DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 901

[Docket No. FR–3447–I–03]

RIN 2577–AA89

Public Housing Management Assessment Program

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

ACTION: Interim rule.

SUMMARY: This interim rule implements the proposed revision, published on May 6, 1996, of the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901. PHMAP applies to public housing agencies (PHAs) and resident management corporations (RMCs), and any other entities under contract to manage public housing, but does not apply to Indian housing authorities, nor to the Family Self-Sufficiency Program authorized under section 23. PHMAP provides policies and procedures to identify PHA management capabilities and deficiencies, and assists HUD State/Area Offices in accountability monitoring and risk management.

DATES: Effective Date: January 29, 1997. Assessments using the requirements of this rule will begin with PHAs whose fiscal years end on March 31, 1997, the final date of the quarter after this rule is published in the Federal Register.

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SUPPLEMENTARY INFORMATION: On May 6, 1996, HUD published a proposed rule (61 FR 20358) to revise the entire PHMAP at 24 CFR part 901. Eighty-seven comments were received on the proposed rule. The public comments on the proposed rule and the resulting changes in this rule are discussed below in section II of this preamble.

I. Highlights of Changes From the Proposed Rule

A number of changes, more fully discussed in section II of this preamble, below, have been made to the proposed rule by this interim rule, including the following:

- The definition for ''vacancy days: is modified to specify that it pertains to ''dwelling'' units.
- The definitions and methodologies for both the Performance Funding System (PFS) and PHMAP should be the same as long as feasible, and the language of the new rule reflects that.
- Definitions of the terms ''effective lease date,'' ''maintenance plan,'' and ''move-out date'' are added.
- The definition of ''average turnaround time'' is changed to read, ''. . . the annual average of the total number of turnaround days between the latter of the legal expiration date of the immediate past lease or the actual move-out date of the former tenant (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect.''
- The threshold for progress in reducing the vacancy rate that applies to a C grade has been changed from 30% to 15 percentage points.
- The term ''Reduced Actual Vacancy Rate in Previous 3 Years'' is clarified to include the fiscal year being assessed under PHMAP in the 3-year period.
- Dwelling units used for non-dwelling purposes with HUD approval, employee occupied units, and vacant units approved for demolition or disposition are not included as available units in the determination of occupancy/vacancy rates
- For purposes of indicator #2, Modernization, a minimum time is specified between the date HUD's monitoring report or audit is provided to the PHA and the end of the PHA's fiscal year in order to give the PHA sufficient time to correct all findings. The Department has revised components #3 and #4 to reflect a minimum time of 75 calendar days.
- The Department agrees that emergency CGP work does not require prior HUD approval and has revised component #5 of indicator #2, Modernization, to specifically exclude emergency work.
- The Department has added specific language to indicator #4, Work Orders, stating that all preventive maintenance work orders are to be tracked, as well as which type of work orders are exempted from the calculation of this indicator.
- The new resident services and community building indicator is now subdivided into four equally weighted components, and the indicator or the individual components are subject to exclusion based on the particular circumstances of each PHA. The name of this indicator has been renamed ''Resident Services and Community Building'' to place a more accurate emphasis upon the specific role of PHAs for these functions. PHA's with 100% elderly developments will not be assessed under this indicator. To avoid penalizing small PHAs with active programs, PHAs with fewer than 250 units or with 100% elderly developments may request to be assessed under the indicator at the time of PHMAP certification submission.
- The Resident Services and Community Building indicator has been revised in order to assess PHAs for the functions they perform in operating resident services programs and for resident management or TOP performance only when the PHA is the contract administrator for the program.
- The rule has been changed to state that indicator #8, Security, does not apply to PHAs with fewer than 250 units under management unless the PHA requests to be assessed under the indicator at the time of the PHMAP certification submission.
- Section 901.105(d)(3)(iv) has been clarified in the new rule to state that a PHA's score for indicators #1, #4 and/or #5, after any adjustment(s) for physical condition and/or neighborhood environment, may not exceed the maximum potential weighted points assigned to the respective indicator(s).
- Section 901.115(e) of the proposed rule read, ''PHAs with more than 100 units that achieve a total weighted score of less than 60% on indicator (2), modernization, shall be designated as mod-troubled.'' The Department agrees that these ''small'' PHAs should also be assessed on their modernization program, and has amended this section accordingly.
- The posting of PHA PHMAP scores is now required at all offices, rather than in all developments.
- The rule makes clear that PHAs are only required to post and report out final PHMAP scores and do not have to post and report any score that is appealed in a timely basis and is under consideration by HUD.
- The rule now specifically permits an appeal from a State/Area Office rejection of a claim for additional scoring adjustment that is based on the physical condition or neighborhood environment of housing developments.
- In sections 901.220(b) and 901.225, the Department has changed the percentage in the new rule to require that 20% of the residents at a PHA in substantial default indicate to HUD their interest in participating in the competitive proposal process.
- The period has been extended to a 60, rather than 45, day submission period for certifications to be submitted following the end of a PHA's fiscal year.

II. Discussion of Public Comments

General Comments

Comment: One comment stated that PHAs should be monitored, but the PHMAP grading system is not the answer.

Response: Congress passed the amendments to the 1937 Act that authorize PHMAP, and it is the clear intent and purpose of Congress to require HUD to assess PHA management performance. The authorizing statute provides specific statutory indicators, and permits, as HUD deems appropriate, up to five additional ones to be used for this purpose.

Comment: Twenty-four comments stated that a truer assessment can be accomplished now than before; overall, the proposed rule is positive; generally pleased with the proposed revisions that eliminate the snapshot indicators; and the proposed rule is a vast improvement over the current PHMAP certification. Many of the commenters commended HUD's effort to streamline the certification process by reducing the number of indicators from 12 to eight and by providing standard definitions for critical terms. The first six indicators are measures of essential property management and a marked improvement over the current system.

Response: The comments are noted by the Department.

Comment: Five comments felt that there should be a transition period to allow adequate time to change computer programs. There should be at least one year to sample the new indicators to see how changes are going to affect individual PHAs. Any revision of the PHMAP should be made effective beginning with the next fiscal year after the new rule has been published. Two comments felt that if Congress has moved the authorization process forward, PHA's should have an ''option year'' implementation where a PHA has a choice to use either the current PHMAP or the new PHMAP. If the authorization process is stalled, the Department should not implement the new rule.

Response: Most of the data elements required to determine the grade or score for the new indicators are already being maintained by PHAs for reporting requirements for the current PHMAP rule or for other programs. Because of that, a long transition period is not needed. Therefore, assessment under this rule will begin with PHAs whose fiscal year ends the quarter after the publication of this rule (PHAs whose fiscal year ends in the quarter immediately following publication of this revised rule will be assessed under the ''old'' PHMAP rule). This transition period will permit PHAs to organize their data in order to respond to the new requirements. During the first year of implementation of the new rule, the Department will consider modification and exclusion requests based on special circumstances arising from the initial implementation process. A choice of which set of criteria to use (have PHAs choose under which PHMAP rule, old or new, to be assessed) is not feasible because all PHA's must be assessed using the same indicators for the same period of time (i.e., the same calendar year) in order for the scoring to be comparable and fair. HUD is moving forward with this rule because the implementation of the new PHMAP is not dependant upon Congressional authorization. The new rule is published as an interim rule to indicate HUD's intention to continue to refine and improve PHMAP.

Comment: Three Comments requested the Department not to establish a system which requires PHAs to retroactively retrieve information. The Commenters stated that in areas where ''improvement over the last three years'' is considered to calculate the grade, the information needed is not readily available to the PHAs in the new format required by the proposed rule. A transition process should be addressed in the new rule to deal with this.

Response: The PHMAP new rule does not require a PHA to retroactively retrieve information unless the PHA chooses to certify to the percentage of improvement within the prior three year period as permitted by some of the indicators. Since whether to make such a certification is the decision of each PHA, a PHA should factor in the additional time to retrieve the necessary information. A transitional period for this reason is deemed to be unnecessary.

Comment: Three Comments felt that with fewer indicators, it will be more difficult for small PHAs to achieve high performer status; a low score on one indicator will have a much greater impact on the total score.

Response: The reinvention and streamlining of the PHMAP process seeks to focus on the most significant management aspects of PHA management and reduce the burden of the PHMAP process while still producing a valid and reliable assessment. However, the use of fewer indicators does not result in a disproportionate impact from any one indicator. The use of modification and exclusion requests allows PHAs the opportunity to justify why they should not be penalized by a performance that does not exactly meet the requirements of an indicator. Even if additional, though less significant, indicators were used in PHMAP, the weighting of indicators according to their significance would reduce their individual impact on the score despite the additional assessment burden that would result.

Comment: One Comment stated that HUD has attempted to add compliance with specific directives to a program that is supposed to rate performance, and that including them in PHMAP waters down the focus and the results of the program. HUD should remove all non-essential components (Section 3 program at 24 CFR part 135, energy/utility management, etc.).

Response: HUD has attempted to limit PHMAP to examining essential aspects of PHA management. Of these, some that deal with compliance issues, such as the energy indicator, are essential because they are statutory. In other indicators, such as Resident Initiatives, which examines, among other subjects, implementation of Section 3 programs, the degree of successful implementation is regarded as a valid measure of a PHA's efforts to encourage partnerships with residents and the local community that help improve management operations at the PHA. However, compliance-related measures have been kept at a minimum in this rule.

Comment: One Comment felt that the State/Area Offices should be given the flexibility to correct shortcomings in the system which could not have been foreseen in advance.

Response: This rule does provide a high degree of the requested flexibility to State/Area Offices. The State/Area Offices assess each PHA within their jurisdiction on an annual basis, and make determinations for high-performing, standard, and troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score. On-site confirmatory reviews may be conducted by the State/Area Offices, which may result in corrections to a PHAs total weighted score, if appropriate. In addition, State/Area Offices make determinations for exclusion and modification requests, perhaps the greatest area of flexibility in the PHMAP rule. At the same time, HUD must ensure that PHMAP is a truly nationwide assessment methodology and that comparable performance by PHAs in different State/Area Offices is rated without regard to the location.

Comment: One Comment stated that the Commenter has worked very hard to achieve high performer status, but cannot achieve it, under the proposed

PHMAP ratings. Surely, a rating scheme can be formulated that would be equally fair to all PHAs, taking into consideration the huge differences between small and large PHAs, big city and rural PHAs, and the necessity for each to be operated differently.

Response: As indicated in the preamble of the proposed rule, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (92 App. Act) (approved October 28, 1991, Pub. L. 102–139) provided that the evaluation of PHAs must be administered flexibly to ensure that they are not penalized for circumstances beyond their control; and that the weights assigned to indicators must reflect the differences in management difficulty that result from physical condition and neighborhood environment. HUD implements this mandate, which also reflects the concerns expressed in the comment, by permitting PHAs to submit modification and exclusion requests, by limiting the applicability of certain indicators by PHA size, and by assigning additional adjustments to a PHA's PHMAP score based upon physical condition and neighborhood environment.

Comment: Two comments stated that PHMAP scores for PHAs and RMCs should be assessed and scored separately. The purpose of the RMC is to manage and maintain public housing units independent of the PHA. The RMC is an independent body that neither answers to, nor is required to follow the advice of the PHA. Resident groups are being given an enormous amount of responsibility, without the corresponding accountability which puts the PHA in an unfair and untenable position. To relieve the RMC of the necessity of being accountable creates a situation of ''smoke and mirrors.'' Don't let resident management be an illusion; make it real. If the RMC has been deemed eligible and able to manage, it should also be deemed eligible to handle the corresponding success or failure. Do not combine RMC and PHA PHMAP scores.

Response: As discussed in the preamble to the proposed rule, because an RMC enters into a contract with a PHA to perform specific management functions on a development-by-development basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC. Even if an RMC were to assume all of the management functions for a particular development, 24 CFR 964.225(d), entitled, *Management contract,* and 24 CFR 964.225(h), entitled, *Prohibited activities,* provide that a PHA may enter into a management contract with a resident management corporation, but a PHA may not contract for assumption by the resident management corporation of the PHA's underlying responsibilities to the Department under the ACC. In addition, 24 CFR 964.225(k) requires a PHA to review, not less than annually, an RMC's performance to ensure that it complies with all applicable requirements and meets agreed-upon standards of performance. The ultimate responsibility for the management of all of its developments resides with the PHA, whether it contracts out management or other services to an RMC or any other contractor.

Comment: Two comments stated that the sample worksheet for indicator #6 and the PHMAP certification form are not exactly user friendly. One commenter suggested that HUD redesign these two forms so that they can be readily understood and computer formatted for those PHAs that have such capability. The other commenter stated that the new rule should include a standard questionnaire form for PHA use.

Response: The worksheet and certification form have been redesigned, as applicable, to make them more user friendly. HUD welcomes additional, specific recommendations to improve these documents further.

Comment: One comment felt that PHMAP should be aimed toward identifying a quality and reliable service delivery. Progress of development conditions, resident involvement in the solution of community affairs, as well as independent achievements by the residents should be evidence of growth and should be rewarded with high scores and additional benefits.

Response: Even with the reduction and streamlining of PHMAP to measure only the essential aspects of PHA management, as discussed in previous responses, the significance of resident involvement and achievement are recognized in this rule by maintaining resident involvement as a separate indicator. However, this is only one factor in a program that attempts to assess all of the significant areas of PHA management and a PHA must perform well in each area to receive a high score and additional benefits.

Comment: One comment maintained that the results in the quality of work and development conditions should be evaluated in connection with available resources versus market cost in the jurisdictions.

Response: The current PHMAP regulation contains substantial provisions to ensure that PHAs are not penalized for conditions beyond their control: (1) a PHA may request a modification of any indicator and/or component to compensate for conditions beyond its control; (2) a PHA may request the exclusion of an indicator and/or component for the same reason; (3) without requesting a modification, the current and new PHMAP regulations both allow PHAs to modify the scoring calculations for certain indicators by exempting certain units; and (4) there is a two-stage appeal process available if the PHA fails to find relief under items one, two and three, above. As discussed previously, exclusion and modification requests are processed by the local State/Area Office, which would have the greatest awareness of the resources and market conditions affecting a PHA. These procedures provide the appropriate mechanism to address special circumstances, such as area market costs, affecting a PHA's performance.

Comment: Two comments were concerned with revisions that would require the collection and management of new data when that data is needed solely for PHMAP and is not normally utilized in the management of housing. Such changes to the data collection and processing system are not easily accomplished.

Response: The Department's experience in implementing PHMAP so far has resulted in some refinement in the data necessary to assess management performance. The goal of this rule is to provide a more valid assessment process and HUD believes the data requested will produce this result. HUD will continue to evaluate the appropriateness and usefulness of the information it gathers in its implementation of this rule, and will make adjustments as warranted.

Comment: Three comments stated that the proposed rule should be delayed until Congress has completed action concerning the management assessment criteria of PHAs. Bills in the Senate and the House have provisions that would affect PHMAP. The Senate bill would add two indicators and the House bill would create an accreditation process for PHAs. It is not clear how these provisions may be reconciled. If the final bill contains significant changes, HUD should incorporate them into a new proposed rule re-issued for comment.

Response: HUD believes that this rule, incorporating nearly five years of experience and feedback on the rule first implemented in January 1992, represents an improvement over the existing process. The Department will

fully implement any statutory amendments to PHMAP when they are made, but is also continuing to go forward with this rule to avoid delay in implementing an improved process.

Comment: One comment stated that a PHA's ability to maintain its units will decline due to the budget cuts to all PHAs, thus affecting the PHMAP scores. With no funds for repairs, more units will fail HQS. How are PHAs suppose to improve and maintain housing units when funds are reduced, and PHAs are denied modernization funds?

Response: HUD recognizes that PHAs have not been fully funded. In FY 1996, for example, PHAs received only 89% of their funding eligibility under the Performance Funding System (PFS). To the extent that a PHA can demonstrate its management performance has been adversely affected by funding shortfalls, it should do so in an exclusion/modification request. PHAs are expected and encouraged to do their best, but they cannot be expected to do the impossible. In addition, alternative measures have been implemented such as minimum rents and the new focus on mixed-income housing, which provide PHAs with possible alternative income sources.

Comment: One comment stated that a system designed to measure performance of PHAs nationally must be flexible and accommodate local differences. PHMAP should give consideration to the conditions and level of difficulty involved in owning and operating public housing in poverty impacted and distressed urban areas.

Response: PHMAP is required by statute to take into account the physical condition of a PHA's developments and their neighborhood environment in assessing management. In the previous rule, PHMAP scores could be adjusted, based upon physical condition and neighborhood, by up to 10 points to raise a designation to the next status level. In this rule, the overall PHMAP score of a PHA will be adjusted by adding weighted points that reflect the differences in the difficulty of managing developments that result from the physical condition and/or the neighborhood environment of a PHA's developments.

Comment: Two comments felt that two indicators, Resident Services and Security, are troubling and display a tendency toward meddling and micromanagement. HUD has been trying to retreat from that tendency. Plus, Congress has been cutting funding for PHAs. The commenters felt that these indicators are non-management in nature and are not within the control of the PHA. PHMAP should grade only those indicators which are within the control of the management.

Response: A PHA's management efforts are directed toward developments, which are not just properties or structures, but which are housing: buildings that are people's homes. Because of this, there is a strong relationship between a PHA's management efforts and quality of life for a development's residents. While the PHA cannot mandate or control the positive interaction or advancement of its tenants, it can foster the environment and opportunity for such interaction and advancement. The resident involvement indicator attempts to measure a PHA's success in accomplishing this. On the other hand, a PHA is obligated to manage and respond to the unlawful behavior of tenants whose actions impede the peaceful enjoyment of other tenants. The security indicator addresses the PHA's success in managing this significant housing issue.

Comment: One comment supports extending coverage to alternative management entities.

Response: The Department appreciates this concurrence in its effort to assess and improve the management performance of every PHA.

Comment: One comment urges HUD to adopt those changes that help streamline the process of assessment and to use the simplest methods necessary to achieve a particular goal or outcome.

Response: As discussed above, it is HUD's intention to streamline and improve the PHMAP process with this new rule. Further, HUD is by no means closing the door on additional refinement, but will continue to consider and examine additional ways of improving PHMAP. To this end, this rule is being published as an interim rule.

Comment: One comment felt that it is equally important for PHAs to develop strong relationships with their surroundings and their neighbors. There should be points added or deducted to a PHA's final score based on the role a PHA assumes and its relationship with its surroundings.

Response: The resident involvement indicator in this rule, as did the previous resident initiatives indicator that is being replaced, assesses, in part, a PHA's efforts to involve residents to improve the community in which they live. Beyond this specific aspect of community involvement, it is likely that a well managed PHA, the general goal of PHMAP, is a positive community asset and a good neighbor. The recognition of outstanding individual community contributions and achievements by PHAs is important and receives attention from HUD in special ceremonies rather than in PHMAP, which focuses on the overall, day-to-day management aspects of PHAs.

Comment: One comment felt that there should be a simplified list of indicators to be used for smaller PHAs: vacancy rate; rents uncollected; inspections; and financial management.

Response: The authorizing statute for PHMAP lists seven indicators that must be used in assessing PHAs. This limits HUD's ability to differentiate between large and small PHAs in the indicators used for assessment. However, for indicators #7 and #8, PHAs with fewer than 250 units will not be assessed under these indicators unless they request to be assessed at the time of submission of the PHMAP certification.

Comment: Three comments stated that the proposed rule is more process-oriented and requires the tracking and/or collection of much more data. This is more burdensome and requires additional administrative responsibilities at a time when the level of public housing operating subsidy is being reduced.

Response: Although the Paperwork burden estimate for this rule exceeds the Paperwork burden estimate for the previous rule published on January 17, 1992, a substantial part of that increase results from HUD's recognition that a change in necessary data for assessment purposes will initially require more effort to compile. As was the case for the previous rule, it is expected that as the collection and organization of the data becomes more routine following the first submission, the associated burden will also decrease.

Comment: One comment felt that HUD should look for ways to eliminate regulations, not just change regulations.

Response: In the past year, HUD has undertaken an extensive effort to reinvent and streamline all of its rules, and hundreds of pages of regulations have been eliminated. The statute authorizing PHMAP requires its implementation by regulations, and HUD must follow this Congressional mandate.

Comment: Two comments stated that a continuing concern is that making the annual grade in PHMAP may become the true mission of many PHAs.

Response: HUD does not consider the prospect of PHA's refining their management practices to become high performers under PHMAP year after year to be distressing. The purpose of PHMAP is to assess the quality of PHA management, and in implementing this program, HUD intends for the score

achieved to be a valid measure of performance. To address situations in which the PHMAP score poorly corresponds to the actual conditions at a PHA, the rule permits the State/Area Office, in exceptional circumstances listed in the rule, to reinstate any review to address particular deficiencies, and to deny or rescind incentives or high performer status, even though a PHA has satisfied all of the indicators for high or standard performer designation. The purpose of this provision is to prevent PHMAP from being an empty, pro forma exercise.

Comment: One comment believes that PHMAP is but one way to evaluate a PHA's management and ultimately, the quality of its stock. PHMAP is not a comprehensive measure of PHA quality and it is too process oriented. Greater emphasis should be placed on key results which more accurately equate with the quality of the housing stock.

Response: The observation in this comment does not quite correspond to the parameters and purpose of PHMAP as established under the authorizing statute. PHMAP evaluates PHA management performance using seven indicators that are made mandatory under the statute, which permits the Department to use up to five additional indicators. These requirements establish limits on what must and what may be used to assess the quality of a PHA's management, and not the quality of its housing stock. The statute explicitly requires HUD to take into account the difficulty of managing developments that result from their physical condition, indicating the Congressional determination that, to some degree, the quality of the housing stock is independent of the PHA's management capability. HUD is obliged to implement PHMAP in a manner consistent with the statute, and attempts to do so in a manner that will produce a valid and reliable result. As the Department hopes this rule demonstrates, HUD is, and will continue to be, receptive to the refinement of PHMAP based upon its administrative experience and the input it receives from PHAs.

Comment: One comment encourages HUD to publish handbook guidance well in advance of the effective date of the new rule so that PHAs may make any planning, record keeping or operational changes required to ensure compliance and performance.

Response: The Department anticipates the issuance of a revised PHMAP Handbook 7460.5 and a new confirmatory review guidebook prior to the applicability date of the new rule.

Comment: One comment stated that the term ''approved, funded, on-schedule annual modernization program'' is defined in the rule and in the preamble under the discussion of indicator #1. But the term is not used in indicator #1. Is it intended that the term be applied to the exemption for ''vacant units undergoing modernization?'' If so, it should be made explicit. Is it intended that the term be used in connection with indicator #2? If so, then this term is contrary to the rule's discussion of indicator #2, which includes only CIAP and CGP.

Response: The comment is noted, and the definition for ''approved, funded, on-schedule annual modernization program'' is superseded by the definition for ''vacant units undergoing modernization.'' The definition in this rule, which includes the Hope VI Program, the Vacancy Reduction Program (VRP), lead based paint risk assessment funding (1992–1995) and any successor program to the CGP or the CIAP, applies to indicators #1, #4 and #5, as appropriate. In addition, the Department intended for all modernization programs to be assessed under indicator #2. For this reason, lead based paint risk assessment funding will be assessed under all five components of indicator #2. However, due to the design of the Hope VI and the VRP, these program areas cannot be assessed under components #1 and #2 under the modernization indicator. Therefore, in completing a PHA's assessment for indicator #2, the State/Area Office will only examine components #3, #4 and #5 for the Hope VI and the VRP. Appropriate language has been added to indicator #2 in the new rule. A similar comment was made with respect to indicators #4 and #5, and this response is also applicable to those two indicators.

Section 901.10 Indicator #1, Vacancy Rate and Unit Turnaround

Component #1, Vacancy Rate

Comment: Many comments agreed with the changes proposed for the indicator and commended the Department for making the indicator a more representative measure of vacancies. Six comments commended the Department for allowing an adjusted vacancy rate to be used for grades above a C. Seven comments stated that this is a much better way to compare vacancy indicator grades and scores since all PHAs will be compared on the same basis. Several comments indicated that this is a more accurate measure of good management and concurred with the proposed rule combining these two indicators whereas currently they are separate. One comment stated that the changes made to indicator #1 are much more equitable than the current indicator requirements and two other comments indicated agreement with adjusting the vacancies by the conditions listed in the rule and with the grading scale for the vacancy rates. Three comments expressed strong support for the change indicating that it will allow HUD to more accurately judge a PHA's vacancy rate.

Response: The Department agrees that, since the adjusted vacancy rate is derived from valid exemptions, PHAs should be able to achieve grades above a C level based on an adjusted vacancy rate. The Department feels that the new component #1 will provide a more representative picture of PHA vacancies than the current indicator. The Department also agrees with the assumption that if a PHA scores C or above in the vacancy component it should not have a problem with turning around vacant units, and that combining current indicators #1 and #5 into the new indicator #1 is a correct decision.

Comment: Four comments stated that the new vacancy indicator is really a measure of the number of vacancies weighted equally to the turnover rate. The comments indicated that the new weighting of turnover will penalize PHAs that have successful programs for families that move out of public housing. Two comments stated that the proposed rule rewards process over product and activity over results, and that the proposal is far more process-oriented and less results-oriented than the present system for counting vacancies. The proposed rule states that vacancy rates should have greater significance than unit turnaround but proposes a scoring system that requires greater reliance on unit turnaround and unit turnover than on the number of units vacant at the end of each month. Eight comments indicated that a 12 month average of the number of units that are vacant at the end of each month should be used. This is normally what is expected in any rental market and the proposed method is too complicated and requires too much staff time to calculate. Another comment stated that the proposed method places as much emphasis on turnaround time as on actual vacancies and suggested using a twelve month average of the number of vacant units on the 10th day of each month to avoid the problem.

Three comments indicated that the new vacancy indicator would not reward actual occupancy. Instead of measuring the number of units vacant at the end of each month, it measures the number of units leased each month and the amount of time required to lease the

units to arrive at a vacancy rate which converts to an occupancy rate. The current method is an honest way to define occupancy levels. Computing the vacancy rate by calculating the ratio of unit vacancy days to unit days available places greater reliance on unit turnaround. It requires PHAs to calculate the vacancy days for all units leased in a given month plus the vacancy days for all units remaining vacant at the end of the month, divided by the total unit days available for occupancy that month.

Six comments stated that this method calculates vacancy days, which is a function of turnover, rather than the actual number of vacant units. For example, if two PHAs have the same number of units and turnaround time, but one has higher *turnover*, the latter will automatically have more vacant days than the former. The vacancy rate should be the average vacancy rate over the past twelve months. Three comments indicated that the current indicator allows PHAs to answer the question, ''What is your vacancy rate?'' The answer is, ''Our vacancy rate is the number of units vacant at the end of the month compared with the number of units available for occupancy.'' Two comments stated that if a PHA has a high turnover rate because it is moving residents out for private lease-up or home ownership, this too, should be an allowable adjustment to the vacancy rate because PHAs with high move-out rates are adversely affected even though they may have no control over the reasons for the high move-out. Two comments suggested that the snapshot picture be retained.

Three comments indicated that the proposed rule penalizes high turnover rates and provided the following examples: PHA with a high turnover rate but the same unit turnaround time would get a higher vacancy rate than a PHA with lower turnover rate (same unit turnaround time): PHA ''Y'' with 100 units, and 20 units vacated and filled during the year (10 days average turnaround) would have a .55% vacancy rate; and PHA ''Z'' with 100 units, and 40 units vacated and filled during the year (10 days average turnaround) would have a 1.10% vacancy rate. A PHA with a high turnover rate and a lower unit turnaround time could get a higher vacancy rate than a PHA with lower turnover rate and a higher unit turnaround time: PHA ''A'' with 100 units, and 60 units vacated and filled during the year (20 days average turnaround) would have a 3.2% vacancy rate and a B grade. PHA ''B'' with 100 units, and only 30 units vacated and filled during the year (35 days average turnaround) would have a 2.8% vacancy rate and an A grade, even though it averaged a higher (35 vs. 20) vacancy turnaround rate. There is no basis for rewarding or penalizing a housing authority based on a higher or lower percentage of residents moving out during a year. Turnover rates depend on a variety of factors, many beyond the PHA's control. Some factors are: availability of alternative affordable housing; self-sufficiency programs; resident demographics; eligibility screening and lease enforcement; and HUD required transfers.

Response: The Department agrees that by using a methodology that takes into account circumstances and actions that impact on the occupancy/vacancy status of a unit over the entire course of the PHA's fiscal year, PHAs with high turnover rates will have more vacancy days than comparable PHAs with low turnover rates, assuming that the turnaround time is the same. The Department disagrees, however, with the conclusion that this makes the proposed methodology less useful than one based on taking a snapshot, either on a one-time basis, as is currently the case, or on a monthly basis over a year's time as suggested in some comments. The ''snapshot'' approach may be easier to implement but it grades the PHA performance based on a single-day measurement that may or may not be representative of the PHA performance in this area over the entire period of time being assessed. If an average based on 12 snapshots is better than one snapshot, then an average based on 365 snapshots will present the most accurate picture.

It is incorrect to state that the measure of vacancies and the measure of turnaround time have been given equal weight in the development of this indicator. The new rule combines the vacancy indicator and the turnaround indicator of the current § 901 into one single indicator that has two components. The first component (with a weight of x2) measures the vacancy rate and, if applicable, the progress a PHA has made in reducing the vacancy rate. The second component (with a weight of x1) measures turnaround time. Because the vacancy rate is a clear manifestation of management effort and reflects the essence of a PHA's mission, it has been weighted more heavily than the unit turnaround component. In addition, the proposed rule would use the second component only when a PHA scores below a C on the first component.

The proposed methodology provides ample opportunities for a PHA to adjust its vacancy days for turnover of units due to reasons such as modernization or that are due to circumstances and actions beyond the control of the PHA, such as court-ordered or HUD-approved desegregation efforts. A PHA also has the option of requesting a modification to the calculation of this component that would take into account any other special factor, such as self-sufficiency activities or security measures implemented by the PHA, that may contribute to a higher than normal turnover of units. The indicator should not be a deterrent or penalty to PHAs that have successful programs that encourage residents to move out of public housing to private market housing opportunities. Success builds upon success and a PHA that is able to work with residents and prepare them for home ownership or private market rental units should not have difficulties in attracting applicants for units that have been vacated.

The Department believes the proposed method of calculating this component to be the most accurate measure of a PHA's performance in this area. Also, contrary to some comments, the proposed method of calculation is the method commonly in use in the real estate industry.

Comment: One comment stated that the proposed rule requires more calculations than the current method and also requires tracking each unit for potential adjustments. This will be difficult for many PHAs and for HUD field staff to verify. The current occupancy rate calculation method is preferred. Three comments indicated that the indicator will take hours more in record keeping. HUD reduces PFS and modernization monies, but expects more and more in reports and record keeping. The proposed method is cumbersome, inconsistent with other HUD definitions for determining vacancy, and increases the difficulty level for calculating vacancy rates.

Two comments stated that the new method of calculating the vacancy rate is far more process-intensive than the previous methods. PHAs should be given the opportunity to take a simple average based upon end-of-month vacancies rather than using the far more complex calculation offered in the proposed rule. Two comments stated that it is poor management practice to calculate vacancy/occupancy percentages one way for the PFS and another way for a management assessment system. Two comments agreed with the expansion and clarification of the units that can be exempted from the adjusted vacancy rate and indicated that the nine

exemptions should remain consistent with reporting under the PFS.

One comment indicated concern with the need to maintain data on the cause of each vacancy, as in the examples presented in the preamble. For large PHAs the data collection and maintenance becomes very difficult. Maintenance of this data is doable, but HUD needs to recognize the impact on PHA data systems if the various categories for adjustment are revised from time to time.

Three other comments stated that this level of evaluating vacancies would be burdensome for large PHAs. To track the actual vacancy rate and have the ability to also accurately calculate an adjusted vacancy rate would require significant alterations to the mainframe computer system programs as well as to standard operating procedures, and large PHAs need ample time to implement these changes. One comment stated that the new component requires that PHAs analyze each vacant unit and in the absence of readily available industry software, this process could prove burdensome for large PHAs. Another comment stated that if HUD retains the methodology of the proposed rule it should provide PHAs with software that do the bulk of the calculation for them.

Response: The Department does not believe that the information collection requirements for this indicator represent an undue burden on PHAs. Most of the data elements required to determine the grade or score for the two components that comprise this indicator are already being maintained by PHAs and used in calculating operating subsidy eligibility under the PFS or used for reporting requirements of other programs. In fact, if PHAs have been maintaining turnaround time data accurately under the previous interim rule, no new data collection will be required, just a change in computation.

