partnerships.
964.120 Resident management corporation requirements.
964.125 Eligibility for resident council membership.
964.130 Election procedures and standards.
964.135 Resident involvement in HA management operations.
964.140 Resident training.
964.145 Conflict of interest.
964.150 Funding tenant participation.

### Subpart C—Tenant Opportunities Program

964.200 General.
964.205 Eligibility.
964.210 Notice of funding availability.
964.215 Grant agreement.
964.220 Technical assistance.
964.225 Resident management requirements.
964.230 Audit and administrative requirements.

### Subpart D—Family Investment Centers (FIC) Program

964.300 General.
964.305 Eligibility.
964.308 Supportive services requirements.
964.310 Audit/compliance requirements.
964.315 HAs role in activities under this part.
964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.
964.325 Notice of funding availability.
964.330 Grant set-aside assistance.
964.335 Grant agreement.
964.340 Resident compensation.
964.345 Treatment of income.
964.350 Administrative requirements.

**Authority:** 42 U.S.C. 1437d, 1437g, 1437l, 1437r, 1437t, 3535(d).

### Subpart A—General Provisions

#### § 964.1 Purpose.

The purpose of this part is to recognize the importance of resident involvement in creating a positive living environment and in actively participating in the overall mission of public housing.

#### § 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any HA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

(b) Subpart B of this part contains HUD policies, procedures, and requirements for the participation of residents in public housing operations. These policies, procedures, and requirements apply to all residents participating under this part.

(c)(1) Subpart C of this part contains HUD policies, procedures, and requirements for residents participating in the Tenant Opportunities Program (TOP) (replaces the Resident Management Program under Section 20 of the United States Housing Act of 1937). Resident management in public housing is viable and remains an option under TOP.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements for resident management in public housing between a PHA and a resident management corporation. On or after September 23, 1994, any new, renewed or renegotiated contracts must meet the requirements of this part, the ACC and all applicable laws and regulations.

(d) Subpart D of this part includes requirements for the Family Investment Centers (FIC) Program which was established by Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) to provide families living in public housing and Indian housing with better access to educational and employment opportunities.

(e) The term "resident," as used throughout this part, is interchangeable with the term "tenant," to reflect the fact that local resident organizations have differing preferences for the terms. Terms such as "resident council" and "tenant council" and "resident management" and "tenant management" are interchangeable. Hereafter, for ease of discussion, the rule will use the terms resident, resident council and resident management corporation, as appropriate.

#### § 964.7 Definitions.

*Annual Contributions Contract (ACC).* A contract (in the form prescribed by HUD) under which HUD agrees to provide financial assistance, and the HA agrees to comply with HUD requirements for the development and operation of the public housing project.

*Eligible residents for FIC.* A participating resident of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program. Although Section 8 FSS families are eligible residents for FIC, they do not qualify for income exclusions that are provided for public housing residents participating in employment and supportive service programs.

*Family Investment Centers (FIC).* A facility on or near public housing which provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

*FIC service coordinator.* Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding.

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs, and other education and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

*Management.* All activities for which the HA is responsible to HUD under the ACC, within the definition of "operation" under the Act and the ACC, including the development of resident programs and services.

*Management contract.* A written agreement between a resident management corporation and a HA, as provided by subpart C.

*Public Housing Agency (HA).* Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing.

*Public housing development (Development).* The term "development" has the same meaning as that provided for "low-income housing project" as that term is defined Section 3(b)(1) of the Act.

*Resident management.* The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

*Resident management corporation.* An entity that proposes to enter into, or enters into, a contract to manage one or more management activities of a HA.

*Resident-owned business.* Any business concern which is owned and controlled by public housing residents. (The term "resident-owned business" includes sole proprietorships.) For purposes of this part, "owned and controlled" means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

*Supportive services for FIC.* New or significantly expanded services that are essential to providing families living with children in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

*Tenant Opportunities Program (TOP).* The TOP program is designed to prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, to move toward financial independence, and to enable them to choose where they want to live and engage in meaningful participation in the management of housing developments in which they live. Financial assistance in the form of technical assistance grants is available to RCs/RMCs to prepare to manage activities in their public housing developments.

*Vacant unit under FIC.* A dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total resident payment that is based on income and, as a result, the amount paid by the family to the HA is zero.

