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Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 901, 902, and 907

[Docket No. FR–5094–I–02]

RIN 2577–AC68

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default

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

ACTION: Interim rule.

SUMMARY: The changes implemented by this interim rule are intended to enhance the efficiency and utility of HUD's Public Housing Assessment System (PHAS). The interim rule makes 2 sets of amendments to improve evaluation and oversight of the Public Housing Program. First, it amends the PHAS regulations for the purposes of: Consolidating the regulations governing assessment of public housing in one part of the Code of Federal Regulations (CFR); revising certain PHAS regulations based on HUD's experience with PHAS since it was established as the new system for evaluating a public housing agency (PHA) in 1998; and updating certain PHAS procedures to reflect recent changes in public housing operations from conversion by PHAs to asset management. Second, this interim rule establishes new regulations that specify the actions or inactions by which a PHA can be determined to be in substantial default, the procedures for a PHA to respond to such a determination or finding, and the sanctions available to HUD to address and remedy substantial default by a PHA.

DATES: Effective date: March 25, 2011.

Comment due date: April 25, 2011.

ADDRESSES: Interested persons are invited to submit comments on this interim rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia Yarus, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410 at 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

I. Changes to PHAS

A. Background on PHAS

The PHAS regulations codified in 24 CFR part 902 were established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' service and satisfaction assessment (through a resident survey). On the basis of these four indicators, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition and relief from some HUD requirements. PHAs that are designated standard performers may be required to take corrective action to remedy identified deficiencies. PHAs that are designated substandard performers are required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and, consequently, to PHAS. Operating Funds are made available to a PHA to provide assistance to a PHA for the operation and management of public housing; therefore, the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund program are found at 24 CFR part 990.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. Recent HUD appropriations acts have provided through an administrative provision that PHAs that own or operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by HUD in connection with

HUD's Operating Fund rule, with one exception—a PHA seeking discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements.[1] Since requirements in appropriations acts, unless otherwise indicated, apply only to the fiscal year to which the appropriations act is directed, HUD's proposed rule to revise PHAS does not reflect this one-year provision.

The asset management model emphasizes project-based management, as well as long-term and strategic planning. For public housing, this represents a shift from a PHA-centric management model to a model consistent with the norms in the broader multifamily industry. Under this model, PHAs must implement project based management, project based budgeting, and project based accounting. Similarly, HUD funds and monitors PHAs at the project level. A project can be a reasonable grouping of buildings under an Annual Contributions Contract (ACC). One of the major shifts, then, in this interim rule (as opposed to the current rule) is to isolate the performance of individual projects. The current regulation, for example, provides Management Operations only at the PHA level, which can hide problem properties. The essential components of asset management are defined in the regulations in 24 CFR part 990, subpart H.

C. Proposed Amendments to PHAS

On August 21, 2008, at 73 FR 49544, HUD proposed amendments to its PHAS regulations. HUD proposed to retain the basic structure of PHAS and to require PHAs to be scored on performance based on evaluation of four indicators: physical condition, financial condition, management operations, and the PHA's management of its Capital Fund program. The organization of the four indicators differed from the original PHAS indicators in that PHA's management of its Capital Fund program, originally part of the management operations indicator, was proposed to replace the resident satisfaction indicator. HUD proposed that resident services and satisfaction be assessed as part of the management operations indicator. The August 21, 2008, proposed rule also retained the principle that evaluation under the PHAS indicators would continue to rely on information that is verifiable by a third party, wherever possible.

Overview of Proposed Changes to PHAS

The August 21, 2008, rule proposed to modify PHAS primarily to conform to the new regulations on the Public Housing Operating Fund program and the conversion by PHAs to asset management, including project-based budgeting, project-based accounting, and project-based performance evaluation. Highlights of some of the major changes proposed to each of the four current PHAS indicators are as follows:

Physical. The physical inspection indicator would have remained largely unchanged. Independent physical inspections would have continued to be conducted on each public housing project, although the frequency of inspections would have depended on the scores of individual projects, not the score for the entire PHA. For example, if a specific project scored below 80 points, it would be inspected the following year, regardless of whether the overall physical score for the PHA, based on all projects, was 80 points or higher (as is the case in the currently codified PHAS regulations). If a PHA's overall physical score were less than 80 points, and one or more projects scored 80 points or above, those projects that scored 80 points or above would be inspected every other year.

Financial. The financial assessment system would have been modified to include an assessment of the financial condition of each project. A PHA would have continued to submit an annual Financial Data Schedule (FDS) to HUD that contained financial information on all major programs and business activities. However, for purposes of PHAS, the PHA would have been scored on the financial condition of each project, and these scores would be the basis for a program-wide score.

Management. The current management operations assessment system relies on PHA submission of a range of information that is self-certified. Under the proposed rule, this current system would have been replaced with management reviews conducted of each project by HUD staff (or, where applicable, HUD's agents). Preferably, such reviews would have been conducted annually, consistent with the standards for HUD's subsidized housing programs. As part of this project management review process, HUD would have examined a PHA's performance in the area of resident programs and participation, thereby eliminating a separate resident satisfaction survey.

Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would have been evaluated as part of the project management review, thus eliminating the need for a separate indicator on resident satisfaction and, therefore, a separate satisfaction survey. The project management review would have included a subindicator that would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and measure the extent to which residents are provided with opportunities for involvement in the administration of the public housing. This subindicator would have included all of the elements regarding economic self-sufficiency and resident participation that are included in the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) at section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)).

HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, participation, and self-sufficiency measures in the final rule that will follow this interim rule. Accordingly, HUD seeks input from the public in the form of comments to this interim rule on establishing more meaningful measures in these areas.

Capital Fund program. HUD proposed to establish a new indicator, previously part of the management operations indicator, which would have measured a PHA's performance with respect to the obligation and expenditure of Capital Fund program grants. This Capital Fund program indicator can only be measured at the PHA level. This Capital Fund program indicator, based on a requirement of section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), is required by statute to be assessed at that level. HUD believes that this is a separate subject from the management indicator and therefore is more appropriate as a separate indicator. In addition to the changes in the four indicators, discussed above, the August 21, 2008, rule proposed to modify the score adjustment for physical condition and neighborhood environment. This adjustment would have been applied to the management operations indicator on a project-by-project basis rather than to the physical condition indicator. The statutory language at 42 U.S.C. 1437d(j)(K)(I)(2) states that HUD shall reflect in the weights assigned to the various indicators the differences in the difficulty in managing individual projects that result from their physical condition and neighborhood

[1] *See,* for example, section 225 of Title IV of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007); section 225 of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009); and section 223 of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009).

environment. The application of the adjustment to the management operations indicator would specifically address the difficulty in managing individual projects, and would also result in a true physical condition score without any adjustments outside of the physical condition inspection results.

The proposed rule also included, as appendices, scoring notices for the PHAS indicators that provided more detail on how each indicator and subindicator would have been scored. Additional proposed changes to PHAS included:

- Corrective Action Plans would replace current Improvement Plans, addressed in detail at 24 CFR 902.73.
- References to the Troubled Agency Recovery Center (TARC), a program office within HUD to which troubled PHAs were referred for oversight, monitoring, or other remedial action, would be removed, since the TARC no longer exists. The duties and responsibilities of the TARCs have been transferred to and assumed by HUD's field offices.

Finally, the August 21, 2008, rule proposed to establish, in new part 907, the regulations governing the determination of, and remedies for, substantial default. The regulations applicable to substantial default are currently codified in HUD's PHAS regulations. However, a determination of substantial default is not limited to troubled performance or violation of PHAS requirements. Accordingly, HUD determined that it was more appropriate for substantial default regulations to be codified in a separate CFR part.

II. Differences Between This Interim Rule and the Proposed Rule

This interim rule adopts the changes proposed in the August 21, 2008, proposed rule with the exception of provisions identified in this Section II.

One of the key changes to PHAS proposed by the August 21, 2008, rule was to replace the system of PHA self-certification for the management operations indicator with onsite management reviews, consistent with monitoring practices in HUD's multifamily housing programs. Many commenters expressed concern over: (1) Whether HUD would have the resources and/or capacity to conduct management reviews of all public housing projects every several years; (2) possible issues of subjectivity in the scoring of these management reviews; and (3) the weights and measures assigned to the scored components of the management review.

In response to these concerns, and to provide both PHAs and HUD more time to develop and implement a more objective management review tool, this interim rule does not include this proposed change. This interim rule provides that the management review will be used as a diagnostic and feedback tool. In turn, three components that were part of the management review—relating to tenant accounts receivable, occupancy rate, and accounts payable—will be derived from the PHA's annual FDS. These three items represented 60 percent of the scored items on the management review. By relying on the FDS for these three items, HUD can issue an annual (or bi-annual, where applicable) overall PHAS score for each PHA. In the case where low PHAS scores indicate potential management problems, the management review can aid in diagnosing the nature of the problem and determining appropriate corrective actions.

As in the proposed rule, this interim rule contains three items—tenant accounts receivable, occupancy rate, and accounts payable—under the management operations indicator. Because other proposed elements are not adopted by this interim rule, HUD has rebalanced the scoring for the remaining indicators. The proposed management elements not adopted here are utility consumption, turnaround time, work orders, security, the components based on unit inspections, economic self-sufficiency, and resident involvement. The physical condition indicator has increased from 30 to 40 points; the financial condition indicator has increased from 20 to 25 points; and the management operations indicator has decreased from 40 to 25 points. The overall value of the Capital Fund program indicator (10 points) remains unchanged.

However, the Capital Fund program indicator itself has been restructured in a manner that HUD believes better tracks actual performance in respect to the use of Capital Funds for capital activities, whereas the proposed rule simply tracked statutory compliance. The proposed Capital Fund Program Indicator gave full points for timely obligation and expenditure of funds under the statute, a metric that does not necessarily measure the actual use of capital funds for modernization and capital needs; for example, a PHA can transfer a portion of its Capital Fund grant to PHA operations. HUD believes that success in addressing capital needs will be reflected in higher occupancy rates. This interim rule, therefore, while similarly providing 5 points for timely obligation, introduces a new measure based on a PHA's occupancy rate. In order to receive the full 5 points, a PHA's adjusted occupancy rate (that is, adjusted for HUD-approved vacancies) must be 96 percent or more. In recognition of the impact of these changes to the Capital Fund subindicators, this interim rule revises the definition of Capital Fund-troubled. The new definition indicates that a PHA must achieve a score of at least five points, or 50 percent.

Small deregulated PHAs with fewer than 250 units will receive a PHAS assessment as follows:

- High performers will receive PHAS assessments every 3 years;
- Standard and substandard performers will receive PHAS assessments every other year; and
- Overall troubled and Capital Fund-troubled PHAs will receive PHAS assessments every year.

All projects that score 90 points or higher on their physical condition inspections will be inspected every 3 years, consistent with HUD's multifamily housing programs. Projects that score at least 80 points but fewer than 90 points will receive a physical condition inspection every other year. Projects that score less than 80 points will receive a physical condition inspection every year. All projects in overall troubled and Capital Fund-troubled PHAs will receive a physical condition inspection every year.

In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

In addition to these more significant changes, there were other minor changes in this interim rule from the proposed rule. These include:

1. Mixed-finance projects will not receive financial or management scores.
2. The rule has been amended to indicate that, for exigent health and safety (EHS) violations, a PHA may abate the effect of the violation without necessarily correcting or remedying the condition. For example, a PHA may move a family into a different unit until fire damage is repaired.
3. The rule has been amended to modify the standards for Debt Service Coverage Ratio (DSCR) such that any project with a DSCR of 1.25 or higher receives the full points.

Specific scoring procedures that HUD uses will be published separately in the **Federal Register** for public comment.

III. Key Differences Between This Interim Rule and Currently Codified PHAS Regulation [2]

• The current codified PHAS regulation scores the physical, financial condition, management operations, and resident service and satisfaction indicators. In this interim rule, HUD removes the resident service and satisfaction indicator, as well as the resident survey, while HUD considers better means of accurately measuring resident satisfaction, tenant participation, and the efficacy of resident self-sufficiency efforts to be included in the final rule. HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule, which will be promulgated subsequent to and based on HUD's experience with, and the public comments on, this interim rule. Accordingly, the agency seeks input from the public, including PHA residents and PHAs, as well as other interested members of the public, on establishing more meaningful measures in these areas, including suggestions for what the specific items measured might be and methods of measurement.

• The Capital Fund indicator is added as the 4th indicator.

• Under the interim rule, HUD has removed the management operations certification as a scored element. Instead, the management operations indicator will be limited to three items in this interim rule—occupancy rate, accounts payable, and tenant accounts receivable, all drawn from a PHA's annual financial information. The onsite management review will not be scored for the management operations indicator. As a result, the overall management operations indicator has been reduced from 40 points to 25 points.

• The physical condition indicator has increased to 40 points from 30 points; the financial condition indicator has been reduced from 30 points to 25 points; and the new Capital Fund Program indicator will be 10 points.

• There are changes to the adjustment for physical condition and neighborhood environment. In the currently codified regulation, the adjustment allows a total of 3 points, one point each for 3 areas (*see* § 902.25(b)(1)). This interim rule provides for an adjustment of 2 points, 1 for poor physical condition of the project and 1 for the economic condition of the major census tract in which a project is located. The physical condition adjustment in this interim rule applies to projects at least 28 years old; in the current CFR codification, the adjustment applies to 10 year old properties. The neighborhood environment adjustment in this interim rule applies to projects located in census tracts where at least 40 percent of the families are living below the poverty rate. In the currently codified regulation, that adjustment applies where 51 percent of the families in the immediately surrounding area live below the poverty rate.