The Department understands that a well-run PHA should have a system in place for monitoring occupied units and vacant units and the duration of vacancies. Beyond simply being good business practice, PHAs must monitor turnaround time, both to evaluate the effectiveness of their maintenance and marketing and leasing efforts, and to develop information for the current PHMAP indicator on vacant unit turnaround time. This should pose no more onerous burden on large PHAs than on smaller institutions, and in fact, would probably be even more important to a large PHA, where remote monitoring of large-scale activities is the norm.

In response to the suggestion that HUD should provide software for this purpose, HUD has no plans to develop additional software at this time. In addition, as a matter of policy, HUD cannot be in a position of competing with private-sector software developers.

To a significant extent, the Department has also used definitions and methodologies in this section that are the same as those used in other programs. An example of this consistency is that the adjustment for units vacant for circumstances and actions beyond the PHA's control as defined in § 901.1(a)(9) is the same for both PHMAP and PFS. The Department will issue guidance to PHAs on how to use existing sources of data to calculate each component of this indicator.

Comment: Three comments stated that if HUD wants PHAs to calculate vacancy loss, then HUD should adjust the turnaround indicator to reflect that goal, rather than throwing out the existing common sense method of calculating vacancies. Three other comments indicated that HUD's justification for the new vacancy indicator is the need to calculate vacancy loss like the private sector does. The private sector can estimate dollar value of vacancy loss, but PHAs cannot because PHAs do not realize rental income until the unit is rented. The private sector can ''go down their waiting list'' or advertise in the paper to pick the tenant who can move in the day the unit is ready and PHAs can't do that. The information can be useful, but the private sector uses it to determine budgets, not to determine vacancy rate.

Response: The Department disagrees with these comments. Neither the current vacancy indicator nor the new vacancy indicator were developed to be a measure of rental revenue lost because of units becoming vacant. The vacancy indicator is not a measure of financial performance, but a measure of the ability of the PHA to maximize occupancy and minimize turnaround time within certain constraints recognized by the Department.

Comment: Several comments addressed the changes in the grading scale. One comment indicated that a vacancy rate of 3% for a grade C is too stringent. Another expressed support for the change from 1% to 3% vacancy rate in order to achieve an A grade, indicating that it makes sense with the national average vacancy rate of 7%. Two comments stated that the current 99% vacancy rate for an A is valid. Another comment expressed concern with the change indicating that a vacancy rate of 7% would yield a C grade and still exclude the unit turnaround component from consideration. One comment stated that it is not clear if the 3% vacancy threshold for not having to report unit turnaround was retained or not. Another comment stated its support for the provision that permits PHAs to choose between adjusted and actual vacancy rate calculation, but suggested that HUD retain the previous interim rule's alternative grade C for a reduction in vacancies of at least 30%.

One comment expressed support for the option that allows a PHA to achieve a C grade if it reduced its actual vacancy rate by at least 15 percentage points within the past three years and has an adjusted vacancy rate of between four and five percent. It also indicated support for somewhat lower grades for PHAs making slower progress. Another comment stated that a PHA can improve by at least 15% and still receive a lower grade by not matching the adjusted vacancy rate requirement.

Response: The Department agrees that a vacancy rate of 3% for a grade C is too stringent and changed that in the proposed rule. The Department believes that the new grading scale is reasonable and takes into account the national average vacancy rate and also takes into account the new method of calculating the vacancy rate, which is more representative of the true performance of PHAs in this area over the period of time being assessed.

The Department is also proposing a different threshold for not having to report unit turnaround. The second component, vacant unit turnaround time, will only apply to PHAs that score below a C grade on the first component. PHAs can achieve a C grade by meeting one of the following conditions: the PHA has an *actual* vacancy rate of greater than 5% and less than or equal to 7%; or an *adjusted* vacancy rate of greater than 3% and less than or equal to 4%; or the PHA reduced its actual vacancy rate by at least 15 percentage points within the past three years and has an adjusted vacancy rate of greater than 4% and less than or equal to 5%.

Regarding the threshold for progress in reducing the vacancy rate that applies to a C grade, the Department changed it from 30% to 15 percentage points. The Department agrees that it is important to recognize and reward significant progress. It also understands that the grade relief should not defeat the balance of the grading scale. The grading scale already provides for a somewhat lower grade (a D) for PHAs with adjusted vacancy rates between four and five percent that do not achieve the 15 percentage points decrease in the actual vacancy rate.

Comment: One comment requested that the term ''Reduced Actual Vacancy

Rate in Previous 3 Years'' be clarified in order to indicate if the fiscal year being assessed under PHMAP is the third year of that 3-year period or if the 3-year period is prior to the PHMAP year being assessed.

Response: The Department agrees with the comment and the new rule has been changed to state that the fiscal year being assessed is the third year of that three year period. An example will be provided in the revision to the PHMAP Handbook 7460.5.

Comment: One comment stated that the idea of measuring a PHA's performance over the previous three years seems to be unfair and generate inaccurate statistics because of diverse variables that would not remain constant over the years and suggested that each year be measured against its previous year. Another comment indicated that the PHA does not currently have a three-year history of the daily vacancy rate so it must have time to collect this data. It proposed to use the average rate on the last day of each month until it can get the actual daily and adjusted rates. One other comment indicated that it would be extremely difficult to track vacancy days and unit days available for the previous three years and requested that a more accurate and equitable method of calculation be sought so that comparison statistics can remain accurate and consistent.

Response: The Department agrees that due to the change in the method of computation, vacancy rates generated under the two systems cannot be compared unless an adjustment is made to the statistics for the previous two years. Only those PHAs interested in using this grading option (progress in reducing the vacancy rate during the previous three-year period) will have to recompute the vacancy rate for the two years prior to the year being assessed, using the new methodology. Most of the data needed for this will come from the records developed by the PHA to comply with the PHMAP reporting requirements for the current unit turnaround indicator.

Comment: One comment suggested that the five grades be condensed into a ''satisfactory'' rating (2% adjusted vacancy rate or below); ''adequate'' rating (2–4%); and ''unsatisfactory'' rating (over 4%); the five grades could be used as a mechanism for setting goals for troubled PHAs but need not be required for all PHAs.

Response: The Department has some sympathy for the suggestion that the number of evaluation levels be reduced and simplified, but we do not believe it appropriate to address that simplification issue at this time. The biggest reason for maintaining the larger number of evaluation categories is that beyond the pass/fail differentiation, the Department expects to be able to use PHMAP scores, and to some extent, individual indicators, to identify PHAs where performance is clearly superior and worthy of emulation, and at the other extreme, cases where performance indicates a need for the Department's intervention in PHA operations. Five or six ''grades'' may or may not be the perfect model for this kind of evaluation, but the existing structure appears to be working to date, and in the absence of demonstrable benefits of alternate approaches, HUD does not see a need to revisit this issue at this time.

Comment: One comment stated that it appears to be impossible for PHAs to obtain a grade of D or F if the adjusted vacancy rate is greater than 6%. This is not a true grading system and makes it impossible for PHAs with a high vacancy rate to realize any points for improvement. It would be unfair to compare a PHA with an older housing stock to a PHA which may have newer stock or modernized units.

Response: The comment is partially correct that under the proposed rule an adjusted vacancy rate greater than 6% will result in a PHA receiving a grade of F. If a PHA has an adjusted vacancy rate greater than 6% and less than or equal to 7%, and has reduced its actual vacancy rate by at least 5 percentage points during the past three years, then the PHA would get an E instead of an F. The grading system is not unfair to high vacancy PHAs because it does allow for adjustments in recognition that some types of vacancies are beyond the control of the PHA.

Comment: One comment stated that the actual vacancy rate does not exempt units occupied by employees, units used for resident services and units undergoing modernization. PHAs are penalized by an increase in the actual vacancy rate when these units are not exempted from the actual vacancy rate. This creates the potential for PHAs to eliminate needed resident services by eliminating space for these services in an effort to decrease the vacancy rate. Most PHAs will be prevented from ever using the actual vacancy rate if these units are not exempted.

Response: The Department disagrees with the comment. The rule has been clarified to indicate that units approved for non-dwelling use, employee occupied units and vacant units approved for deprogramming will be completely excluded from the computation of this indicator. Regarding the units undergoing modernization, PHAs are not penalized because these units can also be excluded under the adjusted vacancy rate computation. The grading scale for the vacancy indicator allows PHAs to get all possible grades, including an A, under the adjusted vacancy rate option. There is no real incentive for PHAs to cut back on resident services by eliminating space for these services in an effort to decrease the vacancy rate.

Comment: One comment stated that the increase in difficulty for calculating the vacancy rate will increase the cost of a PHA's annual audit.

Response: The Department believes that the increase in scope of work would not represent a substantial increase in the cost of the audit and that the additional expense, if any, will represent a good investment for the PHA. Since the Department reimburses a PHA for its audit costs, it will reimburse a PHA for any additional audit costs resulting from changes to any of the indicators.

Comment: One comment stated that the proposed calculation counts vacant units *both* during the month and at the end of the month, regardless of reoccupancy during the 30 days.

Response: The Department disagrees. The proposed calculation adds the number of vacant units each day of the year (adjusting for valid exemptions) and divides by the number of unit/days available.

Comment: Three comments proposed that PHAs should be able to choose either the current method or the new method for computing vacancy rates. One of the comments stated that there are currently two methods for calculating the vacancy rate and it seems a bit arbitrary to abolish this flexibility that PHAs utilize to reduce their paperwork requirements. Form HUD–51234 already is a requirement that must be submitted by PHAs and to require a duplication of effort for PHMAP purposes is contrary to good management practices. The comments recommend the use of form HUD–51234 or the new calculation methodology at the discretion of the PHA. This would enable PHAs to retain flexibility in the manner in which they choose to determine the vacancy rate without imposing any additional paperwork burden unless the PHAs elect to do so.

Response: While the Department favors maximum local flexibility, it is impractical to allow PHAs to be able to pick and choose among different methodologies for developing the data for this most important indicator. Allowing that would make it impossible to compare the vacancy rates for different PHAs (and even for the same

PHA over a period of time). The Department believes very strongly that all program participants need to be evaluated under the same basic procedures, especially the same definitions. To do otherwise is to invite complaints that the process compares apples with oranges; the process can't afford to permit the PHAs to elect whether to present ''apples or oranges'' for evaluation.

Comment: One comment stated that the Department should give consideration to reducing the vacancy standards for a period of time due to the One Strike policy. Improved screening standards will increase the amount of time to process an application. If the Department is seriously concerned about quality of life in PHAs, give the occupancy people time to do their jobs efficiently.

Response: The Department agrees that the implementation of the ''One Strike and You're Out'' policy and stricter security measures may temporarily increase vacancy and turnover rates at some PHAs. Adequate planning in the implementation of the security measures should help PHAs reduce these temporary problems. After the initial stages, these programs will have a positive impact on the vacancy and turnover rates of PHAs due to the increased security and stability of their public housing communities. Because these situations will greatly vary from PHA to PHA, it would not be proper to make any changes, even temporary ones, to the grading standards of the vacancy indicator. Instead, PHAs that believe that the implementation of stricter security measures related to the ''One Strike and You're Out'' policy negatively impacted their vacancy rate may submit a modification request along with their PHMAP certification.

Comment: One comment stated that because of the low weight (x1) of the turnaround component relative to the vacancy rate component, the turnaround component is almost unnecessary since it can't change the grade of the indicator in a significant way.

Response: The Department disagrees with the comment. Although the component would not have a big impact in determining the final grade of the indicator, this is in accordance with the position of the Department regarding the interrelation and relative weight of the two components. Because the vacancy rate is a clear manifestation of management effort and reflects the essence of a PHA's mission, it has been weighted more heavily than the vacant unit turnaround component. In addition, the new rule uses the second component only when a PHA scores below a C on the first component. The Department believes that if vacancies are at a C level or above, the PHA does not have a problem with turning around vacant units. It should be noted that the component would have at least a minor impact in the final grade of the indicator (may increase or decrease one grade level) and may add up to 6.66 points to the total PHMAP score.

Comment: One comment stated that the proposed rule requirement for vacant units undergoing modernization is inconsistent with scheduling adjustments that HUD permitted in the past in recognition of the realities that some PHAs face in soliciting bids from contractors for modernization funded work. The proposed time requirement would punish a PHA with few vacancies that may need to ''stockpile'' vacancies to accumulate sufficient volume of work to obtain competitive bids from contractors. It is recommended that all vacancies covered by a funded, on-schedule modernization program be excluded from the vacancy rate calculation.

Response: The Department disagrees because the small purchase procedure is a viable option for PHAs with few vacancies to accomplish modernization costing less than $100,000 (or a lesser amount as specified by State law). Under this method, PHAs solicit quotes from an adequate number (normally, no less than three) of sources and can award the contract to the offeror with the lowest quote. This method is significantly less time consuming than the normal sealed bid procedure where formal advertising is involved. It is also noted that contractors can be procured for utilization on an as-needed basis, allowing them to begin work immediately.

Comment: One comment stated that the proposed definition of and calculations concerning a vacant unit undergoing modernization seems to be counterproductive; a more equitable way of calculating vacant days would be to count only those vacant days between the completion of the modernization work and the day of tenant move-in or reoccupancy.

Response: The Department disagrees with the comment regarding the adjustment for vacant units undergoing modernization. The adjustments provided in the proposed rule are either activities that the Department wishes to support, such as modernization, or represent circumstances or actions that the Department considers to be beyond the PHA's control. In such cases where these definitions apply to vacant units before the units are included in a HUD-approved modernization budget, the units may be exempted for those other reasons. If the units were vacant prior to being included in the HUD-approved modernization budget for other than the exempted reasons in the rule, the vacancy days accumulated prior to the unit being included in the HUD-approved modernization budget must be included in the vacancy rate calculation as non-exempted vacancy days.

Comment: One comment stated that not excluding the vacancy days that accumulated prior to a unit being included in the HUD-approved modernization budget from the calculation of this indicator could result in substantial dollars wasted to make vacant units temporarily habitable until such time that a modernization plan has been approved by HUD. Dollars invested in temporary major rehabilitation of units located in buildings subsequently placed under modernization are lost because major replacements cannot be salvaged during/after modernization. In order to not provide PHAs with an unintentional PHMAP performance measure incentive to waste limited HUD dollars, vacancy days for units in a building included in a modernization budget which was approved by HUD during the PHMAP assessment year should be exempt regardless of whether or not some units in the building were vacant prior to HUD's approval of the plan.

Another comment recommended excluding from the vacancy calculation units that a PHA has scheduled to modernize but not yet included in the modernization budget, as well as vacant units that have been modernized and are scheduled to be reoccupied. These vacant units should be excluded because the vacancies are part of the normal modernization process and are not the result of poor performance. For example, this PHA has completed modernization of hundreds of apartments for people with mobility impairments, but HUD has not permitted us to rent accessible apartments to non-disabled families. These vacancy days should not be included in the vacancy rate calculation.

Response: The Department disagrees with the comments. The issue of whether to expand the preferential treatment for units undergoing modernization to include units scheduled for modernization but not yet under a modernization budget (for example, units scheduled for modernization in the second year of the CGP Five Year Plan) was discussed as part of the Vacancy Rule negotiated rulemaking proceedings but not adopted. The Department was part of

the consensus that developed the definition of vacant unit undergoing modernization and believes it to be appropriate. For the same reason, the Department does not believe that an adjustment should be given for the time between completion of modernization work and reoccupancy. Once a unit has been modernized, there is no reason to allow an adjustment for the time needed to lease the unit. Marketing and leasing of units is a normal function of a PHA.

The Department also disagrees with the second part of the comment. HUD does not control whether or not a PHA can admit non-disabled applicants to a unit designed for the disabled. If a PHA cannot lease units with accessible facilities to the persons with disabilities, they are free to lease those units to non-disabled applicants (see Handbook 7465.1 REV–2, paragraph 5–2c). The cited handbook urges that a PHA facing such a circumstance ''* * * include a provision in the lease requiring the family to move if someone needing that size specially designed unit applies and there is an appropriate unit available for the family originally admitted.''

Comment: One comment indicated that the PHA has a large number of competing subsidized units, and certain bedroom sizes and certain handicapped units are very difficult to rent to residents that are actually eligible for them. Another comment stated that the indicator does not accurately reflect the capabilities of a PHA to manage its units; such factors as market conditions greatly impact a PHA's score in this area. One other comment indicated that the rule does not provide enough information on what may be acceptable under changing market conditions and it does not define what constitutes ''aggressive marketing and outreach measures'' or provide standards by which such goals should be reached or judged.

Response: The Department feels that the new rule adequately addresses the issue of marketing difficulties at § 901.5 and § 901.10(b)(2)(iii). An adjustment may be made to a PHA's vacancy days because of market conditions. In order to justify the adjustment, the PHA will need to document the specific market conditions that exist and document marketing and outreach efforts. The PHA will need to describe when the downturn in market conditions occurred, the location(s) of the unit(s) effected, the likelihood that these circumstances will be mitigated or eliminated in the near term and why the market conditions are such that they are preventing the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating, or modernizing the vacant units. The Department has provided examples of what constitutes changing market conditions in 24 CFR § 990.102 and will issue further guidance to PHAs on this circumstance in the revision of the PHMAP Handbook 7460.5.

Comment: One comment stated that the grading system for this indicator penalizes PHAs that are actively modernizing their housing stock. To require lower vacancy rates for PHAs actively improving their housing stock through modernization than for PHAs not undertaking the improvements is egregious at best. The scoring of actual and adjusted vacancies appears to be unnecessary since the adjusted vacancy rate only occurs for authorized reasons as defined by HUD. To allow for adjustments to be made and then apply a different scoring criteria is illogical and inconsistent.

Response: The Department disagrees with the comment. The proposed methodology provides ample opportunities for a PHA to adjust its vacancy days for turnover of units due to reasons that are accepted and supported by the Department such as modernization or are due to circumstances and actions beyond the control of the PHA, such as court-ordered or HUD-approved desegregation efforts. A PHA also has the option of requesting a modification to the calculation of this component that would take into account some other factor that is causing frequent turnover of units at the PHA. The Department believes the proposed method of calculating this component to be the most accurate measure of a PHA's performance in this area.

Exemptions

Comment: One comment stated that adjusted vacancies help a poorly performing PHA score better under the proposed rule, but generally will do nothing to assist high-performing PHAs because it is doing the things necessary to prevent these types of vacancies. A high-performing PHA with just normal vacancies is hurt by the proposed rule. Another comment stated that the proposed scoring range is looser and, therefore, objectionable and there are more exemptions. Vacancies have decreased since the advent of PHMAP, just because HUD is grading PHAs and they are concentrating on keeping vacancies low. HUD should not reduce its standards simply to satisfy PHAs who aren't getting the job done. There should be no changes to the current grading standards. HUD is going in the wrong direction by making PHMAP high-performance status so easy to attain as it compromises the credibility of the evaluation process.

Another comment stated that if a PHA chooses an adjusted vacancy rate, it has the potential to exempt vacancy days in nine different categories, some of which are very broad. Under this scenario, it is conceivable that some PHAs will assume responsibility for few vacancy days. One other comment stated that most exemptions are easy to determine or validate except for units uninhabitable ''for reasons beyond the PHA's control.'' Two other comments indicated that ''reasons beyond the PHA's control'' is vague and may indirectly be within the control of the PHA. Because such an adjustment should be the exception rather than the rule, it should be eliminated. Such units fall into a murky area that some poorly run agencies may be tempted to exploit. It may be difficult to demonstrate that the conditions leading to condemnation by the health department were either within or outside of a PHA's control.

Response: The Department believes that the adjustments are not a function of whether a PHA is a high or poor performer, but a recognition that there are some circumstances and actions that impact on vacancies that are beyond the control of the PHA, such as a natural disaster, or that should be supported, such as modernization. The Department understands that there are often good reasons for unit vacancies, and that a blanket appraisal of unit vacancies as a bad condition glosses over some very real and explicable conditions that affect management of low-income properties in the real world.

The Department believes that it has defined the categories of vacancies completely enough that most of a PHA's vacancies can be clearly identified, and that a PHA has a fair opportunity to explain its situation. Where some number of unit vacancies cannot be adequately explained in terms of the acceptable or allowable categories, the PHA will be held strictly accountable, but where the unit vacancies are within the parameters established by HUD, under the negotiated rulemaking for the PFS vacancy rule, for example, the Department does not believe it fair or reasonable that the PHA should be penalized. The Department agrees that the exemption categories, as presented in the proposed rule, need some clarification and the new rule reflects that. The category mentioned by some of the comments is duplicated in the proposed rule and that duplication will be eliminated in the new rule. The exemptions will remain consistent with the nine exemption categories used under PFS.

Comment: Two comments stated that the language for exemption of units vacant for circumstances and actions beyond the PHA's control (§ 901.10(9)(v)) provides that insufficient funding for otherwise approvable applications made for CIAP funds (only PHAs with less than 250 units are eligible to apply and compete for CIAP funds) are exempted from the calculation of this component. It further provides that this definition will cease to be used if CIAP is replaced by a formula grant. The comments stated that this subsection should apply to CGP, particularly now with the budget reductions. Also, one of the comments stated that vacant units covered in proposed unit demolition and disposition applications should be excluded, even if the applications have yet to be acted upon by HUD.

Response: The Department disagrees and has retained this language in the new rule. The provisions referred to in the comments were taken directly from the new Vacancy Rule published in the Federal Register on February 28, 1996 (61 FR 7586). The rule incorporated recommendations of a regulatory negotiation advisory committee. The committee did discuss the issue of providing relief to PHAs (and RMCs) because of insufficient funding for the CIAP and CGP programs. The relief was limited, however, to insufficient funding for an otherwise approvable CIAP application (or failure of a PHA to fund an otherwise approvable RMC request for CGP funds from its PHA). The CIAP is a competitive program with insufficient funding to cover the needs of all approvable funding applications. When the funding program is competitive, a PHA either gets the funding applied for, or it doesn't. However, since the CGP is a formula grant program, with guaranteed yearly funding, a CGP PHA is better able to plan modernization activities in advance and make crucial repairs as necessary.

The Department does not agree with the suggestion that a PHA be able to assume HUD approval of a pending application for demolition or disposition, if the application has not been acted upon at the end of the fiscal year being assessed. There are significant differences between initiating the application process and receiving approval to dispose or demolish.

Comment: Six comments indicated that vacancy days for units that suffer casualty damage, especially by fire, should not be counted until the unit is turned back over to the PHA after the contractor completes the repairs, if applicable, instead of at the time of insurance claim settlement. It is more logical to include casualty-damaged units in the same exemption status as units undergoing modernization or units documented to be uninhabitable for reasons beyond the PHA's control. The exempted vacancy days for units that suffer casualty damage should change to read, ''vacant units that have sustained casualty damage until the unit is ready to be leased or 90 days, whichever is earlier.''

Response: The Department disagrees with the comment. The indicator retained the current provision that already allows a PHA to make an adjustment for the period of time during which the claim is being adjusted. Since the fire damage to the unit may be minimal or severe, it would not be appropriate for the Department to allow an automatic additional period of time of up to 90 days to repair the unit. PHAs may request a modification to the calculation if they believe they have a situation (severe damage) that warrants a special adjustment.

Comment: One comment recommended substituting the word ''permits'' for ''requires'' in § 901.10(a)(4) which exempts vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit. The comment added that when a resident abandons a unit, leaving their personal property therein, many small PHAs have no other appropriate space to store such property during the period of time specified by State law before they can legally dispose of the abandoned property.

Response: The Department does not concur in the recommendation. The point of this provision is to limit the period of time when a vacant unit would be exempted from the vacancy count to the period of time that is beyond the PHA's control. The proposed change would expand the provision to cases in which State law ''permits'' a unit to remain encumbered by abandoned possessions. HUD believes that the existing language—''requires''—is more specific and more limiting, and is more consistent with the intent of this regulation and similar recent regulatory efforts to reduce unit vacancies.

The Department recognizes that some small PHAs might be inconvenienced by having to store abandoned effects for some period of time before disposition, but we are not convinced that such inconvenience is sufficient to justify holding a residential unit off-line. In most cases, laws on abandonment require that the landlord secure abandoned property, not necessarily that they leave such property in place in anticipation of the abandoning family's possible return. If storage space is at a premium, PHAs have the option of renting a storage locker and either deducting the cost of the rental from the proceeds of the sale of the goods, if any, or collecting that cost from the resident, should he/she re-appear.

Comment: One comment stated that the total available units should not include units that are being modernized as a result of Federally mandated work projects (such as a lead-based paint abatement project) that require that the residents be relocated while the work is being performed. All vacant units as a result of Federally mandated work that requires resident relocation should be considered not available for the period of time that the unit is vacant as a result of the required work, including the use of the unit to relocate residents during the course of the work. Another comment stated that the exemptions should include a category for units held to house residents relocated due to comprehensive modernization. When a large development undergoes comprehensive modernization, it is difficult to quickly find units to transfer all residents; a reasonable time limit should be included in the exemption.

Response: The Department partially agrees with the comment. The proposed methodology for calculating the vacancy rate component already permits a PHA to make an adjustment to its vacancy days for units undergoing modernization. A PHA also has the option of requesting a modification to the calculation of this component that would take into account any other special factors or special circumstances that are out of the control of the PHA. The Department does not agree with the suggestion that PHAs be allowed to adjust their vacancy days for units that are not undergoing modernization but are being held vacant for relocation purposes.

Comment: One comment stated that the exemption of units that are uninhabitable is valuable because it allows troubled PHAs to work on renovating units and getting them back into the occupied inventory without being penalized in the vacancy rate calculations.

Response: The Department agrees that this exemption category is valuable, but it should be noted that the category restricts the exempted units to those uninhabitable *for reasons beyond the PHA's control.* The rule further defines these reasons.

Comment: One comment suggested that the rule should be expanded to

specifically exempt vacant days due to transfer of residents resulting from overhoused/underhoused conditions and when for security reasons, a resident must be relocated under a witness protection program.

Response: The Department does not agree with the comment that the new rule include adjustments for vacancy days associated with relocation of residents because of over/underhoused circumstances. This is a situation that should be dealt with by the PHA as part of its normal operations. Adequate planning on the part of the PHA can greatly reduce the amount of time that the units involved in the transfer remain vacant. Vacancies arising as a result of relocation of residents for security reasons may be dealt with under the modification procedures.

Comment: One comment indicated that the rule should clarify whether the PHA can exclude units used for non-dwelling purposes, for resident services, or that are occupied by PHA employees even if HUD has not specifically approved their conversion for non-dwelling purposes.

Response: The Department believes that the relevant rules are sufficiently clear. PHAs may not use dwelling units for non-dwelling purposes without explicit authorization for the conversion, and there should be no expectation that HUD would permit exemption of vacant units used for unauthorized purposes.

Comment: One comment indicated that it appears that § 901.10(a)(3) requires that to be exempted under this item, units have to comply with the two conditions at the same time. The comment added that the exemption should apply if either one of the conditions: high/unsafe levels of toxic materials or structurally unsound, is present.

Response: The Department agrees with the comment that the exemption should apply when either one of the conditions is satisfied. The new rule has been modified to conform with the Vacancy Rule and the subject items are now covered under §§ 901.10(b)(2)(ii) and (b)(2)(iv).

Comment: Two comments observed that there are several categories of units exempted ''off-the-top'' when calculating adjusted vacancy rate and turnaround time. The comments indicated that HUD should clarify if the exemption of units vacant for circumstances beyond the PHA's control due to changing market conditions is determined by the PHA (self-certified) or reviewed and decided by HUD as a modification. The comments also requested HUD to clarify the exemption of units vacant for circumstances beyond the PHA control due to natural disasters as to who determines or declares the natural disaster condition.

The comments suggested that, because these are excluded ''off-the-top'' and using a PHA-certified figure, it is left entirely to the PHA to decide if these circumstances apply, when they apply, and then to subtract them out of the calculation. As currently structured, a PHA could unilaterally adjust the figures they report under ''adjusted vacancy rate'' and ''turnaround time'' because they believe that ''changing market conditions'' have caused their units to remain vacant, or because ''insufficient CIAP funding'' prevented the PHA from occupying the units. *All* market conditions are ''changing'' to some extent, and no CIAP-funded PHA ever receives ''sufficient funding for otherwise approvable applications'' to meet *all* of their needs. The real question is, when are these circumstances sufficiently unique and extensive to impact a PHA's ability to occupy its units?

The comments indicated that these two conditions are so subjective and judgmental that they should be addressed through the regular PHMAP modification process. The comments added that it is inappropriate for an allegedly objective assessment process such as PHMAP to allow the entity being assessed (i.e., the PHA) to exercise this degree of unilateral control over their own assessment. This may help to improve PHA grades, but it does nothing for the integrity of the PHMAP assessment process. One comment requested that exemptions be clearly defined, leaving as little subjective determination as possible to HUD field staff. Another comment requested HUD to clarify if the PHA may exempt the units listed when preparing the PHMAP certification or if it should request a modification.

Response: The Department disagrees with the proposition that the PHAs have free rein to define away unit vacancies as a function of natural calamities and/or market circumstances beyond control. These issues were a major source of discussion during the negotiation of the PFS Vacancy Rule, and the language upon which the negotiated rulemaking committee reached agreement is faithfully reproduced in this regulation. For example, the committee deemed the term ''natural disaster'' sufficiently precise for purposes of establishing a formula for determining PFS eligibility.

In the case of a claim for exemption under any of these ''beyond-the-control'' criteria, the PHAs can exclude the units when preparing the PHMAP certification, but HUD intends that the burden of proof should fall on the PHA to demonstrate that it has done what it can to remedy the reason(s) for the vacancy. In the case of a ''natural disaster'' claim, the PHA would be expected to point to a proclamation by the President or the Governor that the county or other local area in question has, in fact, been declared a disaster area. Where a PHA claims extraordinary market conditions, the PHA will be expected to document the market conditions to which it refers (the examples of changing population base and competing projects are the simplest) and the explicit efforts that the PHA has made to address those conditions.

The Department does not believe that it can draft a regulation that concretely defines and delimits all the circumstances that could affect a PHA's capacity to maintain high occupancy levels, nor does HUD deem it advisable to attempt to do so. The PHAs and their parent State and local governments are in the best position to recognize and appreciate specific local circumstances. In this regulation, and in the supporting handbook guidance, we will expect that PHAs will be able to provide data with which to support their self-certifications, and upon which HUD reviewers can verify such self-certifications, but HUD believes that it would be counter-productive to attempt to define further or to limit the scope of PHAs' capacity to describe their real-world situations.

Comment: One comment proposes that an adjustment factor be added for turnovers delayed because the applicant must give 30 to 60 days notice (by lease) to their current landlord before moving.

Response: The Department does not agree with the proposed addition. PHAs should know local conventions on requirements for notice, and plan their own management activities accordingly, projecting expected turnovers and providing notice to applicants that a unit is expected to become available, for example, far enough in advance to avoid delays in leasing. In those cases where special local circumstances make this unfeasible, the PHA may submit a modification request to the indicator.

Comment: One comment requested guidance on HUD's interpretation of units that are vacant ''for reasons beyond the PHA's control'' asking whether this category includes items such as termite damage, vandalism, or casualty loss that may not be covered by insurance if there is a high deductible. Two other comments asked if the exemption would include units delayed for reoccupancy as a result of heavy

vandalism since such vandalism is often beyond the PHA's control.

Response: The Department does not consider that the examples cited in the comment fall under the definition of units vacant for reasons beyond the PHA's control. Termite control is similar to other examples of pest control and is considered part of the normal maintenance operations of any standard performance PHA. A well managed PHA should also have insurance coverage for casualty loss (including vandalism) providing enough coverage to enable the PHA to repair the units in case of casualty damage. In cases where special local circumstances may make this unfeasible, the PHA should submit a modification request to the indicator.

Definitions

Comment: One comment stated that the definition of ''under construction'' as related to force account work should be changed to indicate that force account work has started in the block (as opposed to the specific unit).

Response: The new rule has been changed to indicate that force account work has started either in the unit(s) or in the building(s).

Comment: One comment stated that the term ''units available for occupancy'' needs to be clearly defined. Some troubled PHAs could argue that a certain number of their units are not available for occupancy because of the extremely poor condition of the units.

Another comment indicated that the term ''dwelling unit'' is not defined in the proposed rule. It should be defined as a unit that is either leased or available for lease to eligible low-income residents. Another comment stated that the term ''available unit'' is defined in the preamble and the rule but never used again. Instead, the term ''unit'' is used in connection to the terms ''vacant unit'' and ''vacancy day''. The term ''unit days available'' is used but no clear connection is ever drawn between it and ''available units''. HUD should clarify and substitute where necessary.

