DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4497–F–05]

RIN 2577–AC08

Public Housing Assessment System (PHAS) Amendments to the PHAS

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Public Housing Assessment System (PHAS) regulation at 24 CFR part 902 to provide additional information and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident services and satisfaction with PHA services in public housing, including the technical review of physical inspection results and resident survey results, and appeals of PHAS scores. The rule also implements certain recently enacted statutory amendments. The rule takes into consideration public comments received on the June 22, 1999, proposed rule, as well as additional input HUD sought on this proposed rule through informal meetings with representatives of PHAs and public housing residents, and an analysis of PHAS advisory scores issued in calendar years 1998 and 1999.

The purpose of the PHAS is to function as a management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

DATES: Effective Date: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Technical Assistance Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Public Housing Assessment System (PHAS) provides a significant oversight tool that effectively and fairly measures the performance of a public housing agency (PHA) based on standards that are objective and uniform. The final rule implementing the PHAS was issued September 1, 1998 (63 FR 46596), and became effective October 1, 1998. Although the PHAS regulation became effective October 1, 1998, the September 1, 1998, final rule provided a delayed implementation date for the PHAS. The final rule took into consideration that time was needed by PHAS to become familiar with and make the transition to this new assessment system. The September 1, 1998, final rule provided that the PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999, and at that time, will replace the previous assessment system, the Public Housing Management Assessment Program (PHMAP). (As will be discussed later in this preamble, the schedule for full implementation of PHAS for certain PHAS was revised by notice published on October 21, 1999 (64 FR 56676).)

Under the PHAS, HUD evaluates a PHA based on the following four indicators: (1) The physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' assessment (through a resident survey) of the PHA's performance. HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

On June 22, 1999 (64 FR 33348), HUD published a rule that proposed to amend the PHAS regulation, codified at 24 CFR part 902, to provide additional information about the PHAS scoring systems, revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction in public housing, including the technical review of physical inspection results and appeals of PHAS scores. The June 22, 1999, rule also proposed to implement certain recently enacted statutory amendments. Although the June 22, 1999, rule only proposed to implement certain provisions of the PHAS regulation, for the convenience of the reader, HUD published the entire PHAS regulation.

On June 23, 1999, HUD published, in connection with the PHAS rule, several notices that provide additional information on the scoring process under the PHAS. These notices pertain to: (1) the Physical Condition Scoring Process (64 FR 33650); (2) the Financial Condition Scoring Process (64 FR 33700); (3) the Management Operations Scoring Process (64 FR 33708); and the Resident Service and Satisfaction Survey Scoring Process (64 FR 33712). The publication of these notices on June 23, 1999, was the second publication for each of these notices. All four notices were previously published on May 13, 1999, at 64 FR 26166, 64 FR 26222, 64 FR 26232, and 64 FR 26236. At both the time of the May 1999 publication and the June 1999 publication, HUD solicited comments on the scoring systems for each of the four PHAS Indicators. The issues raised by the public commenters on the Notices are addressed in this rule.

Sections II and III of the preamble to the June 22, 1999, proposed rule provided a detailed discussion of the changes proposed to be made to the PHAS regulations (see 64 FR 33348 at 33349–3351). The preamble to this final rule does not repeat that discussion. HUD refers the reader back to the June 22, 1999, proposed rule for the discussion of proposed changes.

The public comment period on the PHAS proposed rule closed on August 23, 1999. At the close of the public comment period, HUD had received 29 comments. The commenters included housing authorities, national organizations representing housing authorities, a law firm and a national policy organization. All the comments were carefully considered in the development of this final rule.

In addition to solicitation of public comments through the rulemaking process, following the close of the public comment period on the June 22, 1999 proposed rule, HUD held several meetings with PHAs and their representatives to discuss the PHAS, implementation of the PHAS, and to seek additional suggestions and recommendations on changes and refinements. HUD also solicited additional input from residents, and continued its analysis of the PHAS advisory scores that was started during the one year transition period following the September 1, 1998 final rule. This additional consultation and continued analysis of the PHAS was in keeping with HUD's commitment, made during the 1998 rulemaking process, to work closely with PHAs and residents and their respective representatives in making the transition to the PHAS, to make any necessary refinements to the PHAS as a result of testing PHAS and consultation with PHAs and residents, and to make PHAS an effective and efficient assessment system. This additional consultation and analysis also satisfies direction provided to HUD

in the Conference Report to HUD's Fiscal Year 2000 Appropriations Act (Pub. L. 106–74, 113 Stat 1047, approved October 20, 1999). The conferees directed HUD to (1) delay implementation of the PHAS until, in consultation with PHAs and their designated representatives, HUD conducted a thorough analysis of all advisory PHAS assessments and reviewed the GAO's analysis of the PHAS, and (2) publish a new consensus-based PHAS final rule that incorporates any recommendations resulting from this consultation and review process. Although GAO's report on its analysis of the PHAS has not been issued in final form, HUD has had ongoing discussions with GAO on its analysis of the PHAS to date, and has considered this analysis in the development of the final rule. This final rule published today reflects input from this consultation and review process.

Section III of this preamble highlights the changes made at this final rule stage. Section IV of this preamble addresses the significant issues raised by the public commenters. Section V of this preamble addresses the comments received on the scoring process notices published on June 23, 1999. In the preamble to the June 22, 1999 proposed rule, HUD specifically solicited comments on certain issues. The comments received on these issues are provided in Section VI of the preamble to this final rule. Section VII addresses general comments directed to this rulemaking.

HUD notes that some of the comments from housing authorities raised issues very specific to their public housing developments or their advisory scores, and were not issues directed to the regulatory provisions in the proposed rule or the scoring systems described in the notices. Accordingly, these comments are not addressed in this rule. HUD, however, appreciates PHAs advising HUD of these specific concerns. HUD has followed up with several PHAs and will continue to follow-up with PHAs where there appear to be issues of discrepancies or problems with their physical inspections, or with other aspects of the PHAS particular to the PHA that commented.

Section II of this preamble, which immediately follows, provides a brief overview of the public comments received on the proposed rule.

II. Overview of Public Comments on Proposed Rule

As noted earlier in this preamble, HUD received 29 comments on the PHAS proposed rule published on June 22, 1999. The majority of the commenters expressed their support for a uniform and objective system to assess a PHA's performance. The majority of the commenters, however, also believed that neither HUD nor PHAs were ready for full implementation of the PHAS commencing October 1, 1999, as originally scheduled. Many of the PHAs stated that they had only recently received their PHAS advisory scores, and needed additional time to review and comprehend these scores and prepare for implementation of PHAS. Other PHAs stated that HUD needed additional time to prepare for PHAS because PHAs were experiencing problems with electronic data submission to HUD, as required by the PHAS regulation, and problems were encountered with HUD systems. These commenters stated that neither HUD nor PHAs were ready for implementation of PHAS, and requested that HUD delay implementation of PHAS for another year. (Concerns about specific components of PHAS are addressed in Section IV of this preamble.)

HUD recognizes that with the start-up of any new system, problems will arise and aspects of the system will need to be fine-tuned. For these reasons, HUD provided, in its PHAS final rule issued on September 1, 1998, that PHAS would be implemented for PHAs with fiscal years ending on and after September 30, 1999. During the year of transition that preceded the scheduled implementation of PHAS (September 1998 to September 1999), HUD continued to examine its PHAS processes, tested PHAS systems, obtained feedback about the PHAS from PHAs and public housing residents, and, as a result, gained valuable information, which HUD has used to refine various elements of the PHAS. During this period, HUD also continued its PHAS education and training program for PHAs both through HUD's internet site and through training conducted across the nation. For these reasons, HUD does not believe delaying implementation of the PHAS for all PHAs for another full year is necessary. However, as HUD already has shown through publication of its October 21, 1999 notice, HUD agrees that additional time is necessary for certain PHAs, and additional time was provided to these PHAs.

HUD recognized that even with the one-year delayed implementation of PHAS, those PHAs which, under the September 1, 1998 final rule, will be the first PHAs to be issued PHAS scores (PHAs with fiscal years ending September 30, 1999 and December 31, 1999), additional time and/or additional assistance may be necessary to review advisory scores and prepare for compliance with the requirements of the new assessment system. For these PHAs, HUD already has advised that it will not issue PHAS scores for fiscal years ending September 30, 1999 and December 31, 1999. For these PHAs, HUD will issue a PHAS advisory scores for all four PHAS Indicators. For these PHAS, HUD also will issue an assessment score based only on the management component of the PHAS (subpart D of the part 902 regulation). Section III of this preamble discusses this assistance in more detail.

An additional concern raised by many PHA commenters is that a PHA's score under PHAS was very different from the score the PHA previously received under PHMAP, and PHAs were concerned about the discrepancy between the two scores. As HUD stated in the first PHAS proposed rule published on June 30, 1998, the PHAS is a different system from PHMAP. The PHAS was designed to assess more than the management operations of PHAs. The PHAS provides for an assessment of a PHA's physical condition, financial condition, management operations, and resident services and satisfaction, and the PHAS provides for this assessment to be done using, to the extent feasible, uniform and objective measures. With this broader assessment, a PHA's overall PHAS score will be different from the PHA's overall PHMAP score.

Another concern voiced by commenters is that the PHAS is not consistent with the flexibility provided to PHAs by the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) (commonly referred to as the ''Public Housing Reform Act.''). This statute which amended the U.S. Housing Act of 1937 (the 1937 Act) made significant changes to HUD's public housing and Section 8 assistance programs. HUD agrees with the commenters that the Public Housing Reform Act increased PHA flexibility with respect to management and operations of their programs. The statute, however, did not relieve HUD of the obligation to fulfill its public trust responsibilities, which include the appropriate oversight of the entities receiving taxpayers funds to administer HUD programs. To the contrary, HUD believes that the Public Housing Reform Act strengthened HUD's oversight authority with respect to assessment of the performance of PHAs.

On the subject of improvement and refinement of the PHAS, HUD notes that the number of comments and concerns raised about PHAS were significantly less than those raised during the initial

rulemaking on the PHAS in 1998. HUD received 776 comments on the first PHAS proposed rule, published on July 30, 1998. Although 670 of the 776 comments were form letters, in reviewing the comments raised on the first PHAS proposed rule and this second proposed rule, HUD believes that it has made significant progress in addressing initial concerns about the PHAS, and both HUD and PHAs benefitted from the transition period that followed the September 1, 1998, final rule.

HUD recognizes that there is anxiety about significant change, and the PHAS represents a marked departure from the PHMAP. HUD believes, however, that the PHAS represents not only a marked departure from, but an improvement over, the PHMAP. HUD also acknowledges that the PHAS is not a perfect system, but no system is perfect. HUD expects that in the implementation of PHAS, problems will arise from time to time. Where those problems result from HUD's systems, HUD will work to quickly remedy the problems and correct any errors. Where the PHAS shows that problems are with the PHA in the performance of one or more areas, HUD will work with the PHA to remedy its problems, and, when necessary, take appropriate actions to ensure that PHAs are in compliance with applicable laws and regulations. At the foundation of PHAS is the goal to have all PHAs perform as high performers, which means PHAs are delivering decent, safe and affordable housing to their residents.

III. Changes Made to the PHAS at the Final Rule Stage

PHAS Scoring Notices

The scoring notices for the four PHAS Indicators were published on June 23, 1999, and HUD solicited public comment on these notices. As a result of public comment and further consultation with PHAs and residents, several clarifying changes and improvements were made to the notices. Each notice will describe the changes made since the previous publication. These four notices published in conjunction with this final rule, to be published soon, establish the scoring processes for the four PHAS Indicators. These scoring notices will remain in place as published. As provided in the rule, in the event HUD decides to make any future substantive changes to these notices, they will be published for comment before being issued in final form.

Two scoring notices will be published for the Management Operations Indicator. As will be explained later in this preamble, this final rule revises the sub-indicators of the Management Operations Indicator. One Management Operations scoring notice establishes the scoring process for the Management Operations Indicator, before it was revised by this final rule, and the second notice establishes the scoring process for the revised Management Operations Indicator.

PHAS Regulation

In this final rule, HUD has made the following changes to the regulation:

• Section 902.1 (Purpose and General Description), HUD revised paragraph (e) that provided that a PHA may not change its fiscal year for the first three full fiscal years following October 1, 1998. HUD added language to this section to provide that a PHA may not change its fiscal year ''unless the change has been approved by HUD.'' The requirements under the new PHA Plan regulations, published as an interim rule on February 18, 1999 (64 FR 8170), and as a final rule on October 21, 1999 (64 FR 56844), may necessitate a change in fiscal years for some PHAs in future years. This language will provide HUD and the PHAs with the flexibility to address this matter if necessary.

• Section 902.5 (Applicability) was reorganized to include the discussion of the applicability of the PHAS regulation to Resident Management Corporations (RMCs) and Alternative Management Entities (AMEs) in one paragraph of this section, revised paragraph (a). Revised paragraph (a) recognizes that RMCs may now be direct recipients of certain HUD funds. Section 532 of the Public Housing Reform Act amended section 20 of the 1937 Act to provide, among other things that the Secretary shall directly provide assistance from the Operating and Capital Funds to a RMC under certain conditions. If the Secretary provides direct funding to RMCs (DF–RMCs) as provided by section 20, section 20 provides that the PHA shall not be responsible for the actions of the RMC.

Revised paragraph (a) provides that RMCs and DF–RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. Paragraph (a) provided that because the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable). Revised paragraph (a) includes this language but also provides that the PHAS score of a PHA will not be based on developments managed by a DF–RMC. Again, a PHA is not responsible for developments managed by a DF–RMC.

References in the PHAS regulation to PHAs include RMCs, unless otherwise stated. References in the PHAS regulation to RMCs include DF–RMCs, unless otherwise stated, and the PHAS regulation is applicable to RMCs, including DF–RMCs, unless otherwise stated.

Revised paragraph (a) also clarifies that AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or the PHAs for which they assumed management responsibilities.

• In § 902.5, as part of the reorganization of this section, HUD amended paragraph (b) to reflect the following revised implementation schedule of PHAS for PHAs with fiscal years ending September 30, 1999, or December 31, 1999, that was published in the **Federal Register** on October 21, 1999. Section 902.5 provides that for PHAs with fiscal years ending September 30, 1999, or December 31, 1999, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(1) *PHAS Advisory Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will be issued a PHAS advisory score for all four PHAS Indicators. The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections will be conducted using HUD uniform physical inspection protocol. For these PHAs to successfully make the transition to PHAS, they must comply with the requirements of PHAS and be assessed by HUD under the PHAS, if only on an advisory basis.

(2) *Management Assessment Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of part 902.

This section also provides that PHAs with fiscal years ending after December 31, 1999, will be issued PHAS scores.

• In § 902.7 (Definitions), HUD added a definition of ''Act'' to refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), which is referenced throughout the rule.

• In § 902.7, HUD removed language from the definition of ''Alternative Management Entity (AME)'' which was duplicative of the language in § 902.5. HUD included in the definition of ''AME'' reference to an entity that has entered into a Regulatory and Operating Agreement with a PHA to clarify that the units managed by an AME under this agreement are covered by this rule.

• In § 902.7, in the definition of ''reduced actual vacancy rate within the previous three years,'' HUD clarifies that this rate only applies to PHAs with fiscal years ending September 30, 1999, and December 31, 1999. As provided in the PHAS Transition Notice, published on October 21, 1999, PHAs with fiscal years ending September 30, 1999, and December 31, 1999, will be assessed under requirements of part 902, subpart D, as in effect before issuance of this final rule.

• In § 902.7, HUD added definitions for ''unit months available'' and ''unit months leased.''

• In § 902.7, HUD removed the definition of ''vacancy loss'' and replaced this definition with one for ''occupancy loss.''

• In § 902.20 (Physical Condition Assessment), HUD clarifies that occupied units, which are the units subject to physical inspection are subject to inspection but not as dwelling units; for example, units used for daycare or for meetings (units used for such purposes are inspected as common areas).

• In § 902.23 (Physical Condition Standards), HUD added language to clarify that HUD's Uniform Physical Condition Standards are concerned with acceptable basic living conditions, not the decor or cosmetic appearance of the housing.

• In § 902.23, HUD added language to clarify that the five major inspectable areas may include the components for each area listed in this section, but need not, in each case, include all these components, or may include other components, similar to those listed, but unique to the housing being inspected, or referred to by another name other than the term referenced in the rule.

• In § 902.24 (Physical Inspection of Properties), HUD added language in the definition of ''score'' in paragraph (b) that highlights that PHAs are notified of health and safety deficiencies at the time of the physical inspection and the PHA is expected to promptly address all health and safety deficiencies.

• In § 902.25 (Physical Condition Scoring and Thresholds) HUD revised paragraph (b)(3)(i) to remove reference to outdated form HUD 50072, and to provide that the certification required under this paragraph shall be in the manner prescribed by HUD.

• In § 902.25, HUD added a new paragraph (c) that provides for adjustment of the physical condition score based on certain circumstances that include: (1) Inconsistencies between local code requirements and HUD's inspection protocol, or conditions which are permitted by variance or license, or which are preexisting physical features; (2) deficiencies in the physical condition of the property, the cause of which were beyond the control of the PHA (but the PHA is responsible for correction); and (3) modernization work in progress in a dwelling unit.

• In §§ 902.25, 902.35 (Financial Condition Scoring and Thresholds) and 902.45 (Management Operations Scoring and Threshold), HUD clarified that to receive a passing score under the Physical Condition, Financial Condition and Management Operations Indicators, a PHA must achieve a score of at least 18 points or 60 percent of the available points under these indicators.

• In § 902.26 (Physical Inspection Report), HUD added new subparagraphs to paragraph (a) to provide a process for correcting exigent health and safety deficiencies identified during the physical inspection and noted on the physical inspection report before the physical inspection report becomes final.

• In § 902.33 (Financial Reporting Requirements), HUD provides an extension of time to submit the required financial information. For the following four quarters—September 30, 1999, December 31, 1999, March 31, 2000 and June 30, 2000—PHAs will receive an automatic one month extension for the submission of their required financial information. For fiscal years ending after June 30, 2000, the final rule provides PHAs with a 15-day ''grace'' period beyond the submission due date. This same automatic one month extension is provided for the information required to be submitted under PHAS Indicator #3 (Management Operations) and Indicator #4 (Resident Services and Satisfaction) (see discussion of § 902.60 below).

• In § 902.33, HUD also revised paragraph (a) to add a new paragraph (3). New paragraph (3) provides under the scoring process for the Financial Condition Indicator, no points will be deducted under the Current Ratio or Monthly Expendable Fund Balance components for a PHA that has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator, and is not required to prepare a follow-up survey plan under the Resident Service and Satisfaction Indicator. For a PHA that has too high liquidity or reserves but does not meet the qualifications described in paragraph (a)(3)(i), the PHA may appeal point deductions under the Current Ratio or Monthly Expenditure Fund Balance components based on mitigating circumstances if the PHA's physical condition score is at least 60 percent of the total available points under the Physical Condition Indicator. The appeal may be made without regard to change in designation. The appeal process is similar to that provided for adjustments of scores under the Physical Condition Indicator.

• In § 902.35 (Financial Condition Scoring and Thresholds), HUD added a new paragraph (paragraph (a)(2)) to provide that PHAs with fiscal years ending September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000, will receive an advisory score for HUD's financial assessment of the PHA's entity-wide operations. An entity-wide assessment includes financial information on other HUD funds, such as Section 8 or Community Development Block Grant funds (received from the CDBG grantee), as well as funds from non-HUD sources.

HUD's notice published on October 21, 1999, already notified PHAs with fiscal years ending September 30, 1999 or December 31, 1999 that they would receive a financial advisory score. Although the final rule extends the entity-wide advisory score to PHAs with fiscal years ending March 31, 2000, and June 30, 2000, the rule does not exempt these latter PHAs from a PHAS financial score.

PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive a PHAS financial score based on their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial scores that are based on the PHA's entity-wide operations. HUD has extended entity-wide advisory scores to PHAs with fiscal years ending March 31, 2000, and June 30, 2000, as a result of HUD's consultation with the industry, and because of the conversion from HUD accounting to GAAP. The chart that follows provides an overview of the financial scoring process into the year 2000.