### § 964.11 HUD policy on tenant participation.

HUD promotes resident participation and the active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA. HUD encourages HAs and residents to work together to determine the most appropriate ways to foster constructive relationships, particularly through duly-elected resident councils.

### § 964.12 HUD policy on the Tenant Opportunities Program (TOP).

HUD promotes TOP programs to support activities that enable residents to improve the quality of life and resident satisfaction, and obtain other social and economic benefits for residents and their families. Tenant opportunity programs are proven to be effective in facilitating economic uplift, as well as in improving the overall conditions of the public housing communities.

### § 964.14 HUD policy on partnerships.

HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. Strong partnerships are critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community.

### § 964.15 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages HAs, resident councils and resident management corporations to explore the various functions involved in management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident-managed entities include improved quality of life, experiencing the dignity of meaningful work, enabling residents to choose where they want to live, and meaningful participation in the management of the housing development.

### § 964.16 HUD role in activities under this part.

(a) *General.* Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation including resident management are local decisions to be made jointly by resident councils/resident management corporations and their HAs. HUD will promote tenant participation and tenant opportunities programs, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with these initiatives.

(b) *Monitoring.* HUD shall ensure that the requirements under this part are operating efficiently and effectively.

### § 964.18 HA role in activities under subparts B & C.

(a) *HAs with 250 units or more.*

(1) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(2) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(3) A HA may consult with residents, or resident councils (if they exist), to determine the extent to which residents desire to participate in activities involving their community, including the management of specific functions of a public housing development that may be mutually agreeable to the HA and the resident council/resident management corporation.

(4) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(5) If requested, a HA should provide a duly recognized resident council office space and meeting facilities, free of charge, preferably within the development it represents. If there is no community or rental space available, a request to approve a vacant unit for this non-dwelling use will be considered on a case-by-case basis.

(6) If requested, a HA shall negotiate with the duly elected resident council on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the HA and the resident council. If a HA fails to negotiate with a resident council in good faith or, after negotiations,

refuses to permit such usage of community space, the resident council may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the resident council's efforts to negotiate a written agreement. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the request or for refusing to negotiate. HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on an agreement. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(7) In no event shall HUD or a HA recognize a competing resident council once a duly elected resident council has been established. Any funding of resident activities and resident input into decisions concerning public housing operations shall be made only through the officially recognized resident council.

(8) The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident committees to work on issues and planning.

(9) The resident council shall hold frequent meetings with the residents to ensure that residents have input, and are aware and actively involved in HA management-resident council decisions and activities.

(10) The HA and resident council shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

(11) The HA, in collaboration with the resident councils, shall assume the lead role for assuring maximum opportunities for skills training for public housing residents. To the extent possible, the training resources should be local to ensure maximum benefit and on-going access.

(b) *HAs with fewer than 250 units.* (1) HAs with fewer than 250 units of public housing have the option of participating in programs under this part.

(2) HAs shall not deny residents the opportunity to organize. If the residents decide to organize and form a resident council, the HA shall comply with the following:

(i) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(ii) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(iii) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(iv) In no event shall HUD or a HA officially recognize a competing resident council once a duly elected resident council has been established. If a duly elected resident council has been formed, any input into changes concerning public housing operations shall be made only through the officially recognized resident council.

**§ 964.24 HUD policy on FIC Program.**

HUD promotes Family Investment Centers which provide better access to educational and employment opportunities for residents living in public housing. HUD encourages resident involvement in the FIC Program and promotes resident-HA partnerships to achieve mutual goals.

**§ 964.30 Other Program requirements.**

All programs under this part must be conducted and administered in accordance with the Civil Rights requirements cited below and comply with all other Federal laws, executive orders, regulations and policies.

(a) *Fair Housing Requirements.* The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and regulations pursuant thereto (24 CFR Part 100); Executive Order 11063 (Equal Opportunity in Housing) and regulations pursuant thereto (24 CFR Part 107); the fair housing poster regulations (24 CFR Part 110) and the advertising guidelines (24 CFR Part 109).

(b) *Nondiscrimination in Housing.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR Part 1).

(c) *Discrimination on the Basis of Age or Handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR Part 146), and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8).

(d) *Employment Opportunities.* The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects).

(e) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11246, 11625 12432, and 12138. Consistent with HUD's responsibilities under these orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(f) *Affirmative Outreach.* The Affirmative Fair Housing Marketing Program requirements of 24 CFR Part 200, Subpart M and the implementing regulations at 24 CFR part 108.