One comment stated that the term ''vacant unit'' in the rule is different from the term as used in the preamble. The preamble indicates that ''units under lease for non-dwelling uses should not be included...'' In other words, these units should be excluded. The rule definition states that units under lease for police substations, social service providers, etc., are treated the same as units under lease to eligible families. If an occupant vacates the unit, it is made available to another social service provider. These units are not available for lease to eligible low-income residents, and as such, should not be treated the same as units which are available in this definition. It should be clarified whether these units will be excluded from the computation of vacant units or if they will be counted as occupied units. Another comment stated that units used for non-dwelling purposes and dwelling units occupied by PHA employees and units used for resident services need to have additional parameters defined. This adjustment may encourage some poorly run PHAs to use these loopholes to get a better adjusted vacancy rate.

Response: The Department agrees that dwelling units used for non-dwelling purposes with HUD approval, employee occupied units, and vacant units approved for demolition or disposition should not be included as available units in the determination of occupancy/vacancy rates and the new rule reflects that change. We also agree with the definition of a ''dwelling unit'' as a unit that is either leased or available for lease to eligible low-income residents.

Comment: Two comments indicated that while the use of the total unit days available as the denominator in both the actual and adjusted vacancy rates provides a simple procedure, it tends to understate the adjusted vacancy rate. A more accurate calculation would exclude the adjusted vacant units from both the numerator and denominator.

Response: The calculation of the vacancy rate and the use of that rate to determine a given grade for PHMAP purposes has been and continues to be closely linked to the methodology and definitions used in the PFS. Under the PFS, a PHA, when calculating occupancy or vacancy rates, first determines the total number of dwelling units in its inventory (the denominator portion of the rate being calculated). Regulations then permit the PHA to exclude units that have been approved for deprogramming (e.g., demolition or disposition) as they become vacant and units approved for non-dwelling use. These exclusions reflect the permanent nature of the action. Units that are undergoing modernization or are vacant because of circumstances beyond the PHA's control are not excluded from the denominator because these actions are not permanent. By remaining in the denominator, they will continue to be eligible for operating subsidy.

The inclusion of units undergoing modernization or units vacant because of circumstances beyond the PHA's control in the denominator does not make the calculation of the PHMAP adjusted vacancy rate either ''more'' accurate or ''less'' accurate. What is necessary is that the two quantities that comprise the rate have a logical relationship to each other. In this case, the relationship is between a PHA's dwelling unit inventory and that portion of the inventory that is vacant during the PHA's fiscal year. Under both PHMAP and PFS, there are incentives to minimize the portion of the inventory that is vacant and both approaches start by looking at the proportion of total vacancies to the dwelling unit inventory. If that rate is low enough, the PHA will maximize its PHMAP grade and its operating subsidy eligibility.

Both PHMAP and PFS also recognize that not all vacancies are ''equal.'' A PHA with a high number of vacant units may still maximize its PHMAP grade and PFS eligibility if it can show that most of the vacant units are undergoing modernization. When one makes an adjustment to the total number of vacancies to exclude those that are undergoing modernization, the PHA is not changing the fact that the unit is still part of the PHA's dwelling unit inventory. This is why the adjustment is only to the numerator portion of the rate and not to the denominator.

Comment: One comment indicated that the term ''vacancy day'' definition uses the qualifying statement ''...unless the vacancy day is exempted for an eligible reason.'' A ''vacancy day'' does not lose its status as a ''vacancy day'' because it is exempted. It simply becomes a ''vacancy day that is exempted''. This should be clarified because other terms (like ''actual vacancy rate'' and ''adjusted vacancy rate'') make reference to it in their definitions. Another comment proposed that the definition for vacancy day should be modified to specify that it pertains to ''dwelling'' units.

Response: The Department agrees with the comments and the new rule reflects the changes.

Comment: One comment indicated that the term ''units available for occupancy'' is defined as the number of units identified on a PHA's ACC times the number of days available and asked then what number should be used for units acquired or built during the assessment year? Two comments asked whether occupied units that have not reached Date of Full Availability (DOFA) are counted or excluded until they reach DOFA date.

Response: The definition of number of ''units available for occupancy'' has been clarified to exclude three categories of units from the number of units identified in the PHA's ACC. The units acquired or built during an assessment year will be added on a prorated basis based on the sum of the

number of days available of each individual unit added to the ACC. The date to be used for determining days available is the date of ''End of Initial Operating Period'' (EIOP) for the corresponding project. *COMMENT:* One comment stated that the formula used for the calculation of the actual vacancy rate is inconsistent with that used for the completion of PHA financial information and creates the potential for errors when preparing both the PHMAP certification and the annual budget documents. The actual vacancy rate should be consistent throughout all HUD requirements (i.e., form HUD–51234 and budget forms).

Response: The Department agrees that the definitions and methodologies for both PFS and PHMAP should be the same as long as feasible, and the language of the new rule reflects that.

Comment: One comment recommended adding to the list of definitions the terms ''move-out date,'' which is when the PHA regains possession of the unit by the legal expiration of the lease; and ''effective lease date,'' which is the date from which rent is due and payable and all other provisions of the lease are enforceable.

Response: The Department partially agrees with the comment and the new rule includes the definitions. The ''effective lease date'' is the date when the executed lease contract becomes effective and rent is due and payable and all other provisions of the lease are enforceable. On the other hand, the ''move-out date'' is the actual date when the resident vacates the unit, which may or may not coincide with the legal expiration of the lease agreement.

Component #2, Unit Turnaround

Comment: Two comments stated that if the turnaround calculation is retained, it should be kept as a separate indicator. Two comments suggested the elimination of this component, because unit turnaround measures efficiency of scheduling maintenance activities, which should be covered by indicators #4 and #5.

Response: The Department disagrees with both of these suggestions. The requirement to measure a PHA's ability to turn around its vacant units is statutory, whether the statutory requirement is carried out by establishing a separate indicator for unit turnaround or by including unit turnaround as a component of a different indicator. The Department agrees with the assumption that if vacancies are at a grade C or above, a PHA does not have a problem with turning around vacant units. The Department also disagrees that unit turnaround solely measures a PHA's efficiency of scheduling maintenance activities. The calculation of unit turnaround also includes down time, which is the time between when the unit is vacated and a work order is issued for the repair of the unit; and lease-up time, which is the time from when maintenance completes the repair of the unit and a new lease takes effect.

Comment: Three comments stated that this component does not accurately measure a PHA's performance in maintaining and leasing their units because nothing in the component shows how many units the PHA had to turn around during the year. These commenters believed the percentage of units that are turned around during the year should be included in the formula. For example, if a PHA has a turnaround time of 20 days, and turned over 45% of their units, and you multiply the turnaround time (20 days) times the percentage of turnover (45%), it equals 20 times 45%, or nine days. You then subtract nine days from the 20 days to equal a turnaround of 11 days. The commenters felt that this is a more accurate measure of a PHA's ability to manage and turnaround per unit. A PHA with a high yearly turnaround is unduly taxed under the current formula.

Response: The Department disagrees with this suggestion because this component is measuring the annual average of time it takes a PHA to turn around its vacant units, rather than measuring the turnover rate, which takes into account how many units the PHA had to turn around during the year.

Comment: Three comments stated that the calculation of unit turnaround includes vacancy days from prior fiscal years, offering little incentive (scoring) under the proposed rule for re-occupying older units. It is recommended that unit turnaround time be capped at one year or 360 days.

Response: The Department disagrees because to do so would result in an inaccurate assessment of a PHA's ability to turnaround all vacant units and would provide no incentive for PHAs to ensure that long-tern vacant units are turned around and reoccupied. In addition, if these units are not included in the calculation of this component, it would result in a skewed perception of a PHA's ability to manage its total maintenance/re-leasing activities. Furthermore, ''turnaround time'' is a term of art and means all the days that elapse between one tenancy and the next. In the event that unusual or special circumstances exists, a PHA may request a modification to the calculation of this component.

Comment: Two comments feel that this component should be given the same exemptions as in component #1.

Response: The Department agrees and stated so in both the preamble and the regulation of the proposed rule, as well as in the new rule.

Comment: Two comments stated that unit turnaround time should exempt seven days for each PHA-required transfer because one resident has two units tied-up for a week and sometimes longer.

Response: The Department disagrees with this suggestion. Although the total time it took the two units mentioned in the comment to be turned around may have been a week or longer, each unit was turned around on different days, with different individual total turnaround time. The intent of this component is to measure the annual average number of days it takes a PHA to turn around its vacant units, which includes for each vacant unit a total of down time, make ready time, and lease up time.

Comment: Two Comments questioned the definition which states that units are exempted from the vacancy calculation if special conditions exist that are beyond control of the PHA. They inquired whether this definition includes units delayed for reoccupancy as a result of heavy vandalism. They contend that it should because such vandalism is often beyond the PHA's control.

Response: The Department has determined not to specifically include heavy vandalism as part of conditions beyond a PHA's control in this definition since circumstances for individual PHAs will differ. In such a case, a PHA may submit a modification request to exclude such units in the calculation of this component, accompanied by justifying documentation.

Comment: One Comment stated that unit turnaround is assessed based on calendar days rather than working days (25% of the time in 20 calendar days is non-working time). The Commenter contended that it should be based on regular working days since most PHAs cannot afford to pay overtime salary rates.

Response: The Department disagrees and will continue to use calendar days as the standard for all of the PHMAP indicators. Vacancies, rent collection, etc., are not based on working days, and it would be unrealistic to do so. In addition, it is easier to calculate calendar days, especially when using an automated system, due to the necessity of factoring in holidays and weekends when using working days.

Comment: One Comment stated that unit turnaround operates against thorough tenant screening and compliance with city code requirements and, therefore, against the reputation of public housing. These other factors that affect unit turnaround should be considered, including strict lease compliance, terminating residencies or relocating over or underhoused families. The Commenter said that conscientious implementation of HUD policy can create large turnovers, stress maintenance resources and result in poor ratings, while a PHA with no turnovers or even lack of attention to over and under-housing can maintain an excellent rating.

Response: The Department disagrees with this statement because the enforcement of and/or compliance with these factors is part of the ongoing management responsibility of all PHAs. Using good management practices, a PHA should not have a higher turnaround time due to enforcement and/or compliance with the other factors mentioned in the Comment. For example, a PHA that strictly enforces rent collection procedures will typically have fewer evictions since more residents will pay rent in a timely manner. This normally will eliminate the need for evictions or situations where huge balances are built up and the resident vacates as a result of not being able to pay off the indebtedness once court action is taken. If a PHA enforces the lease clauses regarding the upkeep of the unit by occupants through informing the resident of the family's responsibility, providing instruction as necessary, and through inspections, repair, and properly instituted resident charges, units will tend to be in better condition when vacated, thereby reducing needed repairs and subsequently reducing vacant unit turnaround time. Additionally, a lack of attention to over and underhoused residents will affect a PHA's turnover rate, rather than its turnaround time.

Comment: One Comment requested that the Department consider the implementation of an exception to the component whereby, if all but one unit turns over in a timely manner, a PHA can request an exception for a circumstance that was beyond its control. Even one exception can have a big impact in a small PHA.

Response: The Department agrees, and in the event a truly unusual or special circumstance exists, a PHA may submit a modification request that addresses the circumstance(s) beyond its control.

Comment: One Comment stated that assessing this component based on how the PHA fared in the first component is appropriate and the grading is equitable.

Response: The Department agrees, and will continue to examine unit turnaround as the second component under this indicator.

Comment: One Comment stated that if the current turnaround method stays, it should be a measure of when the unit is ready physically for rental and the new tenant has committed to the unit, not necessarily when physical occupancy occurs.

Response: The Department disagrees with the Comment for several reasons. First, there is no guarantee that maintenance staff will start renovations as soon as possible after the unit is vacated. Secondly, there is no guarantee that the first applicant that is offered the unit will accept, thereby leaving the unit vacant for a longer period of time. Thirdly, the Department believes that the definition of turnaround time takes into account the concerns expressed in the Department's first two reasons for disagreeing. A well managed PHA coordinates maintenance and resident selection activities to ensure that as many units as possible are available for occupancy as soon as possible by planning move-ins in advance and notifying applicants as soon as possible. Since the PHMAP assesses management performance, it is appropriate to include the management of the total maintenance/re-leasing activities in this component.

Comment: One Comment (1) disagrees that unit turnaround is an unnecessary component for high performers; (2) feels that this component should be weighted as proposed; (3) believes that an adjusted turnaround time exceeding 30 days is unacceptable performance for any management agency regardless of the vacancy rate; and (4) believes that the need for a turnaround time of 50 days or less to score on this component is a poor standard and would not show the results of what may be clear and significant performance improvements.

Response: The Department disagrees with the first statement because normally, a PHA (whether a standard or high performer) that achieves at least a grade of C for component #1 does not have a problem with turning around vacant units, i.e., unit turnaround is not a factor in a high vacancy rate. The Department agrees with the second statement because the vacancy rate is a clear manifestation of management effort and embodies the essence of a PHA's mission; therefore, it is weighted more heavily than the process-oriented unit turnaround component. It is not clear what the Comment meant in the third statement by ''adjusted turnaround time.'' This term was not referred to in the proposed rule, was not included as a definition, nor was it used in the text of the component. The Department also disagrees with the fourth statement and believes that the range between the grades in this component is equitable for the new rule.

Comment: One Comment stated that the proposed rule provides that the calculation of turnaround time for newly modernized units starts when the unit is turned over to the PHA from the contractor and ends when the lease is effective for the new or returning resident. This provision eliminates a level playing field for measuring the normal turnaround time required by a PHA to restore vacant units to occupancy. The Commenter alleges that this gives unfair advantage to PHAs that did not need to vacate units for modernization and it doubly penalizes PHAs that modernize units for completing modernization on large numbers of units concurrently. The Commenter felt that this component should measure the time it takes PHAs to restore units to occupancy when they vacate for normal move-out reasons.

Response: The Department disagrees with this Comment and believes that this method of calculating unit turnaround does provides a level playing field for PHAs because it provides a standard method that will be used by all PHAs. The Department does not believe that this method of calculating unit turnaround gives an unfair advantage to any PHA, regardless of the scope or type of modernization. A unit that is modernized with the resident in place is not included in the calculation of this indicator because it has not been vacated and subsequently turned around; therefore, there is no advantage to be considered. If a PHA vacates a unit to modernize, the time it took to modernize the unit is not included in unit turnaround time regardless of the number of units completing modernization concurrently. A PHA should be able to plan for move-ins in advance and notify applicants in sufficient time to coincide with the availability of units. This component will continue to measure unit turnaround for whatever reason the unit is vacated and turned around.

Comment: One Comment recommended that average turnaround time be defined as, ''the annual average of the total number of turnaround days between the legal expiration date of the immediate past lease (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect, that being the date from which rent is due and payable and all

other provisions of the lease are enforceable.'' This allows PHAs to take into consideration the wide variety of local ordinances and State statues that effect the termination of a lease and date the PHA thereby regains possession of the unit.

Response: The Department agrees, in part, with this recommendation, and will change the definition of average turnaround time to read, ''...the annual average of the total number of turnaround days between the latter of the legal expiration date of the immediate past lease or the actual move-out date of the former tenant (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect.'' This change will take into consideration the wide variety of State and local laws that effect the termination of a lease. By retaining the actual move-out date of the former tenant in the definition, a PHA is not penalized for doing evictions, since in such cases, the resident usually vacates after the legal expiration date of the lease. It should be noted that in the rare case where an applicant executes a lease and moves into the unit prior to the completion of minor repairs, the calculation of turnaround time continues until the repairs to the unit have been completed by the PHA.

Indicator #2, Modernization—§ 901.15

The weight for this indicator has been increased to x1.5 in the new rule to reflect the importance of planning for and allocating scarce modernization funding.

Comment: Ten Comments supported the greater emphasis being given to obligation of funds in relation to expenditure of funds for components #1 and #2.

Response: The Department concurs that by assigning more weight to fund obligation, and less to fund expenditure, the rule largely removes the disincentive for PHAs to accept inferior work products from contractors.

Comment: Two comments recommended that there should be intermediate grades for components #1 and #2 that allow for varying times beyond the required deadlines (e.g., within one year after deadline = C, two years = D, etc.). Interim grades should be adopted to recognize that capacities vary between PHAs and the size of their modernization programs. One method would be: A for 100%, B for 90–99.9%, C for 80–89.9%, D for 70–79.9%, and F for below 70%. If the Department remains adamant that these are too many grades, then at least a grade of C should be available for > 80% but < 100%. Another comment suggested that components #1 and #2 should have more grades (A–F) to allow small amounts of funds to be expended/obligated without scoring an F. For example, 99% of funds obligated/expended would receive a score of B, and 95% of funds obligated/expended would receive a score of C. Another comment recommended that all components should have grades A–F; larger PHAs may have multiple modernization projects being run simultaneously. A problem with just one such project should not be the cause of a failing grade. In addition, another comment recommended that an intermediate grade of C should be created for components #1 and #2 for PHAs that, for example, are one year behind the expenditure or obligation time. Some PHAs may need to accumulate funds over several years in order to fully carry out their strategic plans. Another comment recommended that large PHAs that administer complex, multi-year programs that exceed $100 million in a single year, be given more flexible standards than are proposed for components #1 and #2. The proposed rule refers to the HUD-approved original implementation schedule, and the previous interim rule refers to the HUD-approved revised schedule. HUD should allow a grade of A for these two components where the HUD-approved original or revised implementation schedule allows longer than three years to expend all funds, and the PHA is either in compliance with that schedule or has timely self-executed an extension of the HUD-approved deadline for valid reasons beyond its control.

Response: The Department does not agree with these comments since components #1 and #2 adequately take into account situations where longer times are appropriate in the original implementation schedule or are necessary in the revised implementation schedule due to reasons outside of the PHA's control. The Department believes that it is appropriate to distinguish between time extensions due to reasons outside of the PHA's control (which have no adverse impact on the PHA's score on components #1 and #2) and time extensions due to reasons within the PHA's control (which avoid fund recapture, but have an adverse impact on the PHA's score on components #1 and #2). The Department notes that the need to use leftover funds is a reason for a time extension outside of the PHA's control. In addition, the Department notes that while larger PHAs have more funds to obligate and expend, such PHAs also have greater resources and capacity to implement their programs; therefore, size of program is not appropriate in measuring fund obligation and expenditure performance.

Comment: Six comments expressed concern about how HUD will define ''significant findings'' for components #3 and #4 in the new rule. This is a very critical issue since HUD staff judgments vary widely from city to city. Significant findings should be really significant. PHAs should have the opportunity to see and comment on the definition.

Response: The Department has revised components #3 and #4 to include a definition of ''findings.'' The Department has eliminated the term ''significant'' since, by definition, all findings made in connection with HUD monitoring or an audit are significant. Items that are not significant are considered to be observations and are not designated as findings.

Comment: Two comments disagreed that obligation of funds should be weighted higher than expenditure of funds. Often it is easier to enter into a contract than it is to complete one. Emphasis should be on a PHA's planning efforts and its record of delivering promised work.

Response: The Department does not agree with this comment. The Department believes that the more time-consuming part of implementation involves the design work, the bid process, and the award of contract. In the overwhelming majority of cases, fund expenditure occurs routinely after fund obligation, in accordance with the schedule for periodic payments.

Comment: Two comments were unclear about the reporting requirements for a self-executed time extension for obligation of funds and suggested that the Department provide a short list of examples of the types of circumstances ''out of the control of the PHA'' which would warrant a self-executing extension.

Response: The Department has revised components #1 and #2 to provide additional examples which are: unforeseen delays in contracting or contract administration; and need to use left-over funds from a completed modernization program for additional work. Additional examples will be provided in the revised PHMAP Handbook 7460.5.

Comment: One comment stated that it was not clear what data were being used to score components #1, #2 and #5, and suggested that HUD needs to develop a procedure reflecting PHA performance in the same fiscal year as other PHMAP grades.

Response: The Department scores components #1 and #2 on the basis of Federal Fiscal Year (FFY), not PHA fiscal year, in order to provide a uniform measurement for all PHAs, without regard to the relationship between the construction season and PHA fiscal year. The Department scores components #3, #4, and #5 based on the status of the PHA's modernization program(s) as of the PHA's fiscal year end. The Department intends to continue these bases for scoring.

Comment: One comment noted that the components are well described and the grading is equitable.

Response: The comment is noted by the Department.

Comment: One comment recommended that only fund obligation should be measured since in fact this is the only activity really under a PHA's control, with expenditures affected by contractor progress, litigation, and other outside factors.

Response: Fund expenditure is a performance measure mandated by the 1992 Appropriations Act and, therefore, must be included.

Comment: One comment recommended that the modernization indicator be changed for the assessment of the CGP. Requirements for measurements should be in large percentages rather than items of work (i.e., 33% of all funds three years old or less should be obligated). Further detail should not be required. HUD should model these reporting requirements on those of the CDBG program. There should be flexibility for expenditure rate requirements based on circumstances beyond PHA control, such as contractor default, the discovery of hidden conditions, etc.

Response: The Department believes that the component on fund obligation appropriately assesses performance under the CGP. The CGP provides annual formula funding for modernization. Accordingly, such stable and predictable funding should enable CGP PHAs to plan and implement their modernization programs in an expeditious manner. The Department strongly believes that two years is adequate time for most PHAs to obligate all funds, but provides for a longer time period where appropriate.

Comment: One comment recommended that fund obligation be extended to three years rather than the two proposed.

Response: The Department believes that two years is a more appropriate measure of performance. However, the Department notes that the PHA may propose, and HUD may approve, implementation schedules with fund obligation deadlines of longer than two years due to local differences in work scope and complexity, construction seasons, material or equipment supply, or State/local contracting requirements.

Comment: One comment questioned how HUD will know whether the PHA extended the target date within 30 calendar days after the deadline and whether such extensions were for reasons outside of the PHA's control. These components are not certified by the PHA, but are graded by HUD based on HUD in-house information. HUD will only know what it can gather from LOCCS and from on-site reviews. Assessments will be very inconsistent and of questionable accuracy.

Response: A PHA is currently required to inform HUD if it has extended the target date for fund obligation so that HUD may enter the revised date into the Line of Credit Control System (LOCCS). A PHA also is currently required to report on all time extensions that it issued and the reasons for those extensions in its annual CGP performance and evaluation report for the program year ending June 30. If a PHA issues a time extension between June 30 and September 30, it will be required to inform HUD so that components #1 and #2 may be scored correctly. If the State/Area Office fails to take into account a time extension made by the PHA, the PHA may appeal its score to the State/Area Office so that the corrected information may be used in rescoring.

Comment: One comment stated that component #1 is an example of excessive flexibility, in that a PHA can miss the performance target but still receive a grade A by executing a self-imposed time extension within 30 calendar days after the expenditure deadline so long as the extension is for conditions which the PHA determines is beyond its control. A PHA also can manage this requirement by simply including in its original implementation schedule, a time period longer than three years to expend its modernization funds. The same options are available in connection with component #2.

Response: The Department believes that PHA flexibility to issue time extensions for reasons outside of the PHA's control is critical to streamlining program requirements and is an important tool in expediting program implementation. HUD still approves the original implementation schedule and may require a shorter time period if a PHA proposes a time period that is too long. Also, HUD reviews the basis on which the PHA issues a time extension and, if inappropriate, may withdraw the PHA's authority to do so, thereby requiring that all future time extensions be submitted for prior HUD approval.

Comment: One comment questioned the term ''modernization'' as used in components #1 and #2. Does it mean CIAP/CGP only, or the larger definition of ''modernization'' found in the term ''approved funded, on-schedule annual modernization program?'' The comment contended that the rule uses two different definitions of the term ''modernization'': one that is CIAP/CGP only; and one that includes more than just CIAP/CGP.

Response: All components apply to both the CGP, the CIAP and lead based paint risk assessment (1992–1995). Only components #3, #4 and #5 apply to funding under the HOPE VI Program and the Vacancy Reduction Program for the assessment of this indicator. The new rule has been revised to include this language.

Comment: One comment recommended that HUD decouple the fund obligation deadline from specific modernization projects. This is in keeping with HUD's approach in the community development program arena where HUD tracks a specified amount of funds obligated each year regardless of the year in which HUD allocated the funds to a locality.

Response: The Department does not agree with this comment since each annual grant must be individually tracked and closed out.

Comment: One comment stated that components #1 and #2 do not measure the adequacy of modernization efforts or address the adequacy of the overall maintenance program of the PHA.

Response: The Department points out that both components are mandated by statute. The Department believes that component #2, fund obligation, is a critical indicator of modernization performance. Neither component is intended to address the adequacy of the PHA's overall maintenance program.

Comment: One comment stated that a PHA's potential score for components #3 and #4 seems to be subject to the timing of a HUD monitoring visit. A PHA should not be graded on these components unless at least three months have elapsed between the date of HUD's monitoring report to the PHA and the end of the PHA's fiscal year; also, the time frame for HUD reviews should be clarified.

Response: The Department agrees that a minimum time should be specified between the date of HUD's monitoring report or audit is provided to the PHA and the end of the PHA's fiscal year in order to give the PHA sufficient time to correct all findings. Accordingly, the Department has revised components #3

and #4 to reflect a minimum time of 75 calendar days.

Comment: One comment stated that a clearer distinction should be established between an ''A'' and a ''C'' grade for components #3 and #4; i.e., that a PHA must ''have corrected'' all findings versus ''be in the process of correcting'' all findings.

Response: The phrase the ''PHA has corrected'' all findings means that HUD concurs in the PHA's determination that the violation no longer exists and that HUD is ready to close the finding or has already closed it. The phrase the ''PHA is in the process of correcting'' all findings means that the violation still exists and the finding is not yet ready to be closed.

Comment: One comment supports an appeal process in the event a PHA and HUD differ on what constitutes ''significant findings.''

Response: As stated, above, this language has been changed and the term ''significant'' has been eliminated. In addition, the PHMAP rule at § 901.125 sets forth the PHA's right of appeal.

Comment: One comment recommended that HUD use qualified building inspection firms or inspectors, in combination with qualified HUD engineers as they are available to inspect the physical work that is completed rather than the Corps of Engineers.

Response: The Department intends to use all resources available to it, including the U.S. Army Corps of Engineers, for inspection of approved modernization programs.

Comment: One comment recommended that component #5 be covered under indicator #6, financial management, since financial management of the modernization program is part of the overall financial management of the PHA's programs.

Response: The Department rejects this comment since the modernization budget controls are so integral to implementation performance by a PHA.

Comment: One comment supported the change to component #5 that reflects the flexibility recently provided to CGP PHAs to move work items between approved annual statements and the five-year action plan and to address emergency items not reflected in either document. Another comment noted that emergency CGP work does not require prior HUD approval.

Response: The Department agrees that emergency CGP work does not require prior HUD approval and has revised component #5 to specifically exclude emergency work.

Comment: One comment proposed a new component related to the incorporation of work orders, which are identified by yearly inspections of systems and units and deferred for modernization, in the modernization plan.

Response: The Department does not agree with this comment because all work orders are tracked under indicator #4 in the new rule. A work order deferred for modernization is any work order that is combined with similar work items as defined in § 901.5.

Indicator #3 Rents Uncollected—§ 901.20

Comment: Ten comments supported the simplification of the indicator and the grading method, without further comment.

Response: The comments are noted by the Department.

Comment: Ten comments sought a variety of additional exclusions from ''dwelling rent'' such as charges for amounts that cannot be collected by the PHA without stopping the eviction process, amounts owed by tenants no longer in possession, disputed amounts, amounts written off, or amounts abated. One PHA thought that the indicator was inconsistent with the one strike policy in indicator #8 because a resident evicted for selling drugs would be charged dwelling rent that could not be collected during the eviction process.

Response: The Department does not agree. The reasons for nonpayment of rent are varied and the specific conditions mentioned are not unique. The purpose of the indicator is to assess a PHA's ability to deal with conditions for nonpayment effectively to collect the rent due; excluding the charges related to all possible reasons for noncollection would defeat the purpose of the indicator. A PHA may request a modification or exclusion to this indicator due to highly unusual or unique circumstances.

Comment: Five comments pointed out inconsistencies in terminology in the indicator that they believed made the indicator unclear. One comment stated that the terminology in § 901.20 doesn't have the same specificity as the summary. The language in § 901.20 needs to be revised to conform with the summary and the definitions. There were four comments regarding the definition of the terms ''current dwelling rent billed,'' ''current dwelling rent uncollected,'' ''percent of current dwelling rent,'' and ''rents uncollected.''

Response: The terminology referred to in the comments has been changed in the new rule to be consistent.

Comment: Four comments stated that uncollected rent of 2% or less for a grade of A was unduly restrictive and not in line with the private market standard. The comments requested that the 2% be changed to 5% to conform to industry standards.

Response: The Department believes that the percentage for grade A is fair since this grade represents the truly outstanding PHA, rather than the industry standard. The industry standard of 5% is reflected in grade C of this indicator, and denotes standard performance.

Comment: Two comments noted that the indicator is not as simple as it seems since data required by the indicator is not readily available in the accounting system. One comment stated that the method should not be changed from the interim method.

Response: The Department recognizes that accounting systems do not usually collect or compile the specific tenant accounts receivable information required for indicator #3 as proposed; therefore, the proposed indicator has been changed to incorporate information that is collected by PHAs to compile other tenant accounts receivable and financial reports. The major change between the new indicator and the current method is that the new indicator includes only information for tenants in residence during the assessed fiscal year.

Comment: One PHA commented that rent collections are so important that the indicator should have a weight of x3.

Response: The Department agrees that rent collections are important to the financial health of the PHA, and it has the second highest weight of all the indicators. The weighting has been simplified to a ten point scale, with only indicator #1, vacancy rate and unit turnaround, having a weight of x2.

Indicator #4, Work Orders § 901.25

General Comments

Comment: Many comments received were generally supportive of the revised requirements of this indicator. Most indicated that the changes made to this indicator will create a management tool that is more equitable and provide a more accurate measurement of work order completion.

Response: The comments are noted by the Department.

Comment: Four comments stated that recording the time for completing emergency and non-emergency work orders is unnecessary and unproductive. The extra administrative expense to record the time of processing work orders is not justified. One comment stated that this change will put an excessive burden on small PHAs in tracking the time involved on routine

(non-emergency) work orders due to the many factors which can effect how long it takes to do a work order.

Response: The Department does not agree with this statement. This indicator is a statutory requirement under the PHMAP. The preamble to the PHMAP rule and the new rule state that ''implicit in this indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.'' Therefore, there should not be substantial additional administrative expense since an adequate work order system must be able to track and control work orders from the dates/times of when the work orders were initiated to the dates/times when they were completed.

Comment: Two comments stated that emergency work orders should be at least equal in weight to non-emergency work orders.

Response: The Department believes that since emergency conditions must be abated immediately or no longer than 24 hours from when first reported, the tracking and controlling of non-emergency work orders would provide more accurate information of PHA work order performance. Hence, more weight is given to the PHAs' non-emergency work order activities. However, the weight of the total indicator in the new rule is x1.

Comment: Two comments stated that the definitions for cyclical work orders and preventive maintenance are very similar, which is especially distressing because the proposed rule is very clear in its requirement that the two not be confused.

Response: The Department agrees that there are many instances in which PHAs might not use the work order process to do general cleaning activities, pick up trash or change light bulbs. When they do, these work orders are classified as cyclical work orders and are excluded from component #2, non-emergency work order, calculation. Other examples of cyclical work orders might be work orders that are routinely written each year to replace furnace filters, clean out site and roof storm drains or raking leaves in the fall. Preventive maintenance work orders are usually generated from preventive maintenance inspections. They are primarily related to the modification or repair of physical systems of units, buildings and grounds. The Department will include examples of cyclical and preventive work orders in the revision of the PHMAP Handbook 7460.5.

Comment: Two comments stated that for work orders done by outside contractors, which may take longer to complete or that require special parts, if a vendor has difficulty in securing a part, the PHA would be penalized even though the living conditions in the unit aren't compromised.

Response: The Department does not agree with this comment. The Department has provided up to 25 days for the average time to complete non-emergency work orders in order for a PHA to achieve a grade A for this component. This is quite liberal as compared to the private sector. The few cases that might exceed the 25 day period, due to a wait on a special part, should not significantly impact a final PHMAP score. In regards to emergency work orders, if the emergency condition in a particular unit cannot be corrected or abated within the 24 hour time frame, the resident(s) could be moved out of the unit, which would abate the emergency situation.

Comment: Two comments wants to know if the reduction of days needed to complete work orders affect grades A and B, or is it only taken into consideration when the grade is C or less. Under what conditions may a PHA make such an election? To this, the rule appears to be silent.