• This interim rule provides increased incentive for projects that perform well on the physical inspection. Projects in PHAs with 250 or more dwelling units that score 90 or higher on their physical inspection will be inspected every 3 years under the interim rule, while projects that receive at least 80 points but less than 90 points will be inspected every 2 years. All other projects will receive a physical condition inspection every year. All projects that are in overall troubled and Capital Fund-troubled PHAs will receive a physical condition inspection every year.

• The financial condition indicator under the currently codified regulation assesses the financial condition of the entire PHA. Under this interim rule, a financial condition score for each project will be calculated, as well as a composite score for the entire PHA.

• Under this interim rule, a PHA may immediately abate the effect of an exigent health and safety (EHS) violation and later correct the condition, under § 902.22(f). Section 902.24(a)(2) of the codified regulation allows only for correction.

• References to the former Troubled Agency Recovery Center (TARC) are removed. Those former duties are now handled in the HUD field office.

The definition of a high performer remains the same as in the currently codified regulation. A PHA that achieves a score of at least 60 percent of the points available under the physical condition, financial condition, and management operations indicators, and at least 50 percent under the Capital Fund indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS, shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

IV. Public Comments Received on August 21, 2008, Proposed Rule

The proposed rule published on August 21, 2008, provided for the public comment period to end on October 20, 2008. During that comment period, HUD made available to the public on its Web site a scoring template. In order to ensure that all commenters had an equal opportunity to address this new information, HUD reopened the comment period on November 24, 2008, and solicited comments through January 8, 2009.

HUD received approximately 138 comments during the first comment period and an additional 25 comments during the reopened comment period. Comments were from public housing-related trade associations, housing authorities, advocacy organizations, and individuals. This section of the preamble, which addresses the public comments, organizes the comments by subject category, with a brief description of the comment and HUD's response to the comment.

Several commenters expressed their support of the rule rather than raising issues to be addressed, including support for focusing on the performance of projects, the removal of the "troubled" designation for substandard agencies, and the elimination of both entity-wide scoring and self-certifications for management operations.

General Comments

Comment: A number of commenters stated that the proposed rule was overly complex, burdensome, overly stringent, or contrary to the Department's goals of administrative streamlining.

HUD Response: As the preamble to the proposed rule stated, a revised PHAS is made necessary by the transition of public housing's budgeting, funding, and reporting systems from one that was entity-wide to one that is project-based. Though the evaluation emphasis has shifted from the PHA as a whole to individual projects, the interim rule does not impose any more regulation than what has been in place. By eliminating the resident satisfaction survey, the management certification, and, in this interim rule, the management review, HUD has considerably streamlined the evaluation process. All of the data are collected from three sources—the FDS, the physical inspection, and the electronic Line of Credit Control System (eLOCCS). No data point in the interim rule requires any submission from a PHA other than what is already required. Since the FDS is already generated by the PHA and is required by

[2] "Currently codified PHAS regulation" refers to the PHAS regulation in 24 CFR part 902 (Government Printing Office, April 1, 2010).

existing rule, by OMB A–133, and by the Annual Contributions Contract (ACC), using this data to evaluate a project's performance cannot be considered burdensome. Moreover, because HUD conducts the physical inspection and tallies the results, there is no PHA data submission for this indicator.

Comment: Commenters expressed concern over implementation of the onsite management review, which, as proposed, would have accounted for 40 percent of a PHA's overall PHAS score. Commenters expressed concern over the capacity of HUD staff to administer these reviews, the specific elements to be scored, the weights and measures associated with those elements, potential subjectivity, and the overall weight associated with this indicator.

HUD Response: In response to public comments, HUD has removed the management review as a scored element in this interim rule. Instead, the management operations indicator will be limited to three items in this interim rule—occupancy rate, accounts payable, and tenant accounts receivable, all drawn from a PHA's annual financial information. As a result, the overall management operations indicator has been reduced from 40 points to 25 points, with the remaining points assigned to the physical condition indicator and the financial condition indicator.

HUD still regards the onsite management review as critical to its task of effective oversight of the public housing portfolio, as is the case in multifamily housing. Under this interim rule, management reviews will not be scored but instead will be used for both compliance (not scored) and as a diagnostic instrument for performance.

Comment: Commenters requested clarification regarding how the proposed rule would apply to Moving-to-Work (MTW) agencies, including inspection protocols, information submissions, energy conservation, energy audits, and capital fund.

HUD Response: MTW agencies are subject to their respective MTW agreements. In most cases, the MTW agreements require MTW agencies to submit annual financial information and be subject to the same standards and protocols for physical inspections, management reviews, and obligation/expenditure deadlines as non-MTW agencies. However, the MTW agreements allow MTW agencies the option of carrying over their pre-MTW PHAS scores or being scored under the applicable PHAS regulation.

Comment: Several commenters indicated that, by producing a program-wide score for a PHA, the proposed rule was inconsistent with the goals of asset management (with the focus on project-level performance). Another commenter stated that PHAs should be scored at both the project-level and the PHA level. One commenter stated that only the overall score should be the PHAS score. Some commenters stated that it is duplicative to score individual projects on items that are PHA-wide responsibilities, such as energy, security, budgeting, tracking of work orders, and accounts payable.

HUD Response: As a result of the Operating Fund program regulations, published and developed through negotiated rulemaking, both HUD and PHAs have been transitioning to asset management, with project-level budgeting, funding, accounting, management, and oversight. At the same time, Section 6(j) of the 1937 Act requires HUD to develop a system to measure the management performance of whole PHAs, along with processes for designating troubled PHAs. This interim rule balances the need to provide for measurements at the project level, as required for asset management, with the need to designate troubled PHAs, as required under the statute.

Comment: Commenters suggested that the proposed rule should provide for a mechanism for adjusting scores (both overall and for particular components) as a result of funding shortfalls, noting that operating subsidy proration levels were between 84 percent and 90 percent from 2006 to 2009. Commenters suggested various formulas for this adjustment.

HUD Response: HUD's position is it was not the intent of Congress, in establishing section 6(j) of the 1937 Act, to make allowances for funding, as the statute makes no mention of funding allowances. The statute does, however, mention adjustments for physical condition and neighborhood environment (*see* 42 U.S.C. 1437d(1)(I)(2)), indicating that Congress did intend for adjustments based on those items, but did not intend for adjustments based on funding levels. Moreover, HUD believes that it is the primary intent of the system to provide an indication of the performance of public housing, regardless of funding levels, which is consistent with the current rule. Finally, it should be observed that a number of PHAs have achieved high performance ratings with current funding levels.

Comment: Some commenters stated that performance standards based on multifamily housing are inappropriate for public housing, or that the rule otherwise uses inappropriate standards more applicable to non-public housing multifamily projects, such as tax credit projects, which can have more amenities than public housing.

HUD Response: HUD disagrees with these comments. The Operating Fund program regulations clearly establish that public housing shall transition to asset management, consistent with standards and practices in multifamily housing. Furthermore, the physical condition standards for HUD public housing and multifamily housing are the same. In addition, multifamily properties are assessed by project, as PHAs will be assessed under this interim rule.

Comment: Several comments expressed concern that it was either too soon for HUD to change PHAS, overall, or that it was premature to begin measuring the performance of projects.

HUD Response: HUD disagrees with this comment. The transition to project-based budgeting, funding, and accounting is in its 5th year, with full implementation expected in 2011. An appropriate mechanism is needed for measuring the management performance of projects. Moreover, it would be a burden on PHAs, which are transitioning to asset management, to retain the existing reporting systems established under the PHAS regulations, prior to amendment by this interim rule, which focus on entity-wide performance.

Comment: Several commenters expressed concern over whether HUD's systems will be ready to implement the new scoring methodologies and the different data collection efforts.

HUD Response: All data elements necessary for scoring are in place and currently captured through the Office of Public and Indian Housing information technology systems, REAC's physical inspection system, eLOCCS, the Public Housing Information Center (PIC), or the FDS, greatly simplifying administrative systems.

Comment: Commenters requested that the implementation be postponed, and requested that PHAs have at least one year from date of publication to effective date, or some other enlarged time period.

HUD Response: HUD has not adopted this recommendation. There is no adverse impact on PHAs in terms of needing to modify reporting systems in order to comply with the various scoring elements under this rule. PHAs are already subject to the independent physical inspections, and the information that HUD will use to score the financial condition and management operations indicators is already contained within the FDS that PHAs

began submitting with fiscal years ending June 30, 2008. Scoring for the Capital Fund program indicator is taken directly from eLOCCS and the PIC. Moreover, the information that HUD will be using to generate PHAS scores is similar to the information scored that has traditionally been scored under the currently codified PHAS regulations, only with an emphasis on project-level data.

Comment: Many commenters recommended that the period of assessment for the management review conform either with the PHA's fiscal year or with calendar years.

HUD Response: Under the August 21, 2008, rule, HUD proposed that certain elements on the management review would be assessed as of the most recently completed month or as of the most recent 12-month period, but not necessarily the most recently completed fiscal year. Commenters generally preferred that the assessment year always coincide with the PHA's fiscal year. Because HUD will not be scoring the management review, and because both financial and management operations data will be derived from the FDS and possible additional points due to the physical condition, neighborhood environment (or both) of a project, the assessment year under this interim rule will now coincide with the PHA's fiscal year, as is the case under the currently codified PHAS regulations, which is not changed by this interim rule. Also, using fiscal years is an accepted business practice. HUD will use the current fiscal year data from the FDS and eLOCCS and the latest physical condition score to arrive at the PHAS score.

Comment: Several commenters requested clarification as to how the proposed rule would apply to mixed-finance projects or recommended that mixed-finance projects be exempted from PHAS, or that specific elements, such as financial condition or management condition scoring, not be applied to mixed-finance projects. With respect to financial condition, commenters stated that there is a conflict between generally accepted accounting principles (GAAP) and the way mixed-finance projects are funded and organized.

HUD Response: This interim rule clarifies that mixed-finance projects will continue to be subject to the independent physical inspections. These inspection scores will then be included with other physical inspection scores to determine the PHA's overall physical condition score. However, because of the special nature of mixed-finance projects, especially in the limited financial data submitted on these projects, mixed-finance projects will not receive a financial condition or management operations score. Mixed-finance projects are, by definition, owned by an entity other than the PHA. As such, PHAs report only "pass-through" activity on the FDS—essentially, the subsidy earned and the subsidy transferred. HUD does not receive detailed information on operating revenues or operating expenses on mixed-finance projects. Because HUD does not include detailed financial information on mixed-finance projects, it cannot determine occupancy, accounts payable, or tenant accounts receivable through the FDS. As a result, mixed-finance projects will also be excluded from the management operations indicator.

HUD specifically seeks comment on how best to include mixed-finance projects under PHAS.

Comment: A number of comments were received requesting that certain fair housing requirements, including accessibility requirements and fair housing training for PHA staff, be included as part of the management review. One commenter stated that existing methods of enforcement should suffice.

HUD Response: Although, in the operation of public housing, PHAs must adhere to various fair housing requirements, the oversight of those requirements is the responsibility of HUD's Office of Fair Housing and Equal Opportunity (FHEO). Only FHEO, for example, can issue fair housing findings. HUD is continuing to work with FHEO, and solicits input from the public, to better determine what data elements, if any, that PIH staff can obtain during onsite reviews, and through other means, that can assist FHEO in its monitoring functions and to affirmatively further fair housing.

Comment: Some commenters recommended that the regulations be changed to increase the exemption from asset management (currently fewer than 250 public housing units). Other commenters stated that PHAs that are exempt from asset management should not be subject to PHAS. One other commenter stated that PHAs already subject to inspection by other agencies should be exempt from PHAS.

HUD Response: The regulatory exemption for small PHAs is part of the Operating Fund program regulation at 24 CFR part 990. Although, as noted earlier in this preamble, the Public Housing Operating Fund program regulations are relevant to changes to PHAS, this rulemaking is focused on changes to PHAS only, and changes to the Operating Fund program are outside the scope of this rulemaking (however, section 223, Div. A, Tit. II of the 2010 Consolidated Appropriations Act, Pub. L. 111–117, states that PHAs "that own and operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by the Secretary of Housing and Urban Development in connection with the operating fund rule" (except for stop-loss PHAs)). Additionally, even for PHAs that are exempt from asset management and which treat their entire public housing portfolio as one project, HUD still has a responsibility for monitoring performance. Finally, although PHAs may also be reviewed from time to time as to certain criteria based on their participation in other programs, PIH must also do the assessment of PHAs required by statute (42 U.S.C. 1437d(j)).

Comment: A commenter asked for clarification as to whether the term "project," when used in the rule, also meant "asset management project" as defined under PIH Notice 2006–10. The same commenter asked for HUD to define "statistically valid sample" and "crime-related problem." Another commenter asked to remove "decent, safe, and sanitary housing" and replace it with "affordable."

HUD Response: When HUD first required conversion to asset management, HUD asked PHAs to identify "asset management projects," or AMPs, so as to differentiate with "developments" as listed in the PIC (Inventory Management System (IMS)). AMPs are now simply referred to as "projects" and are identified as so in PIC. HUD has added the definition of "statistically valid sample" in § 902.3 of the interim rule. Since the management review under this interim rule will not be used to score management operations, it is not currently necessary to define "crime-related problem." This interim rule does not change the phrase "decent, safe, and sanitary," which is a statutory standard for HUD-assisted housing.