Quarter	Financial condition		Management		Physical	Resident
	Public Housing	Entity-wide	Six Indicators	Five Indicators		
9/30/99	Advisory	Advisory	Score	N/A	Advisory	Advisory.
12/31/99	Advisory	Advisory	Score	N/A	Advisory	Advisory.
3/31/00	Score	Advisory	N/A	Score	Score	Score.
6/30/00	Score	Advisory	N/A	Score	Score	Score.
9/30/00 and beyond	N/A	Score	N/A	Score	Score	Score.

• In § 902.35, HUD reversed the order of Net Income or Loss divided by the Expendable Fund Balance (Net Income) and Expense Management/Utility Consumption (Expense Management). Expense Management now precedes Net Income. The order was reversed to be consistent with the previously published guidance on the PHAS Financial Condition Indicator.

• In § 902.35, HUD revised the definitions of ''Number of Months Expendable Fund Balance'' and ''Occupancy Loss.''

• In § 902.43 (Management Operations Performance Standards), HUD removed Management sub-indicators #1 (Vacancy Rate and Unit Turnaround Time) and #3 (Rents Uncollected). HUD agreed with commenters that stated that these factors are assessed under the Financial Condition Indicator through the ''Occupancy Loss'' and ''Tenant Receivable Outstanding'' (formerly Days Receivable Outstanding) components, and the inclusion of these components under both the Financial Condition Indicator and Management Operations Indicator was duplicative.

HUD notes, however, that for PHAs with fiscal years ending September 30, 1999, and December 31, 1999, which are being assessed under 24 CFR part 902, subpart D (Management Operations) and only receiving PHAS advisory scores, HUD's assessment will be based on the requirements of subpart D as in effect before issuance of this final rule. This means that the management assessment will be based on all six sub-indicators of the Management Operations Indicator.

The amendment made to the sub-indicators in the Management Operations Indicator by this final rule now provides for five sub-indicators. Former sub-indicator #6—Security and Economic Self-Sufficiency—are now two separate sub-indicators. Although the rule does not reflect the points for each of the sub-indicators of the Management Operations Indicator, these are provided in the Management Operations scoring notice, the points for the six sub-indicators have been redistributed proportionally among the current five sub-indicators. As a result of this redistribution, economic self-sufficiency sub-indicator is assigned greater weight than assigned at the proposed rule stage. This redistribution of points will be reflected in the new Management Operations scoring notice.

• In § 902.43, HUD removed language from paragraph (b) that provided that a PHA in reporting under the Management Operations Indicator which was unable to submit its information electronically, should consider utilizing library or local government location to access the internet. This paragraph also provided that in the event local resources were not available, a PHA should go to the nearest HUD Public and Indian Housing program office for assistance. This language was informational only, and not appropriate for the regulatory text. If a PHA does not have internet capability, the PHA should seek assistance from local resources in submitting its information electronically to HUD, and the HUD offices are willing to assist PHAs in meeting their reporting requirements under the PHAS. This language was included in the PHAS rule issued in 1998. HUD believes that as we approach the new millennium the number of PHAs that needed this type of assistance in 1998 are dwindling quickly and it is HUD's intent, consistent with this Administration's goal, that information is provided and exchanged electronically.. [Note: HUD made this same change in § 902.50(c) and 902.51(c)].

• In § 902.50 (Resident Service and Satisfaction), HUD added language in paragraph (c) that advises that at the completion of the resident survey process, a PHA will be audited as part of the Independent Audit to ensure the resident survey process has been managed as directed by HUD. HUD also added language to clarify that (1) implementation plans are to be submitted to HUD via the internet; and (2) any follow-up plans that a PHA may be required to submit are to be submitted with the PHA's Annual Plan submission in accordance with 24 CFR part 903.

• In § 902.51 (Updating of Resident Information), HUD added language in paragraph (c) to clarify that the electronic updating of the public housing unit address list is to be done through the internet. HUD also revised paragraph (c)(3) to provide that REAC will respond to a PHA's request to update its list manually upon REAC's receipt of the PHA request.

• In § 902.52 (Distribution of Survey to Residents), HUD replaced the term ''residents'' with ''units'' in several places to emphasize that the survey selection process is random and objective; it is based on occupied units and not on particular information about the residents in those units.

• In § 902.60 (Data Collection), HUD made the same revision to paragraph (a) as HUD made to § 902.1(e).

• In § 902.60, HUD added the extensions in filing submission that it provided in § 902.33, discussed above.

• In § 902.63 (PHAS Scoring), HUD clarified in paragraph (c) when a PHA's overall PHAS score becomes its final PHAS score. HUD also reorganized the paragraphs in this section to present a more logical order. HUD also added a new paragraph (d) to provide that REAC will perform an audit review of a PHA whose audit has been found deficient.

• In § 902.67 (Score and Designation status), HUD revised the definition of ''standard performer'' in paragraph (a) to clarify that to be designated a standard performer a PHA must receive a passing score in PHAS Indicators #1 (Physical), #2 (Financial), and #3 (Management Operations).

• In § 902.67, HUD added language in paragraph (b) that notes, in accordance with new section 5A(j) of the 1937 Act (42 U.S.C. 1437c–1), that a PHA that achieves a total score of less than 70 percent but not less than 60 percent is at risk of being designated troubled. New section 5A(j) provides generally that HUD may require, for each PHA that is at risk of being designated as troubled under section 6(j)(2) of the 1937 Act, that the public housing agency plan for such PHA include any additional information that the

determines to be appropriate. The proposed rule did not clearly indicate PHAs that are at risk of being troubled.

• In § 902.67(c)(2), HUD included language that was in the previous PHAS rule issued on September 1, 1998, but inadvertently omitted in the June 22, 1999, proposed rule. This language pertains to troubled with respect to modernization and was in the previous PHAS rule at § 902.67(c). The language reinserted, however, is revised from the September 1, 1998 final rule, to reflect that the Capital Fund Program is replacing the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program.

• In § 902.67, HUD provides that a PHA whose designation as a standard or high performer has been withheld or rescinded, as a result of a PHA's involvement in any of the circumstances described in § 902.67(d) (e.g., involved in litigation bearing directly upon the physical, financial or management performance of a PHA, operating under a court order) may request the Assistant Secretary for Public and Indian Housing to reinstate the designation and provide the basis for the reinstatement. HUD clarifies that a designation assigned or withheld under § 902.67, and any reinstatement determined appropriate by the Assistant Secretary, does not result in a change in the PHA's PHAS score.

• In § 902.68 (Technical Review of Results of PHAS Indicators #1 and 4), HUD revised the paragraph concerning ''unit error'' to clarify that only a PHA's public housing units are considered in the scoring.

• In § 902.69 (PHA Right of Petition and Appeal), HUD revised paragraph (c) to clarify the procedures that govern appeal of troubled designation and refusal to remove trouble designation. These procedures were present in the September 1, 1998 final rule but became merged, in some aspects inappropriately, with the procedures that govern appeal of a PHAS score. In paragraphs (d) and (e) of this section, HUD also clarified how final decisions are reached by the Board of Review. The Board of Review reaches a decision on the appeal and the PHA is notified of the final decision by the Assistant Secretary for Public and Indian Housing.

• In § 902.71 (Incentives for High Performers), a new paragraph (a)(4) is added to reference the performance reward available to high performing PHAs under the regulations of the Capital Fund Formula. (See § 905.10(j) of the proposed rule published on September 14, 1999. A performance reward factor is expected to be part of this formula and part of the final rule on the Capital Fund Formula to be published in the near future.)

• In § 902.71, HUD clarifies that the bonus points available to high performers in HUD's funding competitions, where permissible by statute and regulation, will be provided in HUD's notices of funding availability.

• In § 902.73 (Referral to an Area HUB/Program Center), HUD removed language in paragraph (b) that described the contents of the Improvement Plan because this language was duplicative of that in paragraph (d) of this section.

• In § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)), HUD revised paragraph (a) to include PHAs designated troubled under the PHMAP regulations in 24 CFR part 901. Since PHAS is a fairly new system, this revision recognizes that some PHAs were designated as troubled (and remain under such designation) under the PHMAP regulations. PHAs designated troubled under PHMAP are subject to the provisions of §§ 902.75 through 902.85.

• In § 902.75(a), HUD clarifies that the referral by the TARC of a troubled PHA to a HUB/Program Center is for the purpose of having the HUB/Program Center assist with the oversight and monitoring of the PHA's planned recovery. In § 902.75, HUD is also removing the requirement of a Recovery Plan. On further consideration, HUD believes that the Memorandum of Agreement (MOA) is the only required document necessary to address the plan for recovery of a troubled PHA.

• In § 902.75, HUD also clarifies in paragraph (b)(2) that performance targets may be annual, quarterly, or monthly.

• In § 902.75(d), HUD clarifies that the PHA must improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1 (Physical Condition), #2 (Financial Condition) and #3 (Management Operations).

• In § 902.75(e)(4), HUD clarifies that the Board of Commissioners will be a party to the MOA unless exempted by the TARC (not the HUB/Program Center as the rule previously provided). HUD also revised the example provided in paragraph (g) of this section to be more helpful to the reader.

• In § 902.75, HUD adds a new paragraph (h) to address the audit review of a PHA designated as troubled. This new provision is based on practice under the PHMAP regulations.

Under the PHMAP regulations, a troubled PHA with more than 100 units was required to undergo a confirmatory review by HUD before the PHA's troubled designation was removed. This review is conducted by a team appointed by the Office of Public and Indian Housing. For large troubled PHAs, the team is comprised of housing specialists and financial analysts from throughout the country (as opposed to staff from HUD's Field Office with jurisdiction over the PHA). This process provides for an accurate and objective assessment of the PHA and appropriately removes these duties from the Field Office that provides the technical assistance to the PHA.

As revised by this final rule, the PHAS will provide a similar process for PHAS, but only in relation to the PHAS Financial Indicator. REAC may, at its discretion, select an audit firm that will perform the audit of PHAs identified as troubled under PHAS, and its predecessor PHMAP, and REAC will serve as the audit committee for the audit in question. At its discretion, REAC will either select the auditor from the existing request for proposals of audit work issued by the PHA, or REAC will conduct its own request for proposals and will conduct the selection process. If REAC conduct its own request for proposals and conducts the selection process, the audit engagement may be paid from funds assigned to the PHA by HUD for such purposes, as provided by law.

In § 902.77 (Referral to the Departmental Enforcement Center), HUD clarifies that the Assistant Secretary for Public and Indian Housing makes the determination that a troubled PHA shall be declared in substantial default.

In addition to these changes, HUD has made editorial and technical changes throughout the rule for purposes of clarity.

IV. Discussion of Public Comments

This section presents HUD responses to the significant issues raised by the public commenters. The organization of the public comments generally follows the organization of the proposed rule. The heading ''Comment'' states the comment or comments made by the commenter or commenters, and the heading ''Response'' presents HUD's response to the issue or issues raised by the commenters. With respect to comments about the scoring processes of the PHAS Indicators, the majority of these comments are discussed in Section V of this preamble, but there may be some overlap in discussion of the processes between this Section IV and Section V.

Subpart A—General Provisions

Section 902.1 Purpose and General Description

Comment. The PHAS fails to consider differences related in the overall mission and goals of PHAs nationally. The PHAS assessment does not take relative size, mission, condition, geographic, and other local variances into consideration. The effect of a ''one-size-fits-all'' construct is in direct opposition to the intent of the Quality Housing and Work Responsibility Act of 1998, which promotes and encourages local flexibility. Additionally, PHAs that serve the elderly or persons with disabilities should not be compared to PHAs that predominantly serve low-income families.

Response. PHAS, like PHMAP, was never intended to be an all encompassing assessment tool. There are many aspects of PHA management that PHMAP did not assess and the PHAS does not assess. Instead, key indicators of performance, that are common to all PHAs, are identified for review. In determining how best to structure the PHAS, HUD's approach was to strike a balance on many issues, including those raised by this comment. HUD decided that uniform, standardized, and objective criteria among its programs are essential to effective management. A standard of decent, safe and sanitary for housing should not be dependent upon the location of a PHA's public housing or the residents that it serves. Similarly, the PHA's financial condition or the ability to manage its operations in accordance with certain standards should not be dependent upon geography, or residents served. HUD notes that where local variances should be taken into consideration, they will be, as provided in the changes made in this final rule.

With respect to flexibility, HUD regulations governing individual public housing programs provide PHAs with the needed flexibility to tailor the operation of their programs and to manage their properties in a manner that is sensible given their particular circumstances. HUD believes that the PHAS significantly improves upon the PHMAP.

Section 902.5 Applicability

Comment. Private owners or owner entities that operate mixed-income developments that contain public housing units do not appear to fit the definition of ''Alternative Management Entity'' (AME) and therefore should be addressed separately. Additionally, there are concerns about several aspects of the PHAS to AMEs. All PHAS indicators are not applicable to mixed-finance owner entities or public housing units owned and operated by such entities. PHAS Indicator #1 (Physical Condition) and some but not all of the components of PHAS Indicator #3 (Management Operations) are applicable to these entities but not PHAS Indicator #2 (Financial Condition) and not PHAS Indicator #4 (Resident Service and Satisfaction Indicator). These entities should be exempt from assessment under Indicators #2 and #4.

Response. Entities that manage mixed-income, and/or mixed-finance developments fall under the definition of an AME. An AME is defined as ''a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is duly appointed or contracted (for example, by court order or agency action) to manage all or part of a PHA's operations'' (24 CFR 902.7). An owner entity managing a mixed-income, mixed-finance development has a contractual relationship with the PHA, usually through a Regulatory and Operating Agreement, to operate the public housing units that are covered by the PHA's Annual Contributions Contract (ACC) contract with HUD. Therefore, for the purpose of PHAS, private owners or entities operating mixed-income developments that include public housing units are treated as AMEs.

HUD disagrees with the comment that all PHAS Indicators are not applicable to entities that manage mixed-finance developments. Components of PHMAP measured the financial condition of these entities and resident services. Accordingly, HUD does not believe there is a basis for exempting these entities from the assessments performed under PHAS Indicators #2 and #4.

Subpart B—PHAS Indicator #1: Physical Condition

Certain comments specifically addressed to the PHAS Notice on the Physical Condition Scoring Process may be applicable to the regulations in Subpart B and vice versa. Please see Section V of this preamble.

Section 902.23 Physical Condition Standards for Public Housing—Decent, Safe, and Sanitary Housing in Good Repair (DSS/GR)

Comment. The definition for ''good repair'' is not defined in the rule. This term needs to be defined in the rule.

Response. The term ''good repair,'' like the terms ''decent, safe, and sanitary,'' is defined in § 902.23, and in § 5.703 of HUD's Uniform Physical Condition Standards rule, published in final on September 1, 1998 (63 FR 46566). For each of the major inspectable areas that are inspected as part of a physical condition inspection, these terms are defined through descriptions such as ''proper operating condition,'' and ''structurally sound'' of the items that make up the inspectable areas. These terms were elaborated upon in the PHAS Notice on the Physical Condition Scoring Process, and in the preamble to both the June 30, 1998, PHAS proposed rule, and the June 30, 1998, Uniform Physical Condition Standards proposed rule. As noted in both preambles, the statutory physical condition standard for public housing required by the 1937 Act was expressed in terms of ''decent, safe and sanitary.'' (However, the physical condition standard presently required under section 2 of the 1937 Act is referred to as ''decent and safe'' which HUD does not consider a substantive change to the previous statutory standard.) For FHA-related properties, the statutory standard is expressed in terms of ''good repair and condition.'' In adopting physical standards that are applicable to both public housing and FHA-related properties, HUD uses the descriptive term—''decent, safe, sanitary and in good repair.''

Comment. The physical condition standards are not clearly defined. The standards by which PHAs are judged must be defined.

Response. The preceding response addresses this issue to some extent. Additionally, HUD addressed this issue in its proposed rule on Uniform Physical Condition Standards, published on June 30, 1998. In the preamble to that proposed rule, HUD stated that the standards are intentionally broad and are defined with terms such as in ''proper operating condition,'' ''adequately functional,'' and ''free of health and safety hazards.'' Given the differences in design of HUD housing, and the different types of electrical and utility systems that will be encountered, a rule cannot define or describe proper operating condition for every type of system, or every type of element. This information is rightly placed in supplementary documents, which have been made available to PHAs directly, through HUD's website, since 1998. This information also was made available through notices published in the **Federal Register** in May 1999 and June 1999, as discussed earlier in this preamble.

Section 902.24 Physical Inspection of PHA Properties.

Comment. The majority of the commenters commended HUD for removing vacant units from the physical inspection process. Several commenters, however, stated that the rule also should exclude from inspection units that are in the process of being modernized. As an example, commenters noted that deficiency ratings should not be assigned to units or buildings to be replaced as part of HOPE VI revitalization. This information can be obtained by HUD's review of the PHA's on-going modernization projects and Physical Needs Assessment.

Response. HUD believes that many of the concerns raised by the commenters with respect to modernization result from advisory inspections that occurred before HUD issued its proposed rule on June 22, 1999. HUD addressed concerns regarding modernization issues in the June 22, 1999, proposed rule. The June 22, 1999, proposed rule advised that it would add to the PHAS rule (and this final rule includes this amendment), three categories of exemptions which assist PHAs by providing flexibility in scoring for reasonable unforeseen circumstances in conducting physical inspections. The exemptions consist of the following categories of units that are not under lease: (1) units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over, i.e., the period between which one resident has vacated a unit and a new lease takes effect; (2) units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded; and (3) off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between five to seven days) and which are not included under any approved rehabilitation plan.

HUD declines to exempt occupied units that are undergoing modernization from physical inspections. If a unit is occupied it must be decent, safe, sanitary and in good repair. However, the final rule provides that HUD may determine occupied dwelling units undergoing modernization work in progress require an adjustment to the physical condition score and will consider such adjustment as provided in § 902.25(c)(3) of this final rule.

Comment. PHAs should be given credit for items needing repair or modernization and for which repair or modernization is pending but not yet begun because of lack of funding due to Federal budget decisions. PHAs should not be penalized for circumstances (such as funding) beyond their control. Rather than a ''point in time'' physical inspection, PHAs should be given points for doing their jobs well under difficult circumstances.

Response. The 1937 Act and the ACC place the responsibility for maintaining public housing in the hands of the PHA. HUD understands budgetary constraints, but part of good management is maintaining housing in a decent, safe and sanitary condition even when funding sources are limited. Maintaining housing in acceptable living condition is not just a regulatory standard but also a statutory standard. HUD's Uniform Physical Condition Standards and the PHAS rule assess the extent to which PHAs are maintaining public housing in accordance with the statutory standard.

Of necessity, the inspection of the public housing inventory is an inspection at ''a point in time.'' HUD believes it would be misleading to report a condition of public housing other than the actual condition of the housing. If a PHA maintains its housing in a condition that is decent, safe, and sanitary despite limited funding, the PHA is fulfilling its statutory mandate and will receive a passing score under PHAS Indicator #1.

With respect to modernization needs, HUD notes that the final rule provides an adjustment to the physical condition score for modernization work in progress. (Please see earlier discussion on § 902.25(c)(3).)

Comment. The rule needs to clarify how units are selected for physical inspection. Rating a PHA only on a certain percentage of the units inspected is unfair.

Response. To ensure accuracy in the physical condition standards and inspection requirements, units are chosen for physical inspections by a statistically valid random sample determined by the size of the property. The sample does not distinguish between the type of property(s) (i.e., elderly or family) or units (i.e., one bedroom, two bedroom, three bedroom, etc.) that are involved. The system generated sample will evenly distribute the buildings and units to be inspected among the different types if more than one building type is contained in a particular property.

In developing the PHAS rule, HUD considered the extent to which it needed to inspect all units or some lesser number. HUD concluded that it should not inspect all units because that would be costly and PHAs are already required to inspect 100% of their units and systems under PHAS Indicator #3, Management Operations. HUD decided to use a statistically valid random sample methodology. This methodology is accepted throughout the scientific and business communities for making assessments regarding large universes.

Comment. PHAs should not receive deficiency ratings for items that are outside of a PHA's control, e.g., city or town sidewalks, or roads near public housing developments.