(g) *Disability Requirements—Fair Housing Act, Section 504 and the Americans with Disabilities Act.* The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, as amended. Recipient must also comply with Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulation at 28 CFR Part 35.

## Subpart B—Tenant Participation

**§ 964.100 Role of resident council.**

The role of a resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing. Resident councils may actively participate through a working partnership with the HA to advise and assist in all aspects of public housing operations.

**§ 964.105 Role of the jurisdiction-wide resident council.**

(a) *Jurisdiction-wide resident council.* Resident councils may come together to form an organization which can represent the interest of residents residing in units under a HA's jurisdiction. This can be accomplished by the presidents of duly elected resident councils forming an organization, by resident councils electing a representative to the organization, or through jurisdiction-wide elections. If duly elected resident councils form such an organization, the HA shall recognize it as the voice of authority-wide residents for input into housing authority policy making.

(b) *Function.* The jurisdiction-wide council may advise the Board of

Commissioners and executive director in all areas of HA operations, including but not limited to occupancy, general management, maintenance, security, resident training, resident employment, social services and modernization priorities.

(c) *Cooperation with other groups.* There shall be regularly scheduled meetings between the HA and the local duly elected resident council, and the jurisdiction-wide resident council to discuss problems, plan activities and review progress.

**§ 964.110 Resident membership on HA Board of Commissioners.**

HUD encourages to the maximum extent possible resident membership on HA Board of Commissioners, for the purpose of having maximum input into HA policy and decision-making on matters concerning public housing.

**§ 964.115 Resident council requirements.**

A resident council shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(a) It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses; or

(3) In one or more contiguous buildings;

(4) In a development; or

(5) In a combination of these buildings or developments;

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership ("threshold") who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(c) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five (5) elected board members.

The voting membership must consist of heads of households (any age) and other residents at least 18 years of age or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

**§ 964.117 Resident council partnerships.**

A resident council may form partnerships with outside organizations, provided that such relationships are complementary to the resident council in its duty to represent the residents, and provided that such outside organizations do not become the governing entity of the resident council.

**§ 964.120 Resident management corporation requirements.**

A resident management corporation must consist of residents residing in public housing and have each of the following characteristics in order to receive official recognition by the HA and HUD:

(a) It shall be a non-profit organization that is validly incorporated under the laws of the State in which it is located;

(b) It may be established by more than one resident council, so long as each such council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation;

(c) It shall have an elected Board of Directors, and elections must be held at least once every three (3) years;

(d) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(e) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in the public housing represented by the resident management corporation;

(f) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

**§ 964.125 Eligibility for resident council membership.**

(a) Any member of a public housing household whose name is on the lease of a unit in the public housing development and meets the requirements of the by-laws is eligible to be a member of a resident council. The resident council may establish additional criteria that are non-discriminatory and do not infringe on rights of other residents in the development. Such criteria must be stated in the by-laws or constitution as appropriate.

(b) The right to vote for resident council board shall be limited to designated heads of households (any age) and other members of the household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

(c) Any qualified voting member of a resident council who meets the requirements described in the by-laws and is in compliance with the lease may seek office and serve on the resident council governing board.

**§ 964.130 Election procedures and standards.**

At a minimum, a resident council may use local election boards/commissions. The resident council shall use an independent third-party to oversee elections and recall procedures.

(a) Resident councils shall adhere to the following minimum standards regarding election procedures:

(1) All procedures must assure fair and frequent elections of resident council members—at least once every three years for each member.

(2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.

(3) Each resident council shall adopt and issue election and recall procedures in their by-laws.

(4) The election procedures shall include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(5) All voting members of the resident community must be given sufficient notice (at least 30 days) for nomination and election. The notice should include a description of election procedures, eligibility requirements, and dates of nominations and elections.

(b) If a resident council fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted, HUD shall require the HA to withdraw recognition of the resident council and to withhold resident services funds as well as funds provided in conjunction with services rendered for resident participation in public housing.

(c) HAs shall monitor the resident council election process and shall establish a procedure to appeal any adverse decision relating to failure to satisfy HUD minimum standards. Such appeal shall be submitted to a jointly selected third-party arbitrator at the local level. If costs are incurred by using a third-party arbitrator, then such costs should be paid from the HAs resident services funds pursuant to § 964.150.