Comment: Several commenters disagreed with the proposal that a PHA could not be high-performing if 10 percent of its units fail the physical, financial, or management indicators.

HUD Response: HUD agrees with this comment, and has determined to retain the definition of high performer that is in the currently codified regulation and not add another layer of complexity to the definition.

Comment: Several commenters stated that certain classifications of PHAs should be subject to less frequent PHAS scoring, either because of their size

(small PHAs) or recent performance. Several comments suggested that HUD modify the inspection frequency for public housing, consistent with the standards in HUD's multifamily housing programs, or alternatively that the size of the PHA should not dictate the frequency of inspections, but rather that frequency should be based on achieving a certain score. With respect to the management assessment, a commenter states that if a PHA meets certain goals, it should be exempt from the following year's management assessment.

HUD Response: HUD agrees and has changed the overall PHAS scoring frequency in response to these comments for physical condition inspections and the Deregulation for Small Public Housing Agencies (68 FR 37664, June 24, 2003) (small public housing agencies are those with fewer than 250 dwelling units). With this rule, HUD is changing the frequency of physical inspections, adopting HUD's multifamily housing standard. Under the currently codified regulations, a PHA's projects are inspected biennially (every 2 years) if they achieve a physical condition score of 80 points or higher. In contrast, in HUD's multifamily programs, projects with a physical condition score of 90 points or higher are inspected triennially (every 3 years). The interim rule has been modified to reflect HUD's multifamily score-based inspection frequency. As a consequence, a public housing project scoring 90 points and above will be inspected triennially; a public housing project scoring less than 90 and at least 80 points will be inspected biennially; and a public housing project scoring below 80 points will be inspected annually (known as "3–2–1"). Previously, HUD was concerned that extended periods between inspections resulted in significant declines in inspection scores; however, recent data for public housing properties that scored 90 points or higher does not show any significant drop-off in scores when those projects are inspected triennially. HUD will continue to monitor the interval data to ascertain that this change does not result in adverse effects. Further, if a management review or some other event (e.g., multiple Exigent Health and Safety (EHS) issues) should cause HUD to believe that the project is in need of a physical inspection, it may so schedule one at its sole discretion. Likewise, HUD may extend the time between inspections for cause as HUD determines.

With this rule, HUD is providing additional relief to small PHAs that are deregulated and is basing the frequency of PHAS assessments on the overall PHAS score. A small PHA that is a high performer will receive a PHAS assessment every 3 years; a small PHA that is a standard or substandard PHA will receive a PHAS assessment every 2 years; and all other small PHAs, including overall troubled and Capital Fund-troubled, will receive a PHAS assessment annually. All overall troubled projects receive a physical inspection annually.

Physical Condition Indicator

Comment: Commenters stated that the physical inspection scoring process is overly complex, difficult to understand, and should be simplified. Another commenter suggested that the physical inspections be modified to capture actual physical needs. Another commenter stated that HUD was changing the physical inspection standards to a tougher standard than currently used.

HUD Response: The physical inspection standards, established under 24 CFR part 5, are outside the scope of this rulemaking. These standards are the same for public housing and HUD's multifamily housing programs. The physical inspection system is designed to assess the livability of a property to the aforementioned "decent, safe, and sanitary" standard. It is not designed to assess or evaluate the remaining useful life of building and property components. HUD plans to update its requirements related to the Physical Needs Assessment in a separate rulemaking, which should address the concern raised by the comment regarding physical needs. The standards for physical inspections have not been changed by this interim rule.

Comment: Several commenters objected to PHAs being penalized when a tenant refuses or impedes access to a unit, thereby preventing the independent inspector from inspecting the unit, and indicated that these situations are beyond a PHA's control, or that a pattern of noncompliance rather than one incident should be required to warrant a penalty.

HUD Response: The prior PHAS regulation at § 902.24(d) and at § 902.20(f) states that all PHAs are required by the Annual Contributions Contract (ACC) to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections. This provision is now at § 902.20(f) in this interim rule, and the substance was not changed. HUD does not agree that such situations are beyond a PHA's control because it is the responsibility of a PHA to ensure that its residents are aware of the physical condition inspection requirement, and if a resident does not comply, a PHA may initiate eviction proceedings for noncompliance with the lease.

Comment: One commenter recommended that HUD eliminate the physical assessment subsystem (PASS) as too costly.

HUD Response: HUD disagrees. The independent physical inspections, which commenced in 1998, have provided an essential tool for HUD in monitoring its public housing and multifamily portfolios and in raising the standards of operations with respect to maintaining the physical condition of public housing properties. The costs of HUD's physical and financial oversight operations amount to a little more than 0.3 percent of the Capital Fund appropriation, of which these costs are an appropriated administrative offset.

Comment: One commenter suggested that units being used for non-residential purposes, such as for community services, be exempt from the physical inspections. One commenter suggested that the site not be included as an inspectable area.

HUD Response: HUD disagrees. First, 24 CFR part 5, subpart G, requires the inspection of common areas, the site, and dwelling units. Secondly, any aspect of a project that may be used by assisted tenants should be subject to inspection, as deterioration of any portion of the project, including community rooms and common areas, affects the whole project.

Comment: One commenter suggested that HUD create a special adjustment factor due to the age of a project.

HUD Response: The currently codified PHAS regulation provides for two adjustments—physical condition and neighborhood environment (PCNE). The PCNE adjustment is based on a statutory requirement at 42 U.S.C. 1437d(j)(1)(I)(2). Under the currently codified regulation, PHAs apply for these adjustments through their management operations certification, which are calculated using information from HUD data systems applied to the physical condition score. Under this interim rule, PCNE will be applied to the management operations indicator score. Moreover, PCNE is based on: (1) Age of the property, and (2) location, which accommodates both the commenter's concern as well as HUD's statutory mandate.

Comment: Several commenters regarded the physical inspections as being too subjective, citing instances of large variations in scores (depending on the inspector), and stated that the appeals process was too cumbersome.

HUD Response: Over the past 12 years, HUD has invested significant resources to assure consistent application of established standards, including a team of HUD "quality assurance" inspectors. While always striving to continue to improve the accuracy of its inspections, HUD believes that the inspection process provides a reasonable indication of the physical condition at the time of inspection of each project. Of course, conditions can vary from year to year. Additionally, HUD has established a process of appeals. HUD is required by statute, 42 U.S.C. 1437d(j)(2)(A)(iii), to establish procedures for appealing a designation of "troubled." HUD's appeals process has been in existence since 1998. The appeals process is, in fact, quite streamlined and uses a bare minimum of procedural requirements. For example, an appeal is initiated by a simple written request.

Comment: Several commenters asked that HUD modify the method of scheduling inspections to allow more flexibility for PHAs.

HUD Response: The scheduling of inspections is part of the Reverse Auction Program that is not part of the PHAS rule. Physical inspection procedures call for adequate notice to the PHA. Inspectors are encouraged to be flexible when the PHA expresses insurmountable difficulties in meeting the inspection date. However, inspectors are not obligated to change inspection dates, and at times cannot do so because of their workload and the need to complete inspections in a timely and efficient manner. The PHAS regulations were not changed in response to this comment.

Comment: Several commenters suggested that PHAs have the option to "abate" EHS violations, rather than to correct or repair them within 24 hours.

HUD Response: HUD agrees that this is a reasonable differentiation. Consequently, this interim rule adopts the following language in § 902.22(f) on EHS deficiencies, "The project or PHA shall correct, remedy, or act to abate all EHS deficiencies cited in the deficiency report * * *."

Comment: Commenters stated that the 72-hour deadline for non-exigent health and safety deficiencies, and the 24-hour timeline for EHS, are too short. The deadline for EHS could result in a PHA having to do emergency procurement, which will increase costs.

HUD Response: EHS deficiencies are, by definition, ones that pose a danger to tenants and so must be corrected or abated quickly. Adding the option to abate the deficiencies and subsequently do a final repair gives PHAs more flexibility, which should address the expenditure issue. As for other deficiencies, the 3 days for an "A" is the average, and HUD believes that this is reasonable for a high performing PHA.

Comment: A commenter stated that § 902.26(a)(4) (triple deduction for uncorrected EHS deficiencies that the PHA had certified were corrected) is overly harsh and seems intended to dissuade PHAs from availing themselves of their right to appeal and given the subjective nature of inspections.

Response: The triple penalty referenced in this section is not related to a PHA's right to appeal; rather, it is a penalty for a false statement to HUD. In general, false statements to the government are often punished harshly in order to deter such behavior. The PHAS system relies heavily on PHAs correctly certifying information and on following through with promised repairs.

Comment: Several commenters suggested that PHAs should be able to challenge EHS deficiencies.

HUD Response: A PHA may always challenge an inspector's determination of what constitutes an EHS issue. However, such a challenge does not remove the PHA's obligation to correct or abate the deficiency within the time required by the regulation. EHS violations are scored, with the exception of smoke detectors, and, therefore, properly belong in the PHAS regulations. A PHA also has the option of requesting a technical review or submitting an appeal if the PHA believes that the inspector was in error.

Comment: Several commenters stated that it is too difficult and time consuming to obtain database adjustments and changes. Commenters stated that requiring PHAs to annually file the same requests adds another layer of bureaucracy and HUD should be required to actually make a permanent adjustment to its database for items that do not belong to the PHA. The paperwork involved in requesting a database adjustment from the HUD field office can be unnecessarily time consuming. The inspector should be given the authority to make an onsite adjustment in cases that are clearly warranted. Also, because maintenance does not automatically stop when an inspector arrives, ongoing maintenance work should not reflect negatively on a PHA's overall rating, but should be noted as an adjustment by the inspector.

HUD Response: There has been a mechanism in place since 1998 for making database adjustments. HUD notes that PHAs are required to present compelling evidence that deficient items noted in the physical inspection report are issues of ownership or code enforcement that are: (1) Outside of the PHA's property; (2) owned and maintained by another entity (such as a municipality); or (3) items normally expected to be code violations (e.g., window security bars) are permitted by the locality. These database adjustments are permanent once a PHA goes through the initial process and submits the justifying documentation, and when granted, are automatic for the next inspection. Other database adjustments, such as units undergoing comprehensive modernization, rehabilitation or conversion, are temporary. To the extent that a unit's status carries over from one inspection to the next, the temporary adjustment must be re-verified. Due to the fact that the field office is required to verify a PHA's request for a database adjustment based on a PHA's supporting documentation, the inspector cannot make an adjustment while on-site. Since the physical inspection of a unit is a snapshot in time, if maintenance work is in progress during the inspection of a unit, the physical condition of the unit is recorded in the inspection report. Accordingly the PHAS regulations have not been changed in this regard. However, to be consistent with multifamily regulations, the time frame for requesting database adjustments has been increased to 45 days.

Comment: Several commenters suggested various clarifications in the "definitions" related to physical inspections, such as project area versus building area, normalized sub-area weight, and how scattered sites are scored in the building area score calculation, project area score calculation, and property score calculation.

HUD Response: HUD has clarified the definitions related to physical inspections, as appropriate, in the physical condition scoring notice.

Comment: The physical inspection standards should be weighted more toward assuring major capital systems are not neglected.

HUD Response: The elements scored by PHAS are statutory, and related to the ongoing physical condition and management of public housing projects and PHAs as a whole. Major capital systems are addressed in the Physical Needs Assessment (PNA).

Comment: Several commenters disagreed with the use of contractors for inspection, stating that HUD field office personnel know the local communities and have an interest in improving the projects.

HUD Response: The use of contractors is within HUD's administrative discretion.

Comment: A commenter asks whether HUD is considering changing the understanding that smoke detectors do not affect the overall score.

HUD Response: No, HUD is not changing that understanding.

Financial Condition Indicator

Comment: One commenter indicated that a PHA should receive bonus points under the financial condition indicator for a "clean" independent audit. Another commenter stated that there was a conflict, in terms of timeframe for submitting audits, between the proposed rule and the Single Audit Act.

HUD Response: A clean, independent audit is a minimum acceptable performance standard for any financial entity, including PHAs. Bonus points will not be awarded simply because a PHA maintains its books and records properly. There is no conflict between the proposed rule, and now this interim rule and the requirements of the Single Audit Act, because both require the submission of a PHA's audit within 9 months of a PHA's fiscal year end. HUD can waive the submission of audited information to HUD, but it cannot waive the PHA's submission of audited information to the Federal Audit Clearinghouse, which is required by the Single Audit Act and OMB Circular A–133.

Comment: Several commenters requested greater clarification on the three scored elements, Quick Ratio (QR), Months Expendable Net Assets Ratio (MENAR), and the Debt Service Coverage Ratio (DSCR), under the financial condition indicator, whether they will only be applied to the public housing program, and whether scores will be based on audited or unaudited statements.

HUD Response: The financial condition scoring notice provides further clarification as to how the subindicators under financial condition are scored. All PHAs will receive scores on the submission of the unaudited FDS. For those PHAs that expend more than $500,000 in federal funds and where audited information is required, financial condition indicator scoring may be revised based on the audited submission. The score based on the audited information will replace the score based on the unaudited FDS because audited information is more reliable as the audit is performed by a third party that attests to the information. HUD does not agree that it should ignore the audited financial information in computing the PHAS score, because audited financial information has an assurance of reliability that is important for those PHAs where audited information is required, as a greater amount of funding is involved, and such audits are required under OMB Circular A–133. PHAs that expend less than the A–133 threshold amount, currently $500,000, are not required to have an audit performed. However, PHAs that received operating subsidy for an audit are required to have a non-A–133 audit performed. Accordingly, the PHA will select a non-A–133 audit when submitting to Financial Assessment Subsystem—Public Housing (FASS–PH).

