

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR PART 901**

[Docket No. FR-3447-P-01]

RIN 2577-AB30

**Office of the Assistant Secretary for Public and Indian Housing; Public Housing Management Assessment Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes changes to the Public Housing Management Assessment Program (PHMAP). PHMAP provides policies and procedures to identify PHA management capabilities and deficiencies, and assists HUD State/Area Offices in accountability monitoring and risk management. PHMAP also establishes procedures for developing, negotiating and executing memoranda of agreement between HUD and troubled agencies and agencies troubled with respect to the program under section 14 that set forth targets, strategies, incentives and sanctions for improving performance. Procedures to follow with respect to housing administered by PHAs that substantially default on their management responsibilities are included in PHMAP. PHMAP applies to public housing agencies (PHAs) and resident management corporations (RMCs), and any other entities under contract to manage public housing, but does not apply to Indian housing authorities, nor to the Family Self-Sufficiency Program authorized under section 23.

**DATES:** Comment due date: July 5, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:**

MaryAnn Russ, Deputy Assistant Secretary for Public and Assisted Housing Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1380. A telecommunications device for hearing or speech impaired persons (TTY) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:****I. Paperwork Reduction Act Statement**

The proposed information collection requirements contained at § 901.100 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Public Housing Management Assessment Program (PHMAP)

(2) Summary of the collection of information:

PHAs shall be required to certify to seven indicators and one component because information regarding these indicators/ component is not presently reported to HUD by PHAs on any form. The use of Form HUD-50072, rather than the preparation and submission of a full data report, was judged to be the least intrusive method of gathering the information.

(3) Description of the need for the information and its proposed use:

Section 502 of the National Affordable Housing Act of 1990 (NAHA) establishes seven specific indicators and directs the Secretary to develop no more than five other factors (indicators) deemed appropriate to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. The designation of PHAs as troubled or as troubled with respect to the program under Section 14 (mod-troubled) is based upon PHA performance under the indicators. The proposed information collection will be used by HUD to assess annually all PHAs at the beginning of the PHA fiscal year to allow the Department to fulfill this mandate of NAHA.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be PHAs. The estimated number of respondents is included in paragraph (5), immediately below. The proposed frequency of responses is once annually.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

**REPORTING BURDEN**

Reference	Number of respondents	Freq. of response	Est. avg. time (hours)	Est. annual burden response (hrs.)
1-99 Unit PHAs .....	1,608	1	2.25	3,618.0
100-499 Unit PHAs .....	1,274	1	2.45	3,121.3
500-1249 Unit PHAs .....	244	1	3.45	841.8
1250-3999 Unit PHAs .....	102	1	4.05	413.1
4000+ Unit PHAs .....	40	1	4.85	194.0
Total reporting burden .....	.....	.....	.....	8,188.2

**Recordkeeping Burden**

Recordkeepers .....	3,268.0
Hours per recordkeeper .....	1.0
Total annual responses .....	327.0
Total burden .....	8,515.2

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-3447) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,  
Office of Management and Budget,  
New Executive Office Building,  
Washington, DC 20503

and  
Reports Liaison Officer, Office of the  
Assistant Secretary for Public and  
Indian Housing, Department of  
Housing and Urban Development,  
451—7th Street, SW., Room 4244,  
Washington, DC 20410

## II. Background

The Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901 has been established in accordance with section 502 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101-625), as amended by the Departments of Veterans Affairs and Housing and Urban Development (HUD), and Independent Agencies Appropriations Act, 1992 (92 App. Act) (approved October 28, 1991, Pub. L. 102-139) and the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992). The need to identify and assist troubled PHAs and PHAs troubled with respect to section 14 (mod-troubled), and to provide for consistently high quality management of PHAs was statutorily recognized in section 502 of NAHA, which amended section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)). Section 502 requires the Department to develop indicators to assess the management performance of PHAs. A PHA assessed as troubled or mod-troubled must enter into a memorandum of agreement (MOA) with HUD that sets forth targets, strategies and incentives for improving its management performance, and provides for sanctions if improved performance does not result. Section 502 also provides that if a PHA substantially defaults upon its agreement or with respect to other covenants or conditions

to which it is subject, the Department may solicit proposals from other public housing agencies and private housing management agents for the management of the housing administered by the defaulted PHA. Alternatively, following a default, the Department may petition the appropriate State or Federal court to appoint a receiver to manage the defaulted PHA. The Department may also require a defaulting PHA to make other acceptable arrangements for managing all or part of its operation in the best interests of the residents.

A proposed rule to implement section 502 as the Public Housing Management Assessment Program (PHMAP) at 24 CFR part 901 was published in the Federal Register on April 17, 1991 (56 FR 15712), with a 60-day comment period. The Department received 114 comments on the PHMAP proposed rule.