### § 964.135 Resident involvement in HA management operations.

Residents shall be involved and participate in the overall policy development and direction of Public Housing operations.

(a) Resident management corporations (RMCs) may contract with HAs to perform one or more management functions provided the resident entity has received sufficient training and/or has staff with the necessary expertise to perform the management functions and provided the RMC meets bonding and licensing requirements.

(b) Residents shall be actively involved in a HA's decision-making process and give advice on matters such as modernization, security, maintenance, resident screening and selection, and recreation.

(c) While a HA has responsibility for management operations, it shall ensure strong resident participation in all issues and facets of its operations through the duly elected resident councils at public housing developments, and with jurisdiction-wide resident councils.

(d) A HA shall work in partnership with the duly elected resident councils.

(e) HAs, upon request from the duly elected resident council, shall ensure that the duly elected resident council officers as defined in subpart B of this part, and other residents in the development are fully trained and involved in developing and implementing Federal programs including but not limited to Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grant Program, Urban Revitalization Demonstration, Drug Elimination, and FIC.

(f) HAs shall involve resident council officers and other interested residents at the development through education and direct participation in all phases of the budgetary process.

(g) Resident council officers shall be encouraged to become involved in the resident screening and selection process for prospective residents at the development. Those selected to perform resident screening and selection functions must be trained by the HA in resident screening and selection and must sign a legal document committing to confidentiality.

### § 964.140 Resident training.

(a) *Resident training opportunities.* HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

(1) Community organization and leadership training;

(2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;

(3) Public housing policies, programs, rights and responsibilities training; and

(4) Business entrepreneurial training, planning and job skills.

(b) *Local training resources.* HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:

(1) Resident organizations;

(2) Housing authorities;

(3) Local community colleges, vocational schools; and

(4) HUD and other Federal agencies and other local public, private and non-profit organizations.

### § 964.145 Conflict of interest.

Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the HA.

### § 964.150 Funding tenant participation.

(a) *Funding duly elected resident councils and jurisdiction wide resident councils.* (1) The HA shall provide funds it receives for this purpose to the duly elected resident council at each development and/or those jurisdiction-wide councils eligible to receive the resident portion of the tenant services account to use for resident participation activities. This shall be an addition to the Performance Funding System (PFS), as provided by 24 CFR part 990, to permit HAs to fund $25 per unit per year for units represented by duly elected resident councils for resident services, subject to the availability of appropriations. Of this amount, $15 per unit per year would be provided to fund tenant participation activities under subpart B of this part for duly elected resident councils and/or jurisdiction-wide councils and $10 per unit per year would be used by the HA to pay for costs incurred in carrying out tenant participation activities under subpart B of this part, including the expenses for conducting elections, recalls or arbitration required under § 964.130 in subpart B. This will guarantee the resources necessary to create a bona fide partnership among the duly elected resident councils, the HA and HUD. Where both local and jurisdiction-wide councils exist, the distribution will be agreed upon by the HA and the respective councils.

(2) If funds are available through appropriations, the HA must provide tenant services funding to the duly elected resident councils regardless of the HA's financial status. The resident council funds shall not be impacted or restricted by the HA financial status and all said funds must be used for the purpose set forth in subparts B and C of this part.

(3) The HA and the duly elected resident council at each development and/or those jurisdiction-wide councils shall collaborate on how the funds will be distributed for tenant participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the Field Office for intervention. HUD Field Office shall require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of the Field Office intervention, the Field Office shall refer the matter to HUD Headquarters for final resolution.

(b) *Stipends.* (1) HUD encourages HAs to provide stipends to resident council officers who serve as volunteers in their public housing developments. The amount of the stipend, up to $200 per month/per officer, shall be decided locally by the resident council and the HA. Subject to appropriations, the stipends will be funded from the resident council's portion of the operating subsidy funding for resident council expenses ($15.00 per unit per year).

(2) Pursuant to § 913.106, stipends are not to be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(3) Funding provided by a HA to a duly elected resident council may be made only under a written agreement between the HA and a resident council, which includes a resident council budget and assurance that all resident council expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation

of the local development. The agreement must require the local resident council to account to the HA for the use of the funds and permit the HA to inspect and audit the resident council's financial records related to the agreement.