The interim rule is clear that PHAS measures the financial condition of projects. It does not score the Central Office Cost Center (COCC), the PHA's operation of a Section 8 voucher program, any other PHA program, or a PHA's business activities.

Comment: One commenter stated there is a conflict between §§ 902.60 and 902.62 regarding the deadlines for filing financial audits, with § 902.60 implying that a 9-month deadline for audited financial statements can be deferred and § 902.62 stating that it cannot.

HUD Response: The commenter misunderstands the waiver of deadlines provision. The only deadlines that may be waived are those other than the 9-month deadline for the audited financial statement under the Single Audit Act, such as the financial statements required under 24 CFR part 5, subpart H.

Comment: Several commenters believed that the financial condition standards should be modified. Others commented that the standards for the DSCR were too high (a project would need a DSCR of 2.0 to receive full points). One commenter stated that MENAR and QR should be prorated to account for underfunding, and provided examples. One commenter questioned the fact that bad debt is removed as a separate element in this interim rule.

HUD Response: The QR and the MENAR are very similar to the Current Ratio and the Months Expendable Fund Balance that are used in the currently codified regulation, with the major change being made by this interim rule is that they are applied to public housing projects and rolled up to reflect a PHA's public housing financial activity.

The QR compares quick assets to current liabilities. Quick assets are cash, assets, receivables, and investments that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months.

The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. This ratio compares the adjusted net available unrestricted resources, such as cash, receivables, and investments, to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources. Because MENAR is a measure of reserve adequacy, HUD views one month's reserves, a MENAR of 1.0, as a minimum adequacy for which minimal points are awarded. The greater the adequacy of reserves, the higher the MENAR, and the greater number of points awarded.

Both QR and MENAR specifically exclude Capital Fund Financing program short term liabilities from their calculations. As to underfunding, funding levels for PHAs are determined by Congress. HUD declines to "prorate" these measures. All PHAs are subject to the availability of appropriations, and PHAs that make the most efficient use of their available resources will, and should, score the most points under these indicators. As a result, the QR and the MENAR have not been changed by this interim rule.

However, HUD will consider revisions to the QR metric in the final rule subject to these guidelines. The responsible maintenance of operating reserves is a critical component of effective property management. Scoring for the QR subindicator should acknowledge the fine line between adequate and excessive reserve levels. HUD is concerned that projects that maintain excess reserves may not be providing adequate services to its residents or effective property maintenance. HUD will continue to explore ways in which the maintenance of appropriate operating reserves can be encouraged through the final PHAS rule. However, the public is advised that a different measurement tool may be used, or, if HUD retains the QR, that HUD may explore how it should be tightened to recognize that high QRs might not indicate effective property management. HUD invites the public to comment on these and other issues regarding the QR.

The DSCR is the ratio of net operating income available to make debt payments, to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations.

It was not the intent of Congress, in establishing section 6(j) of the 1937 Act,

42 U.S.C. 1437d(j), to make allowances for funding, because the statute makes no provision for funding allowances.

Bad debt is included in the tenant accounts receivable indicator in the Management Operations component.

HUD agrees that the standards originally proposed for DSCR were too high and has modified the scoring for DSCR such that any project with a DSCR of 1.25 or higher receives the full points. This standard conforms to Fannie Mae's Tier 2 underwriting specifications as well as Freddie Mac's affordable multifamily mortgage requirements. HUD specifically seeks public comments on this issue.

Comment: One commenter stated disagreement with the way the proposed rule would address differences between unaudited and audited financial audits by making an adjustment under § 902.64(a), in that the proposed rule used as an example a downward adjustment only. This commenter also stated that PHAs that are exempt from providing audited financial statements could be treated differently from PHAs that file both audited and unaudited statements, and that financial scores should be based entirely on the audited statements only if a PHA files both.

Response: This interim rule revises the language in § 902.64(a)(1) to simply state that scores may be adjusted in the case of significant differences. However, HUD does not agree with the commenter that unaudited results should be completely disregarded. Audited results are an important check on the accuracy of unaudited results, and if the PHA is following proper accounting practices, there should not be significant differences.

Comment: Several commenters believed that HUD should retain the "peer grouping" aspect of financial condition scoring, as exists under the currently codified regulation.

HUD Response: HUD disagrees. In its multifamily housing programs, HUD does not provide any adjustment in the financial assessment of a project because the project is owned by a "large" property owner or because the project is located in a certain area. A project is financially stable because it meets or exceeds certain basic thresholds that are generally accepted in HUD multifamily asset management. Peer grouping, as it has existed under scoring notices pursuant to the currently codified PHAS rule (an explanation of peer grouping appears in the July 17, 2006, 2006 financial condition scoring notice at 71 FR 40535, first column), was proposed to be removed in the August 21, 2008, proposed rule and is removed in this current rule as a consequence of the change to asset management. Peer grouping is based on the size of the PHA as a function of the number of units it administers, along with an adjustment for geographic location. Peer grouping, in other words, was a result of the fact that entire PHAs were being scored, and there had to be some way to account for differences among PHAs that could affect their financial score. However, now that financial scoring is being done on an individual project basis, all projects are essentially similar and judged by the same criteria and peer grouping is no longer required.

Comment: A commenter suggested that PHAs be provided with an additional 30 days to submit unaudited financial statements.

HUD Response: HUD disagrees. Although HUD provided extra time for PHAs to submit unaudited financial statements during the first year of conversion to asset management, a PHA should be able to submit unaudited statements within 2 months, as is the case under the PHAS regulations that are currently codified.

Management Operations Indicator

Comment: A number of commenters stated that there should be no onsite management assessment, stating that it is too costly or logistically difficult.

HUD Response: As noted in response to the general comments, HUD is not scoring the onsite management review, pending further study. However, given the extensive public comment on many aspects of the management review, HUD wishes to further test the management review mechanism as a diagnostic and feedback tool.

Comment: One commenter suggested that PHAs not be evaluated based on individual projects but based on the public housing program as a whole.

HUD Response: HUD disagrees. Project-based evaluation is fundamental to asset management.

Comment: Commenters stated that the management assessment scoring notice is overly complex, not streamlined, and seeks too much information. One commenter suggests removing the non-scored areas.

HUD Response: HUD has significantly reduced the scored portion of the management operations indicator in this interim rule. The management review mechanism will be further tested by HUD to record non-scored site visits by HUD field staff to public housing projects. For that use only, the review mechanism may include scored and non-scored items.

Comment: One commenter suggested that HUD retain the current management operations certification.

HUD Response: HUD disagrees. The current management operations certification does not capture data on individual projects.

Comment: Several commenters regarded the 40 points assigned to the Management Operations Indicator as disproportionally high.

HUD Response: Because HUD is not scoring the management review and is, instead, evaluating the management operations from discreet data from a project's FDS (occupancy, tenant accounts receivable, and accounts payable), at this interim rule stage, HUD has changed the scoring weights as follows:

Physical Condition—40
Financial Condition—25
Management Operations—25
Capital Fund—10

Comment: Several commenters suggested changes to the 3 elements in the management operations indicator (i.e., occupancy, tenant accounts receivable, and accounts payable) that will be scored. Commenters suggested that there are "too many variables" that can impact accounts payable, which render its measurement moot, and made various suggestions for the percentage of accounts payable indicator, including different scoring and clarification to the applicable time frame. Similar comments were received relative to rent collections (tenant accounts receivable in the interim rule). One commenter suggested that this element be scored not based on actual performance but based on efforts undertaken.

HUD Response: HUD has not made this change in the interim rule in response to these comments. HUD disagrees that there are too many variables that can impact accounts payable because all of the variables cited by the commenters are fully within the management purview of the project and/or PHA. It is a management responsibility to arrange for vendor services, monitor the work, and make payment. Such arrangements are essential to managing a multifamily real estate enterprise. A well-managed property or PHA should already be tracking accounts payable. Therefore, HUD's measurement under PHAS should not represent a burden to the PHA.

HUD disagrees with the comments on rent collection. It is a standard multifamily housing practice that performance is measured by actual collections, not by efforts initiated. HUD has not made this change at this interim rule stage.

Comment: Several commenters stated that the standard for denial of admission based on "reason to believe" that the

applicant is using illegal drugs or is abusing alcohol would be subject to legal challenge.

HUD Response: Under this interim rule, the security subindicator is no longer scored. A review of security, including denials of admission based upon standards mandated by federal law and previously promulgated HUD regulation, will still be included in protocols for public housing onsite management reviews per the requirements of 24 CFR 960.204, "Denial of admission for criminal activity or drug abuse by household members."

Comment: Several commenters stated that the proposed management operations indicator for accounts payable is redundant because the independent audit should or does capture that and other information, or that the indicator is not useful, is overly strict, or is otherwise not needed. Some commenters stated that HUD's own funding issues are the source of problems in this area.

HUD Response: The management operations subindicators being evaluated in the interim rule (occupancy, tenant accounts receivable, and accounts payable) are not subject to A–133 compliance requirements. HUD believes that the inclusion of accounts payable in the PHAS score properly reflects effective property management practices. As noted elsewhere in this preamble, the timely payment of vendor invoices is a function fully within the purview of a property's management, and that a surplus of accounts payable is generally recognized in the property management industry as a prime indicator of a potentially or actually troubled property. Further, and also noted elsewhere in this preamble, HUD does not consider funding issues relevant to scoring under this rule.

Comment: A number of commenters opposed the "appearance and market appeal" indicator, and other aspects of the management operations indicator such as whether a property looks institutional, as too subjective, duplicative of the physical inspection indicator, or both. In addition, commenters stated that criteria related to signage, graffiti, boarded up windows, window treatments, landscaping, paved surfaces, dumpsters, and trash cans, were too difficult to enforce, unfair in their application, and overly subjective. As to signage and graffiti, commenters noted that this component would not apply well in scattered-site developments. As to window treatments, commenters stated that the standard was overly intrusive and that deductions for a single damaged window treatment were unfair. Commenters stated that landscaping components were vague. Some commenters had suggestions for changes to the appearance and market appeal, window treatment, and institutional appearance components.

Comment: Commenters stated that the security component should not be scored for various reasons. Commenters stated that PHAs have no ability to police crime; that it would be burdensome on police agencies to generate the required statistics; that the component cannot be scored in scattered site developments; and that the standards used are overly subjective. Some commenters state that since PHA developments are often sited in high-crime areas, they should be scored on programs they have implemented to prevent crime and not on results, or on matters within the control of the PHA.

HUD Response: These components will be subject to further consideration to create strong and appropriate policies in this area and the capability to measure efforts in ensuring a safe environment for public housing residents. Through this interim rule, HUD solicits additional public comments on the security component and whether appearance measures are appropriate and, if so, how they can best be measured.

Comment: Commenters stated that the applicant screening component should not apply, stating that scoring this element would place an undue burden on the PHA, or sought clarification on how it is scored. One commenter stated that because it is a statutory requirement it should not be scored.

Comment: A number of commenters stated that the proposed rule improperly handles work order turnaround time. Many commenters stated that the 3-day turnaround time to receive an A grade is unrealistically short. Commenters stated that the rule improperly prioritized tenant-generated work orders, which are not always the most urgent. Commenters stated that the rule did not take into account that small PHAs might not have the necessary staff to meet the required deadlines. Commenters stated that work order turnaround might be at the expense of long-term maintenance items, and that the relative scoring between the two items should be adjusted. Commenters stated that funding and staffing reduction should be taken into account. Commenters suggested various less stringent scoring guidelines for work order turnaround. Commenters stated that measuring improvement over time in the work order component could be difficult because it is a new standard and PHAs will not have data, and it is unclear what the consequences would be if there were a minor reduction in turnaround time, for instance, from 2 to 3 days.

Comment: A number of commenters stated that the scoring standards vacancy rate and vacancy turnaround times were too stringent and suggested various revisions, arguing that there are factors outside the PHA's control, too many points were assigned, and more strict than in the private sector. As to vacancy turnaround time, one commenter stated that small PHAs would have particular issues meeting the standard as well as other maintenance obligations.

Comment: Several commenters stated that economic self-sufficiency should not be scored, because it is outside a PHA's control, there is no funding or staffing allocated to self-sufficiency, it is not a program requirement, it is a social service function not appropriate for PHAs, and including the standard may cause PHAs to favor higher-income tenants or impose work requirements. Some commenters suggested for changes to the self-sufficiency component, including aligning the standard with the Section 8 Management Assessment Program (SEMAP) and using the component only for bonus points.

Comment: One commenter stated that the management operations assessment should include a component to assess civil rights compliance with respect to admissions, occupancy, accessibility, and other civil rights-related program requirements.

Comment: Several commenters stated that the energy conservation and utility consumption component should not be scored, because of funding issues, vagueness in the standard, or timing issues involving the required energy audit.

Comment: Several commenters stated that the preventive maintenance component should be removed.

Comment: One commenter stated that the unit inspections component should be revised to allow for alternative inspection protocols.

