

## PART 901—[Reserved]

## PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

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### 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.

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(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 as-

essment, 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 defi-

ciency, 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.

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(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.

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(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

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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.

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### § 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 re-

habilitation 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 re-

quest 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 re-scoring 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 sub-standard 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

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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.

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(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.

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### § 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.

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### § 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

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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 docu-

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mentation 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 non-compliance 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 objec-

tive 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 ap-

propriate 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

## 24 CFR Ch. IX (4-1-11 Edition)

### § 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.

## PART 903—PUBLIC HOUSING AGENCY PLANS

Sec.

### Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

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