## Subpart C—Tenant Opportunities Program

### § 964.200 General.

(a) The Tenant Opportunities Program (TOP) provides technical assistance for various activities, including but not limited to resident management, for resident councils/resident management corporations as authorized by Section 20 of the U.S. Housing Act of 1937. The TOP provides opportunities for resident organizations to improve living conditions and resident satisfaction in public housing communities.

(b) This subpart establishes the policies, procedures and requirements for participating in the TOP with respect to applications for funding for programs identified in this subpart.

(c) This subpart contains the policies, procedures and requirements for the resident management program as authorized by section 20 of the U.S. Housing Act of 1937.

### § 964.205 Eligibility.

(a) *Resident councils/resident management corporations.* Any eligible resident council/resident management corporation as defined in subpart B of this part is eligible to participate in a program administered under this subpart.

(b) *Activities.* Activities to be funded and carried out by an eligible resident council or resident management corporation, as defined in subpart B of this part, must improve the living conditions and public housing operations and may include any combination of, but are not limited to, the following:

(1) *Resident capacity building.* (i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of resident management enablement for a specific project or projects; and

(iii) Assisting in the actual creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(2) *Resident management.* (i) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(ii) Training of residents with respect to fair housing requirements; and

(iii) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(3) *Resident management business development.* (i) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(ii) Technical assistance and training in resident managed business development through:

(A) Feasibility and market studies;

(B) Development of business plans;

(C) Outreach activities; and

(D) Innovative financing methods including revolving loan funds; and

(iii) Legal advice in establishing a resident managed business entity.

(4) *Social support needs (such as self-sufficiency and youth initiatives).* (i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, etc;

(iii) Management-related employment training and counseling;

(iv) Coordination of support services;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition and safety;

(vii) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas;

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident councils on youth initiatives and program activities; and

(5) *Homeownership Opportunity.* Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multi-family) affordable for purchase by residents.

(6) *General.* (i) Required training on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project and property management;

(ii) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(iii) Training in accessing other funding sources; and

(iv) Hiring trainers or other experts (RCs/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the HA, or other sources knowledgeable about the program).

### § 964.210 Notice of funding availability.

A Notice of Funding Availability shall be published periodically in the Federal Register containing the amounts of funds available, funding criteria, where to obtain and submit applications, and the deadline for submissions.

### § 964.215 Grant agreement.

(a) *General.* HUD shall enter into a grant agreement with the recipient of a technical assistance grant which defines the legal framework for the relationship between HUD and a resident council or resident management corporation for the proposed funding.

(b) *Term of grant agreement.* A grant shall be for a term of three to five years (3–5 years), and renewable at the expiration of the term.

### § 964.220 Technical assistance.

(a) *Financial assistance.* HUD will provide financial assistance, to the extent available, to resident councils or resident management corporations for technical assistance and training to further the activities under this subpart.

(b) *Requirements for a management specialist.* If a resident council or resident management corporation seeks to manage a development, it must select, in consultation with the HA, a qualified housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties in connection with the daily operations of the project.

### § 964.225 Resident management requirements.

The following requirements apply when a HA and its residents are interested in providing for resident performance of several management functions in one or more projects.

(a) *Resident management corporation responsibilities.* Resident councils interested in contracting with a HA must establish a resident management corporation that meets the requirements for such a corporation, as specified in subpart B. The RMC and its employees must demonstrate their ability and skill to perform in the particular areas of management pursuant to the management contract.

(b) *HA responsibilities.* HAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the HA. A HA shall enter into good-faith negotiations with a corporation seeking to contract to provide management services.

(c) *Duty to bargain in good faith.* If a HA refuses to negotiate with a resident management corporation in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(d) *Management contract.* A management contract between the HA and a resident management corporation is required for property management. The HA and the resident management corporation may agree to the performance by the corporation of any or all management functions for which the HA is responsible to HUD under the ACC and any other functions not inconsistent with the ACC and applicable state and local laws, regulations and licensing requirements.

(e) *Procurement requirements.* The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the HA is subject. Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of a HA to contract with a RMC.

(f) *Rights of families; operation of project.* If a resident management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of part 941 of this chapter, the resident management program may not, as determined by the HA, interfere with the rights of other residents of such project or harm the efficient operation of such project.

(g) *Comprehensive improvement assistance with RMCs.* (1) The HA may enter into a contract with the RMC to provide comprehensive improvement assistance under part 968 of this chapter to modernize a project managed by the RMC.