Comment: Several commenters stated that the time provided for clearance of prior management findings in the proposed rule is too short.

HUD Response: HUD agrees that the management review, as proposed, contains a number of subjective elements. In response to public concerns, and to provide both PHAs and HUD more time to develop and implement a more objective management review tool, the interim rule provides that the management review will be used as a diagnostic and feedback tool and not scored.

Comment: One commenter stated that the standard for corrected EHS deficiencies should be included in the management review and scored; one commenter asked why this element is not scored and more subjective elements such as market appeal are.

Comment: Two commenters stated that the adjustment for physical condition and neighborhood environment is more appropriate for the physical indicator. Several commenters stated that the point adjustment is too small to give relief for viable older properties. Other commenters stated that different or tiered property ages should qualify for the adjustment, and that the use of census tracts does not necessarily reflect the neighborhood.

HUD Response: Correction and abatement of EHS deficiencies is scored under the Physical Condition Indicator. As noted above, HUD has decided not to score the management review at this time but to use it as a diagnostic and feedback tool.

Comment: One commenter stated that items that are not scored should be removed from PHAS, including lead paint abatement, occupancy review, management review findings, other prior review findings, budget management, EHS correction, and insurance.

Comment: Commenters requested clarification of a number of specific management review items, including: modernization; resident involvement; reduced vacancy rate during the previous 3 years; the definition of average number of days that tenant-generated work orders remain open; adequate tracking systems; and the scoring under various specific Management Assessment Subsystem (MASS) components. Some commenters noted that compliance with the resident involvement requirement could differ depending on when the review is conducted.

Comment: Several commenters stated that the rule, specifically the Management Operations scoring notice, should be revised to allow force account labor.

HUD Response: As noted above, HUD has withdrawn the management review as a source of PHAS scoring. All of the issues mentioned in these comments are no longer proposed for PHAS scoring. However, HUD has taken the commentary regarding the utility of the management review itself into consideration. The current MASS protocol is removed by the interim rule.

Removal of the Resident Satisfaction Survey

Comment: The vast majority of commenters supported HUD's removal of the Resident Satisfaction Survey, stating that it does not have statistical validity or is otherwise inaccurate and unhelpful. One commenter, while not supporting the removal of the survey entirely, supported exploring alternatives, and made a number of suggestions, including utilizing Resident Advisory Boards (RABs) to obtain feedback, and sending to RABs and residents councils the results of the management review; having PHAs explain what uses are being made of resident participation funding provided by HUD; having HUD hold meetings with residents and staff; and allowing for a public comment period at PHA board meetings. Also, HUD could make the current survey available in PHA common areas, develop complaint forms, and create an ombudsman position to assist residents and resident councils. One commenter stated that it would be more realistic for an onsite management review team to ask residents the survey questions directly.

Response: HUD's experience is that the Resident Satisfaction Survey does not have a sufficient completion rate overall to be useful. HUD agrees that resident input into the assessment process is important. Notwithstanding the removal of the resident satisfaction component for the period during which this interim rule will be in effect, HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule. Accordingly, HUD seeks comments from the public on better methods of measuring resident satisfaction, self-sufficiency, and participation.

Capital Fund Program Indicator

Comment: One commenter indicated that the Capital Fund program indicator was unnecessary.

HUD Response: This indicator is statutory and imposes no reporting burden on PHAs because the information is already captured in eLOCCS and the PIC.

Comment: One commenter requested clarification as to how Capital Fund Financing Program (CFFP) debt service payments would affect the Capital Fund program indicator.

HUD Response: The Capital Fund program indicator measures obligations of Capital Fund program grants. CFFP amounts are treated as "obligated" upon approval and closing of the financing.

Comment: One commenter suggested that the Capital Fund program indicator be revised to reflect more than just the obligation and expenditure rates under the Capital Fund program.

HUD Response: HUD agrees with this comment, and this interim rule revises the Capital Fund indicator in order to measure the use of the Capital Fund for modernization and other capital needs. HUD believes that success in addressing capital needs will be reflected in higher occupancy rates, and this interim rule measures Capital Fund in terms of timely obligation, as proposed, and adds a new component tied to occupancy rate.

Comment: One commenter suggested that the threshold for meeting the timeliness of obligation and expenditure rates be revised.

HUD Response: The threshold for the obligation subindicator has not changed. The interim rule reflects the timeline for obligation of funds that is stated in the 1937 Act. However, expenditure of Capital Funds is not necessarily a good measure of how well the funds are being used for capital expenditures, and this interim rule revises the indicator to consider occupancy as well.

Comment: Several comments identified technical errors creating apparent inconsistencies regarding project versus whole PHA scoring or the need for clarifications regarding the scoring of the Capital Fund program.

HUD Response: Both the interim rule and the Capital Fund scoring notice have been clarified to reflect HUD's intention to score Capital Fund program indicator activity only at the PHA level.

Comment: Several commenters suggested changes in the method of determining Capital Fund program bonus funds.

HUD Response: Currently, HUD awards Capital Fund program bonus funds according to a PHA's PHAS scores. HUD does not see a reason to modify this procedure.

Substantial Default

Comment: One commenter suggested that the PHAS regulations could be simplified by allowing HUD to declare a substantial default on its own prerogative without regard to regulatory criteria.

HUD Response: Sections 6(j)(3) and (4) of the 1937 Act specifically address the events or conditions that constitute substantial default by a PHA. Part 907 (24 CFR part 907) codifies those statutory requirements.

PHAS Scoring and Audit Reviews

Comment: One commenter states that it is unclear what the "appropriate sanctions" are under § 902.62(a); and for large housing authorities with large

numbers of AMPs because collecting the data is a large burden.

HUD Response: The interim rule in § 902.62(a) clearly states the appropriate sanction is one (1) PHAS point for each 15 days the data submission is delinquent. Large housing authorities have many years of experience in aggregating data from their sites and at least 2 years of experience so far with collecting project level data under asset management. Accordingly, the interim rule has not changed the PHAS regulations as requested by the commenter.

In addition, late points and late presumptive failure will only be applied to the financial condition indicator. This limitation is because the management operations information is derived from the financial condition submission, and applying penalties for lateness under both indicators would penalize PHAs twice for the same action.

Comment: One commenter stated that § 902.64(a)(2) allows HUD to change a PHAS score based on the audit report, other actions such as investigations by HUD's Office of Fair Housing and Equal Opportunity (FHEO) or Office of Inspector General (OIG), or reinspection by HUD. This commenter stated that arbitrarily changing a PHAS score is not appropriate and the regulations should not allow HUD to take this action. Another commenter stated that the "significant difference" between the audited and unaudited results and the amount of downward adjustment need to be defined.

HUD Response: Because the audit report is the PHA's submission to HUD, the fact that it may yield different scoring results than the unaudited FDS is a proper outcome. HUD notes that adjustments due to the audited statement may be adjusted either upward or downward, and a management operations score can change as a result of the audited submission since the management operations information is derived from the financial condition submission. HUD reserves the right to alter PHAS scores when instances of bona fide non-compliance, for items otherwise subject to routine PHAS scoring mechanisms, are revealed by the OIG or FHEO.

In addition, if a PHA does not submit its unaudited or audited information, it will receive a zero for management operations.

The significant difference between the unaudited and audited financial submissions is defined in the Financial Condition Scoring Notice.

Comment: Some commenters stated that the rule should allow for more upward scoring adjustments and do more to incentivize high scores.

HUD Response: HUD has incentivized PASS physical inspection scores (see above). The higher the project's PASS score, the less frequently HUD inspects the property. As with the prior PHAS rule, high performers are eligible for the Capital Fund bonus.

Comment: Several commenters objected to the removal of the board of review and recommended its reinstatement.

HUD Response: HUD finds that the mechanisms for technical reviews, database adjustments and appeals provide sufficient recourse to a PHA, where there are issues of record or fact in dispute, that there is no longer a need for a board of review. The interim rule has not changed the PHAS regulations as requested by the commenters.

Comment: A commenter suggested that the "substandard" performance designation should be appealable and that a time limit should be placed on HUD's review of appeals.

HUD Response: A PHA can appeal its PHAS scores, as well as a designation as substandard. HUD's position is that a time limit for the review of appeals may be counterproductive to ensuring adequate review of an appeal since the underlying circumstances involved in the matter of the appeal can vary greatly. The interim rule did not change the PHAS regulations as requested by the commenters.

Comment: One commenter suggested that § 902.62(a)(3) should be revised to reflect that a PHA may have received a waiver from HUD under § 902.60(c), and the PHA's due date for submission of its audited financial information may, therefore, be other than 9 months after the PHA's fiscal year-end.

HUD Response: HUD will not penalize a PHA that has received a waiver under § 902.60(c), for submitting its audited financial statement in accordance with the provisions of the waiver. HUD can waive the submission of an audited statement to HUD, but it cannot waive the PHA's submission of an audited statement to the Federal Audit Clearinghouse pursuant to OMB Circular A–133. The interim rule has not changed the PHAS regulations as requested by the commenters.

Comment: Several commenters objected to: (1) The limited circumstances under which a PHA can request a technical review of the physical inspection; and (2) limiting appeals only to those that would materially affect the physical condition and PHAS scores.

HUD Response: The technical review and appeals procedures in the interim rule are the same procedures that have been in effect since the issuance of the PHAS regulations currently codified. The interim rule has not changed the PHAS regulations as requested by the commenters.

PHAs With Deficiencies

Comment: Several commenters suggested that corrective action plans be restricted to substandard performers and that HUD should give a PHA the option not to deal with substandard housing.

HUD Response: The operation of decent, safe, and sanitary housing is the core of HUD's monitoring obligations under its grant contracts with PHAs. To suggest otherwise, especially that a PHA not address substandard housing, is unacceptable to HUD. PHAs have a statutory obligation to provide decent, safe, and sanitary housing and will be held responsible for failure to meet this obligation. The changes to the PHAS regulations proposed by the August 21, 2008, proposed rule and adopted by this interim rule are designed to better evaluate whether this core responsibility is met by PHAS. Finally, there are and will continue to be circumstances where deficiencies are noted, but are not sufficient to declare a PHA troubled or substandard. In such cases, the development of a corrective action plan may be in order. The interim rule has not changed the PHAS regulations as requested by the commenters.

Troubled Performers

Comment: One commenter stated that HUD should increase the time for a PHA to review and accept a memorandum of agreement (MOA) and that the substantial improvement measure under § 902.75(g) be tied to the MOA. This commenter stated that the current timeline does not provide enough time for meaningful resident participation.

HUD Response: This interim rule at § 902.75(c) provides that HUD may extend both PHA review and acceptance time upon PHA request. Since the MOA is designed to remedy a troubled PHA, its substantial improvement measures are tied properly to the PHA's PHAS evaluation. In addition, the criteria for substantial improvement are statutory. Further, ensuring meaningful resident participation is wholly within the purview and control of the PHA. As noted above, the PHA may request additional time to effect an MOA. HUD has not changed the interim rule to reflect these comments.

V. Solicitation of Additional Comment

HUD generally publishes rules for advance public comment in accordance

with its rules on rulemaking at 24 CFR part 10. However, under 24 CFR 10.1, HUD may omit prior public notice and comment if it is "impracticable, unnecessary, or contrary to the public interest." Since HUD recently published a proposed rule on this subject on which it received extensive public comment, advance public comment on this interim rule is unnecessary. While HUD recognizes the concerns expressed by many commenters about incorporating the management review into the PHAS scoring until such matters as subjectivity, capacity, and training can be more fully developed, it is necessary to provide an interim mechanism for scoring PHAs. Therefore, HUD is issuing this interim rule. Because of the importance and complexity of the issues involved, HUD is also providing additional opportunity for public comment while also establishing an interim mechanism for scoring. The preamble to this interim rule, where appropriate, states several specific issues upon which HUD seeks comment.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been approved under OMB Control Numbers 2577–0237, 2535–0106, 2502–0369, and 2535–0107. In accordance with the Paperwork Reduction Act, 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 currently valid OMB control number.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 UMRA.

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. 4332). That Finding remains applicable to this interim rule and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing PHAS regulations for the assessment of public housing at 24 CFR part 902, to revise the PHAS regulations to elaborate upon certain procedures, to conform the PHAS regulations to current public housing operations, and to conform to certain statutory changes. These revisions impose no significant economic impact on a substantial number of small entities. PHAs in general have been assessed under PHAS for several years, and this rule imposes no additional burdens; rather, it removes the onsite management review, further lessening the compliance burdens on all PHAs. Further, small PHAs (PHAs with under 250 units) are assessed on a less frequent schedule than larger ones. While some commenters on the August 21, 2008, proposed rule argued for even further lessening of the burdens on small PHAs, there were no commenters that suggested that the proposed rule violated regulatory flexibility principles. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Public Housing program is 14.850.

List of Subjects

24 CFR Part 901

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

24 CFR Part 902

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

24 CFR Part 907

Administrative practice and procedures, public housing, reporting and recordkeeping requirements.

Accordingly, HUD amends 24 CFR Chapter IX, as follows:

PART 901—[REMOVED AND RESERVED]

■ 1. Under the authority of 42 U.S.C. 1436d(j), remove and reserve 24 CFR part 901.

■ 2. Revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.

902.1 Purpose, scope, and general matters.
902.3 Definitions.
902.5 Applicability.
902.9 PHAS scoring.
902.11 PHAS performance designation.
902.13 Frequency of PHAS assessments.