Response. The physical condition standards and inspection requirements under the PHAS rule do not hold PHAs accountable for site areas which are not within their control. The rule only applies to aspects of the housing that are within the ownership of the PHA. For instance, a PHA owner is not responsible for maintaining a road, sidewalk, etc., if the PHA does not own the site area; however, the PHA will be responsible for maintaining all areas which are legally part of the property. In instances involving items scored but that are not within a PHA's control, the PHA may request an adjustment in accordance with new paragraph (c) of § 902.25.

Comment. The final rule needs to resolve possible conflict with fair housing issues and issues of reasonable accommodation under section 504 of the Rehabilitation Act of 1973. A PHA received a deficiency rating because a unit was not painted, but the unit was not painted at the request of a tenant who claimed disability on the basis of allergic reaction. This type of situation needs to be addressed in the final rule.

Response. Section 902.24 (Physical Inspection of PHA Properties), introduced by the June 22, 1999 proposed rule, addresses the issue of compliance with civil rights and accessibility requirements. This section provides that HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, but a PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

Comment. The final rule should provide for separate inspection protocols for high rise buildings and scattered site projects. The current inspection protocol apparently was designed for both high rise and townhouse developments, so its treatment of common areas is somewhat uneven and unreliable. The inspection protocol is even less accurate when

applied to scattered sites. Some scattered site ''clusters'' have communal sites and common areas, but truly scattered single family homes and duplexes do not.

Response. When HUD introduced its Uniform Physical Condition Standards in the proposed rule, by the same name, published on June 30, 1998, and in the first PHAS proposed rule, also published on June 30, 1998, HUD specifically advised that one of the objectives in formulating these standards and in designing a new inspection protocol was to move away from the different physical condition standards and inspection procedures that were applicable to housing administered by HUD programs. The PHAS takes into account all housing types, including high rise housing (4 stories or more) and other building types, and proportionately allocates the sample of units between those two types of buildings. The scoring system only assesses elements that are present. In cases where there are no common areas, for example, the scoring system redistributes the available points to the other inspectable areas.

Comment. PHAs should not receive deficiency ratings for recent tenant damage or unreported repair needs. Deficiency ratings occurred even when tenants acknowledged that they had not reported damage or need for repairs to the PHA. The inspection process should require HUD to review work order files to determine if the resident has reported the noted deficiency. The PHA should only be responsible for those items left unrepaired following proper notification.

Response. HUD's physical inspection system is objective and does not distinguish those defects that are the fault of the resident, nor does the system in itself recognize good faith efforts of the owner. The system is simply a tool for observing and transmitting data regarding the physical condition of the property at the time of the inspection. An owner of HUD assisted or insured housing is statutorily and contractually responsible for maintaining the physical condition of the property. HUD anticipates that such owners, like all landlords, would rely on lease provisions regarding the resident maintenance or destruction of the units, and HUD would encourage them to do so in furtherance of compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections throughout the year, coupled with strict lease enforcement, will result in well-maintained housing that meets the standard.

Comment. The rule needs to address further the inspection notification process. The scheduling of the inspection appears to be kept a secret until the last moment. In one PHA's development, although some tenants did not want their units inspected, the inspector advised that the tenants would have to confirm that to the inspector in person. Advance notice of the inspection needs to be provided and tenant rights need to be considered and respected by the inspector.

Response. The rule provides the timing of the inspections. Specifically, PHAs are to be assessed annually. Physical inspections are to take place in the three months immediately preceding the end of the PHA's fiscal year. In addition, HUD's ACC does not afford tenants the right of refusal to have a unit inspected. In accordance with the ACC, PHA's are required to provide HUD or its representative with full and free access to all facilities (units and appurtenances) contained in the project in order to permit physical inspections. In the event that a PHA fails to provide access as required by HUD or its representative, the PHA will be given ''0'' points for the project(s) involved which will be reflected in the physical condition and overall PHAS score. With respect to notification of the physical inspection, HUD provides written notification to the PHA that its properties will be inspected within the next 30 to 90 days. The HUD contract inspector will schedule the inspection, providing a minimum 10 days notification, which is confirmed with the PHA in writing by the contractor. HUD's notification of inspection requires the PHAs to provide proper notification to tenants. The contractor's confirmation letter also reminds PHAs of the tenant notification requirement.

Comment. HUD's authority to access tenant dwelling units as provided in § 902.24(d) is questionable. Section 902.24(d) states that ''PHAs are required by the Annual Contributions Contract (ACC) to provide the government with full and free access to all facilities contained in the project.'' However, the degree of access envisioned by Section 15 of the ACC is circumscribed by the auditing function, and is not meant to authorize unbridled access to tenant dwelling units. Additionally, portions of the public housing program regulation at 24 CFR 966.4(j) do not give HUD full and free access to tenant dwelling units. The PHAS rule does not justify entry by HUD of a tenant dwelling unit without notification which specifies a date and time of inspection, or entry by the HUD without notice because a physical inspection would not be considered an ''emergency'' within the regulation.

Response. HUD has the requisite statutory and regulatory authority to inspect tenant dwelling units. Notification of inspection is provided to the PHA who is required to provide proper notification to tenants. However, HUD notes that § 966.4(j) of its regulations does not require a specific time or date, only reasonable advance notification, that inspections will be performed during reasonable hours.

Comment. The PHAS inspections establish unfunded financial burdens and constitute an unfunded mandate. Although HUD outsources the inspections, PHAs are required to accompany contractors during inspections, resulting in added maintenance and managerial costs. When coordinating inspections for scattered site public housing units, a lot of time is wasted inspecting units in one part of the city and then going to an entirely different section of the city on the same day. HUD should schedule scattered site inspections with regards to geographical considerations such as zip codes to maximize routing efficiencies and to keep the already excessive administrative costs of this process to a minimum.

Response. HUD has a statutory obligation to assess the performance of PHAs, including the physical condition of their properties. Additionally, the ACC has always provided that PHAs must provide HUD with full and free access to their developments. HUD has conducted on-site reviews of PHAs either through PHMAP confirmatory reviews or other management reviews for at least two decades. Therefore, Federal oversight of the physical inspection of public housing units is not new for PHAs. It is an inherent part of receiving Federal financial assistance and is customary in most, if not all Federal grant programs, regardless of the administering agency. HUD believes that there should be little or no difference in the way a physical inspection should be conducted between Federal programs. HUD believes that it is important to have a consistent standard across programs and geographical regions. In this way, all properties and property owners are treated fairly and equally.

With respect to inspection of units at scattered sites and the additional time involved, it is HUD's intent to reduce the administrative burden to the PHAs to the extent possible. HUD will examine inspection schedules and make every effort to schedule inspections that

minimize the use of resources on the part of the PHA.

Comment. The HUD contract inspectors are poorly organized, inadequately skilled and highly inefficient, and PHAS physical inspection quality controls are inadequate. Inspectors did not keep the inspection schedules as promised, and did not perform the inspection process as required. Inspectors did not inform PHA staff of inspection schedules as required. The rule needs to ensure consistency in inspection. Inspectors in one area may be more lenient, whereas inspectors in another area may be more stringent in interpreting inspection standards. Inspection standards should be clarified in the new rule and independent contractors should communicate their interpretation of the standards to PHAs before the inspection is conducted.

Response. HUD contract inspectors, contracted under the national inspection contract (NIC), successfully conducted approximately 24,000 inspections nationally during the first year. Other contract inspectors under the baseline inspection contract (BIC) will inspect approximately 16,000 properties by the end of this calendar year. These contract inspectors were trained using a new and unique protocol, and successfully scheduled and completed the required inspections. All of this required a tremendous amount of organization and logistics.

All HUD contract inspectors must meet certain basic qualifications involving knowledge, experience and/or education in the building trades or conducting inspections. In addition, these inspectors completed a 5 day training course in the new inspection software and were required to pass proficiency tests in the use of the software. Since these inspections started for the first time in October 1, 1998, the initial start-up involved some refining as one would expect given the size and magnitude of this effort. In certain cases, problems were encountered and HUD responded to those problems. HUD believes that the process, overall, is running smoothly. HUD is striving to constantly improve and refine the process and will continue to do so in the future. In this regard, HUD also provides for required periodic retraining of the inspectors, to ensure that the inspectors are up-to-date and familiar with any changes made to the PHAS regulation, physical condition protocols and the physical condition inspection software.

HUD acknowledges that even with qualification and training requirements imposed on inspectors, some inspectors, as is the case in any profession, perform better than others. For this reason, HUD has developed a four tiered quality control/assurance process.

First, each contractor is required to have a quality control program to ensure that the HUD protocol is being followed. Second, REAC has its own quality assurance staff, who are employees of the Federal government. Their sole job is to review the performance of the contract inspectors to ensure that the inspection protocol is being followed. Third, REAC also has a Technical Assistance Center and a toll free telephone number (1–888–245–4860) for program participants to call when experiencing problems like the inspector failing to show up for scheduled inspections. In many cases, failure to show up for inspections is the result of unexpected delays (*e.g.,* weather, more difficult and complex inspections than anticipated, etc.). Fourth, HUD has provided a technical review procedure to address material errors in an inspection. This review procedure was first announced in a notice published in the **Federal Register** on May 13, 1999, and was part of the PHAS proposed rule published on June 22, 1999.

Comment. The sheer volume of inspectable items makes the inspection even more vulnerable to differences in interpretation and error.

Response. HUD does not believe that the number of inspectable items is either excessive or makes the inspection vulnerable to different interpretations. The number of inspectable items is similar to those contained in the Section 8 Housing Quality Standards (HQS) inspection. While there is a considerable number of deficiency definitions, all elements of the inspection protocol, including the definitions, are contained in the inspection software and are easily retrievable by the inspector, and are designed to preclude subjective interpretations on the part of the contract inspectors. The more experience that the contract inspectors have with the protocol the easier the inspection process becomes. HUD does not believe that the inspection protocol is beyond the capabilities of the inspection profession.

With respect to deficiency definitions, HUD has revised a considerable number of definitions for purposes of clarity and simplification. The revised Dictionary or Deficiency Definitions is currently available for review on HUD's website.

Comments. The rule should allow for PHAs to correct minor deficiencies while an inspector is on site, to avoid potential problems related to the inspection.

Response. New paragraph (b) in § 902.26 allows for PHAs to correct deficiencies before HUD issues its final physical inspection report to the PHA.

Comment. Certain elements of the inspection are equivalent to an appearance-oriented inspection that is like a military ''white glove'' test and is beyond determining whether the property is decent, safe, sanitary and good repair, or the property components work and function properly. The PHAS physical inspection should not be an assessment of the tenant's housekeeping.

Response. HUD disagrees that elements of the inspection go beyond the statutory mandate regarding the physical condition of the property. The PHAS physical inspection is not an appearance-oriented assessment or an assessment of a resident's housekeeping. The focus of the inspection is whether the housing is in a condition of decent, safe, sanitary and in good repair. The inspection assesses the condition of the PHA's property, including occupied units. HUD has revised the physical inspection report and the revised report is more user friendly and clarifies for the PHA the exact nature of the deficiency.

Comment. HUD inspectors should skip the relatively few units with ''problem'' tenants, such as those who are mentally ill and hostile, or currently bringing legal actions against the PHA.

Response. HUD understands the challenges that PHAs face. HUD, however, has a statutory obligation to determine the condition of the PHA's property. Resident evictions and related actions are a normal part of residential management. Given HUD's statutory obligation, HUD cannot forgo inspection of occupied units because certain tenants are considered ''problem'' tenants.

Comment. Tenant-owned appliances and smoke detectors should not be scored in the physical inspection of a property. One PHAS inspector cited a defunct battery operated smoke detector which a tenant had installed, even though the PHA-provided hard-wired smoke detector that worked. PHAs should not receive deductions for items that are not the property of the PHA.

Response. Any deductions that may be made for resident-owned property such as that described in the comment can be accommodated by a PHA's request for an adjustment in accordance with new paragraph (c) of § 902.25.

Comment. There should be no deficiency ratings for elements or items of the public housing development that

pass local code requirements, and no deductions should be made for items that are not present and are not required by national codes or HUD mandates. PHAs should be protected from negative consequences for meeting local code requirements. Additionally, while objectivity is a sound principle for inspection, under the PHAS advisory inspection process, it all too often translated into rigidity.

Response. As noted earlier in Section III of this preamble, HUD has added a new paragraph (c) to § 902.25 that takes into consideration local code requirements that may be inconsistent with HUD's physical inspection protocols, or other conditions, including preexisting physical features of a building, that are permitted by local variance or license.

Comment. The PHAS standard for lead-based paint ''owner certification'' is not clear. Different PHAS inspectors interpret this standard different ways. This factor should be treated like smoke detectors, with a separate code appended to the numerical score to indicate the possible presence of lead-based paint in units, or the absence of certifications that all units are lead-free.

Response. The certification section, which includes the lead-based paint certification, is not scored; the certification is only recorded as submitted. Accordingly, the Lead-Based Paint certification is currently being treated like smoke detectors, only a separate identifier is not used.

Comment. Smoke detectors should not be required in unfinished basements which are not living areas. This is the standard for some local codes. The PHAS physical inspection protocol is not clear on this issue.

Response. The PHAS regulation requires smoke detectors on ''each level of the dwelling unit.'' The basement, whether or not it is a living area, must have a smoke detector if it is part of the dwelling unit.

Section 902.25 Physical Condition Scoring and Thresholds

Comment. This section provides that the PHA may claim an adjustment on its physical property score due to age and neighborhood environment by certifying to the adjustment on form HUD–50072. The form, as is currently available on HUD's website, is still the PHMAP certification form. The section of the form pertaining to this adjustment does not permit the PHA to specify which developments are qualified to receive the adjustment.

Response. The new Management Operations Certification Form is now available on REAC's website, as well as an instruction guidebook for completing the form. The certification for the physical condition and/or neighborhood environment includes project number, project name, and the three areas where the adjustment applies. The PHA is to indicate for each project which area(s) apply.

Section 902.26 Physical Inspection Report

Comment. The physical inspection reports are difficult to understand. The report lacks the necessary detail for staff to understand the nature of the deficiency so that the PHA may take the appropriate corrective action required.

Response. HUD appreciates the comment and as noted earlier in this preamble, HUD has revised the physical inspection report so that PHAs may better understand the nature and location of deficiencies cited for their properties.

Comment. The final physical inspection report should be supplied to PHAs within 15 to 30 days after the inspection is completed.

Response. As provided in the rule, the PHA's property representative will receive the list of every observed exigent/fire safety, health and safety deficiency that calls for immediate attention or remedy before the inspector leaves the site. HUD will endeavor to provide complete inspection results as soon as possible after inspections are completed. HUD will provide inspection results on its website as soon as all inspections are completed, rather than waiting until all data needed to issue a PHAS score is received.

Comment. There should be an exit conference with the inspector to review the inspection for accuracy in what was inspected. Additionally, no information about PHAS should be released without the approval of the PHA. Response. This issue was raised in response to HUD's June 30, 1998, proposed rule on the PHAS (the first PHAS proposed rule). For the same reasons stated in the preamble to the PHAS final rule (published September 1, 1998) that addressed this issue, HUD declines to adopt the suggestion. PHAs are required to designate a representative to accompany the inspector during the entire inspection. As a result, the PHA representative will be aware of the inspection and be able to provide any clarifications that may be required during the inspection. (See **Federal Register** of September 1, 1998, at 63 FR 46603.) Additionally, as noted in the preceding comment, PHAs will be notified of every exigent/fire safety, health and safety deficiency on the same day of the inspection, before the inspector leaves the site. Further, HUD has added a new paragraph to § 902.26 that allows PHAs to correct deficiencies identified during the inspection process, and noted on the report, before the final physical inspection report is issued.

With respect to the confidentiality of PHAS scores, HUD notes that release of official documents are subject to certain statutes such as the Freedom of Information Act, the Privacy Act., etc.) HUD is therefore further examining this issue in an effort to maintain the confidentiality of the PHAS scores until these scores become final and are required to be posted by the PHA in an appropriate location and published by HUD in the **Federal Register** in accordance with the PHAS regulations. As noted earlier in this preamble, § 902.63 has been revised to clarify when a PHA's PHAS score becomes the PHA's final PHAS score (*e.g.,* any adjustments that needed to be made have been made, and any technical review or appeal issues have been decided).

Subpart C—PHAS Indicator #2: Financial Condition

Certain comments specifically addressed to the PHAS Notice on the Financial Condition Scoring Process may be applicable to the regulations in Subpart C and vice versa. Please see Section V of this preamble.

Section 902.30 Financial Condition Assessment

Comment. HUD should reconsider its plan to measure the financial condition of a PHA on an entity-wide basis by comparing a housing authority to other housing authorities administering a similar number of units. Additionally, comparison should be limited to public housing funds only (Operating Fund, Capital Fund, DEG, EDSS, etc.). The inclusion of other funds (Section 8, CDBG, local development, etc.) simply distorts any meaningful comparison. The comparison becomes more distorted if one housing authority administers CDBG and HOME funds.

Response. HUD has considered whether PHAs should be financially assessed on an entity-wide basis, and has decided that they should. As discussed in Section III of this preamble, HUD has, however, provided additional time for PHAs to adjust to financial assessment on an entity-wide basis. The final rule provides that PHAs with fiscal years ending September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000, will receive an advisory score for HUD's assessment of the PHA's entity-wide operations. Again, PHAs with fiscal years ending

September 30, 1999, and December 31, 1999, were already notified through HUD's notice published on October 21, 1999, that their financial scores would be advisory. Although PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive advisory scores on the financial assessment of their entity-wide operations, they are not exempt under the rule from a PHAS financial score. PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive a PHAS financial score based on their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial scores that are based on the PHA's entity-wide operations.

HUD believes that there is a valid basis for conducting the assessment on a PHA's entity-wide operations. In addition to overseeing its individual grant and subsidy programs, HUD is concerned with the overall financial condition of entities managing public housing without regard to additional sources of funding. The focus of the PHAS Financial Condition Indicator is on the long term viability and financial performance of PHAs.

In addition, HUD has the authority to assess any factors it determines appropriate as provided by section 6(j)(1)(K) of the 1937 Act, and the Single Audit Act and OMB Circular A–133 require entity-wide audits of the financial statements of PHAs receiving federal funds. To the extent that PHAs enter into non-Federal activities that contribute to their financial health, these PHAs should receive higher scores than those PHAs that have entered into arrangements that negatively affect the financial health of the PHA (e.g. commitments, contingencies). Generally Accepted Accounting Principles (GASB 14) requires that an entity include in its financial statement all operations for which it is financially accountable. The issuance of entity-wide financial advisory scores for the first four quarters of PHAS scoring is an accommodation HUD was willing to make based on consultation with the industry and HUD's recognition of the newness of the GAAP conversion process for some PHAs.

Comment. Peer groups should not be based on unit counts alone.

Response. With respect to financial assessment, HUD has and continues to research the possibility of establishing peer groups based on other common PHA characteristics such as tenant composition (elderly vs. family), building type (high rise vs. garden style) and location. Tenant composition and building type have not been incorporated into the scoring process at this time because PHAs have different mixes of tenants and building types and such data is not as accurately tracked as unit count. HUD's research to date shows no clear statistical differences in PHA financial performance based on the type of tenant or building. This may change in the future as additional data becomes available.

Peer groupings based on location, on the other hand, have been established to evaluate expenses in addition to unit count because information on PHA location is readily available and accurate. As additional data becomes available and statistical analysis demonstrates that peer groupings based on additional factors will improve the accuracy of scoring, these factors will be taken into consideration.

Comment. The peer group sizes are insufficient for measurement of financial condition. The PHAS final rule should provide for two additional PHA size categories: one size category for those PHAs administering 1,250 to 5,000 units; and a second size category for extra large PHAs defined as those PHAs administering more than 10,000 units.

Response. HUD has addressed some of these concerns by adding an extra-large size category of PHAs. The extra-large size category includes those PHAs administering more than 10,000 units based on statistical analyses demonstrating that there is a statistical difference between those PHAs administering between 1,250 and 9,999 units. The addition of an extra-large size category is reflected in the PHAS Notice on the Financial Condition Scoring Process, which will be updated and published in the near future. At this time, the PHAS financial scoring process leaves the other five peer groupings unchanged. In the future, the PHAS scoring process for the Financial Condition Indicator may be revised to include additional peer group sizes should a statistical validity be proven.