The 92 App. Act, passed after the publication of the proposed rule, amended NAHA section 502 in four ways: The number of factors that may be used to assess the management performance of PHAs is limited (seven indicators that must be used for assessment purposes were listed in section 502 of NAHA, and the Department was authorized by the 92 App. Act amendments to develop five additional indicators as it deemed appropriate); the evaluation of PHAs must be administered flexibly to ensure that they are not penalized for circumstances beyond their control; the weights assigned to indicators must reflect the differences in management difficulty that result from physical condition and neighborhood environment; and the determination of a PHA's status as "troubled with respect to the program under section 14" is to be based upon factors solely related to its ability to carry out that program. In a related 92 App. Act amendment to section 14 of the 1937 Act, the determination of whether a PHA is "troubled with respect to the modernization program" (the equivalent of mod-troubled) is to consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work with decent quality; in a timely manner; under competent contract administration; and with adequate budget controls.

An interim rule was published on January 17, 1992, (57 FR 2160) with a comment period of 120 days. After the publication of the PHMAP interim rule, a number of statutory changes to PHMAP were made by section 113 of HCDA 1992. Section 113(a) requires an

on-site, independent assessment of a PHA that is designated as mod-troubled and/or troubled. Paragraph (b) of this section provides for additional remedies upon the occurrence of a substantial default. The Department may, under section 113(c), make available, to housing managers appointed after a substantial default, the assistance necessary to remedy the substantial deterioration of living conditions in individual public housing developments or to remedy other related emergencies that endanger the health, safety and welfare of the residents. Annual reporting requirements to Congress that only affect the Department are the subject of section 113(d). Section 113(e) makes the management assessment provisions of PHMAP applicable to RMCs. The implementation of these sections is discussed below in this preamble under the heading, Summary Of Changes To The PHMAP Interim Rule.

Subsequent to the statutory changes to PHMAP made by section 113 of HCDA 1992, the Department established a consultation group and held a series of meetings to review existing PHMAP procedures and the individual indicators. The group consisted of representatives of PHAs of all sizes from across the country with a wide range of PHMAP scores, public housing industry groups, private management firms, and HUD field staff. Resident groups were solicited for their recommendations as well. Revised indicators were field tested during the summer of 1994 at 45 PHAs of all sizes throughout the country. The results of the field test were summarized and analyzed, which resulted in recommendations for changes to the indicators.

The Department has determined that the revised PHMAP should be issued as a proposed rule due to the degree of changes to the individual indicators and the program itself. For example, three indicators have been eliminated, four indicators have been combined into two indicators, and other indicators have been completely rewritten. The proposed changes are the result of a number of considerations, including comments received on the interim rule, inquiries and additional comments received from the field and the regulated community, the field test conducted during the summer of 1994, and the Department's experience in administering the program. By issuing a proposed rule, the Department is providing the public an additional opportunity to comment.

### III. Regulatory Reinvention

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for PHMAP can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the 1937 Act. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, the new part 901 proposed here does not repeat any statutory language, but only implements requirements that are necessary to augment and implement fully section 6(j) of the 1937 Act, which provides the statutory authority for PHMAP. This proposed rule further reinvents PHMAP by reducing the number of indicators from twelve to eight; eliminating the designation of subparts, which are unnecessary; and rewriting the entire remaining rule text to promote clarity.

### IV. Summary of Changes to the PHMAP Interim Rule

Only those portions of the current PHMAP regulation proposed for revisions are addressed below.

#### *HCDA 1992 Section 113 Amendments*

The Department determined, in accordance with 24 CFR 10.1, that prior public notice and comment were unnecessary to implement paragraphs (a) and (c) of section 113, because these paragraphs involve the exercise of little or no discretion on the part of the Department. Section 113(d) applies only to the Department and does not require a rule. Sections 113 (b)(1) and (e) of HCDA 1992 do require elaboration of the statutory language, and are included in this proposed rule.

HCDA 1992 section 113(e) requires the assessment of RMCs, and makes the provisions under paragraph (j)(2) of section 6 of the 1937 Act apply to RMCs as well as to PHAs. Paragraph (j)(2) contains provisions relating to: (1) Establishment of procedures for designating troubled PHAs; (2) commendation of exemplary PHAs; (3) PHA appeal of designation as a troubled

agency; (4) agreements between HUD and troubled and/or mod-troubled PHAs; and (5) new provisions added by HCDA 1992 section 113(a) that require independent assessments of PHAs that are designated troubled and/or mod-troubled.

The Department proposes to implement section 113(e) by adding a definition of RMC to § 901.5 that would refer to 24 CFR part 964, the regulation that provides for resident participation and management in public housing in accordance with section 20 of the 1937 Act. This proposed rule would provide for the management assessment of RMCs in a manner consistent with the regulatory framework established under section 20 and 24 CFR part 964 for RMC management of a development.

The management assessment of an RMC will necessarily differ from that of a PHA. Because an RMC enters into a contract with a PHA to perform specific management functions on a development-by-development basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC. An additional significant feature of RMC management is that 24 CFR 964.225(d), entitled, *Management contract*, and 24 CFR 964.225(h), entitled, *Prohibited activities*, provide that a PHA may enter into a management contract with a resident management corporation, but a PHA may not contract for assumption by the resident management corporation of the PHA's underlying responsibilities to the Department under the ACC.