Subpart B—Physical Condition Indicator

902.20 Physical condition assessment.
902.21 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).
902.22 Physical inspection of PHA projects.
902.24 Database adjustment.
902.25 Physical condition scoring and thresholds.
902.26 Physical Inspection Report.

Subpart C—Financial Condition Indicator

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.

Subpart D—Management Operations Indicator

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.44 Adjustment for physical condition and neighborhood environment.
902.45 Management operations scoring and thresholds.

Subpart E—Capital Fund Program Indicator

902.50 Capital Fund program assessment.
902.53 Capital Fund program scoring and thresholds.

Subpart F—PHAS Scoring

902.60 Data collection.
902.62 Failure to submit data.
902.64 PHAS scoring and audit reviews.
902.66 Withholding, denying, and rescinding designation.
902.68 Technical review of results of PHAS physical condition indicator.
902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

902.71 Incentives for high performers.
902.73 PHAs with deficiencies.
902.75 Troubled performers.
902.79 Verification and records.
902.81 Resident petitions for remedial action.
902.83 Sanctions for troubled performer PHAs.

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

Subpart A—General Provisions

§ 902.1 Purpose, scope, and general matters.

(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, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of projects, on a program-wide basis and individual project basis, and providing rewards for high performers and remedial requirements for poor performers.

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs are responsible for complying with nondiscrimination and equal opportunity requirements, including but not limited to those specified in 24 CFR 5.105, for affirmatively furthering fair housing, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of other federal 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).

(c) *PHAS indicators.* HUD will assess and score the performance of projects and PHAs based on the indicators, which are more fully addressed in § 902.9: Physical condition, financial condition, management operations, and the Capital Fund program.

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and the financial assessment of projects and PHAs, and will use data from appropriate agency data systems to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (eLOCCS), the Public Housing Information Center (PIC), or their successor systems. On the basis of this data, HUD will assess and score the results, advise PHAs of their scores, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate attention and assistance.

(e) *Small PHAs.* A PHA with fewer than 250 units that does not convert to asset management will be considered as one project by HUD.

(f) HUD's *scoring procedures* will be published from time to time in the **Federal Register** for public comment.

§ 902.3 Definitions.

As used in this part:

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

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a management 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/is being assessed under PHAS.

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

Capital Fund-troubled refers to a PHA that does not meet the minimum passing score of 5 points or 50 percent under the Capital Fund indicator.

Corrective Action Plan means a plan, as provided in § 902.73(a), that is developed by a PHA that specifies the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the PHAS indicators and subindicators, and identified as a result of a PHAS assessment, when a memorandum of agreement (MOA) is not required.

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.

Days mean calendar days, unless otherwise specified.

Decent, safe, sanitary housing and in good repair (DSS/GR) is HUD's standard for acceptable basic housing conditions and the level to which a PHA is required to maintain its public housing.

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points for the physical condition, financial condition, or management operations indicators, and any score below 50 percent for the Capital Fund indicator. In the context of physical condition and physical inspection in subpart B of this part, "deficiency" means a specific problem, as described in the Dictionary of Deficiency Definitions, 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 means the Dictionary of Deficiency Definitions document that is utilized in the PHAS Physical Condition Scoring procedure, and which contains specific definitions of each severity level for deficiencies under this subpart.

Direct Funded RMC (DF–RMC) means a Resident Management Corporation to which HUD directly provides operating and capital assistance under the provisions of 24 CFR 964.225(h).

Inspectable areas (or area) mean any of the five major components of public housing 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 means the Item Weights and Criticality Levels document that is utilized in the Physical Condition scoring procedure, and which 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.

Memorandum of Agreement (MOA) is defined in § 902.75(b).

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

Resident Management Corporation (RMC) is defined in 24 CFR 964.7.

Score for a project under the physical condition inspection means a number on a scale of 0 to 100 that reflects the physical condition of a project, inspectable area, or subarea. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the project 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 project score. Although inoperable or missing smoke detectors do not reduce the score, they are fire safety hazards and are included in the Notification of Exigent and Fire Safety Hazards Observed Deficiency list that the inspector gives the PHA's project representative.

Severity under the physical condition inspection 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 the Dictionary of Deficiency Definitions.

Statistically valid sample refers to a scientific sampling performed in a rigorous, random manner.

Subarea means an inspectable area for one building. For example, if a project has more than one building, each inspectable area for each building in the project is treated as a subarea.

Unit-weighted average means the average of the PHA's individual indicator scores, weighted by the number of units in each project, divided by the total number of units in all of the projects of the PHA. In order to compute a unit-weighted average, an individual project score for a particular indicator is multiplied by the number of units in each project to determine a "weighted value." For example, for a PHA with two projects, one with 200 units and a score of 90, and the other with 100 units and a score of 60, the unit-weighted average score for the indicator would be $(200 \times 90 + 100 \times 60)/300 = 80$.

§ 902.5 Applicability.

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

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

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

(2) *ACC.* The ACC makes a PHA legally responsible for all public housing operations, except where DF–RMC assumes management operations.

(i) Because the PHA and not the RMC or AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the projects covered by the ACC, including those with management operations assumed by an RMC or AME (including a court-ordered or administrative receivership agreement, if applicable).

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

(3) This part does not apply to Moving-to-Work (MTW) agencies that are specifically exempted in their grant agreement.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs beginning with the first fiscal year end date after the effective date of this rule, and thereafter.

§ 902.9 PHAS scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, based on the four indicators: Physical condition, financial condition, management operations, and the Capital Fund program. Each of these indicators contains subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. The Capital Fund program indicator score is entity-wide.

(b) *Overall PHAS score and indicators.* The overall PHAS score is derived from a weighted average of score values for the four indicators, as follows:

(1) The physical condition indicator is weighted 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator is weighted 25 percent (25 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator is weighted 25 percent (25 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is weighted 10 percent (10 points) of the overall PHAS score for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. The score for this indicator is obtained as indicated in subpart E of this part.

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation. The performance designation is based on the overall PHAS score and the four indicator scores, as set forth below.

(a) *High performer.* (1) A PHA that achieves a score of at least 60 percent of the points available under the financial condition, physical condition, and management operations indicators and at least 50 percent of the points available under the Capital Fund indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

(2) 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 the PHA achieves an overall PHAS score of at least 60 percent, and at least 60 percent of the available points for the physical condition, financial condition, and management operations indicators, and at least 50 percent of the available points for the Capital Fund indicator.

(2) At HUD's discretion, a standard performer may be required by the field office to submit and operate under a Corrective Action Plan.

(c) *Substandard performer.* A PHA shall be designated a substandard performer if the PHA achieves a total PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical condition, financial condition, or management operations indicators. The PHA shall be designated as substandard physical, substandard financial, or substandard management, respectively. The HUD office with jurisdiction over the PHA shall require a Corrective Action Plan if the deficiencies have not already been addressed in a current Corrective Action Plan.

(d) *Troubled performer.* (1) A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer.

(2) In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives less than 50 percent under the Capital Fund program indicator under subpart E of this part will be designated as a troubled performer and subject to the sanctions provided in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)).

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessments is determined by the size of the PHA's Low-Rent program and its PHAS designation. HUD may, due to unforeseen circumstances or other cause as determined by HUD, extend the time between assessments by direct notice to the PHA and relevant resident organization or resident management entity, and any other general notice that HUD deems appropriate.

(a) *Small PHAs.* HUD will assess and score the performance of a PHA with fewer than 250 public housing units, as follows:

(1) A small PHA that is a high performer may receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer may receive a PHAS assessment every other year; and

(3) All other small PHAs may receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund-troubled in accordance with § 902.75.

(b) *Frequency of scoring for PHAs with 250 units or more.*

(1) All PHAs, other than stated in paragraph (a) of this section, may be assessed on an annual basis.

(2) The physical condition score for each project will determine the frequency of inspections of each project. For projects with a physical condition score of 90 points or higher, physical inspections will be conducted every 3 years at the project. For projects with a physical condition score of less than 90 points but at least 80 points, physical inspection will be conducted every 2 years at the project. The physical condition score of 80 points or higher will be carried over to the next assessment period and averaged with the other project physical condition score(s) for the next assessment year for an overall PHAS physical condition indicator score. For projects whose physical condition score for a project is less than 80 points, physical inspections will be conducted annually at the project.

(3) If a PHA is designated as a troubled performer, all projects will receive a physical condition inspection regardless of the individual project physical condition score.

(4) In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

(c) *Financial submissions.* HUD shall not issue a PHAS score for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS. Although HUD shall not issue a PHAS score under such circumstances, a PHA shall comply with the requirements for submission of annual unaudited and audited financial statements in accordance with subpart C of this part and 24 CFR 5.801.

Subpart B—Physical Condition Indicator

§ 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 housing in good repair (DSS/GR), as this standard is defined in 24 CFR 5.703.

(b) *Method of assessment.* The physical condition assessment is based on an independent physical inspection of a PHA's projects provided by HUD and performed by contract inspectors, and conducted using HUD's Uniform Physical Condition Standards (UPCS) under 24 CFR part 5, subpart G.

(c) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD, where the results are verified for accuracy and then scored in accordance with the procedures in this subpart B.

(d) *PHA physical inspection requirements.* The physical inspections conducted under this part do not relieve the PHA of the responsibility to inspect public housing units, as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)).

(e) *Compliance with state and local codes.* The physical condition standards in this part 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.

(f) *HUD access to PHA projects.* All PHAs are required by the ACC to provide HUD or its representative with full and free access to all facilities in its projects. All PHAs are required to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall 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 shall be given a physical condition score of zero for the project or projects involved. This score of zero shall be used to calculate the physical condition indicator score and the overall PHAS score.

§ 902.21 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 DSS/GR (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, décor, or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* (1) *Site.* The site includes the components and must meet the requirements of 24 CFR 5.703(a).

(2) *Building exterior.* The building exterior includes the components and must meet the standards stated in 24 CFR 5.703(b).

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning (HVAC), and sanitary system. Each building's systems must meet the standards of 24 CFR 5.703(c).

(4) *Dwelling units.* Each dwelling unit within a building must meet the standards of 24 CFR 5.703(d).

(5) *Common areas.* Each common area must meet the standards of 24 CFR 5.703(e).

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards, as provided in 24 CFR 5.703(f).

§ 902.22 Physical inspection of PHA projects.

(a) *The inspection, generally.* The PHA's score for the physical condition indicator is based on an independent physical inspection of a PHA's project(s) provided by HUD and using HUD's Uniform Physical Condition Standard (UPCS) inspection protocols to ensure projects meet DSS/GR standards that constitute acceptable basic housing conditions. Mixed-finance projects will be subject to the physical condition inspections.

(b) Pursuant to § 902.13(a), PHAs with less than 250 public housing units will receive a PHAS assessment, based on their PHAS designation, as follows:

(1) A small PHA that is a high performer will receive a PHAS assessment every 3 years;

(2) A small PHA that is a standard or substandard performer will receive a PHAS assessment every other year; and

(3) All other small PHAs will receive a PHAS assessment every year, including a PHA that is designated as troubled or Capital Fund-troubled in accordance with § 902.75.

(c) In the baseline year, every PHA will receive an overall PHAS score and in all four of the PHAS indicators: Physical condition; financial condition; management operations; and Capital Fund program. This will allow a baseline score to be established for the physical condition inspections and the 3–2–1 inspection schedule, as well as a baseline year for the small deregulated PHAs.

(d) *Physical inspection under the PHAS physical condition indicator.* (1) To achieve the objective of paragraph (a) of this section, HUD will provide for an independent physical inspection of a PHA's project(s) that includes, at a minimum, a statistically valid sample of the units in the PHA's projects, 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 nondwelling purposes, *e.g.,* daycare or meeting rooms, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected. 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 turnover; *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) Offline 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.

(e) *Observed deficiencies.* During the physical inspection of a project, 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 project are a randomly selected, statistically valid sample of the units in the project, excluding vacant units not under lease at the time of the physical inspection, as provided in paragraph (d)(2) of this section.

(f) *Exigent health and safety (EHS) deficiencies and health and safety (H&S) deficiencies.* (1) *EHS deficiencies.* To ensure prompt correction of EHS deficiencies, before leaving the site the inspector gives the project representative a Notification of Exigent and Fire Safety Hazards Observed form that calls for immediate attention or remedy. The project representative acknowledges receipt of the deficiency report by signature. The project or PHA shall correct, remedy, or act to abate all EHS deficiencies cited in the deficiency report within 24 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed form. In addition, the project or PHA must certify to HUD within 3 business days of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed form that all EHS deficiencies were corrected, remedied, or acted upon to abate within 24 continuous hours.

(2) *H&S deficiencies.* The project or the PHA, or both, as appropriate, is required to expeditiously correct, remedy, or act to abate all H&S deficiencies after receipt of the Physical Inspection Report.

(g) *Compliance with civil rights/nondiscrimination requirements.* Elements related to accessibility will be reviewed during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) 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.

§ 902.24 Database adjustment.

(a) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under circumstances described in this section, HUD may determine it is appropriate to review the results of a project's physical inspection that are unusual or incorrect due to facts and circumstances affecting the PHA's project that are not reflected in the inspection or that are reflected inappropriately in the inspection.

(1) The circumstances described in this section are not the circumstances that may be addressed by the technical review process described in § 902.68. The circumstances addressed in this paragraph (a)(1) of this section may include inconsistencies between local

code requirements and the HUD physical inspection protocol; conditions that 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 project or PHA having 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. To qualify for an adjustment on this basis, the project or PHA must have notified the proper authorities regarding the deficient element.