(2) The HA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the RMC provide otherwise by contract.

(3) In assessing the modernization needs of its projects under 24 CFR part 968, or other grant mechanisms established by the Housing and Community Development Act of 1987, the HAs must consult with the tenant management corporation regarding any project managed by the corporation, in order to determine the modernization needs and preferences of resident-managed projects. Evidence of this required consultation must be included with a HA's initial submission to HUD.

(h) *Prohibited activities.* A HA may not contract for assumption by the resident management corporation of the HA's underlying responsibilities to HUD under the ACC.

(i) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the HA) to protect HUD and the HA against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

(j) *Waiver of HUD requirements.* Upon the joint request of a resident management corporation and the HA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the resident management corporation and the HA, that the requirement unnecessarily increases the costs to the project or restricts the income of the project; and that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Any waiver granted to a resident management corporation under this section will apply as well to the HA to the extent the waiver affects the HA's remaining responsibilities relating to the resident management corporation's project.

(k) *Monitoring of RMC performance.* The HA must review periodically (but not less than annually) the management corporation's performance to ensure that it complies with all applicable requirements and meets agreed-upon standards of performance. (The method of review and criteria used to judge performance should be specified in the management contract.)

**§ 964.230 Audit and administrative requirements.**

(a) *TOP grant recipients.* The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreement with HUD for the purpose of audit or other examinations.

(1) Grant recipients must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

(2) A final audit shall be required of the financial statements made pursuant to this subpart by a Certified Public Accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance.

(b) *Resident management corporations.* Resident management corporations who have entered into a contract with a HA with respect to management of a development(s) must comply with the requirements of OMB Circulars A–110 and A–122, as applicable. Resident management corporations managing a development(s) must be audited annually by a licensed certified public accountant, designated by the corporation, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the HA within 30 days of issuance. These requirements are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

## Subpart D—Family Investment Centers (FIC) Program

**§ 964.300 General.**

The Family Investment Centers Program provides families living in public housing with better access to educational and employment opportunities by:

(a) Developing facilities in or near public housing for training and support services;

(b) Mobilizing public and private resources to expand and improve the delivery of such services;

(c) Providing funding for such essential training and support services that cannot otherwise be funded; and

(d) Improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services. FIC provides funding to HAs to access educational, housing, or other social service programs to assist public housing residents toward self-sufficiency.

**§ 964.305 Eligibility.**

(a) *Public Housing Authorities.* HAs may apply to establish one or more FICs for more than one public housing development.

(b) *FIC Activities.* Activities that may be funded and carried out by eligible HAs, as defined in § 964.305(a) and § 964.310(a) may include:

(1) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(2) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(3) The acquisition, construction or renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(4) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(5) The employment of service coordinators.

(c) *Follow up.* A HA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

(d) *Environmental Review.* Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under § 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns.

**§ 964.308 Supportive services requirements.**

HAs shall provide new or significantly expanded services essential to providing families in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(a) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(b) Employment training and counseling (e.g., job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(c) Computer skills training;

(d) Education (e.g., remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(e) Business entrepreneurial training and counseling;

(f) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(g) Personal welfare (e.g., substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(h) Supportive Health Care Services (e.g., outreach and referral services); and

(i) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

**§ 964.310 Audit/compliance requirements.**

HAs cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the HA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [HAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [HAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

**§ 964.315 HAs role in activities under this part.**

The HAs shall develop a process that assures that RC/RMC representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application for funding. The HA shall give full and fair consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) After HUD approval of a grant, notify the duly elected resident organization and if none exists, notify the residents of the development of the approval of the grant; provide notification of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

**§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.**

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, HAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance. Training, employment and contracting opportunities connected with programs funded under the FIC and TOP are covered by Section 3.

**§ 964.325 Notice of funding availability.**

A Notice of Funding Availability will be published periodically in the **Federal Register** containing the amounts of funds available, funding criteria, where to obtain and submit applications, the deadline for the submissions, and further explanation of the selection criteria.

**§ 964.330 Grant set-aside assistance.**

The Department may make available five percent (5%) of any amounts available in each fiscal year (subsequent to the first funding cycle) available to eligible HAs to supplement grants previously awarded under this program. These supplemental grants would be awarded if the HA demonstrates that the funds cannot otherwise be obtained and are needed to maintain adequate levels of services to residents.