Response: The reduction of days needed to complete non-emergency work orders is only taken into consideration when the grade is C or less. The Department has revised the reduction of days needed to complete non-emergency work orders during the preceding three years to conform with other changes in the new rule.

Comment: One comment stated that this indicator is poorly written and needs additional clarification.

Response: The comment is not specific as to where the clarifications are needed. The Department wants a new PHMAP rule that is clear, concise and easy to understand, and welcomes any and all suggestions on how it can achieve that goal. If some areas of the rule are unclear to a reader, or needs further interpretation, he/she can contact the local State/Area Office for assistance.

Comment: One comment stated that PHAs may need technical assistance to construct an effective tracking system without spending scarce funds on additional software or special tracking systems.

Response: The Department agrees with this comment and maintains that PHAs must have in place an adequate work order system that tracks and controls work orders from the dates that they were initially entered into the system to the dates when they were completed. The necessary information to grade emergency and non-emergency work orders should be readily accessible from the data in the PHA's work order system. However, if the PHA's existing system cannot perform the necessary tracking function, it should be a priority of the PHA to up-date the existing system or replace it with one that can. To that end, HUD is always available to provide appropriate technical assistance.

Comment: One comment stated that there should be a one year delay in implementation.

Response: The Department has determined that the revisions in the new PHMAP rule will apply to PHAs with fiscal years ending the quarter after the new PHMAP rule is published in the Federal Register.

Comment: One comment stated that this indicator does not provide any means for measuring the effectiveness of a PHA's response to deficiencies identified in inspections.

Response: The Department agrees. Measuring the effectiveness of PHA response to deficiencies is too subjective and would not necessarily be the same from PHA to PHA; PHMAP measures performance.

Comment: One comment stated that a confirmatory review should be required each year by qualified HUD staff or building inspection firms.

Response: The Department disagrees due to the lack of resources. Risk management is used to determine where confirmatory reviews are most needed.

Component #1, Emergency Work Orders

Comment: One comment stated that the evaluation for grading emergency work orders under component #1, is too tight, i.e., 99% of the emergency work orders completed or abated within 24 hours for a grade A and down to 95% completed or abated for a grade F.

Response: The Department does not agree. The Department defines emergency as physical work items that pose an immediate threat to the life, health and safety of residents or that are related to fire safety. If emergency work items cannot be completed or abated within 24 hours, the PHA could move the resident out of the unit until the emergency work is completed or abated. The removal of the resident(s) from the emergency condition is considered abatement. Therefore, correcting or abating an emergency situation should never exceed 24 hours.

Comment: One comment stated that a more specific definition of emergency work orders should be given, possibly including examples.

Response: Emergency means physical work items that pose an IMMEDIATE

threat to life, health, safety, or property, or that are related to fire safety. Some of the more easily definable emergency situations would be: (1) an unhealthy or undrinkable water supply; (2) a gas leak; (3) a broken sanitary sewer line where sewage is ponding on the surface of the ground; (4) failed heating systems in colder winter climates; (5) hazardous electrical systems; non-working smoke detector or fire alarm system; and (7) toxic material situations such as exposure to asbestos or defective lead-based paint. Situations such as leaky roofs, broken windows or stairways might be classified as an emergency depending on specific circumstances and the degree to which the situation is an immediate threat to tenant health, safety or to property. Temporarily covering a hole in the roof or broken window, or closing off a stairwell until the condition can be corrected would be considered emergency abatement and would change these types of work orders from emergency to regular (non-emergency) work orders. The Department will include examples of emergency and non-emergency work orders in the revision of the PHMAP Handbook 7460.5.

Component #2, Non-Emergency Work Orders

Comment: Two comments stated that excluding cyclical work orders from the calculation of this indicator serves to create what must be an unintentional disincentive to devote staff resource time to routine daily maintenance work. The PHA that devotes all of its maintenance resources to competing PHMAP measured work orders while ignoring trash on the grounds and in the hallways will score higher than a PHA that devotes its resources to daily maintenance as well as inspection and resident initiated work orders. Unless the PHMAP rule intends to cause PHAs to place a very low priority on the completion of daily maintenance work orders, work orders generated to accomplish this work should not be excluded from the calculation of this indicator.

Response: The Department disagrees with this suggestion since this component was designed to only measure PHA performance in completing work orders and was never intended to place daily maintenance work at a low priority or ignore trash on the grounds and in the hallways. Normally, tasks such as picking up trash, etc., are performed by laborers and would not be covered by a work order. Work orders exempted for modernization, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance are not necessarily the same from PHA to PHA and consequently, would tend to skew the performance grade results from PHA to PHA if they were not exempted.

Comment: One comment stated that preventive maintenance work orders are not exempted from the calculation of this component and should be. This PHA issues over 3,000 work orders for preventive maintenance to be performed on the heating systems over the period of the three to four month non-heating season. If these are included in the count, there is no possible way for this PHA to obtain a high score for this component since the work could never be completed in 25 days or less.

Response: It appears that the work orders described above should be classified as cyclical work orders, which are excluded from the non-emergency calculation. If this is not the case, the PHA does have the option to request HUD's approval of either a modification or exclusion of this indicator.

Comment: One comment stated that to divide work orders among routine and emergency, then determine average number of days it took to complete them assumes that only closed work orders will be counted under this indicator, and any work order that is not closed will be counted against the following fiscal year as we currently do with vacant units. Please clarify.

Response: The calculation of this indicator includes: the number of days in the assessed fiscal year it takes to close active non-emergency work orders carried over from the previous fiscal year; the number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and the number of days all active non-emergency work orders are open in the assessed fiscal year, but not completed. The new rule includes a definition of the average number of days for non-emergency work orders to be completed.

Comment: One comment stated that this indicator should specifically state that HUD wants all preventive maintenance work orders tracked rather than focusing on exclusions and thus, place proper emphasis on preventive maintenance.

Response: The Department agrees and has added specific language to the new rule stating that all preventive maintenance work orders are to be tracked, as well as which type of work orders are exempted from the calculation of this indicator.

Section 901.30 Indicator #5, Annual Inspection of Units and Systems

General Comments

Comment: Three comments support the improvements in this indicator, particularly reducing the components from four to two and eliminating redundancies.

Response: HUD agrees that it is more appropriate to track all work orders, including inspection generated work orders, under indicator #4. Indicator #5 now focuses more on a PHA's ability to determine short-term maintenance needs and long-term modernization needs.

Comment: Three comments expressed concern about the possible subjective interpretation of the adequacy of a PHA's inspection system by HUD field staff. A clear and reasonable description of an adequate inspection system should be included in the rule.

Response: The preamble to the proposed rule stated that the adequacy of a PHA's inspection program will be part of the confirmatory review in terms of the quality of a PHA's inspections, and how a PHA tracks both inspections and needed repair, and the adequacy of a PHA's inspection system is also included in the new rule. The Department recognizes that what is adequate for one PHA may not be adequate for another PHA, thereby making this term general in concept. Examples of inspection systems will be included in a guidebook on the conduct of confirmatory reviews and in the revised PHMAP Handbook 7560.5.

Comment: Two comments stated that the two components are well described and are graded equitably. However, it should be clarified if damages caused by residents that are not reported to maintenance for prompt repair could be exempted and considered as repairs for code compliance.

Response: If a unique or unusual circumstance were to occur, a PHA could request a modification to this indicator to avoid being penalized for circumstances beyond its control. However, one of the purposes of an annual unit inspection is for a PHA to be able to identify, at least annually, the condition of its housing stock. Since this indicator no longer measures the amount of time it takes to correct unit/system deficiencies, the annual inspection would simply initiate corrective action.

Comment: One comment stated that this indicator is poorly written and needs additional clarification.

Response: The comment is not specific as to where the clarifications are needed. The Department wants a

new PHMAP rule that is clear, concise and easy to understand, and welcomes any and all suggestions on how it can achieve that goal. If some areas of the rule are unclear to a reader, or needs further interpretation, he/she may contact the local State/Area Office for assistance.

Comment: One comment stated that PHAs must have adequate time to change the manner in which they track annual inspections and needed repairs.

Response: The Department agrees, and the new rule will apply to PHAs whose fiscal year ends the quarter after the publication of this rule in the Federal Register.

Comment: One comment recommended that a confirmatory review of this indicator be required each year by HUD or qualified building inspection firms that would track whether each item was completed or whether it was referred to a work order and when the work order was completed.

Response: The Department disagrees because these issues are more properly examined under indicator #4, work orders. Also, due to the lack of resources, risk management is used to determine where confirmatory reviews are most needed. However, when HUD conducts a confirmatory review of indicator #4, the items mentioned in the comment are verified and confirmed.

Comment: One comment stated that component #2 should have a higher weight. The commenter suggested that there should be a new component that requires a monthly walk through of the common areas, with the results of these inspection being available for HUD monitoring.

Response: The Department disagrees with both parts of the comment. HUD believes that the inspection of units and the inspection of systems are equally important to the quality of a PHA's housing stock and, therefore, each component is weighted equally. The Department believes that adding a new component that requires a monthly walk through of the common areas would result in the micromanagement of PHAs.

Comment: One comment asked why the proposed certification form asks the question, ''Percent of units meeting HQS.''

Response: This question has always been on the certification form. The Department requests this information for trending and statistical purposes.

Comment: One comment felt that this indicator has been severely weakened. Poor property management may be rewarded simply because inspections have been conducted. The necessary follow-up to correct identified deficiencies is not addressed in the proposed rule.

Response: The Department disagrees with this comment because inspection generated repair items are tracked under indicator #4, work orders.

Comment: One comment suggested that units under proposed demolition and disposition applications that are vacant should be excluded from this indicator.

Response: The Department does not agree with this comment. There have been and will continue to be significant differences between initiating the application process and receiving approval to dispose or demolish.

Comment: One comment does not agree with the exemption of occupied units that the PHA has made two documented attempts to inspect because this could become an excuse for PHAs with poor inspection programs.

Response: The Department disagrees that such a situation is likely to happen because the language of the exemption goes on to state that PHAs may claim this exemption only if it can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)), has been taken under the provisions of the lease to ensure that the unit can be subsequently inspected.

Comment: One comment observed that the expanded definition of what units are excluded from the calculations are an improvement. It seems logical to exclude units in the same category as in the vacancy indicator. However, there is concern about the exclusion of ''units vacant for circumstances and actions beyond the PHA's control.'' The concept is too vague. There will be situations cited that may arguably be within an agency's control. HUD should, minimally, identify a short list of examples as a guide to PHAs and HUD State/Area Offices.

Response: The Department agrees and this rule has been revised to specifically state the allowable exemptions for indicator #5.

Comment: One comment agrees with excluding units documented as uninhabitable, but feels the term should be defined (e.g., condemned by local health department). In addition, PHAs with uninhabitable units should indicate what plans they have to demolish and dispose of such units.

Response: The language for this indicator already states that units that are documented to be uninhabitable by order of the local health department may be exempted. To further enumerate all of the possible Federal, State or local agencies that could be involved in such a process is unnecessary since situations differ from PHA to PHA. However, if units have been determined to be in such a state as to be designated uninhabitable, HUD strongly recommends that PHAs at least inspect these units annually to verify the structural integrity of the building. This is particularly important for scattered site units and long-term vacant buildings. In addition, a CGP PHA has to address the physical needs of all of its developments in its Comprehensive Plan.

Component #1, Annual Inspection of Units

Comment: Three comments stated that HQS should remain as the standard, with the PHA expanding on the HQS requirements to include local code items. Otherwise, HUD would need knowledge of many different local codes to properly assess PHA actions. The commenters added that it would be necessary to adapt HQS at the highest local standard or a PHA would have to modify inspection standards based on where the unit was located.

Response: The Department requires that HQS be used as the inspection criteria for PHAs *only* if there are no local occupancy and/or housing codes that cover a PHA's jurisdiction. The PHMAP Handbook 7460.5 requires that a PHA comply with local occupancy and/or housing codes. Rather than expand on the HQS requirements to include local code items, a PHA should expand upon local code requirements to include omitted HQS items. If a PHA is dealing with more than one local occupancy/housing code within its jurisdiction, the PHA should incorporate HQS items into the local occupancy/housing inspection forms for each locality.

Comment: Two comments stated that incorporating maintenance long-term planning into annual inspections would greatly compromise the ability of a PHA to abate common problems. In addition, it is difficult to determine if completion of long-term preventive maintenance functions (exterior painting, etc.) would be included.

Response: The Department disagrees with this comment and believes that just the opposite is likely to occur. A PHA's ability to abate common problems should be greater when a PHA is able to plan for short-term maintenance needs and long-term modernization needs. Such planning will allow a PHA to budget appropriate expenditures from its operating budget and modernization program, thereby avoiding possible budget short falls. With such planning done on an on-going basis, a PHA can focus more resources on day-to-day operations and the abatement of

common problems. In addition, the completion of long-term preventive maintenance items are included at the discretion of each PHA. A PHA may decide to fund all exterior painting out of its operating budget, painting ''X'' amount of units/buildings each year on a rotating basis. Or, a PHA may decide to include 50% of its exterior painting under its modernization program, and fund the exterior painting of the remaining units out of its operating budget.

Comment: One comment felt that the proposed indicator does not exempt occupied units scheduled for modernization this year or the next. Inspection of occupied units scheduled for imminent modernization should be limited to an inspection of emergency conditions only. It seems wasteful to take the time to write up deficiencies on a unit when specifications have been developed and possibly even bid for the modernization of the unit. One comment stated that the term ''referred the deficiency to the current year's or next year's modernization program'' is an incredible loophole simply permitting the existence of non-compliant conditions.

Response: This indicator does exempt a vacant unit undergoing modernization as stated in the preamble language and the proposed rule. The Department has added new language to the new rule in order to clarify the circumstances under which work orders can be deferred to modernization. As stated in the definition for this term, only similar items can be deferred by a PHA to be completed in the current year's modernization program, or to be completed in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated.

However, before an item is deferred to modernization, it should be (1) similar to a work item that is in the current year's modernization program, (2) similar to a work item that is in next year's modernization program, or (3) similar to deficiencies noted in other units/buildings and the correction of such deficiencies has not been included in the current or next year's modernization program, but the current or next year's Annual Statement is revised to include the new work item. If the similar deficiency that was deferred for modernization is not corrected in the current or next year's modernization program, the work item may no longer be exempted from the calculation of this indicator and the deficiency reverts back to being tracked through the work order system.

Occupied units shall be inspected, particularly for detection and repair of emergency conditions, as long as they remain occupied. Non-emergency work orders generated during inspection of occupied units scheduled for imminent modernization (this year or the next) should be classified as deferred for modernization and not included in the computation of this indicator as long as the identified deficiencies are part of the work items included in the modernization project.

Comment: One comment stated that it is not clear whether preventive maintenance items, such as repairs to stoves and plumbing, etc., would be recorded or tracked. How are they recorded if completed during the inspection?

Response: All preventive maintenance items should be recorded and tracked through the work order tracking system. This information will enable a PHA to plan for short- and long-term maintenance needs. If a minor deficiency is corrected during an inspection, the PHA should not retroactively issue a work order for that work item. A minor deficiency that is corrected during the inspection is no longer a deficiency, and there is no need to issue a work order. However, any parts used to complete minor repairs made during the course of an annual inspection should be tracked through inventory control.

Comment: One comment was concerned that many PHAs may misinterpret the indicator as suggesting that a PHA must use only local housing/occupancy code or HQS, and nothing else.

Response: A PHA should use local housing and/or occupancy codes, and should expand upon local code requirements to include omitted HQS items, when applicable. In cases where there is no local occupancy and/or housing code or the local code is less stringent than HQS, the PHA should use HQS.

Component #2, Annual Inspection of Systems

Comment: One comment stated that there is no definition provided for the term ''maintenance plan'' and yet it is used as a factor of measure for indicator #5, component #2. The use of this term appears to be with an appropriate intent to allow for the fact that a major system that has been inspected and documented to be in good repair does not require another inspection in the following year. An effective PHA systems maintenance plan could appropriately reschedule the system for inspection three years later. If the system is new, after the first year of operation, testing it might not need to be rescheduled until five years later. A maintenance plan would document the performance of appropriately scheduled preventive maintenance on systems. Only safety systems and those required to be inspected and certified annually by State law for safety reasons should require annual inspection. If the intent of this provision is the use of the term ''maintenance plan'' is to allow for this fact, it should be clearly stated as such. Otherwise, different Field Offices will be left to subjectively interpret the meaning of this term and its applicability in the determination of PHA performance under indicator #5.

Response: The Department agrees that the term ''maintenance plan'' should be defined. It is defined in the rule as a comprehensive annual plan of a PHA's maintenance operation by providing the total year's estimated work schedule supported by a staffing plan, contract schedule, materials and procurement plan, training, and approved budget. The plan should establish a strategy for meeting the goals and time frames of the facilities management planning and execution, capital improvements, utilities, and energy conservation activities. The Department disagrees with the rest of the comment because this component examines whether a PHA inspects all of its systems *at least annually* to ensure the viability of the units/buildings and the provision of safe, sanitary and decent housing.

Section 901.35 Indicator #6, Financial Management

Component #1, Cash Available

Comment: Eight comments specifically approved of combining the cash and energy/utility consumption components; three more comments specifically approved of the cash available component.

Response: The comments are noted by the Department.

Comment: Three comments objected to the combination of cash available with energy/utility consumption and/or to the use of one or the other as a measure of financial management. Commenters stated that energy is not a measure of financial management and that available cash is not a measure of energy management.

Response: The Department disagrees. Although the amount of cash on hand is not by itself a measure of energy management, efficiencies in operation and in energy/utility consumption will reduce expenditures and thereby affect cash available.

Comment: Nine comments stated that the indicator should include other factors such as ratio of reserves to expenses over a period of time, an assessment of audit findings, average monthly cash reserves instead of a ''snapshot'' of cash available at fiscal year end, ability to maintain expenses within budget, ability to maintain an adequate reserve level for contingencies, or that the existing interim indicators should be retained.

Response: The Department does not disagree that there are a number of additional factors that could be measured as an indication of good financial management. However, the review of existing PHMAP procedures was done with the intent of streamlining and of limiting the number and content of the indicators to the basic information that could be used for performance measurement. This review process intentionally resulted in fewer, not more, indicator measurements. Maintaining a minimum level of liquidity was determined to be a basic requirement for financial management that should be an essential part of performance measurement.

Comment: Nine comments expressed concern that the terms ''cash available,'' ''cash reserves,'' and ''routine operating expenses'' were not adequately defined and would lead to inconsistent reporting on the part of PHAs. One comment stated that the sample worksheet should be revised to be computer friendly. One comment stated that the ''Analysis of General Fund Cash Balance'' should be used in lieu of the sample worksheet. One comment stated that the sample worksheet should match the information on form HUD–52595, Balance Sheet, because it would be difficult for small PHAs to identify accounts receivable/payable that would be active within 30 days.

Response: The Department notes that the sample worksheet is intended as guidance to the PHA in determining the cash available to meet routine operating expenditures, but its use is optional. ''Routine operating expenses'' are identified on the worksheet as being those reported on form HUD–52599, Statement of Operating Receipts and Expenditures, Line 520, Total Routine Expense. If a PHA experiences one-time expenditures in a given year that would distort the use of Line 520 information for the indicator, the PHA may request a modification. If PHAs follow the practice of aging their accounts receivable/payable, determining those that would be active within 30 days should not be a problem, and if the accrual information is immaterial to the computation, it need not be included. The use of information directly from form HUD–52595, Balance Sheet, would be possible only in the case of a PHA with no programs other than the management of PHA-owned rental. For the same reason, the Department does not think that the ''Analysis of General Fund Cash Balance,'' which is based on form HUD–52595, is a substitution for the sample worksheet since the Analysis does not, without further calculation, provide the user with the amount of cash specifically available for PHA-owned rental operations. In any case, the sample worksheet is optional and a PHA may choose to develop its own format and procedures, as long as its results are the same as would be derived by utilizing the optional worksheet.

Comment: Five comments stated that the indicator penalizes PHAs for using reserve dollars to operate, and two comments expressed concern that small PHAs will never be able to accumulate sufficient cash to score well on the indicator.

Response: The Department recognizes that PHAs must make choices in the use of funds and that there are circumstances that may make it difficult to achieve or to sustain a given level of cash, or that may reduce available cash on a short term basis. However, HUD also recognizes that in order to function in a financially responsible manner a PHA must have a minimum amount of cash on hand to cover day-to-day routine expenditures. Available cash to cover one month's routine expenditures would be 8.33% of total routine expenditures; a PHA does not fail this indicator unless the percentage is less than 5%. In order to meet its monitoring responsibilities, it is important that the Department take note of such PHAs and of the circumstances that are affecting their cash flow situation.

Comment: Three comments asked if the cash available calculation was to be adjusted for subsidy proration or year end adjustments for subsidy.

Response: The sample worksheet for indicator #6 has provision for including year end adjustments for subsidy in determining cash availability. The difference between subsidy eligibility and the prorated subsidy amount is not included because the amount of the difference will not be realized in cash payments.

Comment: One comment stated that percentages should be applied to PHAs of all sizes since $3 million in cash for a large PHA might not be enough to cover unexpected financial difficulties. One comment stated that dollars, not percentages, should be applied to all PHAs.

Response: The indicator measures cash available to cover routine expenditures, not unexpected cash needs for emergencies. The new indicator is measured in percentages because a percent gives a more flexible basis for evaluation than a flat dollar amount.

Comment: One comment expressed concern that the indicator would encourage PHAs to exercise poor financial judgment by deferring needed maintenance expenditures in order to maintain a large cash balance and score well on indicator #6.

Response: The Department disagrees. Indicator #6 is but one indicator in a group of indicators intended to measure PHA performance; two other indicators (#4 and #5) measure the PHA's performance in the area of maintenance.

Comment: One comment stated that the available cash should take into consideration funds that might be available from local government to help the PHA.

Response: The Department disagrees that the PHA potential to tap the local government for funds should be automatically included in determining the amount of cash available. Unless the local government is legally required to subsidize the operation of the PHA, there is no assurance that the local government's willingness or ability to provide funds to the PHA will continue in the future.

Component #2, Energy Consumption

In the proposed rule, the Department indicated particular interest in receiving comments from PHAs as to whether they preferred Option A, Option B or the choice of being able to use either option for their PHMAP certification and assessment. Option A compares energy/utility consumption expenses to the average of those computed on a three year rolling base and Option B measures whether or not a PHA has conducted an energy audit and implemented the improvements recommended as a result of the energy audit.

Comment: Nine comments preferred a choice of either Option A or Option B. Four comments stated a preference for Option B.

Response: The Department adopts the preferred approach of the majority of comments, which offers PHAs required to be assessed on this component a choice of either Option A or Option B.

Comment: Five comments stated that the energy/utilities component, Option A, should be based on consumption instead of dollars expended since PHAs don't have any control over the utility rate charged by local utility companies.

Response: The Department agrees and the proposed PHMAP energy/utilities component, Option A, does measure energy/utilities consumption rather than dollars. The sample worksheet for computing Option A compares a PHA's current consumption to its rolling base period consumption. In comparing Line 17 to Line 13 of form HUD–52722B, Adjustment for Utilities Consumption and Rates, the rolling base period consumption is adjusted prior to the comparison with the current year to reflect the current year's rates. Since the same rates are used, the only difference in the amounts compared is due to consumption. The wording of the proposed rule regarding Option A in the preamble may have been confusing in this regard and this option has been revised to refer to energy/utility consumption expenses.

Comment: Three comments stated that the upgrading of equipment, e.g., the addition of security lighting, affects consumption and that PHAs should not be penalized. One comment stated that PHAs should not be penalized for positive initiatives, such as increased utilization by resident initiatives and family self-sufficiency participants, that result in increased consumption for office buildings.

Response: The Department agrees that a PHA should not be penalized for increased energy/utility consumption due to upgrades of equipment such as adding security lighting for safety, etc., and resident initiatives programs. Therefore, with sufficient supporting documentation, a PHA may request a modification to exempt the excess energy/utility consumption from the calculation of the energy/utility component, Option A. The Department anticipates the issuance of a revised PHMAP Handbook 7460.5 subsequent to the effective date of the new rule. Examples of eligible modification requests and required supporting documentation will be included in the Handbook.

Comment: One comment stated that the component should be named ''utility consumption'' rather than ''energy consumption'' since water and sewer charges are a utility expense for PHAs, not an energy source.

Response: The name of the component was, in fact, changed from ''energy'' to ''energy/utility'' in the proposed rule to reflect the fact that water and sewer charges, which are now included in the consumption measurement, are, as the comment states, a utility expense for PHAs, not an energy source. This component is referred to as ''energy consumption'' in the new rule, with Option A referred to as ''energy/utility consumption expenses.''

Comment: One comment stated that the cost of utilities, in comparison with other operating expenses, is not sufficient to justify a PHMAP indicator when other expenses are not measured at all under the PHMAP.

Response: The Department disagrees. Currently, PHA utility expenses exceed $1 billion annually and represent over one-quarter of PHA operating expenses. It is clear that the cost of utilities is a major operating expense that must be addressed on an on-going basis by management. Congress recognized the importance of this issue by including it in the statute as one of the mandatory indicators. Therefore, the cost of utilities must be included in the PHMAP assessment.

Comment: One Comment supported the elimination of measuring energy/utility consumption for those PHAs scoring C or higher for component #1, but stated that the energy audit rule at § 905.302 should be revised to require an audit every five years only for PHAs that score lower than C. Otherwise, the Comment states, comparing energy and utility cost to the average of a three year rolling base should be eliminated as unnecessary.

Response: The Department disagrees. The Department addressed this concern regarding audits for standard and high performers at the time it issued the final rule at 24 CFR part 965 earlier this year. At that time, it was noted that PHA utility expenses exceed $1 billion annually, and the appropriation for operating subsidy for fiscal years 1994 and 1995 was sufficient to fund PHAs at 95% and 96%, respectively. In fiscal year 1996, the appropriation for operating subsidy was only sufficient to fund PHAs at 89%. It is not guaranteed that future appropriations will result in a higher percentage of funding. Hence, the Department must ensure that PHAs conduct audits as one means of holding down operating costs, including the cost of utilities, and ensuring that the limited funds available for operations are used as efficiently as possible.

HUD's Office of Inspector General (OIG) recently completed an Audit Report entitled ''Review of Opportunities to Reduce Utility Costs At Public Housing Authorities.'' The OIG report was based on visits to approximately 63 PHAs that manage 41% of the 1.3 million public housing units nationally. The OIG indicated that, despite past efforts, opportunities for reducing utility costs continue to exist and are cost effective in many instances due to ongoing improvements in technology. PHA managers need to be aware of, evaluate, and give maximum consideration to these ongoing and new opportunities when managing their utility costs. The OIG further states, that, because of improvements in technology, managing utilities is a continuous process that requires an ongoing energy management program.

Comment: One Comment stated that the rule needs a definition of ''energy audit'' and ''cost effective'' so that PHAs know how to determine what is ''cost effective'' and what is not. In addition, the Comment stated that the rule should also cross-reference the location of any applicable HUD guidance on the matter.

Response: The terms referenced by the Commenter have previously been defined at 24 CFR 965.303, PHA-Owned or Leased Projects-Maintenance and Operation. However, as a result of President Clinton's regulatory reinvention efforts and Executive Order 12866, Regulatory Planning and Review, issued by President Clinton on September 30, 1993, HUD commenced a comprehensive review of all of its regulations to determine which regulations could be eliminated and streamlined. One such review was with respect to 24 CFR part 965. The Department favored providing PHAs with more flexibility to meet local custom and eliminated those definitions. The Department still believes that those definitions still represent a reasonable description for those terms and may be used by PHAs. The revised PHMAP Handbook 7460.5 will include cross-references to applicable HUD issuances as appropriate.

Comment: One Comment stated that the energy/utility component could be greatly improved by lowering the standards and recommended adopting a standard of a 10% increase for a grade C level performance and a 4%-5% increase for a grade A.

Response: The Department believes that the current percentage ranges are equitable and that a choice of using Option A or Option B, which the Department has decided to adopt, offers PHAs much greater latitude with regard to the energy/utilities component.

Comment: One Comment stated a preference to let Option A stand as a separate indicator as it does now since Option B (energy audits) is not funded by the Department.

Response: The Department disagrees with this rationale on the basis of its belief that a sound energy management program is fundamental to good property management and that energy audits are a cost of doing business that should be included as a part of an agency's budget.

Comment: One Comment stated that, for purposes of PHMAP, Option A should be modified to reinstate the HDD factor. One Comment stated that if HDDs are not considered for PHMAP, the rolling base period should be extended so as not to distort energy expenditure trend data due to abnormal weather. One Comment stated that the elimination of the HDD factor no longer offers adjustments for unusually harsh winters.

Response: The Department agrees that HDDs should be considered for purposes of PHMAP if an HDD adjustment would significantly affect a PHA's assessment. For purposes of PHMAP, therefore, a PHA may request a modification to adjust consumption using an HDD adjustment for space heating utilities provided that the same data source is used for the current year as well as the three year rolling base period. The HDD factors used by a PHA are subject to HUD State/Area Office approval.

Comment: One Comment recommended the elimination of Option A due to conditions beyond the control of the PHA (e.g., rate increases) or positive initiatives (e.g., increased resident programs that have resulted in increased consumption to provide facilities for these activities).

Response: As previously discussed, Option A measures only consumption, not rate, increases and increased consumption due to special circumstances, e.g., resident initiatives programs, will be addressed in a revised PHMAP Handbook 7460.5.

Comment: One Comment proposed that Option B be modified to permit a passing grade for PHAs that have conducted an energy audit and have an implementation plan for all items in the audit in that it may not be feasible to implement all recommendations given insufficient funding and other priorities relating to health and safety.

Response: The Department agrees. A PHA may achieve a grade C under Option B if it has completed the energy audit, developed an implementation plan and is on schedule with its implementation schedule, based on available funds. The implementation plan should identify at least the items from the audit, the estimated cost, the planned funding source (e.g., funds from 1998 operating budget, 1998 CGP, etc.) and the anticipated date of completion for each item. The Department has changed the language in the new rule to reflect this comment.

Comment: One Comment expresses concern that at the time of a PHMAP self-certification, an audit report may have just been issued or may be five years old. The Comment states that this would give some PHAs an advantage and force others into an F grade. The Comment also questions whether a PHA should implement all cost effective recommendations, e.g., it may be cost-effective to use gas appliances rather than electric, but could create a carbon monoxide danger in units of a certain design. Other recommendations may be cost-effective over a very long payback period but there may be higher priority needs. The Comment recommends that Option B refer to an energy audit completed at least two years earlier and implementation of all recommendations with a payback period of five years or less unless the PHA has established good cause for not implementing them.

Response: The Comment lacks specificity as to exactly how the Commenter believes that the existence of an audit just issued or which may be five years old will give any PHA an advantage. Not all PHAs are going to do audits at the same time, nor would the Department expect them to. As such, some PHAs will be completing work from a previous audit while other PHAs are planning new work from a recently completed audit. The Department does not have a problem with this sequence as it expects energy management to be a constant, ongoing and evolutionary process. Therefore, HUD has determined not to revise Option B to refer to an energy audit completed at least two years earlier, and not to adopt the suggestion that PHAs implement all recommendations with a payback period of five years or less unless the PHA has established good cause for not implementing them.

The Department has no problem with eliminating an otherwise cost effective energy conservation measure (ECM) if the existing design would render the measure hazardous. Issues such as this should be a consideration during the development of the audit itself. At that point, consideration would have to be given to the cost of work necessary to make the ECM safe. If all costs are considered, including the additional hazard, the ECM would likely not be cost effective.

The Department believes that a two year audit period is excessively short and unnecessarily burdensome on PHAs, and has included in this component the existing five year frequency contained in 24 CFR part 965. As noted above, during HUD's streamlining process of 24 CFR part 965, the definition of cost effective (a pay back period of 15 years or less) was eliminated. HUD favors giving PHAs the flexibility to determine what is cost effective. Therefore, HUD will not adopt the recommendation of requiring incorporation of EMCs with a five year payback. The revised PHMAP Handbook 7460.5 will include cross-references to applicable HUD issuances, as appropriate.

Indicator #7, Resident Services and Community Building—Section 901.40

General Comments

Comment: One comment stated that this indicator combines several distinct elements with the grading system, requiring a PHA to score an A on each element in order to score an A on the indicator. The comment added that these elements should be reorganized as separate components within the indicator and the indicator grade should be a composite of the component scores, as is the pattern in the other PHMAP indicators.