(2) An adjustment due to these circumstances may be initiated by a project or PHA's notification to the applicable HUD field office, and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. Projects and PHAs 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 45 days of issuance of the project's or PHA's physical condition score. Based on the recommendation of the applicable HUD office following its review of the project evidence or documentation submitted by the project or PHA, HUD may determine that a reinspection and/or rescoring of the project or PHA is necessary.

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

(1) The circumstances addressed by this paragraph (b)(1) 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 project that results in damage to the project) or natural disasters. The circumstances addressed in this paragraph (b)(1) are not those addressed by the technical review process in § 902.68.

(2) To adjust a physical condition score based on circumstances addressed in this paragraph, the PHA must submit a request to the applicable HUD field office requesting a reinspection or rescoring of the PHA's project(s) dependent on the severity of the deficiency. The request must be submitted within 45 days of the issuance of the physical condition score to the PHA. If the PHA is requesting a reinspection, the request 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 office following its review of the project's or PHA's evidence or documentation, HUD may determine that a reinspection and rescoring of the PHA's project(s) is necessary.

(c) *Adjustments for modernization work in progress.* HUD may determine that occupied dwelling units or other areas of a PHA's project, which are subject to physical inspection under this subpart, and which are undergoing modernization work, require an adjustment to the physical condition score.

(1) An occupied dwelling unit or other areas of a PHA's project undergoing modernization are subject to physical inspection; the unit(s) and other areas of the PHA's project are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA's project that are subject to inspection and 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 or of the project that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the project or PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(2) An adjustment due to modernization work in progress may be initiated by a project's or PHA's notification to the applicable HUD field office, and the notification shall include supporting documentation of the modernization work under way at the time of the physical inspection. A project or 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 45 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD office, HUD may determine that a reinspection and rescoring of the PHA's project(s) are necessary.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under the physical condition indicator, a score will be calculated for individual projects, as well as for the overall condition of a PHA's public housing portfolio.

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score.

(c) *Thresholds.* (1) The project or projects' 100-point physical condition score is converted to a 40-point basis for the overall physical condition indicator score. The project scores on the 100-point basis are multiplied by .40 in order to derive a 40-point equivalent score to compute the overall physical condition score and overall PHAS score.

(2) In order to receive a passing score under the physical condition indicator, the PHA must achieve a score of at least 24 points, or 60 percent.

(3) A PHA that receives fewer than 24 points will be categorized as a substandard physical condition agency.

§ 902.26 Physical Inspection Report.

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

(1) If EHS items are identified in the report, the PHA shall have the opportunity to correct, remedy, or act to abate all EHS deficiencies and may request a reinspection.

(2) The request for reinspection must be made within 45 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 EHS deficiencies that have been corrected, remedied, or acted upon to abate and by the PHA's certification that all such deficiencies identified in the report have been corrected, remedied, or acted upon to abate.

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

(4) If any of the previously identified EHS deficiencies that the PHA certified were corrected, remedied, or acted upon to abate are found during the reinspection not to have been corrected, remedied, or acted upon to abate, 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 45 days after the date that the PHA receives the Physical Inspection Report, the Physical Inspection Report issued to the PHA will be the final Physical Inspection Report.

(b) A 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 (nonlife threatening) and EHS (life threatening) 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 and EHS problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall project score.

Subpart C—Financial Condition Indicator

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the financial condition indicator is to measure the financial condition of each public housing project within a PHA's public housing portfolio for the purpose of evaluating whether there are sufficient financial resources to support the provision of housing that is DSS/GR. Individual project scores for financial condition, as well as overall financial condition scores, will be issued.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the combined performance of all public housing projects in each of the subindicators listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

(c) *Exclusions.* Mixed-finance projects are excluded from the financial condition indicator.

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All 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 unaudited financial information 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 2 months after the PHA's fiscal year end, with no penalty applying until the 16th day of the 3rd month after the PHA's fiscal year end, in accordance with § 902.62.

(c) *Annual audited financial information compliance dates.* 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 85.26).

(d) *Year-end audited financial information.* All PHAs that meet the federal assistance threshold stated in the Single Audit Act and OMB Circular A–133 must also submit year-end audited financial information.

(e) *Submission of information.* In addition to the submission of information required by paragraph (a) of this section, a PHA shall provide one copy of the completed audit report package and the Management Letter issued by the Independent Auditor to the local HUD field office having jurisdiction over the PHA.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* (1) Under the financial condition indicator, a score will be calculated for each project based on the values of financial condition subindicators and an overall financial condition score, as well as audit and internal control flags. Each financial condition subindicator has several levels of performance, with different point values for each level.

(2) The financial condition score for projects will be based on the annual financial condition information submitted to HUD for each project under 24 CFR 990.280 and 990.285. The financial condition score for PHAs will be based on a unit-weighted average of project scores.

(b) *Subindicators of the financial condition indicator.* The subindicators of financial condition indicator are:

(1) *Quick Ratio (QR).* The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Expendable Net Assets Ratio (MENAR).* The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. This ratio compares the adjusted net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

(3) *Debt Service Coverage Ratio (DSCR).* The DSCR is the ratio of net operating income available to make debt payments, to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations. A DSCR of less than one would indicate that the project would have difficulty generating sufficient cash flow to cover both its expenses and its debt obligations.

(c) *Overall PHA financial condition indicator score.* The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score.

(d) *Thresholds.* (1) The PHA's financial condition score is based on a maximum of 25 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 15 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 15 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the management operations indicator is to measure the PHA's performance of management operations through the management performance of each project.

(b) *Exclusions.* Mixed-finance projects are excluded from the management operations indicator.

§ 902.43 Management operations performance standards.

(a) *Management operations subindicators.* The following subindicators listed in this section will be used to assess the management operations of projects and PHAs,

consistent with section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)). Individual project scores for management operations, as well as overall PHA management operations scores, will be issued.

(1) *Occupancy.* This subindicator measures the occupancy for the project's fiscal year, adjusted for allowable vacancies.

(2) *Tenant accounts receivable.* This subindicator measures the tenant accounts receivable of a project against the tenant charges for the project's fiscal year.

(3) *Accounts payable.* This subindicator measures the money that a project owes to vendors at the end of the project's fiscal year for products and services purchased on credit against total operating expenses.

(b) *Assessment under the Management Operations Indicator.* Projects will be assessed under this indicator through information that is electronically submitted to HUD through the FDS.

§ 902.44 Adjustment for physical condition and neighborhood environment.

(a) *General.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing such projects, through appropriate application of the adjustment.

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

(1) Physical condition adjustment applies to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) Neighborhood environment adjustment applies to projects located in census tracts where at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is located in more than one census tract, the census data for the census tract where the majority of the project's units are located shall be used.

(c) *Adjustment for physical condition and neighborhood environment.* HUD will adjust the management operations score of a project, subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the overall management operations score for each project so as to reflect the difficulty in managing the projects. In each instance where the actual management operations score is rated below the maximum score of 25 points, one point each will be added for physical condition and neighborhood environment, but not to exceed the maximum number of 25 points available for the management operations indicator.

(d) *Application of adjustment.* The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* Under the management operations indicator, HUD will calculate a score for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators.

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 25 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 15 points or 60 percent.

(3) A PHA that receives fewer than 15 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds and occupy units in relation to statutory deadlines for obligation for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. Funds from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) do not include HOPE VI program funds.

(b) *Applicability.* This indicator is applicable on a PHA-wide basis, and not to individual projects. This indicator is not applicable to PHAs that choose not to participate in the Capital Fund program under section 9(d) of the Act.

(c) *Capital Fund subindicators.* The subindicators pursuant to section 9(d) of the Act are:

(1) Timeliness of fund obligation. This subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the 1937 Act (42 U.S.C. 1437g(9)(j)).

(2) Occupancy rate. This subindicator measures the PHA's occupancy rate as of the end of the PHA's fiscal year.

(d) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year. This subindicator measures a statutory requirement for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews, and in this indicator through considering occupancy rates.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to eLOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS and/or the PIC systems by the submission due date.

§ 902.53 Capital Fund program scoring and thresholds.

(a) *Scoring.* The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate Capital Fund program grants in a timely manner on capital and modernization needs.

(b) *Thresholds.*

(1) The PHA's Capital Fund program score is based on a maximum of 10 points.

(2) In order to receive a passing score under the Capital Fund program indicator, a PHA must achieve a score of at least 5 points, or 50 percent.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following the effective date of this regulation, unless such change is approved by HUD for good cause.

(b) *Request for extension of time to submit unaudited financial information.* In the event of extenuating

circumstances, a PHA may request extensions of time to submit its unaudited financial information. To receive an extension, a PHA must ensure that HUD receives the extension request electronically 15 days before the submission due date. The PHA's electronic extension request must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. PHAs shall submit their requests for extensions of time for the submission of unaudited financial information through the FASS–PH Secure Systems Web site. HUD shall forward its determination electronically to the requesting PHA.

(c) *Request for waiver of due date for PHA submission of audited financial information.* (1) HUD, for good cause, may grant PHAs a waiver of the due date of the submission of audited financial information to HUD. HUD shall consider written requests from PHAs for a waiver of the report submission due date (established by the Single Audit Act and OMB Circular A–133 as no later than 9 months after the end of the fiscal year). The PHA's written request for a waiver of the due date of the submission of audited financial information must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its written request for such a waiver, 30 days prior to the submission due date, to its local field office. HUD shall forward its written determination of the waiver request to the PHA and, if appropriate, establish a new submission due date for the audited financial information.

(2) A waiver of the due date for the submission of audited financial information to HUD does not relieve a PHA of its responsibility to submit its audited information to OMB's Federal Audit Clearinghouse no later than 9 months after the end of its fiscal year.

(d) *Rejected unaudited financial submissions.* When HUD rejects a PHA's year-end unaudited financial information after the due date, a PHA shall have 15 days from the date of the rejection to resubmit the information without a penalty being applied, in accordance with § 902.62.

(e) *Late points and late presumptive failure.* Late points and late presumptive failure will only be applied to the financial condition indicator since the management operations information is derived from the financial condition submission.

(f) *Score change.* A management operations score can change as a result of the audited submission since the management operations information is derived from the financial condition submission.

§ 902.62 Failure to submit data.

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

(2) If the unaudited year-end financial information is not received within 3 months past the due date, or extended due date, the PHA will receive a presumptive rating of failure for its unaudited information and shall receive zero points for its unaudited financial information and the final financial condition indicator score. The subsequent timely submission of audited information does not negate the score of zero received for the unaudited year-end financial information submission.

(3) The PHA's audited financial statement must be received 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 § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the financial condition indicator.

(b) *Verification of information submitted.* (1) A PHA's year-end financial information and any supporting documentation are subject to 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 the financial condition indicator, and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to HUD for the assessment under any indicator(s) or subindicator(s) shall receive a score of zero for the relevant indicator(s) or subindicator(s) and its overall PHAS score shall be lowered accordingly.

(c) *Failure to submit.* If a PHA does not submit its unaudited or audited information, it will receive a zero for management operations.

§ 902.64 PHAS scoring and audit reviews.

(a) *Adjustments to PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the fiscal year being assessed is transmitted to HUD. If significant differences are noted between unaudited and audited results, a PHA's PHAS score will be adjusted in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators or subindicators, or its overall PHAS score, may be changed by HUD in accordance with data included in the audit report or obtained through such sources as HUD project management and other reviews, investigations by HUD's Office of Fair Housing and Equal Opportunity, investigations or audits by HUD's Office of Inspector General, or reinspection by HUD, as applicable.

(b) *Issuance of a score by HUD.* (1) An overall PHAS score will be issued for each PHA after the later of one month after the submission due date for financial data or one month after submission by the PHA of its financial data. 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(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(2) Each PHA (or RMC) shall post a notice of its final PHAS score and designation in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final PHAS score and designation. In addition, HUD will post every PHA's PHAS score and designation on HUD's Internet site.

(c) *Review of audit.* (1) *Quality control review.* HUD may undertake a quality control review of the audit work papers or as part of the Department's ongoing quality assurance process.

(2) *Determination of deficiency.* If HUD determines that the PHA's financial statements, electronic financial submission, or audit are deficient, it shall notify the PHA of such determination in writing. The PHA will have 30 days in which to respond to the notice of deficiency and to establish that the determination is erroneous. Following consideration of any PHA response, HUD will issue a final determination in writing to the PHA.

(i) *Deficient financial statements.* Deficient financial statements are statements that are not presented, in some material respect, in accordance with accounting principles generally accepted in the United States, as set forth by the Government Accounting

Standards Board, or if applicable, the Financial Accounting Standards Board.

(ii) *Deficient electronic submission.* A deficient electronic financial submission is a filing that was not made, in some material respect, in accordance with HUD requirements or attested to in accordance with the Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants or Generally Accepted Government Auditing Standards.

(iii) *Deficient audit.* A deficient audit is one that was not performed, in some material respect, in compliance with Generally Accepted Government Auditing Standards; Generally Accepted Auditing Standards; the Single Audit Act and OMB Circular A–133, when applicable; or HUD requirements.