**§ 964.335 Grant agreement.**

(a) *General.* HUD will enter into a grant agreement with the recipients of a Family Investment Centers grant which defines the legal framework for the relationship between HUD and a HA.

(b) *Term of grant agreement.* A grant will be for a term of three to five years depending upon the tasks undertaken, as defined under this subpart.

**§ 964.340 Resident compensation.**

Residents employed to provide services or renovation or conversion work funded under this program shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

**§ 964.345 Treatment of income.**

Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the resident's total annual income that is used to determine the resident rental payment during:

(a) The period that the resident participates in the program; and

(b) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(1) The date the resident ceases to continue employment without good cause; or

(2) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program. (See § 913.106, Annual Income.) This provision does not apply to residents participating in the Family Self-Sufficiency Program who are utilizing the escrow account.

**§ 964.350 Administrative requirements.**

The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreements with HUD for the purpose of audit or other examinations.

(a) Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

(b) The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 are applicable with respect to the acceptance and use of assistance by private nonprofit organizations.

## PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

9. The authority citation for part 990 continues to read as follows:

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

10. In § 990.108, new paragraphs (f) and (g) are added, to read as follows:

**§ 990.108 Other costs.**

* * * * *

(f) *Funding for Resident Council expenses.* In accordance with the provisions of 24 CFR part 964 and procedures determined by HUD, each HA shall include in the operating subsidy eligibility calculation, $25 per unit per year (subject to appropriations) for each unit represented by a duly elected resident council in support of the duly elected resident council's activities. Of this amount, $15 per unit per year shall fund resident participation activities of the duly elected resident council and/or jurisdiction-wide councils, including but not limited to stipends. Ten dollars per unit per year shall fund HA costs incurred in carrying out resident participation activities.

(g) *Funding for Resident Council office space.* If there is no community or rental space available, and HUD has approved the use of a vacant rental unit for Resident Council office space, the unit will be eligible for operating subsidy (subject to appropriations) at the rate of the AEL for the number of months the unit is devoted to such use.

* * * * *

11. A new subpart D, consisting of §§ 990.401 through 990.405, is added to read as follows:

**Subpart D—Resident Management Corporations Operating Subsidy**

Sec.
990.401 Calculation of operating subsidy.
990.402 Calculation of total income and preparation of operating budget.
990.403 Adjustments to total income.
990.404 Retention of excess revenues.
990.405 Use of retained revenues.

### Subpart D—Resident Management Corporations Operating Subsidy

**§ 990.401 Calculation of operating subsidy.**

Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with this part, with the following exceptions:

(a) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized HA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects in accordance with § 990.105(e)(5).

(b) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(c) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(d) Any reduction in the subsidy of a HA that occurs as a result of fraud, waste, or mismanagement by the HA shall not affect the subsidy calculation for the resident management corporation project.

**§ 990.402 Calculation of total income and preparation of operating budget.**

(a) Subject to § 990.403, the amount of funds provided by a HA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(b) For purposes of determining the amount of funds provided to a project under § 990.402(a) of this section, the provision of technical assistance by the HA to the resident management corporation will not be included.

(c) The resident management corporation and the HA must submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with § 990.401, for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to the functions which will continue to be performed by the HA.

(d) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host HA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available to the HA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the HA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(e) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(f) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV.1 and interest generated will be included in the calculation of operating subsidy in accordance with this part.

**§ 990.403 Adjustments to total income.**

(a) Operating subsidy calculated in accordance with § 964.401 of this chapter will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(b) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with § 990.401 of this subpart, the contract may specify that income be provided to the project from other sources of income of the HA.

(c) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(1) Any reduction in the total income of a HA that occurs as a result of fraud, waste, or mismanagement by the HA.

(2) Any change in the total income of a HA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

**§ 990.404 Retention of excess revenues.**

(a) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved as specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a HA under part 990, subpart A.

(2) The funds provided by the HA to the resident management corporation.

(b) The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the HA (such as operating subsidy under part 990, subpart A, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

**§ 990.405 Use of retained revenues.**

Any revenues retained by a resident management corporation under § 990.404 of this subpart may only be used for purposes of improving the maintenance and operation of the project, establishing businesses enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

Dated: August 18, 1994.

Joseph Shuldiner,

*Assistant Secretary for Public and Indian Housing.*

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