Section 902.33 Financial Reporting Requirements

Comment. The requirement for electronic transmission of data using GAAP principles is of concern because experience in general with data transmitted to and from HUD has resulted in problems. The experience has been one of difficulty in getting into HUD systems both in terms of timeliness and access. *Response.* HUD continues to improve its ability to receive and process the electronic submission of data. With any new system, there is a learning period that must take place. The electronic submission system has been in development for over a year and has undergone a series of tests both internally and externally at selected PHA locations. HUD's Financial Assessment Subsystem (FASS) Release 3.01 has been streamlined to improve performance and will be tested at over 12 pilot locations nationwide. To the extent PHAs have trouble submitting data as a result of HUD servers or communication problems, PHAs can enter the reason for late submissions on the FASS template and REAC will have the ability to waive late submission penalties. Further guidance will be provided in an upcoming Notice. Additionally, although the FASS does not allow anyone other than the PHA to enter and/or change data in the PHA's financial submission, the system provides a PHA with the ability to review its financial information after the information has been submitted to HUD if the PHA wishes to verify the accuracy of the submission.

Comment. The requirement to submit financial reports electronically via the Financial Data Schedule (FDS) within two months of the PHA's fiscal year end is unrealistic for the first year of submission. The conversion to GAAP is complex, particularly for large PHAs administering many programs, and thus, PHAs need more time to make certain that all GAAP conversion items are properly recorded in the initial FDS submission.

Response. HUD understands that conversion to GAAP may not be easy for some PHAs and may take some time, which is why HUD allowed a year for PHAs to make the conversion to GAAP. PHAs were informed of the conversion to GAAP with the issuance of the first PHAs proposed rule on June 30, 1998, and the PHAs final rule published on September 1, 1998. With respect to submission of financial reports, as discussed in the preambles to both of those earlier rules, PHAs were already obligated to submit, under other program requirements, similar financial information to HUD within 45 days after the PHA's fiscal year end. Under PHAs, PHAs are required to submit their financial information within two months after the PHA's fiscal year end. However, since this is the first year reporting under GAAP, HUD has provided for an automatic 30 day extension for PHAs to submit their year-end financial information. This automatic extension is for the first year of reporting only.

Comment. REAC should assign a reporting model (Enterprise vs. Government) for HUD-based programs, and issue guidebooks.

Response. HUD no longer sets accounting standards and thus cannot prescribe which accounting model to use. The National Council on Government Accounting, Statement 1 (NCGA1) entitled ''Governmental Accounting Reporting Principles'' provides guidance as to which method best represents the reporting entity business. GAAP Flyer #1, which is available on REAC's financial website (http://www.hud.gov/reac/reafin.html), indicates that HUD prefers the Enterprise method for most PHAs based on our interpretation of NCGA1. In addition, Government Accounting Standards Board (GASB) Statement #34 provides that all government entities will be required to report entity wide operations using full accrual accounting. This reinforces HUD's interpretation that PHAs should use the enterprise model to report operations.

Section 902.35 Financial Condition Scoring and Thresholds

Comment. The PHAS rule measures operating budget and expenditure performance through such indicators as net income/loss, number of days expendable balance, and expense management which is not necessarily appropriate. PHAs budget and manage funds for a host of programs, both federal and non-federal, which are not reflected in these indicators. A more clear measurement is whether a PHA has a sound cost allocation plan and is adhering to it.

Response. The PHAS measures the overall financial condition of PHAs without regard to the source of funding. This is referred to as an entity-wide assessment. See HUD's response to the first comment under § 902.30 of this preamble. In addition, cost allocation coverage is obtained through audit procedures in accordance with OMB Circular A–133 (Audits of States, Local Governments and Non-Profit Organizations).

Comment. The PHAS Financial Condition Indicator inappropriately compares a PHA's management responsibilities to those of private real estate entities. Without taking into account the unique operating and related service requirements of the PHA, the comparison to private sector management is difficult to make on an individual or group basis for PHAs.

Response. The assessment provided under the PHAS Financial Condition Indicator does not compare PHA management to management in the private real estate market. Instead, the PHAS performs a financial assessment of PHAs based on a peer comparison within the public housing industry. The private real estate market has capital reserve requirements for the long-term upkeep of its properties and operates for-profit. On the other hand, the private real estate market does not provide the extensive services provided by PHAs to its residents.

The PHAS uses appropriate financial benchmarks used by many industries to assess the financial condition of their operations. For example, Current Ratio, Net Income, and Expense Management are indicators widely used in many industries. Two other indicators, Occupancy Loss and Tenant Receivable Outstanding, are revised versions of the previous PHMAP Management indicators modified to better assess financial condition (and as noted earlier in this preamble, they have been dropped from the Management Operations Indicator; they are now only part of the Financial Condition Indicator).

Comment. The PHAS Occupancy Loss component includes vacancy days that (1) result from units being taken off-line or held for demolition or major redevelopment, and (2) are counted as income loss if part of the PHA's Unit Months Available (UMA). Given the capital funding process for PHAs and the requirements for demolition and disposition, HUD's inclusion of these types of units in an income loss calculation is inappropriate and further, is not a fair or rational basis for comparison to private real estate providers.

Response. During the advisory score process, all units were counted in the UMA calculation. However, after consultation with several housing authority representatives and HUD program staff, HUD has revised its UMA calculation to exclude units approved for demolition/disposition, including units approved for mandatory conversions, since these units are also excluded from the Performance Funding System (PFS) calculations and can be verified through form HUD–52723. In addition, vacant units approved by HUD to be taken off-line for on-going modernization or conversion will be excluded from the calculation.

Comment. The PHAS Financial Condition Indicator relies too heavily on Occupancy Loss, Net Income/Loss, Expense Management, etc., and does not rely sufficiently on sound financial management. While the PHAS rule indicates that it will include points for certain items relating to financial management, these items are secondary. The issue of an unqualified audit opinion, no material internal control weaknesses and no material adjusting entries seems to be the most appropriate basis for measuring financial management coupled with maintaining adequate working capital which is easily measured by the expendable fund balance and a sound and adhered to cost allocation plan.

Response. The components of the PHAS Financial Condition Indicator measure the financial condition of PHAs and are reflective of sound financial management practices. A PHA can have a clean audit opinion and good internal controls yet be in poor financial condition due to many circumstances including unsound management decisions. The rule states that points will be subtracted, not added, as a result of audit findings.

Comment. The Expense Management component of the PHAS Financial Condition Indicator includes utility expenses. HUD needs to examine and take into consideration regional differences in utility costs. Regional utility costs will materially impact on comparisons between PHAs. Therefore, adjustments need to be made if PHAs are to be compared fairly.

Response. These comments were addressed by adding regional peer groupings to the Expense Management component to take into account the impact on PHA expenses because of regional differences. These changes to the Expense Management component are reflected in the PHAS Notice on the Financial Condition Scoring Process, which will be updated and published in the near future.

Comment. Days Receivable Outstanding is also included in the Management Operations Indicator. This component should be included in just one PHAS indicator.

Response. HUD agrees with the commenters and this component (identified in the final rule as Tenant Receivable Outstanding) is now only part of the Financial Condition Indicator.

Comment. Is occupancy loss expressed in terms of dollars lost?

Response. This measure is not expressed in dollars. Because different amounts of rent are paid for like units, the financial indicator measures occupancy loss as a percentage of total units.

Comment. The use of a two year average of accounts when calculating Days Receivable Outstanding (DRO) will prevent PHAs from immediately seeing an increase in score if the management has made some significant improvements.

Response. In calculating non-GAAP advisory scores a two year average of accounts receivable was used to calculate Tenant Receivable

Outstanding (formerly titled DRO) because, if a PHA is experiencing an unusually difficult year in collecting outstanding receivables, the PHA would be penalized. This method of calculating this component while preventing some PHAs from immediately seeing a decrease in score also prevents PHAs from seeing a dramatic increase in score as a result of significant management improvements such as enforcing evictions. For purposes of reporting under GAAP, Tenant Receivable Outstanding is calculated using the accounts receivable balance at a PHA's fiscal year end.

Comment. HUD should take into consideration differences between PHAs in tenant-paid utilities versus nontenant-paid utilities when making the calculation under the Expense Management component.

Response. Differences in PHA costs for those with tenant-paid utilities versus nontenant-paid utilities have not been incorporated into the Expense Management component because no accurate data is available as to an individual PHA's composition of tenant-paid versus nontenant-paid utilities. As a result, of the six expense categories that comprises the Expense Management component, the utilities expense category is worth 3 percent of the overall 1.5 points available under Expense Management. In short, 95 percent of all PHAs will pass the utility expense category under the Expense Management component with only outliers failing.

Subpart D—PHAS Indicator #3: Management Operations

Certain comments specifically addressed to the PHAS Notice on the Management Operations Scoring Process may be applicable to the regulations in Subpart D and vice versa. Please see Section V of this preamble.

Section 902.43 Management Operations Performance Standards

Comment. The rule is not clear concerning the extent to which the old PHMAP regulation will survive and the extent to which the management indicators have been modified by the new PHAS rule. The method of assigning PHMAP letter grades, with their associated numerical formula value, is not clearly defined in the amendments. This is critical and substantive information that belongs in the rule.

Response. HUD's PHMAP regulation in 24 CFR part 901 is being removed by this rule, effective March 31, 2000. Those sections of the PHMAP regulation that HUD needs to retain have become part of the Management Operations Scoring Notice. The PHAS Notice on the Management Operations Scoring Process is referenced in § 902.45 of the PHAS rule.

Comment. PHAs should not be required to report to the local law enforcement agency every activity which is investigated by the PHA's Security Department.

Response. The PHAS does not require PHAs to report every activity which is investigated by the PHA Security Department to the local law enforcement agency. The PHAS management sub-indicator #6, which relates to Security and Economic Self-Sufficiency, recognizes policies adopted by the PHA Board and the procedures implemented by the PHA which assist a PHA in accomplishing the following: track crime and crime-related problems in at least 90 percent of the PHA's developments; have a cooperative system for tracking and reporting incidents of crime to local police authorities; and coordinates with local government officials and residents to implement anticrime strategies. HUD's expectation is that PHAs will follow their own policies and procedures for tracking and reporting crime related activities. HUD respects all good-faith efforts of PHAs to partner with local authorities to address these important issues.

Comment. PHAs should not be held accountable for rent uncollected after a resident vacates the unit if the PHA can document activity to collect the outstanding charges. Such activity can include notifying the resident by letter at the resident's last known address; detailing the amount of resident owes and demanding payment; contacting the credit bureau for slow or no payment; attaching a lien on the resident's property (if State law allows; and securing the services of a third party collection agency).

Response. This component is no longer part of the assessment conducted under the Management Operations Indicator. Rents uncollected component is now addressed only under ''Tenant Receivable Outstanding'' under the Financial Condition Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction Assessment

Certain comments specifically addressed to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process may be applicable to the regulations in Subpart E and vice versa. Please see Section V of this preamble.

Section 902.50 Resident Service and Satisfaction Assessment

Comment. The survey is a tool that residents will use to get back at managers who enforce regulations and housing standards. As a result, managers will be less effective in being objective in managing their properties. There are other ways of measuring the effectiveness of property management instead of asking residents, who may be subjective based on their impressions of the manager instead of the facts. HUD should retain the measurements utilized under PHMAP to assess resident services and satisfaction.

Response. Based on the results of the pilot test of the resident service and satisfaction assessment, HUD has been presented no evidence to support this claim. In developing its resident survey, HUD adhered to sound principles of survey development in order to minimize responses that may simply be retaliatory on the part of residents as suggested by the comment. These survey principles also include that if the majority of those surveyed identify the same problem, the problem is assumed to be true, unless found to be otherwise. The PHAS makes clear that the PHAS score issued to a PHA is not based solely on the residents assessment of the PHA. The PHAS score represents a compilation of scores for all four PHAS indicators. HUD strongly believes, however, that the opinions of residents are important and that the survey is an effective tool to gauge these opinions. Similar surveys are recognized in the commercial property sector as effective management tools. Furthermore, answers to some questions will be used for informational purposes only and not calculated into the score for the PHA. Only questions with a statutory and/or regulatory basis (*e.g.,* questions that address services which a PHA is legally responsible to provide) will be ''scored.'' HUD believes that its survey process is a more effective measurement than the measurements utilized in PHMAP.

Comment. This indicator appears to be the subject of greater substantive change from the September 1, 1998, final rule than any of the other indicators. The PHA is removed from the survey process itself. Surveys will be distributed by ''a third party organization designated by HUD'' to a ''statistically valid number of residents'' chosen randomly by the third-party organization to participate in the survey. Aggregate results will be transmitted by the third party organization to HUD for ''analysis and scoring.'' The scores will be reported to PHAs as single scores for

five ''survey sections.'' Because the survey results will not be broken down by development either to HUD or to the PHA, there will be no ability to attribute particular survey results to any development operated by a mixed-finance owner entity (or by an RMC or an AME such as a private management contractor) as distinguished from the PHA itself, or for that matter to any particular PHA-managed project as opposed to another. While this process presumably will preclude attribution of any particular grade to a mixed-finance project, it also appears to put in question the ability of the PHA to develop any reasonably targeted ''Survey Follow-Up Plan.''

It also appears that scoring under this indicator will not be based on resident satisfaction. Review of the survey form does not reveal readily which questions can be regarded as ''directly related to compliance with the regulations or statutes applicable to the management of public housing.'' An anonymous and unverifiable survey form appears a dubious basis for compliance assessment in any event.

The pre-survey implementation process and the survey itself are ill-suited, if not destructive, to a mixed finance project. Separate treatment or classification of the public housing residents vs. the non-public housing residents in a mixed-finance project should be avoided. It is destructive of the cohesiveness of the mixed-income community.

Response. HUD disagrees that the PHA is removed from the survey process. The PHA will have an instrumental role in the survey process by providing unit addresses and marketing the survey to residents using promotional materials provided by HUD. PHAs also will develop a follow-up plan, if appropriate, to address any issues surfaced by aggregated survey results. The third party organization will not select the sample of residents. Rather, HUD selects the sample and sends it to the third party organization.

At this time, HUD will not provide responses at the development level in an effort to protect respondent confidentiality. HUD, however, will provide survey section scores at the PHA level. HUD does not agree that this will prevent PHAs from developing a follow-up plan. At this initial implementation of PHAS, the survey is not intended to identify individual problems, but rather to identify those at the PHA level. HUD intends, however, that in the future the survey will provide for responses at the developmental level, and HUD is proceeding to work toward that goal. HUD recognizes the benefits that can be achieved by surveys conducted at the developmental level.

The survey results will account for five out of the ten possible points for this indicator. Only those survey questions that are based on statutory and/or regulatory requirements will be ''scored.'' A copy of the survey instrument and the associated weights for the ''scored'' questions are attached as an appendix to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process, which will be updated and published in the near future.

HUD also disagrees that the survey process is ill-suited to a mixed finance project. HUD believes that it is important to assess the services provided to the residents' satisfaction with these services for all residents in public housing, including those in public housing units in mixed-income developments. Therefore, public housing units in mixed finance projects will not be excluded from the survey. Residents are selected at random to participate, so no one income group would be singled out in any given year.

Section 902.51 Updating of Resident Information

Comment. The updating of resident information can be a time consuming process. Under the pilot testing, a PHA received notification to appoint a staff person to access the Resident Satisfaction and Services Assessment System (RASS), review list of addresses from HUD which are supposed to represent all of a PHA's property and unit addresses, edit and enter correct information. Staff expended long hours to correct address information.

Response. HUD recognizes that as a new system, there is some additional time involved at the outset by both HUD and a PHA to compile the information and data necessary to perform the assessments required by the PHAS. Once this information is compiled, however, any revisions necessary should be considerably less time consuming. For the first year of implementation, HUD intends to enhance direct communication with all PHAs to assist PHAs with the updating of resident information. Also, HUD will assist on an individual basis those PHAs that are experiencing technical problems or need assistance with entering a large volume of unit address data in RASS.

Comment. Reliance on the form HUD–50058 for the requisite updating of units and addresses may pose a problem for PHAs. Industry groups have met with HUD to discuss ways to improve MTCS reporting, but little has been accomplished to make reporting easier and accurate. There is a concern that PHAs will receive incomplete files from HUD and will require more than 30 days to update and clean their data files. This process has not been tested under the advisory period and there is no way of knowing where the problems may lie. PHAs should have 60 days to update the files. HUD should be more realistic about the limited role MTCS should play in all its programs—it is not ready to be universally adopted by all programs.

Response. HUD is aware that the MTCS reporting process needs improvement. Therefore, for the first year of implementation, HUD intends to assist on an individual basis those PHAs that are experiencing technical problems or need assistance with entering a large volume of unit address data in RASS. Due to limited data reported in MTCS, HUD must rely on PHAs to validate unit addresses to ensure survey mailing accuracy. PHAs should make additions, deletions and/or corrections to unit addresses under their jurisdiction. Any incorrect or obsolete address information will impact the survey results if the unit address information is incorrect or incomplete. REAC will be unable to select a statistically valid number of residents to participate in the survey. Under those conditions, a survey cannot be conducted at the PHA site and the PHA would not receive any points for PHAS Indicator #4. At this time, PHAs have a two month period to complete unit address certification.

Comment. PHAs were advised to register for IDs to verify unit addresses via the RASS but given very little time to register. Because this process of permitting PHAs to verify unit addresses for purposes of the resident satisfaction survey is crucial for the RASS and physical inspection, it is essential that HUD improves its communication with the industry and provide ample lead-time to implement the RASS. HUD should increase its server capacity for agencies to adequately transmit data to RASS.

Response. HUD agrees that it is HUD's responsibility to ensure that PHAs have adequate notice and sufficient time to take the steps and complete the processes required by this Indicator. To improve communications between PHAs and HUD on this Indicator, HUD intends to have regular meetings with industry representatives to discuss the survey process and continue providing technical assistance to PHA personnel. HUD is also working to improve its

server capacity for easier transmission of data to RASS.

Section 902.52 Distribution of Survey to Residents

Comment. A PHA must spend a considerable amount of staff time to market the survey. The time period set for this process does not appear to allow adequate time to respond or provide meaningful follow-up.

Response. HUD has allotted 30 days for PHAs at the beginning of the survey process to market the survey. At the conclusion of the survey period, the survey results will be posted and the PHA will have 30 days to access the results via the Resident Assessment Subsystem. Based on the survey results, PHAs will be required to develop a follow-up plan to address and resolve performance weaknesses. The follow-up plan must be available as a supporting document for the PHA's Annual Plan in accordance with 24 CFR 903.23(d).

Comment. The draft resident survey should have been published as part of the proposed rule. Publishing the document separately was not helpful.

Response. In retrospect, HUD recognizes that it would have been helpful to have published the survey at the time of publication of the June 22, 1999, proposed rule. HUD, however, had posted the survey, both in draft and final form on the HUD REAC website for an extensive period of time, and at this website, the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process is also posted. The survey was also widely distributed to PHAs beginning in February 1999. HUD has included the survey as an appendix to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process.

Comment. HUD must ensure that the language regarding media outreach, posting flyers, and using newsletters to notify tenants about the resident survey on the RASS website is corrected so that it is consistent with the PHAS Scoring Notice on the Resident Service and Satisfaction Indicator which does not mandate the use of newsletters.

Response. HUD's website on the RASS and the PHAS Scoring Notice on the RASS have been made consistent.

Subpart F—PHAS Scoring

Section 902.60 Data Collection

Comment. The rules pertaining to which certifications are needed and where they must be located should be reasonable and in conformance with standard industry practice and HUD regulations. These requirements then must be communicated to PHAs before physical inspections are conducted and performance judgments made.

Response. HUD has provided copies of the HUD physical inspection training manuals on REAC's website at www.hud.gov/reac since 1998. The training manuals, along with the software, which is also on REAC's website, provides the procedures used by the HUD inspectors including the need for certifications and where they must be located. These are available to PHAs at no cost and may be accessed directly from HUD's website.