Response: The Department agrees with the comment and the new rule reflects the changes. The new resident services and community building indicator is now subdivided into four equally weighted components, and the indicator or the individual components are subject to exclusion based on the particular circumstances of each PHA. The name of this indicator has been renamed ''Resident Services and Community Building'' to place a more accurate emphasis upon the specific role of PHAs for these functions.

Comment: One comment suggested that the criteria for this indicator should recognize innovations in program design or implementation beyond the traditional grant programs that often require considerable effort and resourcefulness.

Response: The Department agrees that PHAs should promote innovation in the implementation of resident programs, especially if this results in linkages to additional resources and measurable results. The subdivision of the indicator into four components will provide more flexibility to recognize this type of innovation when assessing the indicator. The Department will provide further guidance, in the form of examples of activities that PHAs could get credit under each one of the components, in the revision of the PHMAP Handbook 7460.5.

Comment: One comment indicated agreement with the reduction of weight factor from triple weight but suggested that a reduction to a weight of x1.5 would be more appropriate.

Response: The Department disagrees with the comment. A weight of x1 in the new 100 point system represents 10% of the score. A weight of x3 in the current 220 point system represents 13.6% of

the score. It should also be considered that some elements of the current resident initiatives indicator are now covered in the new security indicator. The Department feels that the weight assigned to the new resident services and community building indicator is adequate.

Comment: One comment stated support for a PHMAP indicator measuring resident involvement, but expressed disappointment with the language of the proposed rule and indicated that the current rule gives more flexibility and offers a broader base for resident participation. Another comment stated that the proposed scoring aspects of the indicator appear unrealistic. Both comments suggested HUD retain the current indicator.

Response: The Department disagrees that the current resident initiatives indicator should be retained, without changes, in the new rule. The Department agrees that the indicator required some clarification in order to make it easier to assess and score and the new rule reflects those changes.

Comment: Two comments requested that the term ''on-going management issues'' be defined. The comments argued that this is a very broad term and could create problems if PHAs are required to pass all on-going management issues by the residents because business delays would be very costly. The comments stated that this is not a practical requirement and that the term ''ample opportunity'' is too vague. Another comment requested that the terms: ''Section 3 program,'' ''monitors progress,'' ''issues reports,'' ''encouraged the formation of a resident council,'' ''mechanisms to ensure residents have ample opportunity for input,'' and ''percent of goals met under implementation plan'' be defined in the rule.

Response: Many of these terms have either been revised, or the term is defined elsewhere in the Code of Federal Regulations. The Department will add any applicable guidance regarding such terms in the revised PHMAP Handbook 7460.5.

Comment: The Department received several comments regarding applicability of this indicator to small PHAs. One comment stated that it is impossible for small PHAs to organize a workable resident initiatives program with part-time staff and that the indicator imposes too much extra work and is an administrative burden for small PHAs. Another comment indicated that small PHAs don't have the resources to handle this workload and residents don't have the interest. Five comments proposed that PHAs with 100 units or less be exempted from this indicator and that only large PHAs be assessed under it.

Three comments suggested that the indicator be removed for all housing authorities, or revised to consider only PHAs of 250 or more units. The comments proposed that as a minimum, PHAs with 249 or less units should be exempted. The comments argued that HUD has used 249 or less units as criterion for ''small housing authorities'' for nearly all aspects of funding such as CIAP vs. CGP, Youth Build Grants, Vacancy Reduction Grants, or Tenant Opportunity Program grants. Another comment indicated that maybe this indicator exclusion should be for all PHAs with less than 500 units.

One comment stated that small PHAs should be assessed under the indicator because residents of these PHAs also have a right to involvement in PHA management. One comment indicated that under the proposed changes, HUD has the appearance that it no longer cares what these smaller PHAs are doing. Another comment added that all PHAs should be assessed under the indicator in order to ensure that they are informed of the programs available and are conforming, to the best of their ability, to the Section 3 program. One other comment stated that since many PHAs over the past three years have gotten extensively involved in aspects of resident initiatives, it seems unfair to automatically exclude the efforts of those who have performed and earned merit. Another comment suggested that PHAs with 100% elderly units be excluded from this indicator.

Response: The Department agrees that since it has used fewer than 250 units as a threshold for ''small housing authorities'' for nearly all aspects of funding, the same criterion should and is being used for applicability of this indicator. This policy is consistent with the Tenant Participation and Tenant Opportunities regulation (24 CFR part 964) which has a participating threshold of 250 units, and it is also utilized in the CGP. In addition, PHA's with 100% elderly developments will not be assessed under this indicator. To avoid penalizing small PHAs with active programs, PHAs with fewer than 250 units or with 100% elderly developments may request to be assessed under the indicator at the time of PHMAP certification submission.

Comment: Two comments indicated that what this indicator measures is not a property management issue, but a social issue related to PHAs. The provision of social service support is not a function of PHA management any more than it is a function of privately owned or Section 8 residential property management.

Response: The Department understands that active resident participation and involvement have a direct affect on property management and are a key element to a successful, well managed public housing community. The Department provided a separate resident initiatives indicator and component on resident involvement in PHMAP because there is considerable evidence that resident services programs can help to promote and sustain housing authority management successes. Various tenant participation initiatives (patrols, neighborhood clean-ups, etc.) can reduce vandalism and project maintenance. Resident employment initiatives get residents involved in positive pursuits and employed residents can act as role models for others. Overall, involving residents in the various facets of property management—as trainees in a landscaping project or as participants in screening prospective residents—can showcase self-improvement and individual responsibility and contribute substantially to building positive and strong public housing communities.

Comment: Two comments requested HUD to clarify if the indicator intends to ''examine efforts'' or to ''require efforts'' and argued that it seems that it has been prescribed to require PHAs to develop and administer programs that at times are not funded by HUD, are not long-term commitments by HUD, and in most cases, the results of performance are predicated on the residents' willingness to participate. It is not equitable to score a PHA on items that are beyond the PHA's control. It is equitable to request PHAs to adopt resolutions encouraging participation. Another comment indicated that this is an unfunded mandate.

One comment stated that the performance message has now been confused with compliance items. Another comment indicated that PHMAP is intended to be a performance-based assessment system in which indicators must be written so that standards and criteria are clear, measurable, and capable of being duplicated from one PHA to another. The comment added that too much of this indicator is process-oriented, not performance-based and that adopting programs and ''mechanisms'' is administrative process and offers no guarantee or measure of results. One other comment stated that the indicator, as currently structured, will be very difficult to grade and will produce very inconsistent results. Three comments recommended that this indicator be

deleted entirely because it measures process and not outcomes.

Response: This indicator has been revised to hold PHAs accountable only for the functions they perform in operating resident services programs. The indicator has been subdivided into four separate components to make it easier to assess and grade: economic uplift and self-improvement; resident organization, resident involvement; and resident programs management. Each has been reshaped to address the public comments, especially to focus solely on the PHA's responsibilities for resident services. The indicator has been renamed ''Resident Services and Community Building'' to place a more accurate emphasis upon the specific roles of PHAs for these functions.

In response to concerns about short-term resident initiatives funding, it should be emphasized that PHAs would only be assessed for programs for which it has been funded. PHAs could also get credit for programs implemented through a partnership, for which the funding was made available through another of the partners.

Component #1, Economic Uplift and Self-Improvement

Comment: One comment stated that under the proposed changes, HUD adds a Section 3 requirement that has mixed adherence throughout the country. Another comment indicated that in small communities there are very few Section 3 programs and if there is one and the contractor's contract calls for them to hire Section 3 people, all a PHA can do is inform the residents that they may apply. One other comment argued that the implementation of Section 3 programs and the number of residents hired by the PHA is not a measure of its management. The comment concluded that resident self-sufficiency and related programs don't have any place in a management assessment program.

One comment indicated that to implement Section 3 training, you must have residents willing to participate. It stated that most of their residents are elderly, handicapped or have very small children and many are not able to work. Another comment stated that the Section 3 program may be disadvantageous to large municipalities facing a hiring freeze. Another comment stated that Section 3 is a mandate for any department using federal funds, and should not be a centralized program, as indicator #7 seems to require. It added that there seems to be no final rule for Section 3 in Public Housing (24 CFR part 135) and its status seems in doubt.

One comment mentioned that it does not have a concern with the Section 3 program emphasis because it has a great program now, but it is concerned with future funding and the impact if no new funding is available to continue the program. One comment agreed with the Department's efforts to emphasize the Section 3 program and another comment recommended that PHAs be required to show results in employment efforts in subsequent years to add to the results oriented focus. One other comment stated that it is difficult to be consistently abreast of a PHA performance under Section 3 and resident employment and suggested that it must be a PHA requirement to report resident employment to the HUD office in order to assess this criteria. Another comment stated that Section 3 is already a requirement and argued that PHAs should not get credit for something they are already required to implement. It further suggested that credit be given only for those things that PHAs do that are over and above HUD requirements such as internship programs or on the job training plans and also for using CGP funds to assist resident groups and develop security measures.

Response: The inclusion of an employment-related subcomponent in the resident initiatives indicator reflects the Department's emphasis on economic uplift as a proactive means to reducing dependency, and as mandated by the recent welfare reform legislation. The Department understands that there is considerable evidence that the increase in working families is very beneficial to property management. Because of the importance of this area, the Department wishes to give PHAs credit for the leadership role they can perform in employment-related initiatives. The Department has expanded the definition to include all employment-related initiatives, not just Section 3 or those in the public sector. Section 3 is effective as an interim rule and should be viewed as one tool in employment related initiatives.

In response to comments that the indicator be strengthened, language has been added to the indicator to require the PHA to provide evidence that they have one or more economic uplift and self-improvement programs and partnerships for economic uplift, including but not limited to, Section 3 initiatives. Such opportunities can be provided either directly or through non-PHA partners. The Department believes it is important for PHAs to get credit for their initiatives in promoting employment opportunities for residents. It is expected that PHAs will provide data on the number of residents by development in employment-related programs as well as evidence of the number of residents obtaining employment. PHAs can use Multifamily Tenant Characteristics System information to measure employment.

While the Department is supportive of PHAs efforts to measure employment, the indicator only requires that PHAs implement programs (HUD funded or non-HUD funded through partnerships) in its family occupied developments and set up and implement a system for measuring progress. The Department is not trying to dictate specific numeric employment goals but rather emphasizing activities that help measure PHA effort in implementing these programs.

Component #2, Resident Organization

Comment: One comment stated that HUD's encouragement of a resident council at each family development site assumes that resident councils are an absolute for every family development, regardless of the size of the development. Resident councils for some small developments are not only not necessary, but impractical. Another comment indicated that family developments are often built on scattered sites throughout a wide geographical area. The comment added that it is next to impossible to establish a resident council under these conditions and that this goal should be voluntary in these situations.

Response: Current HUD requirements give PHAs and resident communities the flexibility to determine how resident councils are organized. There is no specific requirement for a resident council at each development. The local public housing community should determine what kind of representation system suits its needs and makes the most sense. In larger developments, a separate resident council is merited. In smaller PHAs, a city-wide council may be more appropriate.

Comment: One comment stated that the current rule is supportive of resident councils and other resident groups while the proposed rule is too restrictive because it only makes reference to resident councils. The comment added that, while highly desirable, it is not always possible to organize and conduct development-wide elections and it urged the Department to reinstate the ''or other resident groups'' language of the current rule. Three comments suggested that the indicator reference to resident councils at each PHA family development should be changed to specify ''HUD recognized resident councils.''

Response: HUD is supportive of all resident organizations that work to benefit the residents, but the indicator

does not pretend to cover all possible forms of resident organization. The Department considers that resident councils, as official vehicles of resident representation, should be encouraged and the indicator measures PHA efforts to promote this goal. In regards to the issue of ''HUD-recognized resident councils,'' the Department understand that it is not HUD's role to certify resident councils and that it is the PHA's responsibility to certify if such organizations have been formed in compliance with approved regulations, policies and procedures.

Component #3, Resident Involvement

Comment: Four comments stated that PHAs should not be penalized for lack of participation by the residents provided the PHA promotes self-sufficiency programs and community involvement. The comments indicated that PHAs may offer a variety of programs and training for residents, but they cannot make residents attend and participate. Another two comments recommended that an exclusion of the indicator be permitted in such cases where a PHA can show that the residents are not interested in forming a resident council and do not want to be involved in any of the programs covered by this indicator. One other comment also recommended to make each component potentially able to be excluded, based upon PHA's situation. Two comments stated that this indicator cannot accurately establish levels of participation, interest, etc., of the residents, it only measures the level of opportunities the PHA makes available to its residents. Therefore, it cannot measure performance.

Response: The Department agrees that PHAs cannot be made responsible for lack of interest by residents in organizing resident councils, but PHAs can be assessed on their efforts to promote and facilitate the organization of resident councils by activities such as: facilitating space for meetings, providing training, access to bulletin boards, helping to schedule and promote meetings, approving Board policies and developing PHA procedures for certifying resident councils.

In response to some of the concerns expressed in the comments, the Department changed the indicator to subdivide it into four components. This component measures PHA efforts regarding resident councils, and PHA collaboration and support to existing resident councils or to those that are in the process of being organized. A PHA is not responsible for the formation or continuation of resident councils as these functions are the responsibility of the resident councils. The Department is making the indicator and each of its components subject to exclusion. This would certainly apply to cases where the PHA can show evidence that it has predominately scattered site units and that residents are not interested in these programs. The Department will provide additional guidance to PHAs on this issue in the revision of the PHMAP Handbook 7460.5.

Comment: Three comments indicated that resident involvement is simply not an appropriate measure of a PHA's management capability.

Response: The Department disagrees and as mentioned earlier, believes that active resident participation and involvement have a direct affect on property management and are key elements to a successful, well managed PHA. In addition, there is considerable evidence that resident involvement and resident services programs can help to promote and sustain housing authority management successes.

Resident Surveys

Comment: One comment stated that resident surveys would be time consuming, but may be helpful. Another comment suggested that PHAs should be required to complete a resident survey on the fear of crime and the measure of disorder in each community once a year.

Two comments stated that resident surveys are most important in order to establish programs in which the residents are interested and suggested that PHAs be required to report on whether they conduct resident surveys for modernization or whether the PHA attempts to conduct resident surveys or communicates with newsletters. Five other comments expressed support for resident surveys, with one proposing an annual standardized survey used as a learning tool by PHAs and another three arguing that standardized surveys should only be used as models for PHAs to develop locally oriented surveys.

One comment suggested that resident surveys be optional for well managed PHAs and required under the MOA for troubled PHAs. Another comment stated that conducting resident surveys is a good idea, but HUD should allow PHAs to complete regular surveys in lieu of HUD's mandated ideas of what resident involvement means.

Two comments indicated that PHAs should be encouraged, but not required, to conduct such surveys, with HUD assisting in the development of survey formats and data analysis models that PHAs may use for this purpose. The comments argued that if HUD wishes to use customer satisfaction as the basis for the PHMAP score, then HUD should conduct the survey itself using some type of sampling technique that employs consistent and statistically reliable methods. Another comment expressed concern with the feasibility of implementing this measure in small PHAs with a majority of elderly and residents with disabilities.

Another comment stated that consumer satisfaction is critical in public housing and a survey of residents may be a way to gauge satisfaction. Surveys should not be conducted by PHAs; that would add too much paperwork and residents would feel inhibited to express their true feelings. Surveys should be conducted by private contractors, using a standardized form on a statistically significant sample of residents (using MTCS data to assure a diverse and representative group) from each PHA. The results would be shared with HUD and the PHA.

Ten comments stated that resident surveys as suggested would only amount to more paperwork with few, if any, tangible results. A survey completed by the resident council or advisory board would be more accurate and more useful. Another three comments stated that the present contact with residents is sufficient to adequately assess their level of satisfaction. One comment indicated that no new unfunded tasks should be imposed on PHAs through PHMAP.

Four comments indicated that surveys, by their nature, are subjective in orientation and often reflect the goals of the entity doing the survey. There are too many variables which would affect the responses. To direct PHAs to design and implement their own surveys would be a self-serving exercise of little real value. For HUD to develop a standard survey to be used by every PHA, each with its own set of problems and capabilities, would result in a document devoid of any real meaning. Another two comments stated that surveys are complex to develop and can be resented or distrusted by residents. Four comments expressed concern with the cost to PHAs of implementing resident surveys and indicated that a national format is not a good idea because of the special local conditions. Another comment stated that PHAs shouldn't be penalized for lack of resident response to these surveys.

Two other comments argued that total consumer satisfaction is impossible to achieve and even more difficult to measure. Requiring PHAs to conduct periodic surveys for this purpose is an undue burden, especially on large PHAs

where housing projects are distant from one another and from the PHA.

One comment recommended that this be a voluntary activity and that it not be included in performance measurements. Another comment requested HUD to provide technical assistance in the area of assessing consumer satisfaction, but discouraged the creation of a new reporting requirement. HUD could distribute information to PHAs on how to design, develop and implement resident satisfaction surveys. It is unrealistic to expect that a single resident survey instrument will necessarily be meaningful to every PHA and every resident population. In times of diminishing operating subsidies, HUD should not force PHAs to conduct such surveys only for the sake of PHMAP.

Response: In response to the comments, the Department decided not to require the implementation of resident surveys as part of the PHMAP process. Although it is not required, PHAs may consider the voluntary use of this optional tool to obtain resident input and to measure resident involvement and satisfaction.

The Tenant Participation and Tenant Opportunities regulation (24 CFR § 964) stipulates that PHAs shall encourage full resident participation and partnership with the PHA. The Department does not want to provide overly specific instructions to PHAs, but instead wants to offer options for alternative approaches for promoting constructive resident participation and customer satisfaction. Therefore, the component on resident participation has been changed to require a PHA to provide evidence that the PHA is providing meaningful ways to communicate and partner with residents concerning the quality of life and housing management services (such as screening, relocation, capital improvements), but is not prescribing the specific method(s).

Possible methods used by PHAs would include, but not be limited to: resident membership on the PHA Board of Commissioners or on specific policy committees that contribute substantially in planning and implementing PHA programs; regular resident consultation through ongoing, scheduled meetings with the PHA-certified duly-elected resident councils; regular communication mechanisms with residents, such as a newsletter, as well as other means such as customer surveys and focus groups.

Component #4, Resident Programs Management

Comment: Several comments stated that PHA performance should not be assessed based on grants and activities that are not under the control of the PHA. Sixteen comments indicated that TOP and TAG are controlled by the resident organization and not by the PHAs and that it would be unfair of HUD to hold PHAs accountable for tenant organization grants that are not under the PHA's control. One of the comments suggested that HUD eliminate this component. Another comment asked if a PHA would get credit if its resident organization implements a TOP grant training.

Response: The Department agrees that PHAs should not be held responsible for resident activities or grants that are not under their control and the new rule reflects these changes. The indicator has been revised in order to assess PHAs for the functions they perform in operating resident services programs and for resident management or TOP performance only when the PHA is the contract administrator for the program.

Comment: One comment stated that in order to meet 90% of the goals as defined in the grants, a PHA would need to adjust those goals under various circumstances, i.e., numbers versus percentages; either the grant plan should allow for a percentage versus an exact number to be included, or the goal must be flexible enough to change when circumstances dictate.

Another two comments indicated that this indicator requires the documentation of achievement of a certain percentage of goals under resident initiative programs, but goals tend to be few and somewhat unquantifiable; such program goals should not be measured by PHMAP unless the goals had been articulated with the understanding that they were to be quantifiable and achievable within the grant term; progress is often in the hands of the tenants and tenant leaders.

Two comments stated that there is general concern that measuring performance in meeting grant goals may be difficult to evaluate and may not be representative of performance. There is a clear incentive for PHAs to establish easily attainable goals to protect a good PHMAP score. We believe the goals for such programs should be set as high as possible and used as targets for achievement. Some other system of measurement should be found. This should be measured in the criteria used to determine management capability in the competition to receive grants.

One comment argued that HUD shouldn't ask PHAs to document goals met under resident initiatives programs. Those programs already have exhaustive reporting requirements.

One comment stated that the standard defined as 90% and 60% of goal attainment under the implementation plan for any and all of the grant programs are too stringent and perhaps inappropriate to the goals being measured. The measure of goal attainment based on implementation strategies is at best subjective and at times affected by conditions beyond the control of the PHA.

One comment indicated concern with the indicator measuring resident involvement via any resident related grants received by the agency. The comment argued that HUD would do better to leave grant measurements with the specific grant processes and perhaps rate PHAs on whether they have a system to become informed about resident related grant opportunities or if they have applied, assuming they have resources to do so.

Another comment indicated that § 901.40(a)(4) attempts to measure compliance in many categorical funding programs in which PHAs are voluntary participants and that have their own contractual requirements and enforcement mechanisms. If HUD were to grade compliance with these contracts under PHMAP, HUD would be unilaterally imposing new contractual provisions that substantially alter the consequences of performance or non-performance. Provisions of this nature should not take effect unless and until they are subject to negotiation between the contracting parties.

One comment stated that applying for social service grants is a PHA option, not a requirement. PHAs that do not elect to apply are appropriately not penalized. How can evaluation of a PHA's performance of optional activities be used as a basis to rate the PHA's management performance?

Response: The Department included resident grant progress as a component of the resident initiatives indicator because it is critical that any available categorical grant funding be utilized effectively to meet the defined work plan objectives of the specific programs. This component would only apply if the PHA has responsibility for administering one or more grant programs.

By applying to these programs, a participating PHA accepts implementation requirements attached to them. Goals for these programs are developed by the PHA and should reflect realistic expectations of what the

PHA proposes to accomplish. The rule reflects some margin of flexibility in grading the percentage of goals achieved. Assessing PHAs on performance in managing grant programs is not new to PHMAP. PHAs are assessed under other areas of their management, including performance in managing grant programs (competitive or formula) such as modernization. In addition, the Department has revised the regulation to eliminate assessment of the resident management or TOP unless the PHA acts as the contract administrator for the resident grantee.

Section 901.45 Indicator #8, Security

General Comments

Comment: There were fifteen comments recommending that indicator #8 not apply to smaller PHAs, described variously as those PHAs with fewer than 500 units, fewer than 250 units, and fewer than 100 units. One comment felt that all PHAs, regardless of size, should be assessed under this indicator because crime and drugs exists everywhere.

Response: In response to the comments received, the Department has determined that indicator #8 will apply to PHAs with 250 or more units under management. To avoid penalizing small PHAs with active programs, PHAs with fewer than 250 units can request to be assessed under the indicator at the time of the PHMAP certification submission. However, PHAs with fewer than 250 units should be keeping records of crime, reporting it to local law enforcement, administering rigorous screening criteria, evicting residents who engage in criminal activity, and meeting the goals specified by categorical grants as good management practices, even though they are not required to be measured on this activity.

Comment: There were two comments specifically supporting ''One Strike and You're Out'' and screening and eviction policies through indicator #8. Two commenters mentioned that constraints in existing State law or the local court system have made it difficult to comply with the intent of the one strike policy. Two other commenters indicated that PHAs should be required to submit evidence that they have implemented eviction policies that could be monitored through tracking systems.

Response: The Department is pleased that there is a positive response to its one strike policies which are established pursuant to the ''Housing Opportunity Program Extension Act of 1996'' and PIH implementing guidance (Notice PIH 96–27), which provided additional guidance to PHAs in the areas of screening, lease enforcement and eviction in order to help PHAs fight crime. The one strike policy must be implemented within the context of the applicable State laws and court systems. PHAs will not be required to submit documentation at the time of certification; rather, PHAs are required to maintain supporting documentation for all of the indicators it certifies to for HUD post review. To assist PHAs in setting up and operating successful programs, the Department will provide examples of best practices in the forthcoming revised PHMAP Handbook 7460.5.

Comment: There were four comments that felt that this indicator would place unnecessary administrative burdens on a small PHA that does not have a crime problem and is already cooperating with the local police department. In addition, small PHAs do not have the resources (funds and personnel) to perform the security measures required by this indicator.

Response: Current practices by PHAs show that the cooperation of PHAs and local law enforcement for the collection and reporting of PHA crime information is not always a cost issue. Please note that the Extension Act permits PHAs to request criminal conviction records of adult applicants from the National Crime Information Center (NCIC), police departments and other law enforcement agencies. The Public Housing Drug Elimination Technical Assistance Program can be used to assist PHAs in developing appropriate collection systems and data bases. The Department anticipates that the use of NCIC and other data sources in addition to the technical assistance from HUD will enable PHAs to obtain necessary information in a timely manner.

Comment: Three comments felt that there should be a policy designed for small PHAs and one for large PHAs. It will be very difficult for a small PHA with no security problem and no resident involvement to make a passing grade in this indicator.

Response: Rather than have a separate security indicator for small and large PHAs, the Department has determined that PHAs with fewer than 250 units shall be exempted from this indicator unless the PHA requests to be assessed under the indicator at the time of the PHMAP certification submission.

Comment: Three comments stated that the criteria listed for this indicator are measures of process and not necessarily results. A more appropriate measure would include actual crime data. Also, indicators of vacancy percentage and financial management are directly related to the degree of security in the developments.

Response: This indicator has been revised to reflect the comments received and its components now more accurately measure results. The Department agrees that vacancies and financial management are directly related to security in the developments, but performance in these areas are measured under indicators #1 and #6.

Comment: One comment suggested that this indicator shouldn't apply until adequate time is provided for PHAs to establish the proper documentation, reporting, and tracking criteria to successfully score in this indicator. Another comment strongly requested that HUD require data be provided beginning with the next fiscal year after the effective date of the provisions of this indicator because it would be very difficult to secure data from January 1, 1996, to the present.

Response: The Department has determined that the new rule will apply to PHAs with fiscal years ending the quarter after the new rule is published in the Federal Register.

Comment: One comment stated that this indicator combines several distinct elements with the grading system, requiring a PHA to score an A on each element to score an A on the indicator. These elements should be reorganized as separate components within the indicator and the indicator grade should be a composite of the component scores, as is the pattern in the other PHMAP indicators.

Response: The Department will grade this indicator as a composite of the sub-component scores, as is the pattern in other PHMAP indicators.

Comment: One comment felt that security is not a property management issue, but a social issue related to PHAs, and was outside of the PHA's control. Another comment stated that reducing crime and drugs was an appropriate property management issue.

Response: In both public and private property management, crime and drug problems have a direct affect on property management. Because of this, the Department has determined it is critical that this indicator apply to all PHAs with 250 units or more under management.

Comment: One comment stated that this indicator will be very difficult to grade objectively and consistently. The terms ''mechanism to track crime-related problems'' and ''system for taking action'' are vague and undefined and need clarification. Two comments questioned the meaning of ''document results in screening out'' various applicants. One comment felt the proposed measure of PHA actions to appropriately screen out applicants and

evict residents who engage in criminal activity is the only appropriate measure of PHA management performance under this indicator.

Response: The Department has rephrased this component and the first two phrases mentioned are no longer included in the new rule. The third phrase commented on has been revised to say, ''can document that it successfully screens out and denies admission to a public housing applicant who * * *'' and ''can document that it successfully evicts a public housing resident who * * *'' This new language more clearly embodies the intent of the one strike policy. The Department agrees with the last comment.

Comment: One comment felt that the term ''crime'' should be defined to avoid wasting time on crimes that do not affect the safety/security of residents.

Response: The Department has not established one uniform national definition of crime, since different types of crime represent different threats, and vary among communities. HUD believes each PHA should decide what constitutes criminal violations that are unacceptable to the local community. In general, the crimes against which PHAs should screen applicants are those that would pose a threat to the health or safety of other residents or PHA staff, or a financial risk to the PHA. These crimes would be lease violations. These are the crimes against which applicants should be screened and for which violators be evicted.

Comment: One comment stated that § 901.110(e) should state that indicator #8 should be excluded automatically for PHAs with 100 or fewer units.

Response: The Department agrees with this comment and the rule has been changed to state that this indicator does not apply to PHAs with fewer than 250 units under management unless the PHA requests to be assessed under the indicator at the time of the PHMAP certification submission.

Comment: One comment reflected that criteria #2 and #3 deal with screening and evictions. If HUD is to allow a PHA to self-certify on this indicator, the PHA should be required to submit evidence of policies and leases to support the certification.

Response: The Department disagrees and is requiring that a PHA maintain supporting documentation for all of the indicators it certifies to for post review by HUD or the independent auditor rather than submit additional documentation at the time of certification.

Comment: One comment felt that too many communities already have police departments that avoid their responsibilities in public housing ''projects'' for reasons that include the perception that public housing is a Federal rather than local responsibility. This indicator plays into that mind set, and therefore, hurts the crime fighting goals PHAs and HUD share.

Response: The Department believes that the establishment of one strike leasing, eviction and related processes have already proven to be effective in crime/drug reduction. This indicator has been designed to measure the implementation of mechanisms that many PHAs have already used successfully in developing safe and secure environments for public housing residents.

Comment: One comment believes that this is the most important indicator for large PHAs where crime is a critical problem, and should have a greater weight than x1.

Response: The Department agrees that this is a very important indictor. This indicator and indicator #7, resident involvement, have a combined total of 20 points in a 100 point scale. The Department feels that this is an equitable distribution when the importance of all of the indicators are considered as a whole.

Comment: One comment thought that PHAs should request help from the HUD State Coordinator in getting assistance from law enforcement agencies.

Response: The Department recommends that a PHA first contact its State/Area Office for technical assistance in obtaining assistance from law enforcement agencies, and to explore alternative solutions. HUD agrees that the State Coordinator and the Area Representative should be advised of unresolved difficulties in implementing the one strike policy. The Department will provide assistance, as appropriate, to further the implementation of the one strike policy.

Comment: One comment suggested that additional criteria should be considered that would give recognition to PHAs that have made tremendous progress in arresting crime and/or have established resident patrols to assist in crime reduction.

Response: The Department appreciates the suggestion, but feels that the appropriate vehicle for such recognition is its Performance Awards Ceremony.

Comment: One comment suggested there be a criterion that measures a PHA's efforts to get resident involvement in citizen patrols.

Response: The Department agrees that citizen patrols are very effective in helping to reduce incidence of crime in a community, and this criterion is indirectly measured under components #1 and/or #4 of this indicator.

Component #1, Tracking and Reporting Crime Related Problems

Comment: Thirty comments felt that PHAs should not be held accountable under indicator #8 for cooperation with local police departments and other community agencies, as this partnership was beyond their control. At least one commenter expressed concern about being able to access criminal data. Another commenter indicated that PHAs do not have the authority to address crime problems.

Response: As a result of these concerns, the Department has determined that PHAs will not be assessed for partnerships with the local police departments and other local agencies, with the exception of grade A. Grade A of this component has been revised to assess a PHA's cooperative system for tracking and reporting incidents of crime to local police authorities. Grades below an A assess only the reporting of incidents of crime to local police authorities. Although PHAs will not be measured under this criterion for grades below an A, it is essential for PHAs to work closely with local and State agencies in order to operate effective crime and drug prevention programs. Also, while PHAs do not specifically have the authority for arrests, they can utilize one strike to deny admission or evict known criminal violators.

Comment: Five comments thought that documentation from local law enforcement agencies might be a method of reporting crime in small housing authorities.

Response: The Department couldn't agree more. All PHAs are encouraged to develop partnership relationships with local law enforcement entities, and all PHAs should be keeping records of crime, reporting it to local law enforcement, administering rigorous screening criteria, and evicting residents who engage in criminal activity.

Comment: One comment stated that HUD shouldn't ask PHAs to try to require their municipal police departments to act beyond the scope of the Cooperation Agreement.

Response: It is not intended that tracking and reporting crime-related problems would in any way mandate PHAs to require their municipal police departments to act beyond the scope of the Cooperation Agreement. A PHA should always act within the scope of the Cooperation Agreement and should never require another agency to act beyond the scope of the Agreement.

Comment: One comment stated that PHAs that complain that they cannot negotiate obtaining monthly calls for service confirm that they have poor relations with their local police departments.

Response: Although this may be true, it is not necessarily through lack of trying. A PHA should continue to negotiate working relationships with local law enforcement entities.

Component #4, Grant Program Goals

Comment: Five comments reflected that this indicator requires the documentation of achievement of a certain percentage of goals under resident initiative programs, but goals tend to be few and somewhat unquantifiable. Such program goals should not be measured by PHMAP unless the goals had been articulated with the understanding that they were to be quantifiable and achievable within the grant term. There is general concern that measuring performance in meeting grant goals may be difficult to evaluate and may not be representative of performance. There is a clear incentive for PHAs to establish easily attainable goals to protect a good PHMAP score. Four of these commenters felt that some other system of measurement should be found, or the indicator eliminated. One commenter proposed that the goals be set as high as possible and used as a target for achievement. Seven commenters indicated that PHAs should not be rated on this indicator unless there was specific funding for all PHAs, and therefore, this program area was an unfunded mandate. One commenter stated that PHAs should only be rated on resident initiatives, not security. One commenter questioned why the goal did not track progress in goal achievement under the Drug Elimination program.