For this reason, the limited management responsibility of RMCs in terms of both: (1) The areas in which they perform management functions, and (2) the fact that the PHA remains ultimately responsible to HUD under the ACC, this proposed rule would implement the management assessment of RMCs as follows: § 901.100, entitled, "Data collection," would be amended to provide that when a PHA submits its PHMAP certification, it must identify developments managed by an RMC and the management functions undertaken by the RMC at those developments. The PHA would be responsible for obtaining from the RMC and submitting to HUD, along with its own certification, the PHMAP certification for the management functions undertaken by the RMC. For example, if an RMC were responsible for rent collection in a particular development, the PHA would be required to identify in its certification the development and management function performed by the RMC, and obtain from the RMC a certification of the percent of rents

uncollected, which would be submitted to HUD along with the PHA's certification. Similarly, for those management functions undertaken by an RMC for which no certification is necessary (i.e., the data is already available to HUD, such as the indicator for modernization), the PHA would still be required to identify in its certification form this RMC-managed function and the development involved. The applicable indicators for the RMC would be scored by the Department, and the resulting grades would be transmitted to the PHA as a part of the State/Area Office notification. The PHA would be required to forward promptly the RMC's score.

Section 901.105 of the rule, entitled "Computing assessment score," requires no amendment to provide for the assessment of an RMC's management. Those indicators that would apply to an RMC, based on the management functions assumed by the RMC, would be graded just as they would for a PHA. However, because of the limited scope of management involved, an RMC would not receive an overall designation of high performer, standard, or troubled, but only a grade on each applicable indicator. In addition, because the PHA and not the RMC is ultimately responsible to the Department under the ACC, the PHA's score will be based on all of the developments covered by the ACC, including those with management functions assumed by an RMC. RMC-managed developments would, thus, be assessed to measure the RMC's performance on an indicator-by-indicator basis, and as a part of the PHA's overall performance. As discussed above, this result is necessary because of the limited nature of an RMC's management functions and the regulatory and contractual relationships among HUD, PHAs and RMCs. A new paragraph (c) is added to § 901.100, *Data collection*, to provide for the assessment of RMCs.

To apprise an RMC of its indicator grades, § 901.120 would be amended to provide that the State/Area Office notification to the PHA would include the grades of the RMC, if any, and that the PHA must immediately notify the RMC, in writing, of its grades.

Because an RMC would be assessed on an indicator-by-indicator basis, and would not receive an overall designation such as troubled, most of the provisions of section 6(j)(2) of the 1937 Act could not apply to RMCs, since most of those provisions (the establishment of procedures for designating troubled PHAs; appeals of designation as a troubled agency;

agreements between HUD and troubled PHAs; and, new provisions added by HCDA 1992 section 113(a) that require independent assessments of PHAs that are designated troubled) are triggered by a designation of troubled.

One provision of section 6(j)(2) that is not dependent upon a designation of troubled and that may appropriately be applied to RMCs pertains to the commendation of exemplary PHAs. Even though RMCs would not receive an overall designation of high-performer, standard, or troubled, § 901.130, Incentives, would be amended to permit an RMC that scored a grade of A on each of its indicators to receive a Certificate of Commendation from the Department as well as special public recognition.

With respect to making the section 6(j)(2) provision for agreements between HUD and troubled PHAs applicable to RMCs, since an RMC would not be designated troubled, a memorandum of agreement under § 901.140 would not be applicable. HUD has determined, however, that it would be appropriate to provide guidance for the improvement of an RMC's management functions, and that the proper tool under PHMAP for this purpose would be an improvement plan under § 901.145. An improvement plan is negotiated to improve performance under those individual indicators that are the relevant measures of management performance for an RMC. Section 901.145 would be amended to permit the negotiation of an improvement plan that would include the RMC, the PHA, and the Department.

#### *Application of PHMAP to Alternative Management Entities*

In addition to extending coverage to RMCs, this proposed rule would also extend PHMAP to apply to any other alternative management/PHA relationship, whether the alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations. It is just as necessary to assess the management performance of AMEs as it is to assess PHAs or RMCs, to follow the expressed policy of the 1937 Act, "to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of lower income".

AMEs would be assessed following the procedures used for PHAs or RMCs, depending upon the extent of the management responsibilities assumed.

An AME that assumes all, or substantially all, of a PHA's management responsibilities (for example, under court order, or following a substantial default and pursuant to an award under a competitive proposal) would also assume the PHA's PHMAP responsibilities and would be assessed accordingly. An AME that was contracted to perform a limited number of management functions would be assessed following the procedure used for RMCs.

Although the contractual relationship under the ACC is between the PHA and the Department, there may also be a contractual relationship between the AME and the PHA, or HUD and the AME. To ensure quality management in such contractual relationships, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in the contract. Failure to meet the performance criteria would be a basis for termination of the contract. The provisions that explicitly address AMEs and establish their treatment under PHMAP as following the procedures for either PHAs or RMCs are found at §§ 901.1 and 901.5.

#### *Definitions—§ 901.5*

This portion of the regulation is revised to include new definitions and revised definitions as a result of the proposed revisions to the indicators. Definitions that no longer apply have been eliminated. Some definitions have been expanded to include instructions for calculation.