Section 902.67 Score and Designation Status

Comment. One commenter praised HUD for adding to the designation of ''troubled,'' the subdesignation of ''substandard.'' The commenter advised that this subdesignation helped to distinguish among those PHAs troubled in a particular area (and identify which area a PHA was experiencing problems) and PHAs that are troubled overall. Two other commenters, however, stated that the proposed rule added a new classification, ''sub-standard,'' without explanation of its meaning or justification for its use. HUD should clearly define the term and explain its value.

Response. The preamble to the June 22, 1999, proposed rule explained HUD's addition of term ''substandard'' to the PHAS regulation. Section II.D. of the preamble (64 FR 33350) stated that the purpose of introducing the term ''substandard'' in connection with troubled PHAs was to identify the particular area in which a PHA received a below passing or standard rating in the three major PHAS Indicators—Physical Condition, Financial Condition, and Management Operations—and to distinguish PHAs with a single problem area from those that have widespread issues. For example, if a PHA received less than 60 percent of the available points for the Physical Condition Indicator, but above 60 percent of the available points for the Financial Condition and Management Operations Indicators, the PHA is designated troubled (the PHA is troubled in one area), but for purposes of clarifying how the PHA is troubled, the PHA is categorized as substandard because it is substandard with respect to the physical condition of its properties.

HUD believes that the introduction of the term ''substandard'' to the PHAS regulation is consistent with Congressional directive in the Public Housing Reform Act. In amending section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)), the Congress directed HUD to establish procedures for designating troubled PHAs and the procedures are to include identification of serious and substantial failure to perform as measured by the performance indicators specified under paragraph (1) of section 6(j) and such other factors as HUD may determine appropriate. The substandard categorization helps to identify the area in which the PHA is troubled, and to distinguish a PHA that is troubled in one area from a PHA that is overall troubled (that is, troubled in more than one area or with an overall PHAS score of less than 60 percent).

Comment. HUD should temporarily abandon the thresholds to determine troubled designation for the first two years of implementation of the PHAS.

Response. It would be a breach of the public's trust in HUD, and a breach of HUD's statutory obligation, to abandon the thresholds, and in essence abandon the designation of troubled for PHAs that are substandard (and therefore troubled) physically, financially, or with respect to their management operations. HUD determined that 60% (or 18 points) was the passing mark for the Physical Condition, Financial Condition and Management Operations Indicators. This was part of the first PHAS proposed rule published on June 30, 1998, and on which HUD solicited public comment. HUD will not disregard these thresholds even for a temporary period. HUD believes that the recent amendments made to section 6(j) of the 1937 Act support that there should be no halt to HUD's assessment of PHAs.

Section 902.68 Technical Review of Results of PHAS Indicators #1 or #4

Comments. Fifteen (15) days to request a technical review and 30 days to request an appeal are not enough time for a small PHA with limited staff resources. The rule provides no limit on the amount of time REAC has to respond to a request for a technical review or appeal. The rule should provide for REAC to respond within 30 days of receipt of the appeal. The 30 day appeal process should follow not only the issuance of the PHAS score but also any final determination of a request for a technical review. Another comment suggests that the period to request a technical review should be extended from 15 days to 60 days.

Response. HUD believes that 15 days, or approximately two weeks, is sufficient time to review the physical inspection report and request a technical review, and in the case of an appeal, 30 days is sufficient. HUD notes that the final rule now provides PHAs with the opportunity to review the physical inspection report, correct

exigent health and safety deficiencies identified in the report and request a reinspection before the physical inspection report is to be final (see § 902.26(b) of the final rule).

With respect to the physical inspection of properties, the PHA is present on a site during the inspection, and as a result is aware of the parameters of the inspection. Further, on the day of inspection, the PHA's property representative receives a list of every health and safety deficiency before the inspector leaves the site.

In order to give appropriate consideration to requests for appeals and technical reviews, HUD is not going to set a time limit but will make every effort to respond to the request within a 30 day time period. HUD notes that until it responds to the technical review request or appeal, the PHAS score is not considered final.

Additionally, HUD notes that under PHMAP, the time for appeal was 15 days. The 30-day period for appeals under the PHAS represents a substantial increase in time over the PHMAP appeal, and the technical review was not a procedure provided by PHMAP.

Comment. Technical review should be expanded to include the erroneous financial scoring results that easily occur in the transmission of information to HUD over the internet. Another comment suggests that all four PHAS indicators should be afforded the technical review process, at least in the first 2 to 4 years of PHAS implementation. The technical review process is burdensome and the proposed rule acknowledges this burden by limiting appeals to a narrow category of areas eligible for technical review. Given the investment of time and resources being made by the PHA, and given that PHAs must provide photos and other objective evidence to support a review, it is difficult to understand why HUD will not revisit the severity of the deficiency as part of the technical review.

Response. HUD disagrees with these recommendations. While HUD has acknowledged that the technical review process is a burden on HUD if it was permitted for all PHAS Indicators, it is a burden HUD would readily assume if there was a substantial benefit to this process for PHAs for all four PHAS Indicators. The technical review process was established as a mechanism to correct unintentional errors caused by a third party. There is no third party involved in the reporting of financial information or in the PHA's provision of the management indicator information as there is in the physical inspection process and the resident survey. While the technical review process is not available for the reporting of financial information or in the reporting of management operations information, this final rule, as already discussed in this preamble, provides procedures by which PHAs can notify HUD of errors and seek correction or adjustments to the score without regard to designation status.

Comment. HUD should permit a technical review where there has been an inspection of a unit which, as a result of the proposed PHAS amendments, is now exempt from inspection. Additionally, a technical review should be permitted where the inspector has failed to adhere to REAC instructions regarding the conduct of inspections.

Response. Several commenters expressed concern about inspection of vacant units that are now exempt under the new PHAS regulation. The inspection of vacant units conducted before issuance of this final rule were advisory in nature, and will not affect a PHA's PHAS designation. HUD has exempted vacant units from the physical inspection process for fiscal years ending September 30, 1999, and thereafter. No official physical inspection score will be based on an inspection of any unit, not under lease, that meets one of the three categories of units exempt from physical inspection as provided in this final rule.

If the HUD contractor fails to adhere to REAC instructions, the PHA should notify REAC. As noted earlier in this preamble, REAC has its own quality assurance staff, who are employees of the Federal government. Their sole job is to review the performance of the contract inspectors to ensure that the inspection protocol is being followed. REAC also has a Technical Assistance Center and a toll free telephone number (1–888–245–4860) and program participants are encouraged to call REAC if they experience problems with the inspectors. If a contractor's failure to adhere to REAC requirements results in the type of error, the technical review process is designed to address, then this process is available to the PHA.

Comment. HUD also should clarify its intent to permit appeals where a PHA has been declared ''substandard'' in one major indicator (per § 902.67(c)(2)), and has been denied ''high-performer'' status due to withdrawal of designation (per § 902.67(d)), or has been denied such status pursuant to 902.67(a), due to deficient grade on the Resident Service and Satisfaction indicator.

Response. ''Substandard'' is a subdesignation under the designation of ''troubled'' and therefore, appealable. The PHAS rule provides that a PHA may appeal any of its individual PHAS scores as a result of an error which the PHA believes, if corrected, would result in a significant change in the PHA's PHAS score and its designation. A PHA whose high performer or standard designation has been withheld or rescinded under the provisions of § 902.67 may request that the Assistant Secretary of Public and Indian Housing reinstate the designation as provided in § 902.67(d)(3).

Comment. The rule provides that technical review will not be granted for challenges to the inspector's findings, or disagreement with the inspector's obligations. Knowing full well human error will affect some authorities, PHAs should be allowed to challenge error.

Response. The purpose of this statement is to avoid challenges that are simply based on a PHA's disagreement with the inspectors findings. For example, the inspector cites a deficiency as major, but the PHA believes it is minor. In performing the inspection, the inspector is guided by HUD's physical inspection software which is to eliminate subjective findings on the part of inspectors. The purpose of the inspection protocol is to promote consistency and fairness in the inspection process. Therefore, a PHA's statement that a deficiency cited by an inspector as major is really minor is not a sufficient basis to request a technical review.

Section 902.69 PHA Right of Petition and Appeal

Comment. The present abbreviated appeal process provided by the rule does not allow for review of the scoring process itself, nor does it allow for discussion or explanation of items beyond the control of the local housing authority. A better appeal system would be one that allows for local, or at least regional, review of PHAS scores and processing. Additionally, the appeal process should not be limited to status changes and the appeal process should be extended from 30 to 60 days.

Response. The appeal of a PHAS score, as provided in § 902.69, necessarily involves the review of the scoring process. The appeal process is coordinated by REAC because scores are issued by REAC, and not by HUD's local or regional offices. Additionally, the appeal process provided in § 902.69 is not an abbreviated process, but rather requires considerable time and effort. For this reason, the appeal process is not appropriate for errors that do not result in a significant change in a PHA's PHAS score and its designation. (HUD, however, has introduced several procedures in this final rule that address

errors of the types raised by the commenters. Please see Section III of the preamble.)

Through the PHAS appeal process, a PHA may request an appeal of its PHAS score in writing to the Director of the Real Estate Assessment Center (REAC) within 30 calendar days following the issuance of the PHAS score. The appeal must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error has occurred, which if corrected, will result in a significant change in the PHA's PHAS score. Those errors may be the result of items beyond the control of the PHA, and the PHA should submit this evidence with its appeal.

Upon receipt of the appeal, REAC will convene a Board of Review to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. The Board of Review will include representation from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate. HUD will make a final decision on appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary.

HUD addressed earlier in this preamble the appeal period of 30 days. HUD believes that 30 days is sufficient, and again, notes that it is an increase in the amount of time provided for the PHMAP appeal process.

Comment. The Board of Review should be eliminated and the Office of Public and Indian Housing (PIH) should act on all appeals.

Response. HUD disagrees with this comment. HUD believes that the Board composition, as provided in the rule (a representative from REAC, PIH, and other office as the Secretary may designate, excluding the TARC) ensures fairness and equity in the appeal process.

Comment. A representative of public housing agencies should be included as a member of the Board of Review discussed in § 902.69(b)(3).

Response. HUD declines to make this change at the final rule stage, but is taking this recommendation under advisement.

Subpart G—PHAS Incentives and Remedies

Section 902.71 Incentives for High Performers

Comment. The incentives for becoming a high performer under § 902.71 are ambiguous. The section does not list what specific HUD requirements a high performer would be relieved from, as well as how bonus points for HUD funding competitions would be utilized.

Response. This regulatory section describes the incentives for high performers broadly to allow HUD the flexibility to create incentives for high performers as HUD reviews the statutory framework and regulatory requirements of new and existing programs and initiatives and identifies appropriate and permissible incentives. For example, HUD's proposed rule on the ''Allocation of Funds under the Capital Fund; Capital Fund Formula,'' published on September 14, 1999 (64 FR 49924) provides for a performance reward for high performers in § 905.10(j) (see 64 FR at 49929). HUD is reviewing aspects of other programs to determine appropriate and permissible incentives to reward high performers, and is considering various incentive alternatives. HUD will notify PHAs of additional incentives when they have been determined.

With respect to relief from requirements, § 902.71 provides a few examples of the requirements that high performers would receive relief from. The rule does not list all requirements because the requirements from which PHAs may be granted relief may change from time to time. Bonus points for high performing PHAs may be provided under future HUD NOFAs.

Comment. The rule should provide as an added incentive for high performers relief from reporting on financial indicator requirements such as operating budgets, supporting schedules to include, all position salaries, and non-routine expenditures and administrative expense other than salaries. An additional incentive to include in the rule would be to provide an automatic extension for submission of year-end financial statements and audit reports, as well as streamlined budget submissions and year-end financial reports.

Response. There is no longer a requirement for submitting information of this type, unless a PHA is designated as troubled. Therefore, to adopt this recommendation would not provide any added incentive for high performers. PHAS offers other incentive for high performance, such as public recognition for achievement and bonus points in funding competitions, where such bonus points are not restricted by statute or regulation. If by this comment, the recommendation is to exempt a PHA from submission of the year-end financial information required under PHAS, HUD will not adopt this recommendation. The timely submission of year-end financial statements and audit reports is a principle of good management and, therefore not an appropriate incentive.

Comments. As incentive for good performance, HUD should reduce physical inspection to every 3 years for PHAs that score 80% on the PHAS physical condition assessment. Another comment suggest that high performers be rewarded with physical inspection reduced to every 3 years.

Response. For the initial implementation of PHAS, HUD believes that a physical inspection every two years of a property that scored at least 90 percent on the PHAS Physical Condition Indicator is an appropriate incentive. As official and full implementation of PHAS gets underway, HUD will continue its review of all aspects of PHAS, all aspects of its public housing programs, and determine whether the incentives provided in this final rule should be revised.

Section 902.73 Referral to an Area HUB/Program Center

Comment. The scoring function of the PHAS under § 902.73 does not provide guidelines to determine when HUD may request ''other standard performers'' to submit an Improvement Plan to HUD. Requiring Improvement Plans for PHAs with scores between 60 and 70 seems clear. However, for standard performers scoring above 70, the reasons are not clear. Without guidelines, HUD could require the submission of an Improvement Plan from a PHA with the highest level (89) of a standard performer. The rule's discretion to HUD to require Improvement Plans of PHAs scoring above 70 should be removed.

Response. Public Housing HUBs are required to monitor the PHAs within their jurisdiction. If a PHA has deficiencies in its performance regardless of its PHAS score, the PHA must correct those deficiencies. An Improvement Plan is both a strategic device and a monitoring tool. The Improvement Plan provides goals and direction to the PHA to correct its deficiencies. Additionally, the Improvement Plan allows the Public Housing HUB to ensure that progress is being made in the correction of the deficiencies.

Comment. The rule needs to clarify the relationship of a troubled designation to the requirement for submission of Improvement Plans to the HUB/Program Center and the TARC.

Response. If the confusion arises because of reference in § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)) to the HUB/Program Center, this reference is included because there may be cases in which the

TARC will refer a troubled PHA to a HUB/Program Center for assistance in oversight and monitoring. A troubled PHA, however, is not required to submit both an Improvement Plan and enter into an MOA, nor is a troubled PHA subject to the provisions of § 902.73 and § 902.75. PHAs that are categorized as troubled in one area do not submit Improvement Plans to either the HUB/Program Center or the TARC. PHAs that are categorized as troubled in one area are required to enter into a Memorandum of Agreement (MOA), as statutorily required of all troubled PHAs in accordance with the provisions of § 902.75. A PHA designated as troubled and that is referred to the HUB/Program Center will be subject to the actions provided in § 902.75, the same as those PHAs that remain under the jurisdiction of the TARC. For certain troubled PHAs, the TARC may determine that the HUB/Program Center is better suited to work with and monitor the troubled PHA. In an effort to clarify an ambiguity, HUD has added language to § 902.75 that states that the referral to the HUB/Program Center is for purposes of oversight and monitoring.

Section 902.75 Referral to a Troubled Agency Recovery Center (TARC)

Comment. HUD must ensure that the Department has the capacity to provide constructive technical assistance to PHAs that are classified as troubled or substandard performer for individual components or the overall PHAS assessment.

Response. HUD, by adding TARCs to its organizational structure, made provisions to ensure that it has the requisite capacity.

V. PHAS Scoring Notices

1. Physical Condition Scoring Notice

Comment. The physical condition rating process needs to be refined. PHAs receive the same deficiency rating whether there are two missing shingles on a roof or 20, or if there is 1 inch of paint peel or 1 foot of paint peel. No discretion appears to be built into the process to determine whether the deficiency is large or small. The same rating for this type of discrepancy needs to be addressed.

Response. In developing the PHAS, one of the objectives was to establish, to the extent possible and permissible under law, a uniform and objective means of assessing the physical condition of properties. Hence, the physical condition standard defines the inspectable areas and inspectable items that are required to be examined. The physical inspection protocol further defines the deficiencies to be identified and the severity levels that distinguish between the varying levels of deficiencies for the same item. The levels of severity are level 1 (minor), level 2 (major) and level 3 (severe). This achieves the objective of the comment to distinguish between large/small deficiencies of the same nature. It is important to define these differences to remove subjective judgements in favor of objective assessments. The inspection protocol only records deficiencies based on the specific inspectable areas, inspectable items and severity definitions. It does not record a defect if a defect is not present. As noted above, however, the protocol does differentiate between the severity levels for a given deficiency. This differentiation is important in order to provide scalable scores which represent the overall condition of the property. HUD, however, is constantly reviewing and refining the deficiency definitions, and HUD will take this comment under advisement.

Comment. The physical condition scoring process is overly complicated. Although the scoring notices detail the item weights and criticality levels for each inspectable area, it is difficult to determine the effect of individual deficiencies on the overall score. The issue is important to PHAs because they will not be granted a technical review unless it is determined that contractor error resulted in a significant change in the property score and the PHAS designation assigned to the PHA. HUD should revise the system to indicate that an appeal will be considered on the basis of errors in other areas, including the inspector's judgment of the severity of deficiencies, and to permit appeals regardless of any change in the performance designation.

Response. HUD has made considerable effort to simplify and make more understandable the physical inspection scoring process, and believes that the Notice on the PHAS Physical Condition Scoring Process reflects HUD's success in this effort. With respect to appeals, the final rule provides for additional ways for PHAs to appeal or request review items in the assessment process that they believe are in error or inaccurate.

Comment. The PHAS inspection process inspects too many elements. HQS and local codes should be the standards by which PHA properties are physically assessed. HUD should revisit the physical inspection protocols. PHAs are being unfairly penalized in the physical condition inspection process for items that meet local building codes but do not meet HUD's physical condition standards.

Response. Before development of HUD's Uniform Physical Condition Standards and physical inspection protocols, HUD has had a number of inspections systems in its various programs. Part of HUD's 2020 Management Reform Plan was to develop standardized, uniform and objective protocols, and HUD sought and obtained industry input in the development of its standards and inspection protocol. The product of this effort is HUD's Uniform Physical Condition Standards, which was the subject of a final rule issued on September 1, 1998, and also was part of the PHAS final rule published on September 1, 1998. These standards are also applicable to HUD's multifamily insured, Section 8 project based, Section 202, and multifamily properties with HUD held mortgages in addition to public housing owned properties. HUD believes that this consistency is crucial to the effective management of the properties that receive assistance from the Federal government. PHAs are still required to meet any applicable local codes or ordinances. HUD's Uniform Physical Condition Standards notes that the standards do not supersede or preempt State and local building and maintenance codes to which HUD program participants must comply (see 24 CFR 5.703(g) and 24 CFR 902.20(d).) Complying with local and Federal standards is not new. This is the case in developing new public housing, modernizing public housing as well as maintaining public housing. In any case where there is conflict, the general rule is that the more stringent standard is applicable. Accordingly, HUD will maintain the uniform physical condition standards. In cases where the HUD standard conflicts with local code, this final rule provides for an adjustment under the procedures described in § 902.25(c).

Comment. The PHAS physical inspection scoring process allows for multiple deductions for the existence of only one deficiency. A single item with a cited deficiency can be included in two inspectable areas. The scoring system does not include adjustments based on physical condition of the site, common areas, and building exterior for properties over 10 years old. The impact of cosmetic deficiencies should be reduced by exclusion or adjustment in item weight, criticality or severity values. Restrict the assessment to only the standards relevant to ''adequately functional and free of health and safety standards.'' The scoring process is inconsistent within properties and the

objective of determining whether a PHA is meeting the standard of decent, safe, sanitary and in good repair.

Response. One of the unique features of the new uniform physical condition standard inspection is that it produces a scalable score to enable PHAs and HUD to better manage the properties. HUD believes that this is a significant improvement over inspections that produce only a pass or fail rating. Oftentimes the pass or fail rating is based only on a single element. This does not give HUD or the PHA an accurate picture of the overall condition of the property.

In developing a scalable score, HUD believes it is prudent to distinguish in the scoring between more important elements such as the heating system and less important elements such as lawns and plantings. HUD has provided PHAs with an itemized list of each inspectable item and its criticality level (from 1 to 5, with 5 being the most critical). This list is found on REAC website at www.hud.gov/reac. Similarly, it is also important when developing a scalable score to differentiate between the severity levels of individual deficiencies. It is also important to note that the scoring process does not deduct for cosmetic deficiencies. As discussed earlier in this preamble, the physical condition protocol is concerned with physical condition deficiencies not cosmetic appearance, but HUD recognizes that several commenters expressed concern about deductions for cosmetic appearance. Following consultation with industry, HUD re-examined the Dictionary of Deficiency Definitions, to assure that cosmetic deficiencies are not included. The revised Dictionary of Deficiency Definitions is posted on HUD's website.