Response: The Department believes that the establishment of one strike leasing, eviction and related processes have already proven to be effective in crime/drug reduction. This indicator has been designed to measure the implementation of mechanisms that many PHAs have already used successfully in developing safe and secure environments for public housing residents. Grant goals are part of the overall evaluation of an application for funding. If a PHA has unrealistic goals, they are either renegotiated, or the PHA does not receive funding.

The Department has determined that security will continue to be a separate indicator because it is integral to good management and can be accomplished without additional funding, or with operating subsidy and comprehensive grant funds. PHAs should make use of these or other allowable funding sources to address crime and security problems. The Department cannot restrict factors to those in the Drug Elimination Program since crime problems affect all PHAs, not only those that have successfully competed for drug elimination grants.

Comment: One comment stated that goal achievement should be measured in terms of program implementation (which it is within the power of the PHA), not impact on crime (which is beyond the control of the PHA). A range from 85% to 100% should be establish for achieving an A grade.

Response: The Department has determined that a PHA will achieve a grade A for this indicator if it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

Data Collection—§ 901.100

Comment: Thirty comments stated that 45 days to submit the certification is a concern because PHAs are busy completing their year end work. It would cause a problem for small PHAs that have limited human resources to complete all other fiscal year end reports required. The time to submit should remain 90 days. Two comments stated that 45 days to submit its certification would be sufficient time as long as there was a quorum for the Board meeting, and as long as the process works smoothly. Seven comments recommended that certifications should be submitted 60 days following the end of a PHA's fiscal year.

Response: HUD is attempting to balance the need to make the PHMAP scoring as quick and timely as possible, so that it more accurately reflects a PHA's current status, with the additional year end burden it represents to both PHAs and HUD itself. In light of the above comments, the Department has determined that a better balance is achieved with a 60, rather than 45, day submission period, and the rule is amended accordingly.

Comment: Two comments pointed out that PHAs that request and receive an extension to submit their fiscal year end financial reports should also be granted an extension to file their PHMAP certification. Large PHA's must routinely ask for extensions to submit their year end financial statements.

Response: The Department agrees with the comment. To satisfy administrative requirements, PHAs must submit extension requests or waiver requests for both their fiscal year end financial reports and their PHMAP certification. However, a State/Area Office may grant an extension for the submission of year end financial statements for a period of no more than 90 calendar days. Requests for extensions for more than 90 calendar days, or requests for extensions in addition to the initial 90 calendar days, shall be approved by the Assistant Secretary, as well as waivers for the submission of a PHA's PHMAP certification.

Comment: Two comments felt that PHMAP should be more flexible so as not to discourage otherwise outstanding performance due to late submission of required reports or a PHA's inability to review and approve submissions more quickly. Lateness should not have the effect of decimating the performance ratings in all areas rated by PHMAP.

Response: The Department disagrees with this comment, and will retain the option which permits State/Area Offices to award a presumptive rating of failure in all of the PHMAP indicators if required reports have not been submitted to HUD in a timely manner. HUD believes that outstanding performance includes a PHA's ability to submit in a timely manner required reports that are used to calculate the PHA's PHMAP score.

Comment: Two comments felt that the revisions to the rule may require major changes in the systems used to maintain records related to PHMAP. Changes in a PHA's information systems will be both costly and burdensome. It will require PHAs to focus important resources on administrative areas that will not improve the manner in which quality housing is provided to low-income families.

Response: HUD recognizes that, at least initially, the changes made by this rule to improve PHMAP will impose a burden on PHAs who will have to make necessary adjustments in their information systems. As was the case for the previous rule, it is expected that as the collection and organization of the data will become more routine following the first submission, the associated burden will also decrease.

Comment: One comment felt that the time frame for submission should relate to the size of the PHA.

Response: HUD disagrees with this comment. The Department has received comments from small PHAs citing small staffs and from large PHAs citing large administrative burdens to justify changes in the time frame for submission. The Department has concluded that, until experience demonstrates otherwise, the same time frame for submissions should apply to all PHAs.

Comment: One comment felt that the certification form is cumbersome and includes requests for information currently available to HUD, specifically financial data required to be provided to HUD by all PHAs, or more information than currently required. It appears to require inclusion of data necessary for HUD to perform or confirm the calculations made by the PHA, and this is repetitive since PHA audits ensure accuracy in reporting. This is contrary to HUD's intent to require PHAs to certify to information otherwise not available.

Response: The worksheet and certification form have been redesigned to make them more user friendly, as applicable. HUD welcomes additional, specific recommendations to improve these documents further. The Department disagrees that the certification form requests information currently available to HUD. For example, the new certification form financial management question for indicator #6 requests the dollar amount of a PHA's cash reserve available for operations. The requested financial information is not reported on any other required reporting submission. The Department cannot rely totally on audit report confirmation because audit reports are not normally available until after the PHMAP process has been completed for the assessed fiscal year. The certification form requires a PHA to state the raw data that are used to calculate the score of specific indicators to ensure accurate calculation.

Comment: One comment stated that if the purpose is to shorten the time it takes for a PHA to learn its status/score, it may be more appropriate to reduce the amount of time that HUD has to respond. It should not take any more than two weeks to review the PHA submission (one page) and to perform any analysis or calculations for indicators that HUD scores.

Response: HUD is attempting to balance the need to make the PHMAP scoring as quick and timely as possible, so that it more accurately reflects a PHA's current status, with the additional year end burden it represents to both PHAs and HUD itself. In light of the above comments, the Department has determined that a better balance is achieved with a 60, rather than 45, day submission period. State/Area Offices monitor other program areas in addition to the PHMAP, which is just one facet of the Department's overall affordable rental housing efforts. In addition to the section 8 program, State/Area Offices must administer such efforts as modernization programs, resident initiative programs, and drug elimination programs. The Department feels that 60 days for State/Area Offices to complete a PHMAP assessment is equitable in view of other workload requirements.

Comment: One comment reflected that in the preamble to the proposed rule, HUD states that it will require State/Area Offices to give PHAs their PHMAP scores within 45 days from certification, but the proposed rule's text does not contain that requirement. The commenter suggests that HUD include that requirement in the text.

Response: State/Area Offices will be required to meet the 60 day notification period by an internal directive that will be as binding upon them as a regulatory requirement.

Comment: One comment observed that § 901.100(b)(5) stipulates that a PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. What does this mean? It suggests that verification could be accomplished by some means other than on-site review. It is critical to clearly stipulate in the rule a standard and consistent approach that must be followed by all HUD State/Area Offices in order to validate, document and justify a conclusion that a PHMAP score certified by a PHA should be changed.

Response: On-site reviews are usually conducted pursuant to risk management, and § 901.100(b)(9) simply provides that certification verification can take place at any time notwithstanding the regularly scheduled on-site reviews. In addition, the rule does clearly stipulate a standard and consistent approach to validate, document and justify a conclusion that a PHMAP score certified by a PHA should be changed. The verification language in § 901.100(b)(9) is related to the provision at § 901.115(k), that permits, in exceptional circumstances that constitute a standard and consistent approach, a State/Area Office to reinstate any review as necessary to address particular deficiencies, or deny or rescind incentives or high performer status, even though a PHA has satisfied all of the indicators for high or standard performer designation.

Comment: One comment asked exactly what information does HUD expect to derive from ''existing reporting and data forms?'' As written, only indicator #2 can be scored by HUD without complete and total reliance on PHA self-certified data. This is an enormous flaw in any allegedly objective assessment process, including PHMAP.

Response: The assessment process is the result of balancing the two objectives of maximizing reliability and minimizing the administrative burden. The Department realizes that the extensive demands upon both its own and PHAs' resources limit what may be appropriately imposed upon PHAs and adequately monitored by the Department. HUD's reliance upon PHA-certified data is backed up by the admittedly small number of on-site reviews HUD is able to conduct, but these reviews do indicate substantial, good faith compliance. HUD attempts to target its monitoring resources as efficiently as possible by focusing on troubled or near troubled PHAs or PHAs in which the factors identified in § 901.115(k) of the rule are present. The required supplement to the independent audit requires a PHA's independent audit to ascertain whether the PHA maintains the data necessary to support its PHMAP certification and whether the PHMAP data are consistent with the PHA's other records. HUD will continue to consider ways in which the reliability of PHMAP may be improved. In addition, the new rule has been revised to state that a PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a failing in any indicator or component was due to the fact that the PHA did not provide justifying documentation to the independent auditor for the indicator(s) the PHA certified to.

Comment: One comment stated that the clause that allows PHAs to include in their PHMAP certifications ''any information bearing on the accuracy or completeness of the data being used by HUD in grading an indicator'' is confusing. A PHA should certify to the correct data in exactly the manner prescribed by the PHMAP process. If a PHA believes that the data does not fairly represent its performance, it should submit a ''modification'' request, but the data in the certification shouldn't be changed.

Response: The rule, at § 901.100(b)(3), provides that a PHA may include such information in its certification, rather than through an exclusion or modification request, and that HUD will consider the information in grading the affected indicator. The intent is not to encourage a result that the certified information would be changed, but to encourage a PHA to submit corrected data, late reports, or previously omitted required data at the time it submits its PHMAP certification. This provision allows more flexibility in the PHMAP process, and helps ensure that the most recent data is available to use in completing the PHMAP assessment.

Comment: One comment felt that the provision that suggests a PHA could get

a presumptive F in all PHMAP indicators if the certification is not submitted on time should be clarified. Does this mean all indicators or only those which rely on the certification?

Response: The language states all indicators. This provision at § 901.100 (b)(4) gives HUD a direct and timely way of enforcing the certification requirement. Although compliance with PHMAP is the norm among PHAs, if failure to provide the certification would only result in failing grades for the indicators subject to certification, a PHA may decide to forgo submitting the certification when a passing grade could be achieved without it. This would defeat the purpose of PHMAP to assess the performance of a PHA on all of the indicators.

Computing Assessment Score—§ 901.105

Comment: Two comments agree that the establishment of clear-cut adjustment guidelines is a good addition to PHMAP.

Response: The comment is noted by the Department.

Comment: One comment stated that the physical condition of a project reflects not only the care and maintenance provided by the PHA, it also reflects the attitudes and behavior of residents in some communities. Those cases where the physical condition of the project does not improve regardless of a PHA's efforts to improve and maintain the project in safe and sanitary condition should be considered as a condition beyond the PHA's control, and a modification or exclusion should be allowed for this reason.

Response: The Department disagrees with this comment. If a resident's attitudes and behavior cause maintenance or other physical problems, it then becomes a lease enforcement issue rather than automatic grounds for a modification or exclusion request due to conditions beyond a PHA's control. However, HUD considers modification and exclusion requests individually, and on a case by case basis, and grants or denies them as appropriate.

Comment: One comment stated that the definition of neighborhood is based on census tract and proposed that HUD permits also the option of census block groups. Census blocks allows for more specific definition of demographic characteristics.

Response: The Department agrees that PHAs may use census blocks as well as census track data, as appropriate.

Comment: One comment stated that the proposed rule excludes developments that received comprehensive modernization within the past ten years from receiving additional weight for the physical condition factor. Some PHAs receive comprehensive modernization for a portion of a larger community. When that happens, some proportional additional weight should be allowed for the physical condition factor.

Response: The Department has determined that if only certain units or developments received substantial rehabilitation, the additional weight would be prorated to exclude the units or developments with substantial rehabilitation. The revision to the PHMAP Handbook 7460.5 will include examples of proration.

Comment: One comment suggested that an alternative for weighting could be to provide extra credit for PHAs that, because of aggressive efforts to develop joint programs, are able to mitigate the adverse conditions in the general vicinity of the developments as well as within them.

Response: The Department may not provide an alternative to the physical condition and neighborhood environment factors because they are statutory. A PHA's efforts to mitigate the adverse conditions in the general vicinity of the developments will be recognized by the resident involvement indicator to the extent the PHA involves residents in such efforts. In general, it is expected that a well-managed PHA would have a positive influence on the adverse conditions in its general vicinity, but the PHA's primary responsibility is to conditions within its developments, and this remains the focus of PHMAP.

Comment: One comment felt that adjustments for physical condition and neighborhood environment are too liberal and can result in artificially inflated scores.

Response: The Department disagrees with this comment, since the adjustments for physical condition and/or their neighborhood environment apply to the following three indicators only: indicator #1, vacancy percentage and unit turnaround; indicator #4, work orders; and indicator #5, annual inspection and condition of units and systems.

Comment: One comment reflected that § 901.105(d)(3)(ii) states that developments that have received comprehensive modernization within the past ten years are not eligible for a weighted score for the physical condition factor. Are these developments eligible for the neighborhood factor?

Response: Yes, these developments are eligible for the neighborhood environment factor.

Comment: One comment reflected that § 901.105(d)(3)(iii) states that a PHA that receives a grade of A under indicators #4 and #5 may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable. Is a PHA eligible for the additional weight for indicator #1 using the neighborhood environment factor?

Response: Yes, such a PHA is eligible for the neighborhood environment factor.

Comment: One comment disagreed that a PHA that receives a grade of A under indicators #4 and #5 may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable. The ability of management to lease a vacant unit bears a direct relationship to its age and neighborhood environment. A PHA's ability to market a unit and a housing applicant's decision to rent a unit is influenced by the neighborhood conditions and environment in which the development is located. Accordingly, the additional weight for indicator #1 should be permitted. Another comment stated that a PHA could be doing a good job of inspecting units and responding to work orders and still have a high vacancy rate at one or more of its developments due to neighborhood environment (if not also physical condition). A PHA has the right to qualify under either one or both.

Response: The Department disagrees with this comment, and maintains that if a unit is in good physical condition, the age of the unit has little bearing on the ability to rent the unit. HUD believes that well maintained units, as evidenced by an outstanding rating in the areas of work orders and the condition of units and systems, are not eligible for the additional weight for physical condition, since indicators #4 and #5 account for the physical condition of a PHA's units. The additional weight based upon neighborhood environment for indicator #1 is permitted in such a case.

Comment: One comment stated that since PHAs already have the right to seek modifications or exclusions, rewarding PHAs with bonus points seems ludicrous.

Response: The additional weight given the factors of physical condition and neighborhood environment represents the Department's implementation of the statutory mandate to have the weights assigned to various indicators reflect these factors. The use of exclusion and modification

requests implements the statutory mandate that PHAs not be penalized as a result of circumstances beyond their control.

Comment: One comment stated that the additional points made available to PHAs that demonstrate a significant number of units subject to adverse physical conditions or neighborhood environment, seem significant. If over 50% of a PHA's units are subject to such conditions, a PHA may get no more than one additional point for each of the three indicators that can be adjusted under the rule.

Response: This comment is correct, and the Department believes that this represents a fair and equitable adjustment for the physical condition and neighborhood environment of a PHA's developments.

Comment: One comment stated that the proposed rule also excludes ''developments that have received comprehensive modernization funds within the past ten year'' from eligibility for the adjustment based on physical condition. This should be revised to make it clear that ''comprehensive modernization'' does not simply mean the use of any CGP money, but contemplates, for example, ''significant capital investments that addresses more than 80% of a development's assessed capital need.''

Response: The Department has defined modernization to include not only the CIAP and CGP, but also the Vacancy Reduction Program, Hope VI Program, and any successor program(s) to the CGP or the CIAP. For indicator #2, modernization, all components apply to both the CGP and the CIAP. Only components #3, #4 and #5 apply to funding under the Hope VI Program and the Vacancy Reduction Program for the assessment of indicator #2.

Comment: One comment thought this section should be more explicit in order to allow anyone to actually compute a PHA's score following the instructions, and examples should be provided.

Response: The Department agrees, and examples of how to compute a PHA's score will be included in the revision to the PHMAP Handbook 7460.5.

Comment: One comment stated that the provision for ''adjustment for physical condition and neighborhood environment'' makes reference to units located in developments over 10 years old that require major capital investment. HUD needs to clarify how that applies to scattered-site projects where the age of the units and buildings will vary greatly.

Response: For scattered site projects, where the age of the units and buildings vary, the Date of Full Availability (DOFA) should be applied. Normally, when a PHA purchases scattered site units, they are rehabilitated prior to occupancy. DOFA also applies in cases where scattered site units are built under new construction.

Comment: One comment pointed out that HUD needs to define how to compute the 5% (of the units) to which the limiting conditions apply for the ''adjustment for physical condition and neighborhood environment.'' Is it individually computed or cumulative (i.e., 5% of physical condition vs. 3% of physical condition plus 2% of neighborhood environment condition).

Response: The percent of units to which the limiting conditions apply is computed as the total number for physical condition (PC) and neighborhood environment (NE) with each unit counted only once if both apply to it (so that a PHA with 10 units both PC and NE + 5 units PC only + 5 units NE only would have 20 eligible units that would be used for purposes of computing the percent applicable to indicators #1, #4 and #5; unless the PHA received a grade of A in indicators #4 and #5, then indicators #4 and #5 would have zero eligible units, and indicator # 1 would have 15 eligible units for purposes of computing the percent). This procedure of adding the number of units to which both conditions apply to the number of units to which only one condition applies is followed because the rule reads, ''Any PHA with 5% or more of its units *subject to either or both of the above conditions* shall, if they so choose, be issued a weighted PHMAP score in addition to the regular score based solely upon the certification of the PHA.''

Comment: One comment stated that the provision for ''adjustment for physical condition and neighborhood environment'' states that PHAs will certify to ''which of the indicators the extra scoring will be added.'' How is the PHA to make this determination? What would preclude the PHA to add the points to all three indicators? The sample certification form offers no clarification of this issue, nor does the rule. The PHA should be required to certify the data used to claim the ''adjustment.''

Response: A PHA does certify to the adjustment for physical condition (PC) and neighborhood environment (NE). It could and should add the points to each of the three indicators to which the weights apply. Example: a 100 unit (scattered site) PHA has 10 units both PC and NE + 10 units PC only + 10 units NE only. In this case .8 is added to indicators #1, #4 and #5 (because both or either conditions apply to at least 30% but less than 40% of the units, and .8 is the weight added for this percentage range), except if indicators #4 and #5 get grades of A, zero is added to indicators #4 and #5, and .7 is added to indicator #1 (because PC does not apply for purposes of indicator #1 when indicators #4 and #5 get grades of A, and so the 10 units would not be counted for indicator #1, leaving 20 eligible units, 20% of the total, for which .7 is the added weight).

Comment: One comment suggested that § 901.105(d)(3)(ii) should read: Units in developments that have received comprehensive modernization within the past ten years are not eligible to be included in the calculation of total PHA units subject to ''management difficulties'' due to physical condition only.

Response: The Department agrees and has rephrased that section to read: Units in developments that have received substantial rehabilitation within the past ten years are not eligible to be included in the calculation of total PHA units due to physical condition only.

Comment: One comment felt that § 901.105(d)(3)(iv) should be clarified since it is confusing.

Response: The Department agrees, and this has been clarified in the new rule to state that a PHA's score for indicators #1, #4 and/or #5, after any adjustment(s) for physical condition and/or neighborhood environment, may not exceed the maximum potential weighted points assigned to the respective indicator(s).

PHA Request for Exclusion or Modification—§ 901.110

Comment: Two comments stated that the previous interim rule permits a PHA to submit a request if the PHA were to discover and demonstrate ''highly unusual circumstances.'' The commenters urge HUD to retain this mechanism to permit consideration of first-time exclusion/modification requests at the appellate level. It is recognized and expected that HUD would subject such requests to strict scrutiny, but there is no reason why such matters cannot be solved by State/Area Office Directors of Public Housing as part of the appellate process rather than at the Assistant Secretary level.

Response: This stipulation was eliminated because it restricted the grounds for appeal.

Comment: One comment reflected that this section requires that a request for an exclusion or modification be submitted at the time of certification. There has been no understanding from HUD on how it grades certain items or

what time periods are considered for the indicators that HUD grades. PHAs should have the right to request an exclusion or modification on the HUD-graded indicators after HUD has announced the preliminary grades on them.

Response: The indicators scored by HUD are based on information that a PHA submits to HUD on other reports. Therefore, a PHA should know what its HUD graded scores are based on. The interim and proposed rules clearly state ''annual'' and ''immediate past fiscal year,'' except for components #2–1 and #2–2, where they clearly state Federal fiscal year.

PHA Score and Status—§ 901.115

Comment: Seventeen comments felt that denying high performer status to a PHA if it scores below a C on any indicator is not a good change. It does not make sense to punish a PHA for only one low score; the total numerical rating should be the only determination in high/standard/troubled performer. The commenters noted that under the proposed rule, PHAs with the same overall score could receive different ratings; this does not seem equitable. The overall performance of the PHA operation is being graded, not an indicator. Denying high performer status to a PHA that gets less than a C in any indicator should be dropped from the rule. Two other comments felt that a system that really identifies and rewards outstanding performance is much more desirable.

Response: The Department believes that high performer designation should identify outstanding management performance, and thus stipulates that a PHA shall not be designated as a high performer if it receives less than a C for any indicator. The intent in not to punish a PHA, but rather to recognize PHAs for outstanding management performance. It has always been possible for PHAs to have the same score, but a different designation, when high performer designation was awarded or when troubled designation was withheld.

Comment: One comment notes that § 901.115(g)(1) stipulates that PHMAP incentives or high performer status could be rescinded in the case of a PHA that is operating under a special agreement with HUD. The commenter asks what a special agreement is and how does it bear on a PHA's actual performance rating under PHMAP? Three additional comments strongly opposes sections 901.115(g)(2) and (3), which would allow the State/Area HUD Office to deny or rescind incentives or high performer status for PHAs either involved in litigation that bears directly upon the management of PHAs or are operating under a court order. HUD should require that the ''specific explanation'' referred to in § 901.115(g) include, at least, a summary of proven fraud, misconduct, or substantial noncompliance. PHAs that can achieve high performer status while operating under these conditions should not be penalized by HUD for continuing to manage operations efficiently and demonstrate positive effort to eliminate obstacles while improving housing conditions for families.

Response: Section 901.115(k) only delineates the exceptional circumstances under which State/Area Offices may deny or rescind initiatives or high performer status. Such actions are not automatic when these exceptional circumstances are present, but are determined on a case by case basis with consideration of the specific circumstances involved. In addition, these determinations may be appealed to the Assistant Secretary, providing an additional safeguard that they will not be made without due deliberation.

Comment: One comment suggested that HUD should submit a written explanation of any PHMAP score of C or below on any indicator not directly certified by the PHA because PHAs are required to submit an Improvement Plan for indicators with grades under C.

Response: The indicators scored by HUD are based on information that a PHA submits to HUD on other reports. Therefore, a PHA should know on what its HUD graded scores are based. Improvement plans are only required for a grade of F and a State/Area Office may require it for every indicator with a grade of D or E.

Comment: One comment observed that in the preamble to the previous interim rule, HUD stated that it would address how the State/Area Offices will determine at which PHAs it would conduct confirmatory reviews in handbook guidance. HUD should at least provide handbook guidance on the factors that the State/Area Office will consider to select a PHA for a confirmatory review.

Response: The Department has provided such guidance in the Field Office Monitoring of Public Housing Agencies (PHAs) Handbook 7460.7 REV–2.

Comment: One comment stated that § 901.115(e) suggests that a ''small'' PHA (100 units or less) will not be designated as mod-troubled, no matter how bad their program is. This is not reasonable.

Response: Section 901.115(e) of the proposed rule reads, ''PHAs with more than 100 units that achieve a total weighted score of less than 60% on indicator (2), modernization, shall be designated as mod-troubled.'' The Department agrees that these ''small'' PHAs should also be assessed on their modernization program, and will amend this section accordingly.

Comment: One comment stated that in § 901.115(h), the reference to ''paragraph (e)'' should be a reference to ''paragraph (g).''

Response: HUD agrees and has amended § 901.115(l) to reference § 901.115(k).

Posting of PHA PHMAP Scores

Comment: Four comments felt that the posting of PHA PHMAP scores should be required at all offices, rather than in all developments, since many developments are too small to have an office or any other building where such notice could be posted, and it is virtually impossible to do with scattered site projects. Notice can be mailed to residents where it is impractical or inappropriate to post the notice.

Response: The Department agrees and has amended this section accordingly.

Comment: Three comments felt that it was not clear why the posting of PHMAP scores is necessary, or why are PHAs being singled out when reviews of other public entities are not held up for public scrutiny. To post a score with no explanation is silly and there would be no way to post an explanation. By the same token, to publish in the Federal Register is not really fair without offering a PHA an opportunity to explain why they may have scored poorly in a particular area.

Response: This provision was recommended by the Office of Management and Budget in the course of its review of the proposed rule in accordance with Executive Order 12866. These requirements are intended to make the community, and tenants in particular, aware of their PHA's management score and to encourage dialogue among the PHA, residents and the community.

Comment: One comment felt that the rule should make clear that PHAs are only required to post and report out final PHMAP scores and do not have to post and report any score that is appealed in a timely basis and is under consideration by HUD.

Response: The Department agrees and has amended this section accordingly.

Comment: One comment observed that § 901.120(b) references a ''handicapped'' score. This term is not used elsewhere in the rule. It should be changed to ''adjustment for physical

condition and neighborhood environment''.

Response: The Department agrees and will amend this section accordingly.

Comment: One comment stated that § 901.120(c) should explicitly state that a normal ''confirmatory review'' is to be conducted prior to the issuance of the initial notification letter. This way, the statement in paragraph (c)(1) about ''exceptional circumstance'' will make sense.

Response: The Department agrees and has added appropriate language to the rule.

Comment: One comment reflects that § 901.120(c)(1) states that the results of a confirmatory review should be explained in writing if the review is conducted after the issuance of the initial notification letter. The results of confirmatory reviews should always be explained in writing to the PHA, regardless of when conducted.

Response: The Department agrees and has added appropriate language to the rule.

Making the Right Decision

The Department specifically expressed its interest in receiving comments concerning ways in which PHAs can receive positive recognition within the context of this regulation for making the right decision.

Comment: One comment stated that it is unreasonable to put forth an assessment system which rewards highly graded performance and not expect actions to be guided by that system.

Response: The Department recognizes that PHMAP scores should not be interpreted as the sole determinant of a PHA's performance, nor should actions be solely guided by the PHMAP. Good management recognizes and balances all variables in the day-to-day operations of a PHA.

Comment: One comment agrees with a PHA doing the right thing. If doing the right thing is important for the PHA, then HUD should also do the right thing. HUD should ensure that PHMAP scores can be adjusted appropriately for any situation that results in lower grading of any indicator that occurs while doing the right thing. Recognition is nice, but PHMAP should be designed in such a way as to actually reward PHAs for right decisions, not simply recognize them outside the program structure.

Response: The Department believes that the ability to request a modification or exclusion of any indicator will usually result in the appropriate adjustments for making the right decision. The Department will continue to explore ways to provide incentives to PHAs for making the right decisions that result in the long-term improvement of overall PHA operations and of a PHA's housing stock. In addition, the Department will recognize such PHAs at the Performance Awards Ceremony.

State/Area Office Functions—§ 901.120

Comment: One comment reflected that § 901.120(2)(c) states the purpose of on-site confirmatory reviews but does not provide a standard applied circumstance under which or manner in which they will be carried out. The new rule should stipulate that an on-site confirmatory review is required before a State/Area Office can decide to change the PHMAP score certified by a PHA, and should include specifically what documentation State/Area Offices must review as a basis for determining the validity of PHA performance certifications. The confirmatory review documentation requirements should be adequate to meet HUD's verification needs while at the same time comply with the Paperwork Reduction Act.

Response: State/Area Offices conduct confirmatory reviews on a risk management basis, as discussed in the Field Office Monitoring of Public Housing Agencies (PHAs) Handbook 7460.7 REV–2. The confirmatory review guidebook and the revised PHMAP Handbook, which will be issued subsequent to the publication of the new rule, will include appropriate guidance regarding the conduct of confirmatory reviews. The rule requires confirmatory reviews of PHAs with 100 or more units before removing a designation of troubled or mod-troubled. In addition, the rule requires a confirmatory review of any PHA that scores less than 60% for its total weighted score, or less than 60% on indicator #2, modernization, before the designation of a PHA as troubled or mod-troubled. Although troubled or mod-troubled pre-designation confirmatory reviews were not previously mandatory, the Department has determined that such reviews can be significant elements of its risk management approach to PHMAP and can maximize the efficient use of its limited resources.

Appeals—§ 901.125

Comment: One comment urged HUD to extend the deadline for appeals to the State/Area to the 30th calendar day after the PHMAP initial notification letter is received. The deadline in the proposed rule of 15 days after mailing is not sufficient time to file a carefully crafted appeal, nor should the time to appeal be measured from the date of mailing. The losing party in a Federal lawsuit has 30 days to appeal. HUD should provide no less time to a PHA that contends it has not been fairly or accurately assessed.

Response: The Department has determined not to change the time frame for a PHA to submit an appeal. The experience of HUD has been that appeals received in Headquarters are well thought out and presented. A PHA that submits an appeal should not have to go through a lengthy process in order to appeal; the documentation and information should be readily available since the PHA would have researched the information in order to submit its certification.

Comment: One comment stated that the proposed rule does not specifically permit an appeal from a State/Area Office rejection of a claim for additional scoring adjustment that is based on the physical condition or neighborhood environment of housing developments. Although the proposed rule appears to cover disputes over the analysis or accuracy of data submitted in support of the claim, it would not cover disputes over whether a PHA maintained adequate documentation to support its claim. The proposed rule covers this type of dispute as it relates to denials of exclusion or modification requests but does not extend to a dispute over weighted scoring. This appears to be an unintended oversight and should be corrected.

Response: HUD agrees and has amended this section accordingly.

Comment: One comment urges HUD to reconsider the amorphous term ''data errors'' that the proposed rule would carry over from the previous interim rule or in the PHMAP Handbook 7460.5. HUD's failure to explain the meaning of this term could result in ad hoc, overly narrow interpretations by State/Area Offices in individual ratings. HUD should revise this ground for appeal to encompass any dispute over the accuracy, calculation, or interpretation of data employed in the grading process that, if resolved in the PHA's favor, would affect its regular or weighted score.

Response: The Department has changed the language to read, ''any dispute over the accuracy, calculation, or interpretation of data employed in the grading process that would affect a PHA's PHMAP score.''

Comment: One comment stated that according to § 901.125(a), a PHA could appeal the denial of an exclusion/modification request if that denial has any effect on their total score. This is different from the 5% threshold in the current rule. If this is the intent, it should be explicitly stated.

Response: The Department believes that it is stated explicitly: ''A PHA may appeal...the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, * * *'' As stated previously, a PHA should have the right to appeal its PHMAP score with as few restrictions as possible.

Comment: One comment thought § 901.125(a)(3) should specify how long the State/Field Offices have to rule on an appeal.

Response: State/Area Offices will be required to meet the 30 day period for responding to appeals by an internal directive that will be as binding upon them as a regulatory requirement.

Comment: One comment stated that § 901.125(a)(5) is duplicative of paragraph (a)(1)(ii).

Response: The Department agrees and has deleted § 901.125(a)(5) from the new rule.

Incentives—§ 901.130

Comment: Five comments stated that HUD should specify the actual HUD requirements that it intends to waive for high and standard performers and supports the extension of any such incentives to standard performers, as the proposed rule accomplishes. The proposed rule falls short of offering any true incentives that would encourage more PHAs to improve their performance. Besides a certificate, the only other incentives mentioned are being relieved from unspecified procedural requirements. But the rule also states that the State/Area Office has the discretion to continue to hold PHAs accountable for those same requirements. HUD must grant additional flexibility, on the record, to standard and high performing agencies. In the past, there seems to have been recognition, but little or no actual relief from administrative burdens.

Response: The Department will cite specific incentives for high and standard performers in the revision of the PHMAP Handbook 7460.5. Incentives are presented in the handbook rather than the regulation to enable the Department to revise the incentives more quickly as conditions and circumstances warrant.

Comment: One comment felt that the administrative burden on PHAs is growing and requested HUD to consider measurable relief such as the elimination of Davis-Bacon or project-based accounting for well-managed PHAs.

Response: The Department cannot eliminate administrative burdens that are separate statutory requirements, such as Davis-Bacon and project-based accounting (applicable to PHAs with 500 or more units). However, the Department's Labor Relations Office is intending to implement a provision that will allow PHAs to obtain only one HUD-determined wage rate determination for a PHA's entire fiscal year.