#### *Indicators—§§ 901.10–901.40*

As indicated in section III, "Regulatory Reinvention," above, this rule would reduce the number of PHMAP indicators from twelve to eight. A proposed sample certification for these revised indicators is included as Appendix 3 of this preamble.

#### *Indicator #1, Vacancy Percentage and Unit Turnaround*

The vacancy indicator and the unit turnaround indicator of the current part 901 have been combined in proposed indicator #1. The proposed indicator has two components. The first component (with a weight of  $\times 2$ ) measures the vacancy rate and, if applicable, the progress a PHA has made in reducing the vacancy rate. The second component (with a weight of  $\times 1$ ), to be used only when a PHA scores below a C on the first component, measures turnaround time. The assumption is that if vacancies are at a C level or above, the

PHA does not have a problem with turning around vacant units.

Because the vacancy rate is a clear manifestation of management effort and embodies the essence of a PHA's mission, it is weighted more heavily than the process-oriented unit turnaround component.

The Department is proposing to use a single method to calculate the actual and adjusted vacancy rate. Instead of taking a "snapshot" picture of the vacancy rate at a certain date, or calculating an average over a thirty day period, the vacancy rate will be calculated by computing the ratio of vacancy days to unit days available over the fiscal year. The adjusted vacancy rate is computed the same way, but with eligible exemptions, such as vacancy days attributable to modernization. The Department believes this method to be the most accurate depiction of performance.

If a PHA elects to certify to the reduction of the vacancy rate over the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

For the calculation of the adjusted vacancy rate and turn-around time, the vacancy days for units in the following categories (fully defined in the rule at § 901.10) shall be exempted:

1. Vacant unit undergoing modernization.
2. Vacant units in an approved demolition or disposition program.
3. Vacant units that are documented to be uninhabitable for reasons beyond the PHA's control.
4. Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law.
5. Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received.
6. Units that are used for non-dwelling purposes, dwelling units that are occupied by employees of the PHA, and units that are used for resident services.
7. Vacant units required to remain vacant because of fire/ police investigations, coroner's seal, or court order.
8. Units kept vacant because of code violations caused for reasons beyond the control of the PHA, rather than as a result of management and/or maintenance failures by the PHA.
9. Units vacant for circumstances and actions beyond the PHA's control.

Definitions for indicator #1 are as follows:

1. Actual vacancy rate: This is the vacancy rate calculated without any adjustments. This is calculated by dividing the total number of vacancy days by the total number of unit days available for occupancy. The maximum number of vacancy days for any unit is the number of days in the year, regardless of the total amount of time the unit has been vacant. An example of this calculation for a hypothetical PHA with 100 units available for occupancy follows. Unit days are calculated by taking the total number of units available for occupancy and multiplying by the number of days in the year.

Unit days available: 100 units×365 days per year = 36,500 actual days available for occupancy

Vacancy days are calculated by adding the total number of days vacant from all units that were vacant for any reason during the PHA's fiscal year. For example:

Unit and reason for vacancy	Days vacant during FY
6 Move-out .....	21
10* Down for modernization .....	120
12* Down for modernization .....	140
15* Down for modernization .....	194
10 Lease up after modernization .....	10
12 Lease up after modernization .....	10
15 Lease up after modernization .....	21

Unit and reason for vacancy	Days vacant during FY
32 Transfer .....	15
81* Fire .....	35
81 Lease after insurance adjustment .....	23
96 Move-out .....	15
41 Move-out .....	28
39 Move-out .....	40
57 Move-out .....	18
61* Down for modernization .....	230
22* Down for modernization .....	90
61 Lease up after modernization .....	10
22 Lease up after modernization .....	3
Total Actual Vacancy Days .....	1,023

The actual vacancy rate for the year is:

$$\frac{1,023 \text{ total actual vacancy days}}{36,500 \text{ actual days under the ACC}} = .03 \text{ (an actual vacancy rate of 3\%)}$$

The asterisks following the unit numbers denote vacancy days that can be exempted in computing the adjusted vacancy rate.

2. Adjusted vacancy rate: This is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons included here. The adjusted vacancy rate for the hypothetical 100 unit PHA would be calculated as follows:

Unit and reason for vacancy	Adjusted days vacant during FY
6 Move-out .....	21
10 Lease up after modernization .....	10
12 Lease up after modernization .....	10
15 Lease up after modernization .....	21
32 Transfer .....	15
81 Lease after insurance adjustment .....	23
96 Move-out .....	15
41 Move-out .....	28
39 Move-out .....	40
57 Move-out .....	18
61 Lease up after modernization .....	10

Unit and reason for vacancy	Adjusted days vacant during FY
22 Lease up after modernization .....	3
Total Vacancy Days, as Adjusted .....	214

The PHA was permitted to exempt 809 of the vacancy days for eligible reasons. To calculate the adjusted rate, the 809 days are removed from the days vacant (numerator). The adjusted vacancy rate for the year is:

$$\frac{1,023 - 809 = 214}{36,500} = .0059 \text{ (an adjusted vacancy rate of .6\%)}$$

3. Reduced actual vacancy rate in the previous three years: this is a comparison of the vacancy rate in the PHMAP assessment year (immediate past fiscal year) to the vacancy rate during the first year of the previous three year period. In the case of the hypothetical PHA discussed earlier, the assumption is made that the actual vacancy rate during the first year of the three year period was 40 percentage points, compared to the assessment year with a 22 percentage point vacancy rate. This is a vacancy rate reduction of 18 percentage points, calculated as follows:

Percentage points vacancy rate in the earlier year, minus .....