Comment. No deductions should be applied to items that were not present in the design, construction and/or rehabilitation of projects when they have been maintained substantially the same as at the time of their acceptance. No deductions also should be made for items that are not present and that are not required by National Codes or HUD mandates.

Response. HUD has received comments similar to this one on the earlier PHAS rulemaking in 1998. While HUD believes that good design practice calls for the provision of window screens, gutters and down spouts, HUD recognizes that not all properties were built with these elements. Similarly, HUD believes that residents should be afforded privacy in bedrooms and bathrooms through the use of door locks, but again recognizes that not all properties were built with these features. Based on these concerns, HUD has modified its protocol to only assess elements that are present at the time of the inspection.

Comment. The PHAS physical condition scoring process should be corrected so that excessive point deduction for relatively few deficiencies do not occur. The system must return reasonable score results in order to be a valid measure of the physical condition found.

Response. If the deficiencies are severe, then even if they are a few deficiencies the point deduction will appropriately represent the severity of the deficiencies. HUD disagrees that the PHAS physical inspection scoring methodology results in excessive point deduction for an important element in the scoring system is the concept that not all inspectable items are of equal importance. Some elements like roofs, heating systems, etc., are more important than other elements such as lawns or plantings. Because of that, if a few high criticality level deficiencies are assessed as severe, and also have relatively high item weights, the score will be significantly reduced. Given the high item weights, criticality level and severity, however, the deductions are appropriate. The weights and levels assigned to the deficiencies are appropriate given their relative importance in terms of maintaining a condition that is decent, safe, sanitary and in good repair.

Comment. The contract inspector should share each observed deficiency noted with the PHA representative accompanying the inspector so the PHA will have a better understanding of the observed deficiency location and can ask questions and seek clarification where needed.

Response. HUD has developed an electronic system of capturing and providing inspection results. HUD believes that it is appropriate to review the results before conveying them the PHA. Again, however, HUD points out that the inspector shares the health and safety deficiencies with the PHA's representative on the day of inspection before the inspector leaves the site, and HUD, at this final rule stage, provides for the PHA to review and comment on the physical inspection report before it is issued in final. Additionally, as noted earlier, HUD has revised the physical inspection report to make it easier to identify the deficiencies noted.

Comments. HUD should consider a mechanism for making allowances for unavoidable downtime conditions resulting from scheduled repairs or unanticipated equipment problems. Such allowances should reflect a PHA's actions to minimize inconveniences to building residents. Another comment suggests that vacant or occupied buildings and units with substandard conditions that HUD has approved for mandatory conversion, HOPE VI redevelopment, demolition or disposition, or a comprehensive modernization plan should be exempt from the PHAS physical inspection.

Response. This final rule amends the inspection protocol to exempt vacant units from the physical inspection requirement. This accounts for repairs that are ongoing while the units are not occupied. Occupied units, however, are subject to inspection (although occupied units undergoing modernization may be eligible for scoring adjustment, as provided in § 902.25) HUD must ensure that residents are living in housing that is decent, safe, sanitary, and in good repair.

Comment. Deductions for ponding should be restricted where it is evident that standing water is causing visible damage to the roof surface or underlying materials. HUD should consider accepting ponding as a natural consequence of flat roof design while it is raining, and that flat roofs are an acceptable design standard for high-rise buildings.

Response. Any ponding or standing water on a roof can compromise the structural integrity if left too long. It is impossible to tell at the time of the inspection how long or to what extent damage may have been caused. For these reasons, HUD declines to adopt the suggestion, but HUD also recognizes the complexity of this issue, and HUD's inspection protocols now provide that if a measurable precipitation event has occurred within the previous 48 hours, consideration will be given to the impact on the extent of ponding.

Comment. Mold and mildew can be a serious problem, but often is not a result of a PHA's performance. The physical condition scoring process must allow for judgment to be exercised by the inspector to determine if the presence of mold/mildew is a result of resident behavior or poor property management.

Response. While HUD appreciates that not all conditions are the result of the PHA's performance, the PHA is ultimately responsible for the condition of the properties. The protocol is designed to determine the condition of the property, for which the PHA is responsible.

Comment. HUD should explain why maintenance areas are considered common areas when residents are not allowed in maintenance work area, boiler rooms, and elevator equipment rooms.

Response. The physical condition standards of decent, safe, sanitary and in good repair applies to the total property, not just areas where residents are allowed. These areas may not permit tenant access, but there is access to PHA maintenance staff.

In developing the Uniform Physical Condition Standards, HUD identified the major components of a property (i.e., site, building exterior, building systems and units). In attempting to not overly complicate the structure of the standard, HUD classified the remaining elements under common areas. This is not unlike the system used by HUD public housing Field Office staff under Handbook 7460.1 REV–1, the public housing ''Project Engineering Survey'' (Form HUD–52414)—''Other Items.'' Similarly, the Section 8 Housing Quality Standards Inspection form (Form HUD–52580), deals with these items under All Secondary Rooms Not Used for Living. HUD believes that its classification is reasonable.

Comment. HUD advised that algorithms, which would provide a methodology to compare vastly different types of housing across the country, would be included in the Physical Condition Scoring Notice, but they were not. If the algorithms are not to be used, the Assistant Secretary for PIH should therefore make a determination of a reasonable basis for scoring these properties, to take in the differences across the country.

Response. As HUD has stated frequently, the objective of its Uniform Physical Condition Standards and its uniform physical condition inspection protocols is to provide basic standards that are applicable to all types of housing, located in all types of areas. To the extent that adjustments to the physical condition inspection and score may be needed because of unique local building codes, or physical features of a housing that are unique to a geographic area and not contemplated by HUD's standards and inspection protocols, the final rule provides the flexibility to make such adjustments.

Comment. HUD should reconsider the current weights in the PHAS. In some areas, for example, the common area, which is only 15% of the entire building score, includes so many items, such as laundry rooms, lobbies, offices, community space that the deficiencies add up to over 70% of all the deficiencies in the entire inspection.

Response. As noted in this preamble, the weighting system for physical inspection scoring was the subject of industry and professional consultations. HUD believes that the current weights represent reasonable values to attribute to those property components. Regardless of the number of inspectable items in an inspectable area, the maximum value of the area is limited to the relative value of the area.

Comment. Properties should not be downgraded for penetrating vegetation that are attractive vines on fences and walls. HUD should not penalize PHAs for features which are considered amenities in the private market. In some cases, a neighbor would be justifiably upset if the PHA removed a vine owned by this neighbor from the PHA's fence.

Response. Penetrating vegetation can affect the livability and structural integrity of the property. HUD believes that the deficiency is justified.

Comment. The PHAS is still not clear how health and safety deficiencies affect a PHA's numerical score. The version of this notice accompanying the final rule needs to provide explicit examples of how these deficiencies figure into the numerical grade.

Response. Health and safety deductions are treated like all other deductions in the scoring algorithm, and take into account the assigned item weights and criticality values. The PHAS physical inspection protocol emphasizes health and safety because of its crucial importance to the well-being of residents. All health and safety deductions are therefore categorized as level 3 (severe).

2. Financial Condition Scoring Notice

Comment. There are contradictory explanations of the scoring of Expense Management and Net Income under the Financial Condition Indicator. In Appendix 1 of the PHAS Notice on the Financial Condition Scoring Process, HUD states that these would be scored based on deviations from a statistical mean. Those either above or below the allowable deviation would score 0 and all others would score 1.5. In Appendix 2 of this Notice, HUD states that these components would be scored only in one direction. HUD needs to state which of the two methods will be used.

Response. As specified in Appendix 1 to the PHAS Notice on the Financial Condition Scoring Process, the deviation from a statistical mean only applies to the first two indicators: Current Ratio and Months Expendable Fund Balance. For the remaining indicators the methodology is clearly delineated. Appendix 2 of this Notice is simply a set of tables providing the threshold values for each indicator by PHA size category consistent with the methodology described in Appendix 1.

Comment. Four categories within the expense management indicator: administrative, utilities, ordinary maintenance, and general expense are too detailed and unnecessary. Moreover, the cost categories are more detailed than high performing PHAs are currently required to report on their budget and subsidy requests. The Financial Condition Indicator should confine its review to overall routine costs and permit the PHA to have the discretion of distributing their expenses across those categories according to its needs and the goals and mandate of the Public Housing Reform Act.

Response. Six categories are measured under the Expense Management indicator: administrative, general, tenant service, protective service, maintenance and operation, and utilities expense. The six expense categories were modeled after the Statement of Operating Receipts and Expenditures form (HUD–52599). HUD already has requested this information annually from PHAs that are using this form. HUD believes that a review of overall routine costs is insufficient because a PHA's allocation of its resources has a significant impact on the quality of housing and services provided to its residents. Thus, in addition to the above described changes to the Expense Management Indicator to account for regional differences among PHAs, REAC has revised the calculation for the expense management component to assign weights to the six expense categories mentioned above. Weights have been assigned to non-tenant related expense categories to encourage PHAs to allocate resources to tenant-related activities.

Comment. PHAs should not be scored on the Expense Management indicator if they are performing well on other indicators.

Response. HUD believes that a PHA's allocation of resources is a valuable measure of efficiency and thus, all PHAs should be assessed on this measure. A PHA whose circumstances show a reasonable business reason will be able to appeal this indicator.

Comment. Under the scoring process for the Quick Ratio and Months Expendable Funds Balance, HUD proposes to utilize statistical distributions as the basis for its scoring. Specifically, HUD proposes to award the maximum number of points to PHA's with liquidity and operating values falling between the 30th and 80th percentiles. HUD, however, will give incrementally fewer points to PHAs with liquidity and operating reserves, values above the upper level of this range. In other words, PHAs with very high short term liquidity and very high operating reserves will be penalized through the loss of points. In effect, too

high of reserves and liquidity has now become a bad practice. This type of scoring does not make sense. PHAs with high liquidity or reserve values which place them above the 80th percentile range should be given the full number of points when these PHAs also score high under the PHAS management practices and physical inspection indicators.

Response. HUD believes that its scoring methodology with respect to reserves is appropriate but has made accommodations to recognize circumstances unique to a PHA.

Scoring Methodology. The scoring methodology for indicators 1 and 2 (Current Ratio and Months Expendable Fund Balance) take into account the difference between for-profit and not-for-profit entities. The focus of for-profit entities is profit maximization (*i.e.,* high-retained earnings and liquidity), whereas the focus of not-for-profit entities, such as PHAs, is to maximize the use of scarce resources to the benefit of their residents. Thus, HUD believes that PHAs with too high liquidity or reserves could be better utilizing their resources to improve the quality of housing or services to their residents.

HUD recognizes there is a much higher risk to HUD associated with PHAs exhibiting substandard levels of reserves as reflected in a score that reaches zero for those indicators. Those PHAs with too high reserves and liquidity, on the other hand, only stand to lose a maximum of 1.5 points out of 9 possible points for each of the two indicators.

Recognition of Unique Circumstances. The Notice on the PHAS Financial Condition Scoring Process that will be published in the **Federal Register** will provide that a PHA will not lose points under current ratio or monthly expenditure fund balance if the PHA has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator and is not required to prepare a follow-up plan under the PHAS Indicator #4 (Resident Service and Satisfaction). Additionally, this final rule provides that a PHA may appeal on the basis of mitigating circumstances any point deduction on the basis of too high liquidity or reserves, without regard to change of designation if the PHA receives a score of at least 60 percent in the Physical Condition Indicator.

Comment. The use of percentile scoring in the financial condition scoring process and the fact that the standards are not fixed are of concern to PHAs. The use of the Bell Curve for scoring PHAs appears to be inequitable. The use of relational scoring should be discontinued for all components.

Response. The concern that there is not an absolute value or standard toward which PHAs may strive is a valid one that has been and continues to be raised. Based on extensive economic and financial analysis, it has been concluded that it would be unfair to PHAs for HUD to identify a single value as the optimum performance measure among PHAs. Such number or standard would be debatable as it is really impossible to have a basis for selecting a single value as the optimum measure for a PHA of a certain size or location. Even PHAs that bear similar characteristics such as size and location operate differently due to a number of unique circumstances. It would be difficult to justify to PHAs that a certain amount of administrative expense or utility cost is the number to which they should strive because no two PHAs are the same.

The peer assessment approach is an equitable means of measuring financial performance because it rewards PHAs in the middle to upper range of performance with the highest number of points. For example, PHAs who have a current ratio in the 30th to 80th percentile receive all of the 9 points allocated to this indicator. Another example is expense management where only the PHAs in the top 95th percentile do not receive the full 1.5 points.

Comment. The PHAS financial scoring process may penalize PHAs under the current ratio component, for making capital improvements with local operating reserve funds. The PHAS also appears to include a penalty under the Physical Condition Indicator if PHAs do not make the capital improvements.

Response. The Current Ratio indicator measures the cash liquidity of a PHA compared to its peers by dividing current assets by current liabilities. This is done irrespective of the PHA's operating reserves. The numerator includes all cash and current assets of the PHA whether or not reserved for capital activities. The denominator includes all current liabilities of the PHA. PHAs are not penalized for either capital or operating expenses under the Current Ratio indicator. This indicator simply predicts whether or not the PHA can meet its current obligations as compared to the rest of the PHAs of the same size.

Comment. HUD should remove Payment In Lieu of Taxes (PILOT) when computing a PHA's General Expenses component. PILOT is a computation which involves utility costs and thus is subject to regional costs differences. PILOT's computation also involves input of a local property tax rate. Additionally, a significant number of PHAs no longer make PILOT payments, thus their expense level will be significantly lower when compared to those PHAs making PILOT payments.

Response. HUD's research of over 10,000 Statement of Operating Receipts and Expenditures forms (HUD–52599) shows over 87 percent of all PHAs pay PILOT expenses. The Expense Management indicator has been changed to assign weights to each individual expense management category. PILOT payments would affect the General Expenses category, which is weighted at 34 percent of the total 1.5 points, awarded. Furthermore, the Expense Management indicator awards full points to PHAs that fall within the 95th percentile of their group. The fact that the commenter's PILOT payment comprises only 22 percent of its total General Expense category does not represent a substantial difference between PHAs that pay PILOT and PHAs that do not.

Comment. The method for scoring Current Ratio and Months Expendable Fund Balance contain numbers that in the long run do not affect the overall scoring of the component. These include project loan notes, the interest payable-development notes, book value of conveyed projects, cumulative HUD grants, cumulative HUD annual contributions and various other surplus accounts. Several numbers used for scoring these two components will change substantially during the changeover to GAAP. The GAAP conversion can substantially change the Land Structures and Equipment, the permanent note account and other accounts. This system should be tested with the GAAP conversion before putting the scoring system in place.

Response. These concerns are currently being addressed. Analyses have been conducted to compare the line items in both the HUD–52595—*Balance Sheet for Section 8 and Public Housing* and HUD–52599—*Statement of Operating Receipts and Expenditures* with the FDS—*Financial Data Schedule* to identify the impact of GAAP adjustments on account balances. Other analyses have focused on comparisons between the indicator values and scores calculated using the respective thresholds for Non-GAAP and GAAP. The results of HUD's analyses show that PHAs that perform well in Non-GAAP performed well in GAAP. The assessment will remain peer-based, as such all PHAs will be affected the same way. The GAAP thresholds that were established based on limited data have been compared to the Non-GAAP

thresholds using various statistical measures. Though the GAAP thresholds are not expected to be similar to the Non-GAAP because of the differences in account balances and the large sample of Non-GAAP data, the statistical comparisons again showed that performance was relatively constant. The GAAP thresholds will be closely monitored once PHAS is implemented and PHAs begin to submit GAAP basis financial statements. After the first year of submissions they will be re-evaluated and proposed adjustments will be communicated in future notices.

Comment. HUD's Uniform Reporting Requirements will also affect the final scoring for the Financial Condition of PHAs. Until HUD has tested the scoring system for the overall financial condition of housing authorities and not just the public housing operating condition, the upcoming year's score should be based only on the public housing financials. HUD should review the composite numbers for future scoring purposes.

Response. HUD has tested the scoring system for several hundred PHAs currently reporting under GAAP. The testing was conducted for the entire PHA operations not just public housing programs. In addition, extensive statistical analysis has been conducted to compare the non-GAAP to GAAP scores in order to arrive at its scoring methodology. As discussed earlier in this preamble, HUD is not foregoing financial assessment of a PHA's entity-wide operations. HUD has, however, deferred issuance of a PHAS financial score based on a PHA's entity-wide operations to those PHAs with fiscal years ending after June 30, 2000. (Please see Section III of the preamble for a more detailed discussion of this issue.)

Comment. PHAs have no control over several accounts that HUD calculates and PHAs should not be penalized for the balances of these accounts.

Response. Because scoring is based on peer comparison PHAs are treated equitably. Although PHAs do not have control over all amounts in their financial statements, these figures impact the financial health and viability of PHAs and therefore cannot be ignored. Most decisions made by HUD and Congress generally treat all PHAs in the same manner.

Comment. HUD's scoring sheet is not user friendly. The scoring sheets do not have enough spaces to include all of the digits in longer numbers and therefore, it is difficult to follow HUD calculations.

Response. HUD assumes by the term ''scoring sheet'' that the commenter is referring to the electronic Financial Data Schedule (FDS) in Excel. PHAs wanting to use this spreadsheet can adjust the width of the columns. Additionally, HUD has reviewed this scoring sheet and has made other adjustments to make this form more user friendly.

Comment. HUD should consider making exceptions for mitigating circumstances.

Response. As noted in a response to an earlier comment, this final rule takes into consideration mitigating circumstances with respect to too high liquidity, high reserves and expense management. It would be impossible for HUD, however, to incorporate every mitigating circumstance that may arise into the scoring process because many of the circumstances would be specific to only one PHA.

Comment. HUD must revisit the graphs and tables that accompany the PHAS Notice on the Financial Condition Scoring Process. They are largely incomprehensible to those who are not trained in statistics. HUD has embraced the use of plain language in its rulemaking. These graphs and tables fall short of the plain language goal.

Response. HUD will update its PHAS Notice on the Financial Condition Scoring Process, will strive to make this notice more comprehensible and will attempt to simplify the graphs and charts.

Comment. The PHAS Notice on the Financial Condition Scoring Process states that the scoring of certain components follows generally recognized business principles. The explanation continues to discuss certain absolute thresholds that are indicated by these principles. There is concern about HUD's lack of a definition for sound business principles. The impression is that GAAP already takes into consideration sound business principles.

Response. The term ''sound business principles'' in the context of this paragraph pertains to the setting of thresholds for PHAS scoring purposes. For example, a PHA with a Current Ratio of less than 1 (*i.e.* where current liabilities is greater than current assets) may receive some points depending on its current ratio compared to other PHAs of the same size. However, sound business principles would dictate that a PHA with a Current Ratio of less than 1 would still pose a financial risk because it may be unable to cover its current obligations and thus should merit a score of zero for the Current Ratio indicator.

Comment. The Financial Condition scoring process does not adequately take into consideration decisions by HUD or Congress that impact PHA resources. This year, HUD funded the PFS at 92.5% of eligibility and did not allow PHAs to request year-end adjustments or to retain entrepreneurial income. These decisions will have a direct impact on a PHA's financial condition. The scoring of this indicator should have an adjustment for factors beyond a PHA's control.

Response. HUD is sympathetic to PHA concerns about meeting management responsibilities during times of budgetary setbacks. While Congressional decisions may impact a PHA's financial resources, the purpose of the PHAS is to assess a PHA's management of its financial resources, even when resources are not at the levels desired by PHAs or HUD. In addition, since the scores are based on a peer comparison and all PHAs are proportionally affected by partial PFS funding, HUD is taking into consideration decisions made by Congress that impact PHA resources. Every organization, whether private or non-profit, governmental or non-governmental, is expected to fulfill its responsibilities and carry out it functions within the budget provided.