Comment: One comment suggested that HUD exempt PHAs with three consecutive years of standard or high performing determinations from having to calculate and certify their PHMAP indicators. Rather, the indicators could be subject to the independent public audit (IPA). If, and when, the IPA indicates that a PHA is experiencing significant management problems, it could again be subject to yearly certifications.

Response: The Department disagrees with this suggestion because the independent audit only checks the existence and consistency of a PHA's PHMAP documentation; it does not award a score. In addition, a well managed PHA should have little or no troubled certifying on an annual basis.

Comment: One comment proposes that PHAs designated as high performers for a minimum of three consecutive years be required to certify to PHMAP only every other year unless and until they are designated as something less than high performers. In the event that their PHMAP score slips to standard performer or below, PHAs would revert to annual certifications until they, once again, have established themselves as high performers for three consecutive years. This would not only be a good incentive for PHAs, but also would reduce workload of the HUD offices.

Response: As stated, above, a well managed PHA should have little or no troubled certifying on an annual basis.

Comment: One comment feels that HUD's proposal that representatives of high-performing PHAs may be requested to serve on a Departmental group working with troubled PHAs is not of sufficient benefit to most PHAs. HUD must be willing to provide real cash incentive to the PHAs that perform well, not just pat them on the back. For instance, if high-performing PHAs are able to enter into ventures that provide monies in excess of 100% PFS subsidy, they should be able to keep most, if not all, of it. The ability of high-performing PHAs to generate revenue should not be used to reward low-performing PHAs.

Response: The Department already permits the retention of ''other income,'' as stipulated in Notice PIH 96–24, Performance Funding System Policy Revision to Encourage Public and Indian Housing Authorities to Facilitate Resident Employment and Undertake Entrepreneurial Initiatives, issued April 3, 1996.

Comment: One comment stated that the proposed rule limits incentives to mod high performers that are also overall high performers. This appears to be a change from the previous interim rule, and is unfair. Mod high performers that are overall standard performers should be able to benefit from mod incentives.

Response: The Department disagrees with this comment and believes that only outstanding performance overall and in modernization warrants the high performer designation.

Comment: One comment encourages HUD to permit the State/Area Offices to add incentives to the extent practical and as deemed appropriate.

Response: The Department agrees and has amended the new rule to permit State/Area Offices to add incentives to the extent practical and as deemed appropriate, with prior concurrence of such action by the Assistant Secretary.

Comment: One comment stated that § 901.130(g) of the proposed rule states that the State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief in accordance with § 901.115. What does this mean? It reads like an attempt to catch anything that the rule makers forgot without specifying what. Anything significant that might be recognized at some later date as omitted should be addressed as an amendment to the rule for consistent application nationwide.

Response: This section refers to cases where the specified unusual circumstances listed in § 901.115 exist at a PHA and the State/Area Office determines the necessity of reinstating any review or requirement.

Comment: One comment stated that according to § 901.130(a), both high performers and standard performers will receive incentives. If so, will these incentives be different for each group? If not, what is the advantage of achieving high performer status?

Response: The Department agrees, and will provide separate incentives for both standard and high performers.

Memorandum of Agreement—§ 901.135

Comment: One comment stated that an independent assessment team is not discussed or defined anywhere else in the rule. What is it? What are its functions? How is it assembled? The requirement for an ''independent assessment'' prior to ''troubled'' designation should be thoroughly discussed somewhere in the rule.

Response: The Department went through the procurement process to contract with the two consultants that conduct the independent assessments. The function of the two consultants is to conduct an assessment of problem areas independent of HUD, issue a report of findings, and perhaps participate in MOA negotiations. Since the independent assessment is separate from the PHMAP scoring process, the independent assessment is addressed only in § 901.135, Memorandum of Agreement, in the new rule.

Improvement Plan—§ 901.145

Comment: One comment stated that the phrase, ''* * * as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations * * *, is too broad and loose. The Improvement Plan shouldn't try to cover everything; this muddies the Improvement Plan and the PHMAP process. This section should specify that additional issues may be added to the Improvement Plan only if HUD and the PHA agree that they are directly related to PHA non-performance in the PHMAP deficiencies.

Response: The Department disagrees with this suggestion and believes that the rule should provide the flexibility to permit identified deficiencies to be addressed as soon as possible, whether they are related to PHMAP or not. This provision allows all identified deficiencies to be addressed in one document.

PHMAP Public Record—§ 901.155

Comment: One comment raised several questions, such as: how do FOIA requirements apply to PHMAP records, if at all; how do these requirements complement each other; are all internal HUD records on the PHMAP assessment included in the ''open public record,'' including those that would be excluded from the normal FOIA request? This should be clarified.

Response: The FOIA does apply to PHMAP. The items listed in § 901.155 (''certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment'') are all public records, and do not make an exclusive or exhaustive list. Also included would be such items as the notification to the PHA, and the State/Area Office scoring sheet. Exemptions authorized under FOIA by 5 U.S.C. 552(b) would still apply. This section is clarified to read, ''...as open records, available for public inspection for three years consistent with the Freedom of Information Act (5 U.S.C. 552) and in accordance with any procedures established by the State/Area Office to minimize disruption of normal office operations.''

Substantial Default—§ 901.200

Comment: One comment observed that § 901.200 requires HUD to determine a PHA in ''substantial default'' if that PHA has been designated as troubled and does not show significant improvement (i.e., 10 point increase) in its PHMAP score within one year. The preamble notes that the rationale for this is that ''troubled PHAs have already had more than adequate time to implement corrective action, or will have at least one year from the time of its initial troubled designation.'' This is not correct. Because of the PHMAP score notification process, a PHA would have less than a year to correct deficiencies once it is notified and before the next assessment. The time frame established for improvement is arbitrary and too short for real improvement to take place. It may be reasonable for some PHAs but not for others. Improvement in performance is the function of many factors. This time frame should be changed.

Response: The rule is modified to stipulate one year after final notification.

Notice and Response—§ 901.205

Comment: One comment stated that section (a) stipulates that if information from any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. Before taking further action, except in cases of apparent fraud or criminality, and/or if emergency conditions exist posing an imminent threat to the life, health or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action. This provision lends itself to unintentional abuse. The use of unidentified credible sources as the basis for action on unverified conditions could leave PHAs vulnerable to becoming the victims of political witch hunts. Even emergency conditions allow 24 hours for corrective action. At minimum, a PHA should be afforded 24 hours for emergencies and longer as appropriate for non-emergency conditions to respond with verification that the condition does or does not exist. This provision should be modified accordingly.

Response: ''Timely opportunity'' varies due to possible individual situations and the Department will provide for a reasonable amount of time for a PHA to initiate corrective action. The Department will consider each situation individually, and on a case by case basis, as appropriate.

Resident Participation in Competitive Proposals—§ 901.220 and Resident Petitions for Remedial Action—§ 901.225

Comment: One comment stated that § 901.220(b) and § 901.225 require at least 5% of the residents at a PHA in substantial default to indicate to HUD their interest in participating in the competitive proposal process. This percentage is unreasonably low. There isn't a PHA in the country that doesn't have at least five people out of 100 eager to get rid of the current PHA management. This doesn't necessarily mean that they know what they are talking about or are right. The Department needs to seriously consider a threshold of interest that is high enough to ensure true interest by the resident population, not just a handful of disgruntled residents.

Response: The Department agrees, and has changed the percentage in the new rule to require that 20% of the residents at a PHA in substantial default indicate to HUD their interest in participating in the competitive proposal process.

Technical Assistance—§ 901.235

Comment: One comment felt that this section is confusing and gives the impression that it is designed to limit HUD's ability to offer technical assistance and should be clarified.

Response: The Department disagrees and thinks this section very specifically states and authorizes under what circumstances HUD may provide technical assistance to troubled or near troubled PHAs.

III. Findings and Certifications

Justification for Interim Rulemaking

Although this rule could have been published as a final rule because it was first published as a proposed rule for prior notice and comment on May 6, 1996 (61 FR 20358), it is being published as an interim rule to communicate HUD's intention to continue to revise and improve the rule. Following a period of implementation and experience with this rule, HUD will again solicit public comment to further refine the PHMAP process.

Paperwork Reduction Act

The information collection requirements for the Public Housing Management Assessment Program have been approved by the Office of Management and Budget in accordance

with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0156. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, local and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment, in accordance with HUD regulations at 24 CFR part 50, which implements § 102(2)(C) of the National Environmental Policy Act of 1969, was prepared for the proposed rule and remains applicable. 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.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, since the rule only establishes management assessment criteria which will be utilized by State/Area Offices for monitoring purposes and the provision of technical assistance to PHAs.

Federalism

The General Counsel, as the Designated Official under 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. The rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. In addition, the rule carries out, as unobtrusively as possible, a Federal statutory mandate. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves requirements for management assessment of PHAs. Any effect on the family would be indirect. To the extent families in public housing will be affected, the impact of the rule's requirements is expected to be a positive one.

List of Subjects in 24 CFR Part 901

Public housing, reporting and recordkeeping requirements.

Accordingly, part 901 of title 24 of the Code of Federal Regulations is revised to read as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

Sec.

901.1 Purpose, program scope and applicability.
901.5 Definitions.
901.10 Indicator #1, vacancy rate and unit turnaround time.
901.15 Indicator #2, modernization.
901.20 Indicator #3, rents uncollected.
901.25 Indicator #4, work orders.
901.30 Indicator #5, annual inspection of units and systems.
901.35 Indicator #6, financial management.
901.40 Indicator #7, resident services and community building.
901.45 Indicator #8, security.
901.100 Data collection.
901.105 Computing assessment score.
901.110 PHA request for exclusion or modification of an indicator or component.
901.115 PHA score and status.
901.120 State/Area Office functions.
901.125 PHA right of appeal.
901.130 Incentives.
901.135 Memorandum of Agreement.
901.140 Removal from troubled status and mod-troubled status.
901.145 Improvement Plan.
901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).
901.155 PHMAP public record.
901.200 Events or conditions that constitute substantial default.
901.205 Notice and response.
901.210 Interventions.
901.215 Contracting and funding.
901.220 Resident participation in competitive proposals to manage the housing of a PHA.
901.225 Resident petitions for remedial action.
901.230 Receivership.
901.235 Technical assistance.

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

§ 901.1 Purpose, program scope and applicability.

(a) *Purpose.* This part establishes the Public Housing Management Assessment Program (PHMAP) to implement and augment section 6(j) of the 1937 Act. PHMAP provides policies and procedures to identify public housing agency (PHA), resident management corporation (RMC), and alternative management entity (AME) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve the management practices of troubled PHAs and mod-troubled PHAs.

(b) *Program scope.* The PHMAP reflects only one aspect of PHA operations, i.e., the results of its management performance in specific program areas. The PHMAP should not be viewed by PHAs, the Department or other interested parties as an all-inclusive and encompassing view of overall PHA operations. When viewing overall PHA operations, other criteria, including but not limited to, the quality of a PHA's housing stock, compliance issues, Fair Housing and Equal Opportunity issues, Board knowledge and oversight of PHA operation, etc., even though not covered under the PHMAP, are necessary in order to determine the adequacy of overall PHA operations. The PHMAP can never be designed to be the sole method of viewing a PHA's overall operations. A PHA should not manipulate the PHMAP system in the short-term in order to achieve a higher PHMAP score, thereby delaying or negating long-term improvement. Making a correct and viable long-term decision (doing the right thing) may hurt a PHA in the short-term (i.e., lower PHMAP score), but will result in improved housing stock and better overall management of a PHA over the long-term and a higher sustainable PHMAP score.

(c) *Applicability.* (1) The provisions of this part apply to PHAs and RMC/AMEs as noted in the sections of this part. The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken

varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) Due to the fact that the PHA and not the RMC/AME is ultimately responsible to the Department under the ACC, a PHA's score will be based on all of the developments covered by the ACC, including those with management functions assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable). This is necessary because of the limited nature of an RMC/AME's management functions and the regulatory and contractual relationships among the Department, PHAs and RMC/AMEs.

(3) A significant feature of RMC management is that 24 CFR §§ 964.225 (d) and (h) provide that a PHA may enter into a management contract with an RMC, but a PHA may not contract for assumption by the RMC of the PHA's underlying responsibilities to the Department under the Annual Contributions Contract (ACC).

(4) When a PHA's management functions have been assumed by an AME:

(i) If the AME assumes only a portion of the PHA's management functions, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(ii) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

(5) To ensure quality management results from a contract between an AME and a PHA, or between an AME and HUD, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in such contract. Failure to meet the performance criteria would be a basis for termination of the contract. However, even in the absence of explicit contractual provisions, this part applies to AMEs in accordance with paragraph (b)(4) of this section, above.

§ 901.5 Definitions.

Actual vacancy rate is the vacancy rate calculated by dividing the total number of vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Adjusted vacancy rate is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons. It is calculated by dividing the total number of adjusted vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order, pursuant to a court ordered receivership agreement, if applicable, or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 901.1(b)(2), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been reviewed for management performance using the PHMAP indicators. Unless otherwise indicated, the assessed fiscal year is the immediate past fiscal year of a PHA.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing of the Department.

Available units are dwelling units, (occupied or vacant) under a PHA's Annual Contributions Contract, that are available for occupancy, after excluding or adjusting for units approved for non-dwelling use, employee-occupied units, and vacant units approved for deprogramming (units approved for demolition, disposition or units that have been combined).

Average number of days for non-emergency work orders to be completed is calculated by dividing the total of the:

(1) Number of days in the assessed fiscal year it takes to close active non-emergency work orders carried over from the previous fiscal year;

(2) The number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and

(3) The number of days all active non-emergency work orders are open in the assessed fiscal year, but not completed, by the total number of non-emergency work orders used in the calculation of paragraphs (1), (2) and (3), of this definition.

Average turnaround time is the annual average of the total number of turnaround days between the latter of the legal expiration date of the immediate past lease or the actual move-out date of the former tenant (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Average turnaround time is calculated by dividing the total turnaround days for all units re-occupied during the assessed fiscal year by the total number of units re-occupied during the assessed fiscal year.

Cash reserve is the amount of cash available for operations at the end of an annual reporting period after all necessary expenses of a PHA or development have been paid or funds have been set-aside for such payment. The cash reserve computation takes into consideration both short-term accounts receivable and accounts payable.

Confirmatory review is an on-site review for the purposes of State/Area Office verification of the performance level of a PHA, the accuracy of the data certified to by a PHA, and the accuracy of the data derived from State/Area Office files.

Correct means to improve performance in an indicator to a level of grade C or better.

Cyclical work orders are work orders issued for the performance of routine maintenance work that is done in the same way at regular intervals. Examples of cyclical work include, but are not limited to, mopping hallways; picking up litter; cleaning a trash compactor; changing light bulbs in an entryway; etc. (Cyclical work orders should not be confused with preventive maintenance work orders.)

Deficiency means any grade below C in an indicator or component.

Down time is the number of calendar days a unit is vacant between the later of the legal expiration date of the immediate past lease or the actual move-out date of the former resident, and the date the work order is issued to maintenance.

Dwelling rent refers to the resident dwelling rent charges reflected in the monthly rent roll(s) and excludes utility reimbursements, retroactive rent charges, and any other charges not specifically identified as dwelling rent, such as maintenance charges, excess utility charges and late charges.

Dwelling rent to be collected means dwelling rent owed by residents in possession at the beginning of the assessed fiscal year, plus dwelling rent charged to residents during the assessed fiscal year.

Dwelling rent uncollected means unpaid resident dwelling rent owed by any resident in possession during the assessed fiscal year, but not collected by the last day of the assessed fiscal year.

Dwelling unit is a unit that is either leased or available for lease to eligible low-income residents.

Effective lease date is the date when the executed lease contract becomes effective and rent is due and payable and all other provisions of the lease are enforceable.

Emergency means physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.

Emergency status abated means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.

Emergency work order is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

Employee occupied units refers to units that are occupied by employees who are required to live in public housing as a condition of their job, rather than the occupancy being subject to the normal resident selection process.

HQS means Housing Quality Standards as set forth at 24 CFR § 882.109 and amended by the Lead-Based Paint regulation at 24 CFR § 35.

Improvement Plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that may be required to correct deficiencies where the grade for an indicator is a grade D or E, and shall be required to correct deficiencies of failed indicators, identified as a result of the PHMAP assessment when an MOA is not required.

Indicators means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in § 901.10 through § 901.45.

Lease up time is the number of calendar days between the time the repair of a unit is completed and a new lease takes effect.

Local occupancy/housing codes are the minimum standards for human occupancy, if any, as defined by the local ordinance(s) of the jurisdiction in which the housing is located.

Maintenance plan is a comprehensive annual plan of a PHA's maintenance operation that contains the fiscal year's estimated work schedule and which is supported by a staffing plan, contract schedule, materials and procurement plan, training, and approved budget. The plan should establish a strategy for meeting the goals and time frames of the facilities management planning and execution, capital improvements, utilities, and energy conservation activities.

Major systems include, but are not limited to, structural/building envelopes which include roofing, walls, windows, hardware, flashing and caulking; mechanical systems which include heating, ventilation, air conditioning, plumbing, drainage, underground utilities (gas, electrical and water), and fuel storage tanks; electrical systems which include underground systems, above ground systems, elevators, emergency generators, door bells, electronic security devices, fire alarms, smoke alarms, outdoor lighting, and indoor lighting (halls, stairwells, public areas and exit signs); and transformers.

Make ready time is the number of calendar days between the date the unit is referred to maintenance for repair by a work order and occupancy is notified that the unit is ready for re-occupancy.

Memorandum of Agreement (MOA) is a binding contractual agreement between a PHA and HUD that is required for each PHA designated as troubled and/or mod-troubled. The MOA sets forth target dates, strategies and incentives for improving management performance; and provides sanctions if performance does not result.

Move-out date is the actual date when the resident vacates the unit, which may or may not coincide with the legal expiration of the lease agreement.

Non-emergency work order is any work order that covers a situation that is not an immediate threat to life, health, safety, or property, or that is unrelated to fire safety.

Percent of dwelling rent uncollected is calculated by dividing the amount of dwelling rent uncollected by the total dwelling rent to be collected.

PHA means a public housing agency. As appropriate in accordance with § 901.1(b)(2), PHA also includes AME.

Percentage of emergency work orders completed within 24 hours is the ratio of emergency work orders completed in 24 hours to the total number of emergency work orders. The formula for calculating this ratio is: total emergency work orders completed (or emergency status abated) in 24 hours or less, divided by the total number of emergency work orders.

PHA-generated work order is any work order that is issued in response to a request from within the PHA administration.

Preventive maintenance program is a program under which certain maintenance procedures are systematically performed at regular intervals to prevent premature deterioration of buildings and systems. The program is developed and regularly updated by the PHA, and fully documents what work is to be performed and at what intervals. The program includes a system for tracking the performance of preventive maintenance work.

Preventive maintenance work order is any work done on a regularly scheduled basis in order to prevent deterioration or breakdowns in individual units or major systems.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHMAP assessment year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the vacancy rate in the assessment year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time it took to complete non-emergency work orders during the previous three years is a comparison of the average time it took to complete non-emergency work orders in the PHMAP assessment year (the immediate past fiscal year) with the average time it took to complete non-emergency work orders of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the average time it took to complete non-emergency work orders in the PHMAP assessment year from the average time it took to complete non-emergency work orders in the earlier year. If a PHA elects to certify to the reduction of the average time it took to complete non-emergency work orders during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Resident-generated work order is a work order issued by a PHA in response to a request from a lease holder or family member of a lease holder.

Resident management corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA in accordance with 24 CFR 964.120. As appropriate in accordance with § 901.1(b)(2), RMC also includes AME.

Routine operating expenses are all expenses which are normal, recurring fiscal year expenditures. Routine expenses exclude those expenditures that are not normal fiscal year expenditures and those that clearly represent work of such a substantial nature that the expense is clearly not a routine occurrence.

Standards equivalent to HQS are housing/occupancy inspection standards that are equal to HUD's Section 8 HQS.

Substantial default means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract (ACC) or a Memorandum of Agreement.

Unit days available are the number of days that the available units were available for occupancy in a PHA fiscal year. Unit days available are calculated by adding the number of days that each unit was available for occupancy in the year.

Units approved for non-dwelling use refers to units approved for non-dwelling status for use in the provision of social services, charitable purposes, public safety activities and resident services, or used in the support of economic self-sufficiency and anti-drug activities.

Units vacant due to circumstances and actions beyond the PHA's control are dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the units. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are required to remain vacant because of fire/police investigations, coroner's seal, or as part of a court-ordered or HUD-approved desegregation effort.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. This category does not include units vacant only because they do not meet minimum housing and building code standards pertaining to construction or habitability under Federal, State, or local laws or regulations, except when these code violations are caused for reasons beyond the control of the PHA, rather than as a result of management and/or maintenance failures by the PHA. Examples of exempted units under this category are: vacant units that are documented to be uninhabitable for reasons beyond the PHA's control due to high/unsafe levels of hazardous/toxic materials (e.g., lead-based paint or asbestos), by order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA, and units kept vacant because they became structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations). Other examples are vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law and vacant units required to remain vacant because of fire/police investigations, coroner's seal, or court order.

(3) *Changing market conditions.* Example of units in this category are small PHAs that are located in areas experiencing population loss or economic dislocations that face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures. Where a PHA claims extraordinary market conditions, the PHA will be expected to document the market conditions to which it refers (the examples of changing population base and competing projects are the simplest), the explicit efforts that the PHA has made to address those conditions, the likelihood that those conditions will be mitigated or eliminated in the near term, and why the market conditions are such that the PHA is prevented from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the vacant units. In order to justify the adjustment, the PHA will need to document the specific market conditions that exist and document marketing and outreach efforts. The PHA will need to describe when the downturn in market conditions occurred, the location(s) of the unit(s) effected, the likelihood that these circumstances will be mitigated or eliminated in the near term and why the market conditions are such that they are preventing the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating, or modernizing the vacant units.

(4) *Natural disasters.* These are vacant units that are documented to be uninhabitable because of damaged suffered as a result of natural disasters such as floods, earthquakes, hurricanes, tornadoes, etc. In the case of a ''natural disaster'' claim, the PHA would be expected to point to a proclamation by the President or the Governor that the county or other local area in question has, in fact, been declared a disaster area.

(5) *Insufficient funding.* Lack of funding for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds (only PHAs with less than 250 units are eligible to apply and compete for CIAP funds). This definition will cease to be used if CIAP is replaced by a formula grant.

(6) *Casualty Losses.* Vacant units that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received. The vacancy days exempted are those included in the period of time between the casualty loss and the receipt of funds from the insurer to cover the loss in whole or in part.

Vacancy day is a day when an available unit is not under lease by an eligible low-income resident. The maximum number of vacancy days for any unit is the number of days in the year, regardless of the total amount of time the unit has been vacant. Vacancy days are calculated by adding the total number of days vacant from all available units that were vacant for any reason during the PHA's fiscal year.

Vacant unit is an available unit that is not under lease to an eligible low-income family.

Vacant unit turnaround work order is a work order issued that directs a vacant unit to be made ready to lease to a new resident and reflects all work items to prepare the unit for occupancy.

Vacant unit undergoing modernization as defined in 24 CFR § 990.102. In addition, the following apply when computing time periods for a vacant unit undergoing modernization:

(1) If a unit is vacant prior to being included in a HUD-approved modernization budget, those vacancy days that had accumulated prior to the unit being included in the modernization budget must be included as non-exempted vacancy days in the calculation.

(2) The calculation of turnaround time for newly modernized units starts when the unit in turned over to the PHA from the contractor and ends when the lease is effective for the new or returning resident. Thus, the total turnaround time would be the sum of the pre-modernization vacancy time, and the post-modernization vacancy time.

(3) Unit-by-unit documentation, showing when a vacant unit was included in a HUD-approved modernization budget, when it was released to the PHA by the contractor, and when a new lease is effective for the new or returning resident, must be maintained by the PHA.

(4) Units remaining vacant more than two FFYs after the FFY in which the modernization funds are approved, may no longer be exempted from the

calculation of the adjusted vacancy rate if the construction contract has not been let. These units may be exempted again, but only after a contract is let.

Vacant units approved for deprogramming exist when a PHA's application for the demolition and/or disposition of public housing units has received written approval from HUD; or when a PHA's application to combine/convert has received written approval from HUD.

Work order is a directive, containing one or more tasks issued to a PHA employee or contractor to perform one or more tasks on PHA property. This directive describes the location and the type of work to be performed; the date and time of receipt; date and time issued to the person or entity performing the work; the date and time the work is satisfactorily completed; the parts used to complete the repairs and the cost of the parts; whether the damage was caused by the resident; and the charges to the resident for resident-caused damage. The work order is entered into a log which indicates at all times the status of all work orders as to type (emergency, non-emergency), when issued, and when completed.

Work order completed during the immediate past fiscal year is any work order that is completed during the PHA's fiscal year regardless of when it may have been received.

Work order deferred for modernization is any work order that is combined with similar work items and completed within the current PHMAP assessment year, or will be completed in the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

§ 901.10 Indicator #1, vacancy rate and unit turnaround time.

This indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time. This indicator has a weight of x2.

(a) For the calculation of the actual and adjusted vacancy rate (and, if applicable, unit turnaround time), the following three categories of units (as defined in the rule at § 901.5), that are not considered available for occupancy, will be completely excluded from the computation:

(1) Units approved for non-dwelling use.

(2) Employee occupied units.

(3) Vacant units approved for deprogramming (i.e., demolition, disposition or units that have been combined).

(b) For the calculation of the adjusted vacancy rate and turnaround time, the vacancy days for units in the following categories (fully defined in the rule at § 901.5) shall be exempted:

(1) Vacant units undergoing modernization as defined in § 901.5.

(i) Only vacancy days associated with a vacant unit that meets the conditions of being a unit undergoing modernization will be exempted when calculating the adjusted vacancy rate or, if necessary, the unit turnaround time. Neither vacancy days associated with a vacant unit prior to that unit meeting the conditions of being a unit undergoing modernization nor vacancy days associated with a vacant unit after construction work has been completed or after the time period for placing the vacant unit under construction has expired shall be exempted.

(ii) A PHA must maintain the following documentation to support its determination of vacancy days associated with a vacant unit that meets the conditions of being a unit undergoing modernization:

(A) The date on which the unit met the conditions of being a vacant unit undergoing modernization: and

(B) The date on which construction work was completed or the time period for placing the vacant unit under construction expired.

(2) Units vacant due to circumstances and actions beyond the PHA's control as defined in § 901.5. Such circumstances and actions may include:

(i) Litigation, such as a court order or settlement agreement that is legally enforceable.

(ii) Federal or, when not preempted by Federal requirements, State law of general applicability or their implementing regulations.

(iii) Changing market conditions.

(iv) Natural disasters.

(v) Insufficient funding for otherwise approvable applications made for CIAP funds. This definition will cease to be used if CIAP is replaced by a formula grant.

(vi) Vacant units that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claim is adjusted. A PHA must maintain at least the following documentation to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the PHA's control:

(A) The date on which the unit met the conditions of being a unit vacant due to circumstances and actions beyond the PHA's control;

(B) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond the PHA's control as defined in § 901.5;

(C) The actions taken by the PHA to eliminate or mitigate these conditions; and

(D) The date on which the unit ceased to meet such conditions and became an available unit.

(E) This supporting documentation is subject to review and may be requested for verification purposes at any time by HUD.

(c) *Component #1, vacancy percentage and progress in reducing vacancies.* A PHA may choose whether to use the actual vacancy rate, the adjusted vacancy rate or a reduction in the actual vacancy rate within the past three years. This component has a weight of x2.

(1) *Grade A:* The PHA is in one of the following categories:

(i) An actual vacancy rate of 3% or less; or

(ii) An adjusted vacancy rate of 2% or less.

(2) *Grade B:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 3% and less than or equal to 5%; or

(ii) An adjusted vacancy rate of greater than 2% and less than or equal to 3%.

(3) *Grade C:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 5% and less than or equal to 7%; or

(ii) An adjusted vacancy rate of greater than 3% and less than or equal to 4%; or

(iii) The PHA has reduced its actual vacancy rate by at least 15 percentage points within the past three years and has an adjusted vacancy rate of greater than 4% and less than or equal to 5%.

(4) *Grade D:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 7% and less than or equal to 9%; or

(ii) An adjusted vacancy rate of greater than 4% and less than or equal to 5%; or

(iii) The PHA has reduced its actual vacancy rate by at least 10 percentage points within the past three years and has an adjusted vacancy rate of greater than 5% and less than or equal to 6%.

(5) *Grade E:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 9% and less than or equal to 10%; or

(ii) An adjusted vacancy rate of greater than 5% and less than or equal to 6%; or

(iii) The PHA has reduced its actual vacancy rate by at least five percentage points within the past three years and has an adjusted vacancy rate of greater than 6% and less than or equal to 7%.

(6) *Grade F:* The PHA is in one of the following categories:

(i) An actual vacancy rate greater than 10%; or

(ii) An adjusted vacancy rate greater than 7%; or

(iii) An adjusted vacancy rate of greater than 6% and less than or equal to 7% and the PHA has not reduced its actual vacancy rate by at least five percentage points within the past three years.

(d) *Component #2, unit turnaround time.* This component is to be completed only by PHAs scoring below a grade C on component #1. This component has a weight of x1.

(1) *Grade A:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is less than or equal to 20 calendar days.

(2) *Grade B:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(3) *Grade C:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(4) *Grade D:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(5) *Grade E:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(6) *Grade F:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 50 calendar days.

§ 901.15 Indicator #2, modernization.

This indicator is automatically excluded if a PHA does not have a modernization program. This indicator examines the amount of unexpended funds over three Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components apply to both the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP) and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP. Only components #3, #4 and #5 apply to funding under the Hope VI Program and the Vacancy Reduction Program for the assessment of this indicator. This indicator has a weight of x1.5.

(a) *Component #1, unexpended funds over three Federal fiscal years (FFYs) old.* This component has a weight of x1.

(1) *Grade A:* The PHA has no unexpended funds over three FFYs old or is able to demonstrate one of the following:

(i) The unexpended funds are leftover funds and will be recaptured after audit;

(ii) There are no unexpended funds past the original HUD-approved implementation schedule deadline that allowed longer than three FFYs; or

(iii) The PHA has extended the time within 30 calendar days after the expenditure deadline and the time extension is based on reasons outside of the PHA's control, such as need to use leftover funds, unforeseen delays in contracting or contract administration, litigation, material shortages, or other non-PHA institutional delay.

(2) *Grade F:* The PHA has unexpended funds over three FFYs old and is unable to demonstrate any of the above three conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(b) *Component #2, timeliness of fund obligation.* This component has a weight of x2.

(1) *Grade A:* The PHA has no unobligated funds over two FFYs old or is able to demonstrate one of the following:

(i) There are no unobligated funds past the original HUD-approved implementation schedule deadline that allowed longer than two FFYs; or

(ii) The PHA has extended the time within 30 calendar days after the obligation deadline and the time extension is based on reasons outside of the PHA's control, such as need to use leftover funds, unforeseen delays in contracting or contract administration, litigation, material shortages, or other non-PHA institutional delay.

(2) *Grade F:* The PHA has unobligated funds over two FFYs old and is unable to demonstrate any of the above two conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(c) *Component #3, adequacy of contract administration.* For the purposes of this component, the term ''findings'' means a violation of a statute, regulation, Annual Contributions Contract or other HUD requirement in the area of contract administration. This component has a weight of x1.5.

(1) *Grade A:* Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were no findings related to contract administration or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to contract administration and the PHA is in the process of correcting all such findings.

(3) Grade F: Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to contract administration and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(d) *Component #4, quality of the physical work.* For the purposes of this component, the term ''findings'' means a violation of a statute, regulation, Annual Contributions Contract or other HUD requirement in the area of physical work quality. This component has a weight of x3.

(1) *Grade A:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were no findings related to the quality of the physical work or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to the quality of the physical

work and the PHA is in the process of correcting all such findings.

(3) *Grade F:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to the quality of the physical work and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(e) *Component #5, adequacy of budget controls.* This component has a weight of x1.

(1) *Grade A:* The CGP PHA has expended modernization funds only on work in HUD-approved CGP Annual Statements, CGP Five-Year Action Plan, excluding emergencies, or CIAP Budgets, or has obtained prior HUD approval for required budget revisions. The CIAP PHA has expended modernization funds only on work in HUD-approved CIAP Budgets or related to originally approved work or has obtained prior HUD approval for required budget revisions.

(2) *Grade F:* The *CGP PHA* has expended modernization funds on work that was not in HUD-approved CGP Annual Statements, CGP Five-Year Action Plan, excluding emergencies, or CIAP Budgets, and did not obtain prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds on work that was not in HUD-approved CIAP Budgets or was unrelated to originally approved work and did not obtain prior HUD approval for required budget revisions.

