

(b) *High performer and standard designations.* If a high performer designation is denied or rescinded, the PHA shall be designated either a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter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 If a standard performer designation is denied or rescinded, the PHA shall be designated as a substandard performer or troubled performer.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