3. Management Operations Scoring Notice

Comment. The Management Operations Scoring Process Notice states that one of the graded components of the Security/Economic Self-sufficiency subindicator is entitled ''grant program goals.'' Presumably, this incorporates the standard for a PHA's economic self-sufficiency program in 42 U.S.C 1437u(b), as amended by section 509 of the Public Housing Reform Act, and would also incorporate PHA activities to promote self-sufficiency in accordance with the statute. HUD should explain, either in preamble to the final rule or in the final version of the Management Operations Scoring Notice, how it will weigh PHA activities under the separate statutory provisions in the grading process.

Response. PHAs will be graded on the combination of grant program goals for both drug prevention activities and self-sufficiency activities met in the appropriate percentage of its developments. As discussed in more detail under section VI of this preamble, HUD is continuing to work on this component to strengthen HUD's assessment of PHA's activities to promote self-sufficiency.

4. Resident Service and Satisfaction Scoring Notice

Comment. Will each of the five components of the survey be worth one point? This should be made clear in the

scoring section. Also, since there is more than one question per section, will some questions count while others will not, or will each question be scored separately?

Response. HUD agrees that the scoring section should be clarified for this indicator. Each of the five survey sections (*i.e.,* maintenance and repair, communication, safety, services, and neighborhood appearance) will be worth one point. Answers to some questions on the survey will be used for informational purposes only and will not be calculated into the overall score. Weights will be associated only with ''scoreable'' questions in each survey section. Scores for each survey section will be calculated in the following manner: (1) Each section will be given a score between zero and one; and (2) the total survey score will be the sum of the five survey section scores, presented in a numeric format with one decimal place (*i.e.,* 4.3).

Comment. The last section of the survey is called ''neighborhood appearance.'' PHAs were led to believe that aspects not under the PHAs control would not be scored. Is this ''development appearance?''

Response. HUD recognizes these concerns. The PHAS rule stipulates that this section of the survey should be titled ''neighborhood appearance.'' Nevertheless, the only questions that will be included in the score for this section will be questions that can be directly associated with regulations or statutes applicable to the management of public housing. PHAs will not be held accountable for aspects of neighborhood appearance for which they are not responsible.

Comment. PHAs have diverse populations with language requirements. The survey must be translated into these languages for participation of all residents.

Response. The survey is now available in Spanish, as well as English. During the first year of operation, RASS asks each PHA to input information relative to alternative languages needed by more than 20 percent of their residents. Full assessment of other translation needs will be made prior to the second year of the survey process.

Comment. HUD has stated that not all questions would be scored but has not stated which specific questions will be scored and what the questions are worth. HUD should publish the survey and indicate the scoring weights of individual questions.

Response. The attachment to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process, which will be published in the near future, provides a copy of the survey instrument and the associated weights for the ''scored'' questions.

VI. Comments on Specific Issues Raised by HUD

In addition to requesting public comment on the June 22, 1999, proposed rule, and the four PHAS scoring notices, HUD specifically requested comment on the following issues. Comments received on these issues are noted below, and HUD's responses to these comments, where appropriate, are provided.

1. PHA Efforts to Keep Units Occupied

The June 22, 1999, rule proposed to inspect only occupied units. HUD noted its concern that PHAs make appropriate efforts to have as many units on line and occupied as possible. For example, PHAs should be keeping units unoccupied for modernization or unit turnover for the minimum possible time. The rule addresses this concern to an extent in the PHAS finance and management indicators. HUD requested comments whether this concern should be addressed further, and sought suggestions and recommendations on ways to do address this matter in the PHAS rule or elsewhere (*e.g.,* other regulations). Comments and recommendations were as follows:

Comment—Vacancy is Already Addressed by Two Indicators. Since occupancy is already measured by both the Financial and Management Indicators, there is no need for HUD to address occupancy an additional time in PHAS or other regulations. The assessment indicators for vacant units and vacancy loss are duplicative and more than adequate for stressing the importance of keeping units on-line to provide affordable housing to the maximum extent possible.

Comment—No Need to Further Address This Issue; It's In the Interest of PHAs to Keep Units Occupied. It is not necessary to address the matter of keeping units on-line and occupied to any greater extent in PHAS. It is in the best financial interests of public housing authorities to keep units off-line and unoccupied for a minimal amount of time.

Comment-No Additional Constraints or Time Limits Are Necessary. HUD asked whether the final rule should contain additional time constraints upon the exemption of unoccupied units from the PHAS inspection process. The three listed categories of exempt unit are subject to an inherent time limit and there is no need to superimpose any further time constraints.

Response. HUD agrees with the comments that no further assessment is necessary under the PHAS with respect to a PHA's efforts to keeping units occupied, and as noted earlier, this component is now found under only one PHAS Indicator (Indicator #2). PHAs are in the business of providing housing assistance and HUD recognizes that PHAs are aware that it is in their best interest, the interest of public housing residents and taxpayers to keep units occupied and on-line.

2. Missing or Inoperable Smoke Detectors

The June 22, 1999, rule did not propose to penalize PHAs in the PHAS score for missing or inoperable smoke detectors because of the extent to which this may not be within a PHA's control. HUD, however, noted its concern about this issue in view of the critical importance of fire prevention. Because of the safety risk presented by missing or inoperable smoke detectors, HUD advised that it considered whether the final rule should provide some consequence to PHAs for missing or inoperable smoke detectors (particularly if the number is high), including possibly a reduction in a PHA's physical inspection score. HUD requested comments on this option, and solicited suggestions as to the availability of working smoke detectors can be encouraged further, either in the PHAS rule or elsewhere.

Comment—PHA Should Certify to Certain Actions. PHAs should not be penalized for missing or inoperable smoke detectors because they truly are not within the control of PHAs. PHAs should take reasonable measures to assure that smoke detectors are operable and take appropriate action when they are found inoperable. These measures could include certifying that all detectors are tested annually; that they are immediately (within 24 hours) replaced or defective detectors are repaired; they are in compliance with Federal, State and local laws regarding smoke detectors; and PHAs follow an enforcement process when they find that tenants have tampered with smoke detectors.

Comment—Reflect Missing & Inoperable Smoke Detectors in Physical Condition Score. The maintenance of operable smoke detectors is a critical factor in the physical condition of housing. If smoke detectors are missing or inoperable, this should be reflected in the physical condition numerical scoring.

Comment—PHAs Should Not Be Held Accountable for Resident Removal or Tampering with Smoke Detectors. We

remain adamant that PHAs should not be held responsible when residents remove batteries or tamper with safety equipment. Even when PHAs have gone to great expense to hardwire smoke detectors, some residents have disconnected them. In short, if a PHA can demonstrate that it has smoke detectors, or it has a system in place that provided smoke detectors, it should not be held accountable for the removal of batteries or the removal system of components.

Comment—No Penalty if PHA Records Reflect Appropriate Measures Taken by PHAs. A PHA should not be penalized for a defective or missing detector in a dwelling unit if the PHA's records reflect either of the following: (a) At the most recent PHA inspection, the PHA found that the dwelling had an operable smoke-detector; (b) inspection revealed that the detector was missing or inoperable, and the PHA made the needed replacement or repair; or (c) subsequent to the most recent inspection, the PHA responded to a work order for repair or replacement of the detector. In regard to smoke-detectors in common areas, a PHA should not be penalized if records reflect that the missing or inoperable detector is scheduled to be replaced or repaired within 24 hours.

Comment—Smoke Detector Maintenance Program. PHAs should not be penalized for missing or inoperable smoke detectors. PHAs should be responsible for maintaining a smoke detector maintenance program by which PHAs could be assessed under the appropriate sub-indicator.

Response. HUD appreciates all the comments on this issue, and at this time, declines to penalize PHAs for missing or inoperable smoke detectors. HUD notes, as it has previously in this preamble, that missing or inoperable smoke detectors constitute health and safety deficiencies, and health and safety deficiencies are presented to the PHA before the HUD inspector leaves the site, and health and safety deficiencies are to be immediately addressed by the PHA. HUD, however, remains concerned about this issue and is going to continue to examine this issue and work with PHAs on how to best to promote fire prevention. HUD is exploring new technology in the area of tamper-proof smoke detectors. If HUD determines that this is a chronic problem with PHAs, HUD may take action through rule or other means, as appropriate, to ensure that this problem is resolved. Such action may include the imposition of penalties on PHAs or residents, or both.

3. More Effective Implementation of the Economic Self-Sufficiency Indicator

HUD requested comments on ways of improving the economic self-sufficiency sub-indicator so that it may be implemented more effectively, and specifically sought comments on whether the sub-indicator is properly weighted and appropriately placed in the rule as part of management sub-indicator #6 (see § 902.43(a)(6)).

Comment—HUD's Treatment of New Indicators Is Inadequate. The economic self-sufficiency indicator correctly belongs under the Management Operations Indicator. While the relative weight to be assigned to a PHAS indicator is undoubtedly a complex judgement, to attribute less than one point to a PHA's economic self-sufficiency efforts sends the message that HUD attributes minimal importance to such efforts. HUD's response to this statutory provision is entirely inadequate. There are several ways that HUD could provide appropriate weight to this indicator. HUD could reduce one or more of the management sub-indicators that are substantially duplicative of sub-indicators within the Physical Condition or Financial Condition Indicators, without adverse results. HUD could measure a PHA's degree of compliance with mandatory HUD programs designed to promote economic self-sufficiency, including the Family Self-Sufficiency program and section 3 (section of the Housing and Urban Development Act of 1968). HUD could include an outcome-base measure that evaluates the progress PHAs have made in increasing the extent of employment and earnings among public housing families while they reside in public housing.

Response. HUD appreciates the suggestions for strengthening the measurement of the economic self-sufficiency assessment. HUD acknowledges that the June 22, 1999, proposed rule did not reflect HUD's ultimate goal for this new subindicator, which is to effectively measure the extent to which the PHA coordinates, promotes or provides effective programs and activities to promote the economic self-sufficiency of public housing residents. This final rule provides for greater weight than that provided in the June 22, 1999, proposed rule (please see the preamble discussion of the changes made to this sub-indicator in § 902.43), and on this basis, is an improvement over the proposed rule. HUD recognizes, however, that this final rule does not fully provide for the measurement of performance under this sub-indicator that HUD desires. HUD is continuing to work on this sub-indicator to better incorporate an appropriate measurement of a PHA's activities to promote economic self-sufficiency.

4. Withholding Designation

HUD sought comments on the consequences to PHAs of withholding designation as provided in new paragraph (d)(2) of § 902.67.

Comment—Designation Should Not Be Withheld. Exceptional circumstances is too subjective a term, and leaves room for considerable discretion. This is an administratively meddlesome provision which is tantamount to double jeopardy.

Comment—Withholding of Designation Manifestly Unfair. Withholding designation because a PHA is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA, or is operating under a court order is manifestly unfair and constitutionally suspect. If HUD is going to permit withholding of designation, HUD should reinstate the PHMAP procedure that permits a PHA to directly appeal a Field Office's denial of designation to the Assistant Secretary for Public and Indian Housing.

Response. The regulatory provision concerning withholding of a PHA's high performer or standard designation is not unfamiliar to PHAs. This provision was part of the PHMAP regulation at 24 CFR § 901.115(k). In egregious situations (as described in the regulation), HUD has an obligation to protect the Federal investment in a public housing property as well as the rights of residents. The PHAS was never intended to be, nor can it be, the only criteria for assessing the performance of PHAs in all areas, especially in the areas of civil rights, nondiscrimination and fair housing laws and regulations. HUD has added a provision to this section of the rule concerning withholding or rescission of designation that allows for the PHA to request from the Assistant Secretary for Public and Indian Housing reinstatement of its designation and provide the basis for its request for reinstatement.

5. Assessing PHA Responsibility to Submit Accurate and Timely Occupancy Data to MTCS

HUD also requested comments on how PHAs should be assessed with respect to their responsibility to submit occupancy data to the Multifamily Tenant Characteristics System (MTCS) in an accurate, complete and timely manner.

Comment—Assist PHAs in Becoming Automated and Phase-In Electronic Submission Requirement. With the

increased requirements imposed by HUD for electronic submission, PHAs need technical resources to become fully automated to meet these requirements. Additionally, PHAs should not be responsible for submission of up to 85% of its occupancy data for transmission problems beyond the control of the PHA. Electronic submission requirements should be phased in.

Comment—Problems with Accurate Submission of Occupancy Data is Often Beyond Control of PHAs. The difficulty that PHAs have experienced with respect to MTCS transmission is frequently a problem beyond their control. In some cases the software utilized by PHAs does not have the capability to interface with MTCS. Numerous communications with MTCS, HUD and the software manufacturer to address the problems with occupancy report transmissions have not resolved the problems. Also, it appears that MTCS has the same mailbox number for both Section 8 and conventional housing. As a result, MTCS cannot distinguish between what reports are coming from conventional housing. For these reasons, HUD should take no punitive measures against PHAs for their performance with respect to the submission of occupancy data to MTCS. HUD should assess PHA by their efforts to meet the MTCS reporting requirement.

Comment—HUD Must Correct MTCS Transmission Problems. It is essential that HUD expand the capacity of the server for the HUD REAC website in an effort to correct the continuous transmission problems associated with the PHAS and MTCS electronic reporting system.

Response. HUD appreciates the comments but advises that MTCS is a fully functional system. It is HUD's primary data system for information on public housing and Section 8 family characteristics and occupancy events. PHAs are required to submit Forms HUD–50058 for every public housing and Section 8 tenant-based assistance family. HUD issued Notice PIH 99–2 on January 28, 1999, to clarify the minimum reporting requirements and to establish a system of monitoring and technical assistance, semi-annual assessment, and formal review and sanctions. Under the Notice, HUD may impose sanctions on PHAs that do not meet the minimum 85 percent reporting level, which is determined at the semi-annual assessments (following the June and December MTCS Delinquency reports). PHAs may request forbearance from sanctions in writing. The request must include an explanation of why the PHA has not attained the minimum reporting level, steps that it plans to take to improve reporting, and monthly milestones. PHAs that do not meet the minimum reporting level and do not obtain forbearance are subject to sanction.

HUD will take into consideration the transmission problems that can be fully documented are beyond the PHAs control in approving these forbearance plans. There has and will continue to be industry consultation on changes required in MTCS to accommodate statutory changes. As of the June 1999 semi-annual reporting period, public housing reporting for MTCS has increased to 81% nationally. HUD has and will continue to work with PHAs to help them meet the minimum reporting rate.

VII. General Comments

Comment—Delay PHAS Implementation. HUD should consider delaying the official implementation of PHAS until October 1, 2000. Concern was expressed by commenters that some PHAs have not provided advisory scores from REAC, and in order for the PHAS to be an effective and meaningful system, PHAS should have a full year to understand advisory scores and prepare for actual implementation. Several issues still need to be resolved with the PHAS. The advisory score process should be extended until these issues are resolved.

Response. As discussed earlier in this preamble, HUD does not believe that a delay in implementation of PHAS until October 1, 2000 is warranted. HUD has revised the implementation schedule of PHAS to begin with PHAs with fiscal years ending after December 31, 1999, and even under that revised schedule, HUD is providing PHAs with fiscal years ending March 31, 2000, and June 30, 2000, to receive PHAS financial scores based only on an assessment of their public housing operating subsidies program. These latter two groups of PHAs will receive advisory scores on their entity-wide operations.

With respect to advisory scores, PHAs are notified of the availability of their completed PHAS advisory score by mail, and if they have access to the Internet, by e-mail. The PHAS scores are posted to REAC's website on a weekly basis. If a PHA requires assistance in accessing its advisory score, the PHA is encouraged to contact the REAC Technical Assistance Center at 1–888–245–4860.

Current reports out of REAC indicate that as of August 10, 1999, 93 percent of all PHAS advisory scores have been posted on REAC website. This includes over 99 percent posting of scores for PHAs with fiscal years ending September 30, 1998 and December 31, 1998; 90 percent posting of scores for PHAs with fiscal years ending March 31, 1999; and 86 percent posting for PHAs with fiscal years ending June 30, 1999. The majority of the delays in posting advisory scores are generally the result of PHAs' late filing of their financial or management reports (under requirements to date, financial reports are due 45 days after fiscal year end).

Comment—Assessment of PHA Deconcentration Efforts. The rule should provide for the assessment of the deconcentration efforts of PHAs. Standards of what constitutes good faith efforts should be included in the rule as a basis of measurement. For HUD not to penalize PHAs who fail to deconcentrate undercuts those PHAs who deconcentrate or make good faith efforts to deconcentrate.

Response. HUD agrees with the commenter about the importance of deconcentration efforts. The first PHAS proposed rule, published on June 30, 1998, and the PHAS final rule published on September 1, 1998, each noted in the ''scope'' provision of the rule (§ 901.3) that the PHAS does not evaluate a PHA's compliance with or response to every departmentwide or program specific requirement or objective. PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973, and requirements of programs under which the PHA is receiving assistance. The rule states that a PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's ACC. The same is true for deconcentration.

Comment—Assessment of a PHA's Section 3 Compliance. HUD should amend the PHAS rule to include compliance with Section 3 obligations as a tool for the assessment of the performance of PHAs (section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u). Section 3 requires that economic opportunities generated by certain Federal financial assistance, including public housing, shall be given, to the greatest extent feasible, to low and very low income persons.

Response. HUD's response to this comment is similar to its response to the comment concerning assessment of a PHA's deconcentration efforts. Assessment of Section 3 compliance is addressed by other HUD regulations. A PHA's responsibilities with respect to the Section 3 program are specifically

addressed in HUD's regulations at 24 CFR part 135.

Comment—Availability of Hand-Held Computers with HUD Software Inspection. REAC should provide a list to PHAs on the HUD website of all known manufacturers of hand-held computers, including all versions HUD reviewed for its inspection purposes. HUD should also release its specification requirements for running inspection protocol software on the hand-held computers so that PHAs may purchase and use the PHAS physical inspection software for annual inspection purposes to be consistent with the condition standards and protocol used by HUD REAC inspectors.

Response. Hand held computers, like other business machines, have many producers which enter and leave the market on a regular basis. With the extensive information available on the internet, there should be a number of websites by consumer associations that list these products, prices, and make recommendations, and there is no need for HUD to duplicate information available through other sources. Additionally, the Federal government must avoid even the appearance of endorsing products on the open market. Producing such a list would give the appearance that the Federal government favored those particular brands. Accordingly, HUD will not maintain a list of hand held computer manufacturers. HUD agrees, however, that it would be appropriate to put the minimum hardware specifications for the hand held computer on its website, and will do so.

VIII. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements for the PHAS regulation at 24 CFR part 902 were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0106. 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.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

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, and tribal governments and the private sector. This rule will 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 was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding remains available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

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 is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to provide additional information on the PHAS scoring process and to revise certain procedures and establish others in accordance with recently enacted statutory requirements. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities.

Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

List of Subjects in 24 CFR Part 902

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, HUD revises 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.
902.1 Purpose and general description.
902.3 Scope.
902.5 Applicability.
902.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

902.20 Physical condition assessment.
902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).
902.24 Physical inspection of PHA properties.
902.25 Physical condition scoring and thresholds.
902.26 Physical Inspection Report.
902.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.
902.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.45 Management operations scoring and thresholds.
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Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA and the PHA's public housing residents to assess management operations and resident services and satisfaction, respectively. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) *Scoring of RMCs and AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs), as described in this section. As described in this section, this part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF–RMCs).

(i) RMCs and DF–RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. References in this part to PHAs include RMCs and this part is applicable to RMCs unless stated otherwise. References in this part to RMCs include DF–RMCs and this part is applicable to DF–RMCs unless otherwise stated.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or PHAs for which they assumed management responsibilities.

(2) *PHA ultimate responsible entity under ACC, except where DF–RMC assumes management operations.* (i) Because the PHA and not the RMC/AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on developments managed by a DF–RMC.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after September 30, 1999.

(1) *PHAs with fiscal years ending September 30, 1999 or December 31, 1999.* For PHAs with fiscal years ending September 30, 1999, or December 31, 1999, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(i) *PHAS Advisory Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will be issued a PHAS advisory score for PHAS Indicators #1 (Physical), #2 (Financial), and #4 (Resident Service and Satisfaction). The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections will be conducted using HUD uniform physical inspection protocol

(ii) *Management Assessment Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of this part.