§ 901.20 Indicator #3, rents uncollected.

This indicator examines the PHA's ability to collect dwelling rent owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected. This indicator has a weight of x1.5.

(a) *Grade A:* The percent of dwelling rent uncollected in the immediate past fiscal year is less than or equal to 2% of total dwelling rent to be collected.

(b) *Grade B:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of total dwelling rent to be collected.

(c) *Grade C:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of total dwelling rent to be collected.

(d) *Grade D:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of total dwelling rent to be collected.

(e) *Grade E:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of total dwelling rent to be collected.

(f) *Grade F:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 10% of total dwelling rent to be collected.

§ 901.25 Indicator #4, work orders.

This indicator examines the average number of days it takes for a work order to be completed, and any progress a PHA has made during the preceding three years to reduce the period of time required to complete maintenance work orders. Implicit in this indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders. This indicator has a weight of x1.

(a) *Component #1, emergency work orders completed within 24 hours or less.* All emergency work orders should be tracked. This component has a weight of x1.

(1) *Grade A:* At least 99% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(2) *Grade B:* At least 98% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(3) *Grade C:* At least 97% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(4) *Grade D:* At least 96% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(5) *Grade E:* At least 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(6) *Grade F:* Less than 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(b) *Component #2, average number of days for non-emergency work orders to be completed.* All non-emergency work orders that were active during the assessed fiscal year should be tracked (including preventive maintenance work orders), except non-emergency work orders from the date they are deferred for modernization, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance. This component has a weight of x2.

(1) *Grade A:* All non-emergency work orders are completed within an average of 25 calendar days.

(2) *Grade B:* All non-emergency work orders are completed within an average of greater than 25 calendar days and less than or equal to 30 calendar days.

(3) *Grade C:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 30 calendar days and less than or equal to 40 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders by at least 15 days during the past three years.

(4) *Grade D:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 40 calendar days and less than or equal to 50 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non emergency work orders by at least 10 days during the past three years.

(5) *Grade E:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 50 calendar days and less than or equal to 60 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders by at least 5 days during the past three years.

(6) *Grade F:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 60 calendar days; or

(ii) The PHA has not reduced the average time it takes to complete non-emergency work orders by at least 5 days during the past three years.

§ 901.30 Indicator #5, annual inspection of units and systems.

This indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. Implicit in this indicator is the adequacy of the PHA's inspection program in terms of the quality of a PHA's inspections, and how a PHA tracks both inspections and needed repairs. All occupied units are required to be inspected. This indicator has a weight of x1.

(a) Units in the following categories are exempted and not included in the calculation of the total number of units,

and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or a part of a building where all of the dwelling units in the building are exempted, are also exempted from the calculation of this indicator:

(1) Occupied units where the PHA has made two documented attempts to inspect, but only if the PHA can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)), has been taken under provisions of the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant for the full immediate past fiscal year for the following reasons, as defined at § 901.5:

(i) Vacant units undergoing modernization; and

(ii) Vacant units that are documented to be uninhabitable for reasons beyond a PHA's control due to:

(A) High/unsafe levels of hazardous/toxic materials;

(B) By order of the local health department or a directive of the Environmental Protection Agency;

(C) Natural disasters; and

(D) Units kept vacant because they became structurally unsound.

(b) *Component #1, annual inspection of units.* This component refers to an inspection using either the local housing and/or occupancy code, or HUD HQS if there is no local code or the local code is less stringent that HQS. This component has a weight of x1.

(1) *Grade A:* The PHA inspected 100% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(2) *Grade B:* The PHA inspected less than 100% but at least 97% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(3) *Grade C:* The PHA inspected less than 97% but at least 95% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(4) *Grade D:* The PHA inspected less than 95% but at least 93% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(5) *Grade E:* The PHA inspected less than 93% but at least 90% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(6) *Grade F:* The PHA has failed to inspect at least 90% of its units; or failed to correct deficiencies during the inspection or issue work orders for the repairs; or failed to refer similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(c) *Component #2, annual inspection of systems.* This component examines the inspection of buildings and sites according to the PHA's maintenance plan, including performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in this year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed. This component has a weight of x1.

(1) *Grade A:* The PHA inspected all major systems at 100% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(2) *Grade B:* The PHA inspected all major systems of at least a minimum of 90% but less than 100% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(3) *Grade C:* The PHA inspected all major systems of at least a minimum of 80% but less than 90% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(4) *Grade D:* The PHA inspected all major systems of at least a minimum of 70% but less than 80% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(5) *Grade E:* The PHA inspected all major systems of at least a minimum of 60% but less than 70% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or

issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(6) *Grade F:* The PHA failed to inspect all major systems of at least 60% of its buildings and sites and perform the required maintenance on these systems in accordance with manufacturers specifications and established local/PHA standards, or did not issue work orders for maintenance/repairs, or did not include identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

§ 901.35 Indicator #6, financial management.

This indicator examines the amount of cash reserves available for operations and, for PHAs scoring below a grade C on cash reserves, energy/ utility consumption expenses. This indicator has a weight of x1.

(a) *Component #1, cash reserves.* This component has a weight of x2.

(a) *Grade A:* Cash reserves available for operations are greater than or equal to 15% of total actual routine expenditures, or the PHA has cash reserves of $3 million or more.

(2) *Grade B:* Cash reserves available for operations are greater than or equal to 12.5%, but less than 15% of total actual routine expenditures.

(3) *Grade C:* Cash reserves available for operations are greater than or equal to 10%, but less than 12.5% of total actual routine expenditures.

(4) *Grade D:* Cash reserves available for operations are greater than or equal to 7.5%, but less than 10% of total actual routine expenditures.

(5) *Grade E:* Cash reserves are greater than or equal to 5%, but less than 7.5% of total actual routine expenditures.

(6) *Grade F:* Cash reserves available for operations are less than 5% of total actual routine expenditures.

(b) *Component #2, energy consumption.* Either option A or option B of this component is to be completed only by PHAs that score below a grade C on component #1. Regardless of a PHA's score on component #1, it will not be scored on component #2 if all its units have tenant paid utilities. Annual energy/utility consumption expenses includes water and sewage usage. This component has a weight of x1.

(1) *Option A, annual energy/utility consumption expenses.*

(i) *Grade A:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have not increased.

(ii) *Grade B:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have not increased by more than 3%.

(iii) *Grade C:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 3% and less than or equal to 5%.

(iv) *Grade D:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 5% and less than or equal to 7%.

(v) *Grade E:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 7% and less than or equal to 9%.

(vi) *Grade F:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 9%.

(2) *Option B, energy audit.*

(i) *Grade A:* The PHA has completed or updated its energy audit within the past five years and has implemented all of the recommendations that were cost effective.

(ii) *Grade C:* The PHA has completed or updated its energy audit within the past five years, has developed an implementation plan and is on schedule with the implementation plan, based on available funds. The implementation plan identifies at a minimum, the items from the audit, the estimated cost, the planned funding source, and the anticipated date of completion for each item.

(iii) *Grade F:* The PHA has not completed or updated its energy audit within the past five years, or has not developed an implementation plan or is not on schedule with its implementation plan, or has not implemented all of the recommendations that were cost effective, based on available funds.

§ 901.40 Indicator #7, Resident Services and Community Building.

This indicator examines the PHA's efforts to deliver quality customer services and to encourage partnerships with residents, resident organizations, and the local community, including non-PHA service providers, that help improve management operations at the PHA; and to encourage programs that promote individual responsibility, self improvement and community involvement among residents and assist them to achieve economic uplift and develop self-sufficiency. Also, if applicable, this indicator examines PHA performance under any special HUD grant(s) administered by the PHA. PHAs can get credit for performance under non-HUD funded programs if they choose to be assessed for these programs. PHAs with fewer than 250 units or with 100% elderly developments will not be assessed under this indicator unless they request to be assessed at the time of PHMAP certification submission. This indicator has a weight of x1.

(a) *Component #1, economic uplift and self-improvement.* PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs can get credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA, if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* The PHA Board of Commissioners, by resolution, has adopted one or more economic uplift and self-improvement programs, examples include but are not limited to, the Section 3 program, homeownership, PHA support for resident education, training, child-care, job-placement programs, Head Start, etc., and the PHA can document that it has implemented these programs in developments covering at least 90% of its family occupied units, either directly or through partnerships with non-PHA providers, and the PHA monitors performance under the programs and issues reports concerning progress, including residents receiving services and residents employed, under these programs.

(2) *Grade C:* The PHA Board of Commissioners, by resolution, has adopted one or more economic uplift and self-improvement programs, including but not limited to, the programs described in grade A, above, and the PHA can document that it has implemented these programs in developments covering at least 60% of its family occupied units, either directly or through partnerships with non-PHA providers, and the PHA staff monitors performance under the programs and issues reports to the Board concerning progress, including residents receiving

services and residents employed, under these programs.

(3) Grade F: The PHA Board of Commissioners, by resolution, has not adopted one or more economic uplift and self-improvement programs, including but not limited to, the programs described in grade A, above, or the PHA has not implemented these programs in developments covering at least 60% of its family occupied units, either directly or through partnerships with non-PHA providers.

(b) *Component* #2, resident organization. This component has a weight of x1.

(1) *Grade A:* The PHA can document formal recognition of, a system of communication and collaboration with, and support for resident councils where these exist, and where no resident council exists, the PHA can document its encouragement for the formation of such councils.

(2) *Grade F:* The PHA cannot document formal recognition of, or a system of communication and collaboration with, or document its support for resident councils where these exist, or where no resident council exists, the PHA cannot document its encouragement for the formation of such councils.

(c) *Component* #3, resident involvement. Implicit in this component is the need to ensure a PHA's delivery of quality customer services to residents. This component has a weight of x1.

(1) *Grade A:* The PHA Board of Commissioners, by resolution, provides for resident representation on the Board and committees, and the PHA has implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions, including but not limited to, modernization and development programs, screening and other occupancy matters, relocation, the operating budget, resident programs, security and maintenance programs.

(2) *Grade C:* The PHA Board of Commissioners, by resolution, provides for resident representation on the Board and committees, and the PHA has implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions in the modernization and development programs and at least three of the remaining six areas described in grade A, above.

(3) *Grade F:* The PHA Board of Commissioners, by resolution, did not provide for resident representation on the Board and committees, or the PHA has not implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions in the modernization and development programs and at least three of the remaining six areas described in grade A, above.

(d) *Component* #4, *resident programs management.* This component examines a PHA's management of HUD funded resident programs. However, PHAs can also get credit for performance under non-HUD funded programs if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* If the PHA has any HUD funded special programs that benefit the residents, including but not limited to, the Family Investment Center (FIC), Youth Sports (YS), Food Banks, Health Clinics, Youth Apprenticeship Program (YAP), Family Self-Sufficiency (FSS), or a Resident Management (RM) or Tenant Opportunity Programs (TOP) where the PHA is the contract administrator, the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(2) *Grade C:* If the PHA has any HUD-funded special programs that benefit the residents, including but not limited to, the programs described in grade A, above, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(3) *Grade F:* If the PHA has any HUD-funded special programs that benefit the residents, including but not limited to, the programs described in grade A, above, the PHA cannot document that it is meeting at least 60% of its goals under the implementation plan for all of these programs.

§ 901.45 Indicator #8, security.

This indicator evaluates the PHAs performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation of tough applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug prevention or crime reduction grant(s). PHAs can get credit for performance under non-HUD funded programs if they choose to be assessed for these programs. PHAs with fewer than 250 units will not be assessed under this indicator unless they request to be assessed at the time of PHMAP certification submission. This indicator has a weight of x1.

(a) Component #1, Tracking and Reporting Crime Related Problems. This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it (1) tracks crime and crime-related problems in at least 90% of its developments, and (2) has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it (1) tracks crime and crime-related problems in at least 60% of its developments, and (2) reports incidents of crime to local police authorities to improve law enforcement and crime prevention.

(3) *Grade F:* The PHA Board, by resolution, has not adopted policies and the PHA has not implemented procedures or cannot document that it (1) tracks crime and crime-related problems in at least 60% of its developments, or (2) reports incidents of crime to local police authorities to improve law enforcement and crime prevention.

(b) *Component* #2, *Screening of Applicants.* This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it successfully screens out and denies admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents or PHA personnel;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937, for a minimum of a three year period beginning on the date of such eviction, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA has reasonable cause to believe is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures, but cannot document results in successfully screening out and denying admission to a public housing applicant who meets the criteria as described in grade A, above.

(3) *Grade F:* The PHA has not adopted policies or has not implemented procedures that result in screening out and denying admission to a public housing applicant who meets the criteria as described in grade A, above, or the screening procedures do not result in the denial of admission to a public housing applicant who meets the criteria as described in grade A, above.

(c) *Component* #3, *Lease Enforcement.* This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately evicts any public housing resident who:

(i) The PHA has reasonable cause to believe engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel;

(ii) The PHA has reasonable cause to believe engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in such a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures, but cannot document results in appropriately evicting any public housing resident who meets the criteria as described in grade A, above.

(3) *Grade F:* The PHA has not adopted policies or has not implemented procedures that document results in the eviction of any public housing resident who meets the criteria as described in grade A, above, or the eviction procedures do not result in the eviction of public housing residents who meet the criteria as described in grade A, above.

(d) *Component* #4, *Grant Program Goals.* This component examines a PHA's management of HUD-funded drug prevention or crime reduction programs. However, PHAs can also get credit for performance under non-HUD funded programs if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that the goals are related to drug and crime rates, and it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(2) *Grade C:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that the goals are related to drug and crime rates, and it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(3) *Grade F:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA does not have a system for documenting or cannot document that the goals are related to drug and crime rates, or cannot document that it is meeting 60% or more of its goals under the implementation plan for any and all of these programs.

§ 901.100 Data collection.

(a) Information on some of the indicators will be derived by the State/Area Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 60 calendar days after the end of the fiscal year covered by the certification:

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(3) A PHA may include along with its certification submission, rather than through an exclusion or modification request, any information bearing on the accuracy or completeness of the data used by HUD (corrected data, late reports, previously omitted required reports, etc.) in grading an indicator. HUD will consider this assertion in grading the affected indicator.

(4) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled and mod-troubled designations.

(5) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(6) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review.

(7) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, shall receive a grade of F for that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(8) A PHA's PHMAP score for individual indicators or components, or its overall PHMAP score, may be changed by the State/Area Office pursuant to the data included in the independent audit report, as applicable.

(9) A PHA's certification and supporting documentation will be post-reviewed by HUD during the next on-site review as determined by risk management, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

(c) For those developments of a PHA where management functions have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. The PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer of whatever title.

§ 901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

(1) Grade A = 10.0 points;
(2) Grade B = 8.5 points;
(3) Grade C = 7.0 points;
(4) Grade D = 5.0 points;
(5) Grade E = 3.0 point; and
(6) Grade F = 0.0 points.

(b) If indicators or components are designated as having additional weight

(e.g., x1.5 or x2), the points in each grade will be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to two decimal places. The total number of component weights for this purpose includes a one for components that are unweighted (i.e., they are weighted x1, rather than x1.5 or x2).

(d) *Adjustment for physical condition and neighborhood environment.* The overall PHMAP score will be adjusted by adding additional points that reflect the adjustment to be given to the differences in the difficulty of managing developments that result from physical condition and neighborhood environment:

(1) Adjustments shall apply to the following three indicators only:

(i) Indicator #1, vacancy rate and unit turnaround;

(ii) Indicator #4, work orders; and

(iii) Indicator #5, annual inspection and condition of units and systems.

(2) Definitions of physical condition and neighborhood environment are:

(i) *Physical condition:* refers to units located in developments over ten years old that require major capital investment in order to meet local codes or minimum HQS standards, whichever is applicable. This excludes developments that have been comprehensively modernized.

(ii) *Neighborhood environment:* refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts or census block groups on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued an adjusted PHMAP score in addition to the regular score based solely upon the certification of the PHA. The adjusted score shall be calculated as follows:

Percent of units subject to physical condition and/or neighborhood environment	Extra points
At least 5% but less than 10%	.5
At least 10% but less than 20%	.6
At least 20% but less than 30%	.7
At least 30% but less than 40%	.8
At least 40% but less than 50%	.9
At least 50%	1.0

(i) These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added.

(ii) Units in developments that have received substantial rehabilitation within the past ten years are not eligible to be included in the calculation of total PHA units due to physical condition only.

(iii) A PHA that receives a grade of A under indicators #4 and/or #5 may not claim the additional adjustment for indicator #1 based on physical condition of its developments, but may claim additional adjustment based on neighborhood environment.

(iv) A PHA that receives the maximum potential weighted points on indicators #1, #4 and/or #5 may not claim any additional adjustment for physical condition and/or neighborhood environment for the respective indicator(s).

(v) A PHA's score for indicators #1, #4 and/or #5, after any adjustment(s) for physical condition and/or neighborhood environment, may not exceed the maximum potential weighted points assigned to the respective indicator(s).

(4) If only certain units or developments received substantial rehabilitation, the additional adjustment shall be prorated to exclude the units or developments with substantial rehabilitation.

(5) The Date of Full Availability (DOFA) shall apply to scattered site units, where the age of units and buildings vary, to determine whether the units have received substantial rehabilitation within the past ten years and are eligible for a adjusted score for the physical condition factor.

(6) PHAs shall maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to adjustment.

(i) If the basis was neighborhood environment, the PHA shall have on file the appropriate maps showing the census tracts or census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received modernization funds.

(iii) PHAs shall also document that in all cases, units that were exempted for other reasons were not included in the calculation.

§ 901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicator or component in its management assessment, thereby excluding or modifying the impact of those indicator's or component's grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the State/Area Office along with supporting documentary justification, rather than during the appeal process.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

(d) Indicator #2, modernization, shall be automatically excluded by the State/Area Office if a PHA does not have an open modernization program.

(e) Indicator #7, resident services and community building, shall be automatically excluded by the State/Area Office for PHAs with fewer than 250 units, or with 100% elderly developments, unless they request to be assessed at the time of the PHMAP certification submission.

(f) Indicator #8, security, shall be automatically excluded by the State/Area Office for PHAs with fewer than 250 units unless they request to be assessed at the time of the PHMAP certification submission.

§ 901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of 90% or greater shall be designated high performers. A PHA shall not be designated as a high performer if it scores below a grade of C for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 901.130.

(b) PHAs that achieve a total weighted score of 90% or greater on its overall PHMAP score and on indicator #2, modernization, shall be designated mod-high performers.

(c) PHAs that achieve a total weighted score of less than 90% but not less than 60% shall be designated standard. Standard performers will be afforded incentives that include relief from reporting and other requirements, as described in § 901.130.

(d) PHAs that achieve a total weighted score of less than 60% shall be designated as troubled.

(e) PHAs that achieve 60% of the maximum calculation for indicator #2, modernization, shall be designated as mod-troubled.

(f) Each PHA shall post a notice of its final PHMAP score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the Federal Register.

(g) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(h) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review.

(i) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, will receive a grade of F for that indicator(s), and its overall PHMAP score will be lowered.

(j) A PHA's PHMAP score for individual an indicator(s), component(s) or its overall PHMAP score may be changed by the State/Area Office pursuant to the data included in the independent audit report, as applicable.

(k) In *exceptional circumstances,* even though a PHA has satisfied all of the indicators for high or standard performer designation, the State/Area Office may conduct any review as necessary, including a confirmatory review, and deny or rescind incentives or high performer status, as described in paragraphs (a) and (b) of this section in the case of a PHA that:

(1) Is operating under a special agreement with HUD;

(2) Is involved in litigation that bears directly upon the management of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as a confirmatory review, routine reports and reviews, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHMAP). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR § 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD–53012A, Section 4, Mission of the PHA). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(l) When a State/Area Office Public Housing Director acts for any of the reasons stated in paragraph (k) of this section, the State/Area Office will send written notification to the PHA with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(m) A PHA may appeal denial of high performer status in accordance with § 901.125.

§ 901.120 State/Area Office functions.

(a) The State/Area Office will assess each PHA within its jurisdiction on an annual basis:

(1) The State/Area Office will make determinations for high-performing, standard, troubled PHAs and mod-troubled PHAs in accordance with a PHA's PHMAP weighted score.

(2) The State/Area Office will also make determinations for exclusion and modification requests.

(b) Each State/Area Office will notify each PHA of the PHA's grade and the grade of the RMC (if any) assuming management functions at any of the PHA's developments, in each indicator; the PHA's management assessment total weighted score and status, and if applicable; its adjustment for physical condition and neighborhood environment; any determinations concerning exclusion and modification requests; and any deadline date by which appeals must be received. PHA notification should include offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status. The PHA must notify the RMC (if any) in writing, immediately upon receipt of the State/Area Office notification, of the RMC's grades.

(c) An on-site confirmatory review may be conducted of a PHA by HUD. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the State/Area Office pertaining to the remaining indicators.

(1) Whenever practicable, a confirmatory review should be conducted by HUD prior to the issuance of a PHA's initial notification letter. The results of the confirmatory review shall be included in the PHA's initial notification letter.

(2) If, in an exceptional circumstance, a confirmatory review is conducted after the State/Area Office issues the initial notification letter, the State/Area Office shall explain the results of the confirmatory review in writing, correct the PHA's total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(3) The State/Area Office shall conduct a confirmatory review of a PHA with 100 or more units under management that scores less than 60% for its total weighted score, or less than 60% on indicator #2, modernization, before initially designating the PHA as troubled or mod-troubled. The results of the confirmatory review shall be included in the PHA's initial notification letter.

(4) The State/Area Office shall conduct a confirmatory review on a yearly basis of all troubled and mod-troubled PHAs.

(5) The State/Area Office shall conduct a confirmatory review of a PHA with 100 or more units under management prior to the removal of troubled or mod-troubled designation.

(6) Independent confirmatory reviews (team members from other State/ Area Offices) shall be conducted of troubled PHAs with 1250 or more units under management prior to the removal of troubled designation.

(d) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered by the State/Area Office. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing,

correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(e) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(f) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, will receive a grade of F for that indicator(s), and its overall PHMAP score will be lowered by the State/Area Office. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(g) A PHA's PHMAP score for an individual indicator(s), component(s) or its overall PHMAP score may be changed by the Area/State Office pursuant to the data included in the independent audit report, as applicable. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(h) Determinations on appeals and on petitions to remove troubled or mod-troubled status will be made by the State/Area Office.

(i) Determinations of intentional false certifications will be made by the State/Area Office. State/Area Offices shall consult with the local Office of Inspector General for guidance in cases of determinations of intentional false certification.

(j) In exceptional circumstances, the State/Area Office may deny or rescind a PHA's status as a standard or high performer, in accordance with § 901.115(i), so that it will not be entitled to any of the areas of relief and incentives.

(k) The State/Area Office will maintain PHMAP files for public inspection in accordance with § 901.155.

§ 901.125 PHA right of appeal.

(a) A PHA has the right to appeal its PHMAP score to the State/Area Office, including a troubled designation or a mod-troubled designation. A PHA may appeal its management assessment rating on the basis of data errors (any dispute over the accuracy, calculation, or interpretation of data employed in the grading process that would affect a PHA's PHMAP score), the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, the denial of an adjustment based on the physical condition and neighborhood environment of a PHA's developments, or a determination of intentional false certification:

(1) A PHA may appeal its management assessment rating to the State/Area Office only for the reasons stated in paragraph (a) of this section:

(i) A PHA may not appeal its PHMAP score to the State/Area Office unless it has submitted its certification to the State/Area Office.

(ii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a deficient grade in any indicator or component was due to the fact the PHA did not submit a required report in a timely manner or without an approved time extension.

(iii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a failing grade in any indicator or component was due to the fact that the PHA did not provide justifying documentation to the independent auditor for any indicator(s) or component(s) the PHA certified to.

(2) The appeal shall be submitted to the State/Area Office and shall include supporting documentary justification of the reasons for the appeal.

(3) The State/Area Office will make determinations on initial appeals and will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(4) Appeals submitted to the State/Area Office without appropriate documentation will not be considered and will be returned to the PHA.

(b) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary for Public and Indian Housing.

(c) A PHA may appeal the denial of an initial appeal by the State/Area Office to the Assistant Secretary for Public and Indian Housing for the following reasons:

(1) Initial appeals denying high performer designation;

(2) Initial appeals denying the removal of troubled designation;

(3) Initial appeals denying the removal of mod-troubled designation;

(4) The denial of an appeal of a determination of intentional false certification;

(5) Data errors;

(6) The denial of exclusion or modification requests when their denial affects a PHA's total weighted score;

(7) The denial of an adjustment based on the physical condition and neighborhood environment of a PHA's developments;

(8) The refusal of a petition in accordance with § 901.140 to remove troubled or mod-troubled designations.

(d) A PHA may appeal its management assessment rating to the Assistant Secretary for Public and Indian Housing only for the reasons stated in paragraph (c) of this section.

(e) A PHA may not appeal its PHMAP score to the Assistant Secretary unless it has submitted its certification to the State/Area Office.

(f) Appeals submitted to the Assistant Secretary for Public and Indian Housing without appropriate documentation will not be considered and will be returned to the PHA.

(g) The date and place by which any appeal must be submitted will be specified in the letter from the State/Area Office notifying the PHA of any determination or action. For example, the State/Area Office initial notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

§ 901.130 Incentives.

(a) A PHA that is designated high performer or standard performer will be relieved of specific HUD requirements, effective upon notification of high or standard performer designation.

(b) A PHA shall not be designated a mod-high performer and be entitled to the applicable incentives unless it has been designated an overall high performer.

(c) High-performing PHAs, and RMCs that receive a grade of A on each of the indicators for which they are assessed, will receive a Certificate of

Commendation from the Department as well as special public recognition.

(d) Representatives of high-performing PHAs may be requested to serve on Departmental working groups that will advise the Department in such areas as troubled PHAs and performance standards for all PHAs.

(e) State/Area Offices may award incentives to PHAs on an individual basis for a specific reason(s), such as a PHA making the right decision that impacts long-term overall management or the quality of a PHA's housing stock, with prior concurrence from the Assistant Secretary.

(f) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36):

(1) PHAs will still be subject to regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(g) In exceptional circumstances, the State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.115(i).

§ 901.135 Memorandum of Agreement.

(a) After consulting the independent assessment team and reviewing the report identified in section 6(j)(2)(b) of the 1937 Act, a Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and/or mod-troubled. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem, or other relevant areas identified as problematic;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent actions, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(b) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director, State/Area Office of Public Housing, except as stated in (d) of this section; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the State/Area Office.

(c) The Department encourages the inclusion of the resident leadership in MOA negotiations and the execution of the MOA.

(d) Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and the execution of an MOA by the Assistant Secretary for Public and Indian Housing.

(e) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

§ 901.140 Removal from troubled status and mod-troubled status.

(a) A PHA has the right to petition the State/Area Office for the removal of a designation as troubled or mod-troubled.

(b) A PHA may appeal any refusal to remove troubled and mod-troubled designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.125.

(c) A PHA with fewer that 1250 units under management will be removed from troubled status by the State/Area Office upon a determination by the State/Area Office that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or mod-troubled, i.e., a total weighted management assessment score of 60% or more, and upon the conduct of a confirmatory review for PHAs with 100 or more units under management.

(d) A PHA with 1250 units or more under management will be removed from troubled status by the Assistant Secretary for Public and Indian Housing upon a recommendation by the State/Area Office when a PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled or mod-troubled status, i.e., a total weighted management assessment score of 60% or more, and upon the conduct of an independent confirmatory review (team members from other State/Area Offices).

§ 901.145 Improvement Plan.

(a) After receipt of the State/Area Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.125 or, in the case of an RMC, notification of its indicator grades from a PHA, a PHA or RMC shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the State/Area Office of its action to correct a deficiency. A PHA shall also forward to the State/Area Office an RMC's report of its action to correct a deficiency.

(c) If the State/Area Office determines that a PHA or RMC has not corrected a deficiency as required within 90 calendar days after receipt of its final

notification letter, the State/Area Office may require a PHA, or a RMC through the PHA, to prepare and submit to the State/Area Office an Improvement Plan within an additional 30 calendar days:

(1) The State/Area Office shall require a PHA or RMC to submit an Improvement Plan, which includes the information stated in (d) of this section, for each indicator that a PHA or RMC scored a grade of F.

(2) The State/Area Office may require, on a risk management basis, a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA scored a grade D or E, as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations.

(d) An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem in a PHA's or RMC's management assessment, or other relevant areas identified as problematic;

(2) Describe the procedures that will be followed to correct each deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The State/Area Office will approve or deny a PHA's or RMC's Improvement Plan, and notify the PHA of its decision. A PHA must notify the RMC in writing, immediately upon receipt of the State/Area Office notification, of the State/Area Office approval or denial of the RMC's Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the State/Area Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA or RMC within 30 calendar days of its receipt of the State/Area Office recommendations.

(g) If a PHA or RMC fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the State/Area Office will notify the PHA of its or the RMC's noncompliance. The PHA, or the RMC through the PHA, will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the ACC and HUD regulations.

§ 901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).

(a) PHAs that achieve a total weighted score of less than 60% on indicator #2, modernization, may be designated as mod-troubled.

(b) PHAs designated as mod-troubled may be subject, under the Comprehensive Grant Program, to a reduction of formula allocation or other sanctions (24 CFR § 968, Subpart C) or under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR § 968, Subpart B).

§ 901.155 PHMAP public record.

The State/Area Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years consistent with the Freedom of Information Act (5 U.S.C. 552) and in accordance with any procedures established by the State/Area Office to minimize disruption of normal office operations.

§ 901.200 Events or conditions that constitute substantial default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.135 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department shall determine that a PHA that has been designated as troubled and does not show significant improvement (10 percentage point increase) in its PHMAP score within one year after final notification of its PHMAP score are events or conditions that constitute a substantial default:

(1) A PHA shall be notified of such a determination in accordance with § 901.205(c).

(2) A PHA may waive, in writing, receipt of explicit notice from the Department as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide the Department with written assurances that all deficiencies will be addressed by the PHA. The Department will then immediately proceed with interventions as provided in § 901.210.

(d) The Department may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(e) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

§ 901.205 Notice and response.

(a) If information from an annual assessment, as described in § 901.100, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as ''troubled PHAs,'' or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing

authority(s) of the Board, and shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (d) of this section, the Department will take control of the PHA, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 901.210, and any additional authority for such action.

(d) Upon receipt of the notification described in paragraph (c) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in the Department's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

§ 901.210 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA; and

(4) The provision of intervention and assistance necessary to remedy emergency conditions.

(c) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 901.215 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a noncompetitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.220 Resident participation in competitive proposals to manage the housing of a PHA.

(a) When a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP) pursuant to section 6(j)(3)(A)(i) of the 37 Act, the RFP, in addition to publishing the selection criteria, will:

(1) Include a requirement for residents to notify the Department if they want to be involved in the selection process; and

(2) Include a requirement for the PHA that is the subject of the RFP to post a notice and a copy of the RFP in a prominent location on the premises of each housing development that would be subject to the management chosen under the RFP, for the purposes of notifying affected residents that:

(i) Invites residents to participate in the selection process; and

(ii) Provides information, to be specified in the RFP, on how to notify the Department of their interest.

(b) Residents must notify the Department by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify the Department must equal at least 20 percent of the residents, or the notification of interest must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

(c) If the required percentage of residents notify the Department, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory members are subject to all applicable confidentiality and disclosure restrictions.

§ 901.225 Resident petitions for remedial action.

The total number of residents that petition the Department to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

§ 901.230 Receivership.

(a) Upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or the Department, and upon a finding by the court that the circumstances or conditions that constituted substantial

default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

§ 901.235 Technical assistance.

(a) The Department may provide technical assistance to a PHA that is in substantial default.

(b) The Department may provide technical assistance to a troubled or non-troubled PHA if the assistance will enable the PHA to achieve satisfactory performance on any PHMAP indicator. The Department may provide such assistance if a PHA demonstrates a commitment to undertake improvements appropriate with the given circumstances, and executes an Improvement Plan in accordance with § 901.145.

(c) The Department may provide technical assistance to a PHA if without abatement of prevailing or chronic conditions, the PHA can be projected to be designated as troubled by its next PHMAP assessment.

(d) The Department may provide technical assistance to a PHA that is in substantial default of the ACC.

(e) The Department may provide technical assistance to a PHA whose troubled designation has been removed and where such assistance is necessary to prevent the PHA from being designated as troubled within the next two years.

Dated: December 10, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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