(3) *HUD actions.* If HUD determines that the financial statements, electronic financial submission, or audit are deficient, HUD may adjust the financial indicator score to zero and/or reduce the overall PHAS score in accordance with the provisions of this section. Additionally, if HUD determines that the audit is deficient, HUD may, at its discretion, elect to serve as the audit committee for the PHA for the next fiscal year and select the audit firm that will perform the audit in question.

§ 902.66 Withholding, denying, and rescinding designation.

(a) *Withholding designation.* 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:

(1) Is operating under a special agreement with HUD (*e.g.,* a civil rights compliance agreement);

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

(3) Is operating under a court order;

(4) 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

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

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

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.68 Technical review of results of PHAS physical condition indicator.

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

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

(2) A request for technical review must be submitted in writing to the Real Estate Assessment Center, Attention: TAC—Technical Review, 550 12th Street, SW., Suite 100, Washington, DC 20410 and must be received by HUD no later than 30 days following the issuance of the applicable results to the PHA.

(b) *Technical review of results of physical inspection results.* (1) For each project inspected, the results of the physical inspection and a score for that project will be provided to the PHA. If the PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual project, the PHA may request a technical review of the inspection results for that project. Material errors are the only grounds for technical review of physical inspection results.

(2) A PHA's request for a technical review must be accompanied by the PHA's evidence that an objectively verifiable and material error(s) 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 a licensed or registered architect or professional engineer with the authority to sign and seal or "stamp" documents, thus taking the legal responsibility for them, or other similar evidence that is specific to the inspectable area and item being challenged. 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 project's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will a request for a technical review be considered if the request 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 project's inspection results, the PHA's file will be reviewed, including any objectively verifiable evidence produced by the PHA. If HUD's review determines that an objectively verifiable and material error(s) has been documented, then one or a combination of the following actions may be taken by HUD:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score; and

(iv) Issue a corrected PHAS score.

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

(6) 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 project. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but will nonetheless be corrected upon notice to HUD.

(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, HUD will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Nonexistent deficiency error.* A nonexistent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) HUD's decision on a request for technical review is final and may not be further appealed under the administrative process in § 902.69.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation (including Capital Fund program troubled performer designation);

(2) Appeal its final overall PHAS score;

(3) Petition for removal of troubled performer designation;

(4) Appeal any refusal of a petition to remove troubled performer designation; and

(5) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) 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 performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. 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 substandard performer or standard performer, or from standard performer to high performer).

(2) A PHA may not appeal its PHAS score, physical condition score, or both, based on the subsequent correction of deficiencies identified as a result of a project's physical inspection or the denial of a technical review request.

(3) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS by the submission due date.

(c) *Appeal and petition procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition the removal of a troubled performer designation, a PHA must submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) To appeal the petition for the removal of a troubled performer designation, or appeal the denial of a petition to remove a troubled performer designation, a PHA shall submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(4) An appeal of a troubled performer designation, the petition for removal of a troubled performer designation, or the appeal of a refusal of a petition to remove a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall PHAS score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The HUD staff initially evaluating an appeal of refusal to remove a troubled performer designation will not be the same HUD staff who evaluated the PHA's petition to remove the troubled performer designation. The Assistant Secretary will render the final determination of such an appeal.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of a PHAS score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

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.* A PHA that is designated a high performer will be relieved of specific HUD requirements (*e.g.,* will receive fewer reviews and less monitoring), effective upon notification of a high performer designation.

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available for the physical condition, financial condition, and management operations indicators, and at least 50

percent of the points available for the Capital Fund indicator, and achieve an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer and will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the field office.

(3) *Bonus points in funding competitions.* A high performer PHA may 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 and are provided in the relevant notice of funding availability.

(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 audits;

(2) Office of Inspector General audits or investigations as circumstances may warrant; and

(3) Reviews identified by the regional or field office in its current Risk Assessment of PHAs and projects.

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be referred to the field office for appropriate oversight and action.

(1) A standard performer that receives a total score of at least 60 percent shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(c). If the PHA fails to correct the deficiencies, HUD may either require the PHA to enter into a Corrective Action Plan, or HUD may take other action, as appropriate.

(2) A substandard performer, *i.e.,* a PHA that achieves a PHAS score of at least 60 percent and achieves a score of less than 60 percent of the total points available under one or more of the physical condition, management operations, or financial condition PHAS indicators, shall be required to correct the deficiencies in performance within the time period for correction. If the PHA fails to correct the deficiencies, HUD may require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(3) A PHA with a project(s) that receives less than 60 percent of the points available for the physical condition, management operations, or financial condition PHAS indicators, or less than 50 percent of the points available for the capital fund indicator, shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(b). If the PHA fails to correct the deficiencies within the time period allowed, HUD may either require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(b) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's (or DF–RMC's) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), or, in the case of an RMC, after 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-executed Corrective Action Plan, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office of its action to correct a deficiency. A PHA shall also forward to the regional or field office an RMC's report of its action to correct a deficiency. A DF–RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF–RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan, or within such extensions as may be granted by HUD, the field office will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or RMC) will provide the field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan, within 30 days of the PHA's 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 (or DF–RMC or RMC's) reasons for lack of progress unacceptable, HUD will notify the PHA (or DF–RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the 1937 Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

§ 902.75 Troubled performers.

(a) *General.* Upon a PHA's designation as a troubled performer, in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B)) and in accordance with this part, HUD must notify the PHA and shall refer each troubled performer PHA to the PHA's field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include statutorily required actions, 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, HUD will initiate activities to negotiate and develop an MOA. An MOA is required for a troubled performer. 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. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score in each of the PHAS indicators or subindicators identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.,* annual, semiannual, quarterly, monthly), which may be the attainment of a higher score within an indicator or subindicator 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, including the identification of the party responsible for the completion of each task and for reporting progress;

(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 a troubled performer designation or troubled with respect to the program for

assistance from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) and HUD recognition for the most-improved PHAs;

(7) The consequences of failing to meet the targets, which include, but are not limited to, the interventions stated in 24 CFR part 907 and in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)); 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 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 draft MOA.

(d) *Maximum recovery period.* (1) *Expiration of the first-year improvement period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2-year recovery period.* Upon the expiration of the 2-year period that started on the date on which the PHA received the initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

(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; and

(3) The field office

(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 performer PHA fails or refuses to execute an MOA within the period provided in paragraph (c) of this section, or a troubled performer 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 HUD, the field office shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each year of this 2-year period.

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

Example: A PHA receives a score of 50 points on the physical condition, management operations, or financial condition PHAS indicators; 60 points is a passing score. Upon the expiration of the one-year period that started on the date on which the PHA received the initial notification of the troubled performer designation, the PHA must achieve at least 55 points (50 percent of the 10 points necessary to achieve a passing score of 60 points) to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If, in the first year that started on the date on which the PHA received the initial notification of the troubled designation, the PHA fails to achieve the 5-point increase, or if the PHA achieves the 5 point increase within the first year that started on the date on which the PHA received the initial notification of the troubled designation, but fails to achieve the minimum passing score of 60 points after the second year after the initial notification, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

(h) *Audit review.* For a PHA designated as a troubled performer, HUD may perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA; and HUD 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 in a troubled performer status, all services to residents will continue uninterrupted.

§ 902.79 Verification and records.

All project and PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including review by an independent auditor. All PHAs must retain supporting documents for any certifications and for asset management reviews for at least 3 years. Failure to maintain and provide supporting documentation for a period of 3 years for any indicator(s), subindicator(s), or other methods used to assess performance shall result in a score of zero for the indicator(s) or subindicator(s), and a lower overall PHAS score for the applicable assessment period.

§ 902.81 Resident petitions for remedial action.

Residents of a PHA designated as troubled pursuant to section 6(j)(2)(A) of the Act (42 U.S.C. 1437d(j)(2)(A)) may petition HUD in writing to take one or more of the actions referred to in section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)). HUD will consider any petition from a group of residents totaling at least 20 percent of the PHA's residents, or from an organization or organizations of residents whose membership equals at least 20 percent of the PHA's residents. HUD shall respond to such petitions in a timely manner with a written description of the actions, if any, HUD plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents. Nothing in this section shall limit HUD's discretion to determine whether a substantial default

has occurred or to select the appropriate intervention upon such determination.

§ 902.83 Sanctions for troubled performer PHAs.

(a) If a troubled performer PHA fails to make substantial improvement, as set forth in § 902.75(d), HUD shall:

(1) In the case of a troubled performer PHA with 1,250 or more units, declare substantial default in accordance with § 907.3(b)(3) of this chapter and petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) In the case of a troubled performer PHA with fewer than 1,250 units, declare substantial default in accordance with § 907.3(b)(3) of this chapter and either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(3) In the case of substantial default by a troubled performer PHA, nothing in this section shall be construed to limit the courses of action available to HUD under this part, 24 CFR part 907, or section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)) for any other substantial default by a PHA.

(b) If a troubled performer PHA fails to execute or meet the requirements of an MOA in accordance with § 902.75, other than as specified in paragraph (a) of this section, the PHA may be deemed to be in substantial default by HUD and any remedy available therefore may be invoked in the discretion of HUD.

3. Add part 907 to read as follows:

PART 907—SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

Sec.

907.1 Purpose and scope.
907.3 Bases for substantial default.
907.5 Procedures for declaring substantial default.
907.7 Remedies for substantial default.

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

§ 907.1 Purpose and scope.

This part provides the criteria and procedures for determining and declaring substantial default by a public housing agency (PHA) and the actions available to HUD to address and remedy substantial default by a PHA. Nothing in this part shall limit the discretion of HUD to take any action available under the provisions of section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), any applicable annual contributions contract (ACC), or any other law or regulation that may authorize HUD to take actions against a PHA that is in substantial default.

§ 907.3 Bases for substantial default.

(a) *Violations of laws and agreements.* A PHA may be declared in substantial default when the PHA:

(1) Violates a federal statute;

(2) Violates a federal regulation; or

(3) Violates one or more terms of an ACC, or other covenants or conditions to which the PHA is subject.

(b) *Failure to act.* In addition to the violations listed in paragraph (a) of this section, in the case where a PHA is designated as a troubled performer under PHAS, the PHA shall be in substantial default if the PHA:

(1) Fails to execute an MOA;

(2) Fails to comply with the terms of an MOA; or

(3) Fails to show substantial improvement, as provided in § 902.75(d) of this chapter.

§ 907.5 Procedures for declaring substantial default.

(a) *Notification of finding of substantial default.* If the PHA is found in substantial default, the PHA shall be notified of such determination in writing. Except in situations as described in paragraph (d) of this section, the PHA shall have an opportunity to respond to the written determination, and an opportunity to cure the default, if a cure of the default is determined appropriate by HUD. The determination of substantial default shall be transmitted to the Executive Director of the PHA, the Chairperson of the Board of the PHA, and the appointing authority(ies) of the PHA's Board of Commissioners, and shall:

(1) Identify the specific statute, regulation, covenants, conditions, or agreements of which the PHA is determined to be in violation;

(2) Identify the specific events, occurrences, or conditions that constitute the violation;

(3) Specify the time period, which shall be a period of 10 but not more than 30 days, during which the PHA shall have an opportunity to demonstrate that the determination or finding is not substantively accurate, if required;

(4) If determined by HUD to be appropriate, provide for an opportunity to cure and specify the time period for the cure; and

(5) Notify the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, action shall be taken as determined by HUD to be appropriate.

(b) *Receipt of notification and response.* Upon receipt of the notification described in paragraph (a) of this section, the PHA may submit a response, in writing and within the specified time period, demonstrating:

(1) The description of events, occurrences, or conditions described in the written determination of substantial default is in error, or establish that the events, occurrences, or conditions described in the written determination of substantial default do not constitute noncompliance with the statute, regulation, covenants, conditions, or agreements that are cited in the notification under paragraph (a) of this section; or

(2) If any opportunity to cure is provided, that the violations have been cured or will be cured in the time period specified by HUD.

(c) *Waiver of notification and the opportunity to respond.* A PHA may waive, in writing, receipt of written notification from HUD of a finding of substantial default and the opportunity to respond to such finding. HUD may then immediately proceed with the remedies as provided in § 907.7.

(d) *Emergency situations.* A PHA shall not be afforded the opportunity to respond to a written determination or to cure a substantial default in any case where:

(1) HUD determines that conditions exist that pose an imminent threat to the life, health, or safety of public housing residents or residents of the surrounding neighborhood; or

(2) The events or conditions precipitating the default are determined to be the result of criminal or fraudulent activity.

§ 907.7 Remedies for substantial default.

(a) Except as provided in § 907.7(c), upon determining that events have occurred or conditions exist that constitute a substantial default, HUD may:

(1) Take any action provided for in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3));

(2) Provide technical assistance for existing PHA management staff; or

(3) Provide assistance deemed necessary, in the discretion of HUD, to remedy emergency conditions.

(b) HUD may take any of the actions described in paragraph (a) of this section sequentially or simultaneously in any combination.

(c) In the case of a substantial default by a troubled PHA pursuant to § 902.83(b):

(1) For a PHA with 1,250 or more units, HUD shall petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) For a PHA with fewer than 1,250 units, HUD shall either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(d) To the extent feasible, while a PHA is operating under any of the actions that may have been taken by HUD, all services to residents will continue uninterrupted.

(e) HUD may limit remedies under this part to one or more of a PHA's specific operational areas (*e.g.,* maintenance, capital improvement, occupancy, or financial management), to a single program or group of programs, or to a single project or a group of projects. For example, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific project, a group of projects in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and projects not so designated.

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Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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