Percentage points vacancy rate in the assessment year, equals .....

Percentage points reduction in the vacancy rate .....

4. Average unit turnaround time: the annual average of the total number of turnaround days between the move-out date and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Unlike vacancy days, which cannot exceed the number of days in the fiscal year, turnaround days include all the days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years. Only units that are re-

occupied during the fiscal year are included in the turnaround time calculation. An example of this calculation is as follows for a hypothetical PHA that had 15 units turned over in the assessment year:

Unit	Turn-around days	Days exempted	Net days
12	100	80 (modernization days).	20
14	10	.....do .....	10
31	12	.....do .....	12
36	96	86 (modernization days).	10
18	413	.....do .....	413
6	4	.....do .....	4
41	13	.....do .....	13
59	74	60 (modernization days).	14

Unit	Turn-around days	Days exempted	Net days
32	2	.....do .....	2
96	14	.....do .....	14
2	60	40 (fire damaged unit).	20
4	21	.....do .....	21
6	8	.....do .....	8
13	29	.....do .....	29
22	19	.....do .....	19
Total Turnaround Days During the Fiscal Year (FY)			590

Annual average vacant unit turnaround time for the FY:

$$\frac{190 \text{ total turnaround days during the FY}}{15 \text{ units re-occupied during the FY}} = 12.7 \text{ days}$$

5. Approved, funded, on-schedule annual modernization program: Includes any modernization program, funded under the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), Vacancy Reduction Program (VRP), or any other source, if a PHA is in conformance with its current implementation schedule as approved by the PHA Board of Commissioners and/or HUD.

6. Turnaround days: The days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years.

7. Vacancy day: A day when a unit is not under lease by an eligible low-income resident, unless the vacancy day is exempted for an eligible reason.

8. Vacant unit: Is a dwelling unit that is not under lease to an eligible family. Units under lease for non-dwelling uses should not be included in the calculation of this indicator.

9. Available unit: A dwelling unit (occupied or vacant) under the PHA's ACC.

This proposed combined indicator has a weight of #2.

#### *Indicator #2, Modernization*

(This indicator is automatically excluded if a PHA has no modernization program.)

This proposed indicator was changed very little with the original five components remaining virtually the same. However, the weight values for component #1, expenditure of funds, and component #2, obligation of funds, have been changed so that greater emphasis is given to obligation of funds in relation to expenditure of funds. This is exactly the opposite of the current interim rule, where the emphasis is placed on expenditure of funds. This

change recognizes the importance of getting projects under contract, while at the same time acknowledging that often it is necessary to hold back payments to contractors due to disputes over the quality of the work or materials.

A new feature in component #1, expenditure of funds, and component #2, fund obligation, would require, for grade A, PHAs that are not on schedule to have self-executed a time extension within 30 calendar days after the expenditure or obligation deadline with the extension to be based on reasons outside of their control.

For component #3, contract administration, and component #4, quality of the physical work, the number of possible grades has been reduced from six to three, the three being A, C and F. "Significant findings" for these two components will be redefined prior to the effective date of any changes to the PHMAP. Component #5, budget controls, has been changed to reflect the final CGP rule which permits agencies to move work items between approved CGP annual statements and the latest approved five-year action plan.

This proposed indicator has a weight of x1.

#### *Indicator #3, Rents Uncollected*

The method for calculating the amount of rents uncollected for this proposed indicator has been simplified to a basic ratio comparing the total amount of rents billed during the assessment year, to the amount of rent collected during the assessment year. In the current interim PHMAP rule, PHAs are instructed to include the accounts receivable owed at the beginning of the assessment year and to deduct the total amount of accounts receivable that have been written off during the year for residents no longer in possession. Both of these adjustments have been eliminated in the proposed indicator as not being directly relevant to rent billed and collected in the current assessment period.

The percentage of rents uncollected refers to the proportion of current dwelling rent that was billed during the assessment year, but not collected during the assessment year. The calculation is made as of the close of business on the last business day of the fiscal year. "Current dwelling rent" excludes retroactive rent charges (including those identified through the Tenant Integrity Program), maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

This proposed indicator has a weight of x1.5.

#### *Indicator #4, Work Orders*

The current indicator #4, energy consumption, has been combined with the overall measurement of financial performance, which is now indicator #6.

The new proposed indicator #4, work orders, continues to measure PHA performance in the handling of both emergency and non-emergency work orders, but under this proposed rule, the measurement will be in two components instead of one. The proposed indicator grade will be based on the average number of days it takes for a work order to be completed rather than the percentage of work orders outstanding at the end of a PHA's fiscal year.