(2) *PHAs with fiscal years ending after December 31, 1999.* PHAs with fiscal years ending after December 31, 1999, will be issued PHAS scores.

(c) *Chart on PHAS Advisory Score and PHAS Score Schedule.* The following chart illustrates when advisory scores will be issued and when PHAS scores will be issued and for which PHAS indicators.

Quarter	Financial condition		Management		Physical	Resident
	Public housing	Entity-wide	Six indicators	Five indicators		
9/30/99	Advisory	Advisory	Score	N/A	Advisory	Advisory.
12/31/99	Advisory	Advisory	Score	N/A	Advisory	Advisory.
3/31/00	Score	Advisory	N/A	Score	Score	Score.
6/30/00	Score	Advisory	N/A	Score	Score	Score.
9/30/00 and beyond	N/A	Score	N/A	Score	Score	Score.

§ 902.7 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Adjustment for physical condition (development age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value exceeding the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a Regulatory and Operating Agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days in this part, unless otherwise specified, refer to calendar days.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in § 902.24)

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

Occupancy loss is the sum of the number one (1) minus the unit months leased divided by unit months available (or Occupancy loss = 1 − (unit months leased/unit months available).

Property is a project/development with a separate identifying project number.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal 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 actual vacancy rate within the previous three years only applies to PHAs with fiscal years ending September 30, 1999, and December 31, 1999.

Reduced average time nonemergency work orders were active during the previous three years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Tenant Receivable Outstanding is defined in § 902.35(b)(3).

Unit months available is the total number of units managed by a PHA multiplied by 12 (adjusted by new units entering a PHA's public housing stock during the fiscal year) exclusive of unit months vacant due to: demolition; conversion; ongoing modernization; and units approved for non-dwelling purposes.

Unit months leased is the actual number of months each unit was rented during the fiscal year based on the PHA's tenant rent rolls or Housing Assistance Payments records.

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

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* (1) To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for non-dwelling purposes, *e.g.,* daycare or meetings, which are inspected as common areas). Vacant units that are not under lease at the time of the

physical inspection will not be inspected, but vacant units are assessed under the Financial Condition Indicator #2 (§ 902.35(b)(4)) and the Management Operations Indicator #3 (§ 902.43(a)(1)). The categories of vacant units not under lease that are exempted from physical inspection are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; *i.e.,* the period between which one resident has vacated a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(iii) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan;

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: site; building exterior; building systems; dwelling units; and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, decor or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site includes components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (*e.g.,* propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* The score for PHAS Indicator #1 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection, as provided in § 902.20(b)(2).

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The

property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very important	4
Important	3
Contributes	2
Slight contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Deficiencies means the specific problems, comparable to problems noted under Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

Dictionary of Deficiency Definitions refers to the Dictionary of Deficiency Definitions document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document. The Dictionary of Deficiency Definitions that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

Inspectable areas (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; dwelling units; and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels Document refers to the Item Weights and Criticality Levels document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document. The Item Weights and Criticality Levels document that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Score means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although inoperable or missing smoke detectors do not reduce the score, they are included in the health and safety deficiencies list that the inspector gives the PHA's property representative. The PHA is expected to promptly address all health and safety deficiencies.

Severity means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see REAC's ''Dictionary of Deficiency Definitions''.

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with civil rights/nondiscrimination requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD access to PHA properties.* PHAs are required by the ACC to provide the Government with full and free access to all facilities contained in the development. PHAs are required to provide HUD or its representative with access to the development, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given ''0'' points for the development or developments involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process (PHAS PASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Physical Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. These

situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment. (See paragraph (c) of this section which provides for further adjustments of physical condition score under certain circumstances.)

(1) *Adjustments in three areas.* Adjustments to the PHA physical condition score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the property; and

(iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) *Adjustment for physical condition (property age) and neighborhood environment.* HUD will adjust the physical score of a PHA's property subject to both the physical condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify in the manner prescribed by HUD, the extent to which the conditions apply, and to which inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a property's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective property's inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties 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 Indicator, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Database adjustment.* (1) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under certain circumstances, HUD may determine it is appropriate to review the results of a PHA's physical inspection which are unusual or incorrect due to facts and circumstances affecting the PHA's property which are not reflected in the inspection or which are reflected inappropriately in the inspection.

(i) These circumstances are not those that may addressed by the technical review process described in § 902.68. The circumstances addressed by this paragraph (c)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the PHA has been scored for elements (*e.g.,* roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining, and the PHA has notified the proper authorities regarding the deficient structure.

(ii) An adjustment due to these circumstances may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (c) of this section. The notice will be applicable to both public housing and multifamily housing properties covered by 24 CFR part 5, subpart G.

(2) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(i) The circumstances addressed by this paragraph (c)(2) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing development that results in damage to the development) or natural disasters. (The circumstances addressed in paragraph (c)(2) of this section are not those addressed by the technical review process in § 902.68.)

(ii) To adjust a physical condition score based on circumstances addressed in paragraph (c)(2) of this section, the PHA must submit a request to the applicable HUD HUB/Program Center requesting a reinspection of the PHA's properties. The request must be submitted within 15 days of the issuance of the physical condition score

to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(3) *Adjustments for modernization work in progress.* HUD may determine that occupied dwelling units undergoing modernization work in progress require an adjustment to the physical condition score.

(i) An occupied dwelling unit undergoing modernization is subject to physical inspection, and all elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(ii) An adjustment due to modernization work in progress may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and the notification shall include supporting documentation of the modernization work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(d) *Overall PHA Physical Condition Indicator score.* The overall Physical Condition Indicator score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties of the PHA.

(e) *Thresholds.* (1) The physical condition score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(1) If exigent health and safety items are identified in the report, the PHA will have the opportunity to correct all exigent health and safety deficiencies noted on the report and request a reinspection.

(2) The correction of exigent health and safety deficiencies and the request for reinspection must be made within 15 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the exigent health and safety deficiencies that have been corrected, and the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, REAC will arrange for a complete reinspection of the development(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the development, and REAC will issue a new inspection report (the final inspection report).

(4) If any of the previously identified exigent health and safety deficiencies that the PHA certified were corrected are found during the reinspection to be not corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 15 days, the physical inspection report issued to the PHA will be the final physical inspection report.

(b) The Physical Inspection Report includes the following items:

(1) Normalized weights as the ''possible points'' by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year end, with no penalty applying until the 16th day of the third month after the PHA's fiscal year end in accordance with Uniform Financial Reporting Standards (see 24 CFR part 5, subpart H). An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending on and after September 30,

1999. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 84.26).

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates.

(1) Under PHAS Indicator #2, REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process (PHAS FASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Financial Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(2) PHAs with fiscal years ending on or before June 30, 2000, will receive an advisory score based on the PHA's entity-wide operations. PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will also receive a score under this subpart C. These PHAs will receive a PHAS financial condition score on the basis of their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial condition scores on the basis of their entity-wide operations.

(3) *High liquidity or reserves.* (i) Under the scoring process for the Financial Condition Indicator, no points will be deducted under the Current Ratio or Monthly Expenditure Fund Balance components for a PHA that has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator, and is not required to prepare a follow-up survey plan under the Resident Service and Satisfaction Indicator.

(ii) A PHA that has too high liquidity or reserves but does not meet the qualifications described in paragraph (a)(3)(i) of this section may appeal point deductions under the Current Ratio or Monthly Expenditure Fund Balance components based on mitigating circumstances if the PHA's physical condition score is at least 60 percent of the total available points under the Physical Condition Indicator.

(A) The appeal may be made without regard to change in designation.

(B) To adjust a financial condition score based on mitigating circumstances, the PHA must submit a request to the applicable HUD HUB/Program Center within 15 days of the issuance of the financial condition score to the PHA and must be accompanied by a description of the mitigating circumstances. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a point adjustment for the financial condition score is acceptable.

(b) *Components of PHAS Indicator* #2. The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is expendable fund balance (Expendable Fund Balance) divided by monthly operating expenses. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Tenant Receivable Outstanding* is the average number of days tenant receivables are outstanding calculated by the gross amount of tenant receivables divided by 365.

(4) *Occupancy Loss* is one minus unit months leased divided by unit months available.

(5) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(6) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(c) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the Act, as provided in § 902.43. (The remaining statutory indicators are addressed under the other PHAS Indicators.)

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #1—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the Act, which remain unobligated by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have section 9(d) capital funding.

(2) *Management sub-indicator #2—work orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active.

Implicit in this management sub-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.

(3) *Management sub-indicator #3—PHA annual inspection of units and systems.* This management sub-indicator examines the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(4) *Management sub-indicator #4—Security.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 6(j)(1)(I) (42 U.S.C. 1437d(j)(1)(I)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the development on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted. For Component #1, Tracking and Reporting Crime Related Problems, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(5) *Management sub-indicator #5—Economic Self-Sufficiency.* The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will receive credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* (1) A PHA is required to submit electronically a certification of its performance under each of the management operations sub-indicators in accordance with § 902.69(d).

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that REAC receives a request for manual submission in writing two months prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. REAC will respond to such a request and will manually forward its determination in writing to the PHA.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process (PHAS MASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Management Operations Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA must achieve a score of at least 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for completing implementation plan activities and developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* (1) At the completion of the resident survey process as described in this subpart, a PHA will be audited as part of the Independent Audit to ensure that the resident survey process has been managed as directed by HUD. PHAs are required to submit and certify their implementation plans electronically via the internet prior to the fiscal year end in accordance with § 902.60(d). Follow-up plans, if applicable, must be made available for review and inspection at the principal office of the PHA during normal business hours as a supporting document to the PHA's Annual Plan in accordance with § 903.23(d) of this title. The PHA must certify electronically that it will develop a follow-up plan, if applicable.

(2) If circumstances preclude the PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that REAC receives the PHA's written request for manual submission

two months before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

§ 902.51 Updating of public housing unit address information.

(a) *Electronic updating.* The survey process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident address and unit information by PHAs.

(b) *Unit address update and verification.* The survey process for PHAS Indicator #4 begins with ensuring accurate information about the public housing unit addresses.

(1) PHAs will be required to electronically update unit address information initially obtained by REAC from the recently revised form HUD–50058, Family Report. REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within two months of submission of the list of current units to the PHA by REAC, and the address information is not valid, REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA will not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* (1) The preferred method for updating a unit address list is electronic updating via the internet.

(2) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting short-term approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that REAC receives the PHA's written request for manual submission one month before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. REAC will respond to the PHA's request upon receipt of the request.

§ 902.52 Distribution of survey to residents.

(a) *Sampling.* A statistically valid number of units will be chosen to receive the Resident Service and Satisfaction Survey. These units will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the unit sampling based on the unit representation of each development in relation to the size of the entire PHA.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of units of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey results to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (*i.e.,* work order response);

(B) Communications (*i.e.,* perceived effectiveness);

(C) Safety (*i.e.,* perception of personal security);

(D) Services; and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process (PHAS RASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Resident Service and Satisfaction Survey Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD, the survey results are determined to be altered, or the public housing unit addresses are not updated as referenced in § 902.51 of this document. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal Year reporting period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD (see § 902.1(e)).

(b) *Physical condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial

information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year, with no penalty applying, however, until the 16th day of the third month after the PHA's fiscal year end. An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(1) The Management Operations 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.

(e) *Failure to submit data by due date.* (1) If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date.

(2) If all certifications or year-end financial information are not received within three months past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators, sub-indicators and components required to be certified to, which shall result in a troubled designation or identification as troubled with respect to the program for assistance from the Capital Fund under section 9(d) of the Act.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(g) *Management operations assumed by an RMC (including DF–RMC).* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC.

(1) For an RMC, that is not a DF–RMC, the PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, 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 or responsible party.

(2) For a DF–RMC, the DF–RMC must submit directly to HUD its certified statement concerning the management functions that it has undertaken. The DF–RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

§ 902.63 PHAS scoring.

(a) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(b) *Adjustments to the PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be adjusted (*e.g.,* reduction in points) in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD in accordance with data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(c) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA after the later of one month after the submission due date for financial data and certifications, or one month after submission by the PHA of its financial data and certifications. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(c), 902.35(a)(3) and/or 902.68; any adjustments requested by the PHA and determined necessary under the appeal process provided in § 902.69; and/or any adjustments determined necessary as a result of the independent public accountant (IPA) audit, as provided in paragraph (b) of this section.

(d) *Review of audit.* For a PHA whose audit has been found deficient as a result of a quality control review of the IPA workpapers, a quality control review that is conducted by REAC as part of REAC's on-going quality assurance process, REAC may, at its discretion, select the audit firm that will perform the audit of the PHA and may serve as the audit committee for the audit in question. This review is important to determine the accuracy of the scoring under the Financial Condition Indicator.

(e) *Posting and publication of PHAS scores.* Each PHA (or RMC as the case may be) shall post a notice of its final PHAS 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** and on HUD's internet site.

§ 902.67 Score and designation status.

A PHA will receive a status designation corresponding to its final PHAS score as follows:

(a) *High performer.* (1) A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer.

(2) A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

(3) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if:

(i) The PHA achieves a total PHAS score of not less than 60 percent of the total available points under PHAS; and

(ii) The PHA does not achieve less than 60 percent of the total points available

under one of the following indicators, PHAS Indicators #1, #2, or #3

(2) All standard performers must correct reported deficiencies.

(3) A PHA that achieves a total PHAS score of less than 70 percent, but not less that 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(4) A PHA that achieves a total PHAS score of less than 70 percent but not less than 60 percent is at risk of being designated troubled.

(c) *Troubled performer.* A PHA that is designated as troubled may be:

(1) *Overall troubled.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under *more than one* of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* (i) A PHA that achieves less than 60 percent of the total points available under *only* one of the following indicators, PHAS Indicators #1, #2, or #3, shall be considered a substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see § 902.43(a)(2)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

(d) *Withholding designation.* (1) In *exceptional circumstances,* even though a PHA has satisfied all of the PHAS Indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated either a standard performer or troubled performer depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

(3) The denial or rescission of a designation of high performer or standard performer does not affect the PHA's numerical PHAS score.

(4) A PHA that disagrees with the basis for denial or rescission of the designation may make a written request for reinstatement of the designation to the Assistant Secretary for Public and Indian Housing which request shall include reasons for the reinstatement.

§ 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.,* minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (*i.e.,* high performer, standard performer, or troubled performer). If REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific

thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of resident survey results, REAC will review the PHA's file and evidence submitted by the PHA. If REAC's review determines that an error has been documented, REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal troubled designation.* A PHA may:

(1) Appeal its troubled designation (including designation as troubled with respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *Appeal of PHAS score.* If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.,* as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(c) *Appeal and petition procedures.* (1) To appeal troubled designation or a PHAS score, a PHA must submit a request in writing to the Director of the Real Estate Assessment Center that must be received by REAC no later than 30 days following the issuance of the final PHAS score to the PHA. To petition removal of troubled designation, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center. The written request must be received by REAC no later than 30 days after HUD's decision to refuse to remove the PHA's troubled designation.

(2) An appeal of troubled designation or petition for removal of troubled designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. An appeal submitted to REAC without appropriate documentation will not be considered and will be returned to the PHA.

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an objectively verifiable and material error has been documented by the PHA, REAC may undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

(2) *Consideration of appeal of troubled designation or refusal to remove troubled designation.* Upon receipt of an appeal of a troubled designation from a PHA, REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, from the Office of Public and Indian Housing, and from such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate. Decisions by the Board will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

(e) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. Failure by a PHA to submit supporting documentation with its request for appeal, or within any additional period granted by HUD is grounds for denial of an appeal. Final appeal decisions will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) The development or developments of a PHA that receives a physical condition score of 90 percent or greater under PHAS Indicator #1 shall be subject to a physical inspection every other year rather than annually. (All developments of the high performer PHA are subject to inspection every other year, not only those inspected for

which the physical condition score of 90 percent or greater was achieved.)

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program. Where permissible by statute or regulation, eligibility for high performers to receive bonus points in HUD's funding competitions, will be stated in HUD's notices of funding availability or other funding documents.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section 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 performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA 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).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action.

(1) A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance.

(2) A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after the final PHAS score is issued, a standard performer with a score of less than 70 percent is required to submit an Improvement Plan to the HUB/Program Center in accordance with paragraphs (d) and (e) of this section.

(2) An RMC, unless a DF–RMC, that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the plan to the HUB/Program Center through its PHA. A DF–RMC that is required to submit an Improvement Plan, also must develop its plan in consultation with its PHA, but must submit its plan directly to the HUB/Program Center.

(3) On a risk management basis, the HUB/Program Center may require a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its final PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's (or DF–RMC's) receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency. A DF–RMC shall forward directly to the HUB/Program Center its report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score for each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Identify any other performance and/or compliance deficiencies that were identified as a result of an on-site review of the PHA's operations;

(3) Describe the procedures that will be followed to correct each deficiency;

(4) Provide a timetable for the correction of each deficiency; and

(5) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's Improvement Plan (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA, or the DF–RMC's Improvement Plan submitted directly to the HUB/Program Center), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan or correct deficiencies.* (1) If a PHA 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 HUB/Program Center will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or the RMC through the PHA) will provide the HUB/Program Center 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.

(3) If HUD finds the PHA's reasons for lack of progress unacceptable, HUD will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default.

(4) In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, that is not a DF–RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

(a) *General.* Upon a PHA's designation of troubled (including troubled in one area), in accordance with the requirements of section 6(j)(2)(B) of the Act and in accordance with this part (or part 901, of this chapter if applicable), REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. Remedial action by the TARC may include referral to the HUB/Program Center for oversight and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of Agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer (including substandard categorization), HUD will initiate activities to develop a MOA. The final MOA is a binding contractual agreement between HUD and a PHA. 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 PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.,* annual, semi-annual, quarterly, monthly), which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(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 HUD, 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 designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets include but are not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; 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.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(d) *Maximum recovery period.* (1) *Expiration of one-year recovery period.* Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) *Expiration of two-year recovery period.* Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1, #2 and #3.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported 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 of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the TARC.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA fails or refuses to execute a MOA within the period provided in paragraph (b) of this section, or a troubled PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by REAC, the TARC shall refer the PHA to the DEC in accordance with § 902.77, and the DEC shall take the actions required by § 902.77(a)(2).

(2) For purposes of this paragraph (g), *substantial improvement* is defined as the improvement required by paragraphs (d)(1) and (d)(2) of this section. The maximum period of time for remaining in troubled status before being referred to the DEC is two years. Therefore, the PHA must make substantial improvement in each year of this two year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a 55 (50% of the points necessary to achieve a passing score of 60 points) to continue recovery efforts in the TARC. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If in the first year, the PHA fails to achieve the five-point increase,the PHA will be referred to the DEC. If in the first year, the PHA achieves the five-point increase but fails to achieve a passing score in the second year, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) *Audit review.* For a PHA designated as troubled, REAC will perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA and REAC may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with § 902.69, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

(2) *Actions of the DEC.* The DEC shall initiate:

(i) The judicial appointment of a receiver, or

(ii) An administrative receivership at HUD's option but only:

(A) With respect to PHAs with fewer than 1250 units, or

(B) While HUD's petition for judicial receivership is pending; and

(iii) Upon the recommendation of the Assistant Secretary for Public and Indian Housing, the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Referral of PHAs in Substantial Default to the DEC.* A PHA that is not designated as troubled but that has been found to be in substantial default under the provisions of § 902.79 shall also be referred to the DEC. The Assistant Secretary for Public and Indian Housing makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period time, the PHA shall be referred to the DEC. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83 as recommended by the Assistant Secretary for Public and Indian Housing and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(2) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(3) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (e)(2) of this section, in accordance with section 6(j)(3)(D).

(4) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3).

(d) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD 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 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.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g)(2), is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD 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).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD 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, HUD 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.

(1) *Form of notification.* 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(ies) of the Board, and shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) 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

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the

Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD'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.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD 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 HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* 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 Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

§ 902.83 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, HUD 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, HUD 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;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is 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 and with section 6(j)(3)(C) of the Act.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A) (i) through (iv) of the 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.

Dated: January 5, 2000.

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Donald J. LaVoy,

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