The Department believes that assessing the average amount of time it takes to complete work orders is more equitable. Consider the following scenario:

Two PHAs have a fiscal year-end date of June 30, 1995. The first PHA has five work orders received on June 29, 1995, and did not complete them until July 2, 1995. The second PHA has five work orders received on January 1, 1995, and completed them on June 29, 1995. If both PHAs received the same amount of work orders, the second PHA would receive a higher grade under the current method of grading this indicator, even though it took the second PHA much longer to complete the work orders.

The first component measures emergency work order performance; the second component measures the average amount of time it takes to complete non-emergency work orders.

The proposed indicator includes more definitions and makes clear the Department's intention that all work orders should be tracked, except those exempted for modernization, issued to prepare a vacant unit for re-rental, and issued for the performance of cyclical maintenance. Implicit in this indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders. As such, the adequacy of a PHA's work order system will be part of the confirmatory review of this indicator.

If a PHA elects to certify to the reduction in time it takes to complete work orders, the PHA shall retain justifying documentation to support its certification for HUD post review.

This proposed indicator has a weight of x1.5.

#### *Indicator #5, Inspection of Units and Systems*

This proposed indicator has undergone significant changes. Instead

of having four components, it now has only two, each with a weight of x1. Component #1 examines the percentage of occupied units, out of all of a PHA's units (except those permitted to be exempted), that the PHA inspects on an annual basis in order to determine short-term maintenance needs (for which work orders are issued) and long-term modernization needs (which are referred to and included in the PHA's comprehensive plan for modernization).

Component #2 examines the effectiveness of a PHA's annual inspection of its major systems, as systems are defined herein, and the maintenance of those systems either as part of the inspection process, or through the issuance of a work order; or, if a work order is not issued, by inclusion in the PHA's comprehensive plan for modernization. While the current indicator assesses the repairs to units and systems, the new proposed indicator makes it clear that work orders that are generated as of result of components #1 and #2 are measured primarily under indicator #4, outstanding work orders, unless the repair is completed during the inspection or deferred to the modernization program.

This proposed indicator also makes it clear that PHAs are expected to inspect to the standard specified in the local housing/occupancy code, as long as that code is at least equivalent to or exceeds Section 8 Housing Quality Standards (HQS). Implicit in this indicator is the adequacy of the PHA's inspection program in terms of the quality of a PHA's inspections, and how a PHA tracks both inspections and needed repairs. As such, the adequacy of a PHA's inspection program will be part of the confirmatory review of this indicator.

The Department has more clearly defined the units, both vacant and occupied, which may be exempted from an annual inspection.

Units in the following categories (fully defined in the rule at § 901.30) are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or in part of buildings where *all* of the dwelling units in the building are exempted, are also exempted from the calculation of proposed indicator #5.

1. Occupied units where the PHA has made two documented attempts to inspect.

2. Vacant units undergoing modernization.

3. Vacant units in an approved demolition or disposition program.

4. Vacant units that are documented to be uninhabitable.

5. Vacant units vacant for the full immediate past fiscal year that have been exempted under indicator #1 for any of the reasons for which exemptions are permitted under that indicator (except those units that are used for non-dwelling purposes or that are occupied by employees of the PHA and units that are used for resident services).

This proposed indicator has a weight of x1.

#### *Indicator #6, Financial Management*

This proposed indicator combines, in two components, indicator #4, energy consumption; and indicator #9, operating reserves. The first component assesses the amount of cash reserves in relation to total actual routine expenses. The second component is required only if a PHA scores below a grade C on component #1. The Department is offering two options for component #2. Option A compares energy and utility expenses to the average of those expenses computed on a three year rolling base; and option B measures whether or not a PHA has conducted an energy audit and implemented the improvements recommended as a result of the energy audit. PHAs with tenant-paid utilities in all their units will not be assessed on energy/utility consumption even if they score below a grade C in cash reserves. The rationale for measuring energy consumption only if a PHA scores below a grade C in the first component is that if a PHA is in good financial health, the Department can reasonably conclude that energy/utility usage is being well-managed.

A PHA that has cash reserves equal to or greater than 10% of total actual routine expenses will be assessed only on the cash reserves component. This proposed component has a weight of x2.

The proposed energy/utility component, option A, is substantially different from the current energy indicator in that it includes water and sewage usage, and the adjustment for the heating degree day (HDD) factor has been eliminated. The elimination of the HDD factor from the calculation of this component is in accordance with Notice PIH 94-81, dated November 18, 1994. On October 13, 1994, a final rule was published in the Federal Register that eliminated the application of the HDD factor for utility consumption. This rule will first affect PHAs with fiscal year ending December 31, 1995.

As stated previously, option B for the energy/utility component assesses the conduct of an energy audit and the implementation of recommendations that resulted from the energy audit. The

Department is particularly interested in receiving comments regarding the energy/utility component to determine what the national preference is for this component. PHAs are asked to indicate whether they prefer option A; option B; or the choice of being able to use either option for their PHMAP certification and assessment.

This proposed component has a weight of x1.

A sample worksheet for computing component #1 is included as Appendix 1 of this preamble; and two sample worksheets for computing component #2 are included as Appendix 2 of this preamble.

This proposed indicator has a weight of x1.

#### *Indicator #7, Resident Involvement*

PHAs with 100 units or less shall not be assessed under this indicator. This indicator reflects the Department's new emphasis on Section 3 programs to encourage resident employment. As in the current resident initiatives indicator, this indicator assesses a PHA's efforts to involve residents to improve the community in which they live. If the PHA is participating in any HUD grants, such as the Tenant Opportunity Program, Youth Apprenticeship Program, etc., this component assesses a PHA's success in implementing these programs. This proposed indicator has a weight of x1.

The Department believes that consumer satisfaction is critical in public housing, and is in the process of conducting a national study on the issue. The Department is also seriously considering including a component under this indicator that assesses consumer satisfaction. Therefore, HUD is especially interested in receiving comments regarding whether or not PHAs should be required to conduct resident surveys on a periodic basis, and whether such a survey should be standardized.

#### *Indicator #8, Security*

It was HUD's intention that PHAs with 100 units or less not be assessed under this indicator, and this is stated in the text of the proposed rule, but HUD is specifically soliciting comments on whether this indicator should apply to such PHAs. Recognizing that many public housing communities are under siege by gangs, violent criminals and drug dealers who threaten the safety and welfare of decent, responsible residents, President Clinton has announced a "One Strike" policy in which people in public housing who engage in drug and other criminal activity will be barred from admittance to public housing or



evicted, as applicable. This policy is supported by a law recently passed by Congress entitled the Housing Opportunity Program Extension Act of 1996 (the Extension Act) (Pub. L. 104-120, approved March 28, 1996). The Extension Act expands the statutory authority of PHAs to keep persons engaged in illegal activities out of public housing. In furtherance of President Clinton's policy and the Extension Act, the Department is adding a new indicator that assesses security. The security indicator will consider a PHA's ability to perform such activities as: Track crime-related problems in their developments; take action with local police authorities to improve law enforcement, lease enforcement and crime prevention; adopt and implement tough applicant screening and resident eviction policies and procedures; and meet goals under any HUD-funded drug prevention or crime reduction program. Although applicant screening and resident eviction policies and procedures must be tough, the proposed rule would require such actions to be appropriately taken. By using the term "appropriately" in the text of the rule, HUD intends to preserve PHAs' ability to act consistently with the provisions of 24 CFR 966.4(5)(i), *Eviction for criminal activity—(i) PHA discretion to consider circumstances*. This proposed indicator has a weight of x1.

With respect to this proposed security indicator, HUD is particularly interested in comments regarding the desirability of holding PHAs responsible for demonstrating systems to take action with local police authorities to improve law enforcement, lease enforcement and crime prevention. HUD believes that such cooperative action is critical to residents' well-being, but some have expressed concern whether PHAs should be held accountable for obtaining cooperation from another party (the police). In addition, HUD specifically invites comments regarding the reasonability of the proposed component which rates PHAs based on the percentage of goals they have met in crime reduction-related programs.

#### Data Collection—§ 901.100

The length of time a PHA has to submit its form HUD-50072, PHMAP Certification, to the State/Area Office has been reduced from 90 days to 45 days after the end of a PHA's fiscal year. This change has been made because many comments have stated that the overall PHMAP process takes too long. Under the current program, it could be a minimum of nine months before a PHA knows its final PHMAP score after going through the appeal process. The

45 day period is consistent with other reporting due date requirements, such as the submission of year-end financial statements and the submission of the CGP annual report. A PHA that does not submit its year-end reports in a timely manner may receive a grade of F for the applicable indicators. PHAs will no longer be allowed to submit past due reports in support of an appeal and expect the appeal to be granted. State/Area Offices will be required by the Department to complete the PHMAP assessments within an additional 45 days, thereby reducing the overall time for the completion of a PHMAP assessment to 90 days after the end of a PHA's fiscal year.

The reporting requirements for PHAs where management functions have been assumed by an RMC or other alternative management entity have been included in the regulation. A PHA's certification will be required to identify the development and management functions assumed by the RMC or AME, and the PHA will be required to obtain a certified questionnaire from the RMC or AME as to the management functions undertaken by the RMC or AME. The RMC's or AME's certification will be required to be approved by its executive director or chief executive officer of whatever title, and the PHA will be required to submit the RMC's or AME's certified questionnaire along with its own certification.

Any alternative management/PHA relationship is assessed under the PHMAP, as discussed above in this preamble, whether the alternative management is an RMC, a receiver, private contractor, private manager, or any other entity that is under contract with a PHA to manage all or part of its operations.

Guidance to PHAs regarding how to calculate each applicable indicator and component will be issued in a handbook and/or guidebook. Such issuances will coincide with the effective date of any changes to the PHMAP.

#### Computing Assessment Score—§ 901.105

##### Indicator and Component Weights

The weights of some of the indicators have been reduced to simplify the computation of a PHA's assessment score. The total weights for each indicator are based on a ten-point scale, and the highest score a PHA can receive is 100. Indicators receive a higher weight primarily if they reflect a management aspect closely related to the key areas of the condition of PHA stock and delivery of services to PHA residents. On this basis, two indicators

are given a weight of two: Vacancies and rents uncollected. Two indicators are given a weight of one and a half: Work orders and resident initiatives. The remaining indicators are given a weight of one: Modernization, inspection of units and systems, and financial management.

The weight of each indicator and component (shown in brackets [ ] for components only) is as follows:

Indicator #1, vacancy percentage and unit turnaround .....	x2
Component #1, vacancy percentage and progress in reducing vacancies .....	[x2]
Component #2, unit turnaround time .....	[x1]
Indicator #2, modernization .....	x1
Component #1, unexpended funds over three Federal fiscal years (FFYs) old .....	[x1]
Component #2, timeliness of fund obligation .....	[x2]
Component #3, adequacy of contract administration .....	[x2]
Component #4, quality of the physical work .....	[x3]
Component #5, adequacy of budget controls .....	[x1]
Indicator #3, rents uncollected .....	x1.5
Indicator #4, work orders .....	x1.5
Component #1, emergency work orders completed in 24 hours or less .....	[x1]
Component #2, average number of days for non-emergency work orders to be completed .....	[x2]
Indicator #5, annual inspection of units and systems .....	x1
Component #1, annual inspection of units .....	[x1]
Component #2, annual inspection of systems .....	[x1]
Indicator #6, financial management .....	x1
Component #1, cash reserves .....	[x2]
Component #2, annual energy/utility consumption .....	[x1]
Indicator #7, resident involvement .....	x1
Component #1, resident involvement .....	[x1]
Indicator #8, security .....	x1

#### Physical Condition and Neighborhood Environment

The overall PHMAP score of a PHA will be adjusted by adding weighted points that reflect the differences in the difficulty of managing developments that result from the physical condition and/or the neighborhood environment of a PHA's developments.

Section 502.(j)(1)(I) requires that (i) the Secretary shall administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as a result of circumstances beyond their control; and (ii) reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical



condition and neighborhood environment.

The Department believes that the current PHMAP regulation contains substantial provisions to ensure that PHAs are not penalized for conditions beyond their control:

1. A PHA may request a modification of any indicator and/or component to compensate for conditions beyond its control.

2. A PHA may request the exclusion of an indicator and/or component for the same reason.

3. Without requesting a modification, the current and proposed PHMAP regulation allows PHAs to modify the scoring calculations for certain indicators by exempting certain units.

4. There is a two-stage appeal process available if the PHA fails to find relief under paragraphs one, two, and three, above.

In view of these already substantial considerations which protect PHAs from being penalized for circumstances beyond their control, the Department is proposing to respond to item (ii), above (requiring the Department to reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual developments that result from their physical condition and/or their neighborhood environment), in a way that will fully comply with the statutory language, but will not make PHMAP substantially more complicated, nor place inordinate administrative burdens on PHAs and HUD staff.

The Department is proposing that the legislative provision (requiring the Department to reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual developments that result from their physical condition and/or their neighborhood environment) apply to the following three indicators only.

1. Indicator #1, vacancy percentage and unit turnaround;
2. Indicator #4, work orders; and
3. Indicator #5, annual inspection and condition of units and systems.

The definitions of physical condition and neighborhood environment are kept as simple as possible and meant to make it relatively easy for PHAs to document.

1. Physical condition: Refers to units located in developments over ten years old that require major capital investment in order to meet minimum HQS standards or local codes, whichever is applicable.

2. Neighborhood environment: Refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts on all sides of the

development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued a weighted PHMAP score, based solely upon the certification of the PHA, in addition to the regular PHMAP score. The additional weight shall be calculated as follows:

Percent of Units Subject to Physical Condition and/or Neighborhood Environment:	Extra points
At least 5% but less than 10% .....	0.5
At least 10% but less than 20% .....	.6
At least 20% but less than 30% .....	.7
At least 30% but less than 40% .....	.8
At least 40% but less than 50% .....	.9
At least 50% .....	1.0

These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD-50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added. For example, a PHA certifying that (after removing from consideration all units previously exempted) 15% of its units are subject to the physical conditions and/or neighborhood environment as defined above, would receive an additional .6 of a point for the score for indicator #1. If a PHA receives an unweighted score of D (5 points) for this indicator, the weighted score would be 5.6 points. Indicator #1 has an overall weight of x2, therefore, the weighted score for the indicator would be 11.2, as opposed to the unweighted score of 10.

Developments that have received comprehensive modernization within the past ten years are not eligible to receive additional weight for the physical condition factor. A PHA that receives a grade of A under indicators #4 and #5 (without additional points) may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable. None of the weighted indicators may have a score that is more than its total weighted points, including the additional point, or fraction thereof, awarded for weighting.

PHAs would be expected to maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to additional

weighting. If the basis were neighborhood environment, the PHA would have on file the appropriate maps showing the census tracts surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation. For example, a unit that has been removed from the adjusted vacancy calculation because it is undergoing modernization shall not also be counted as a unit subject to this provision. For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received comprehensive modernization. They would also have to document that in all cases, units that had been exempted for other reasons were not included in the calculation.

#### *PHA Score and Status—§ 901.115*

This section has been revised to state that a PHA shall not be designated as a high performer if it scores below a grade of C for any indicator.

A new provision, recommended by the Office of Management and Budget in the course of the review of this proposed rule in accordance with Executive Order 12866, would require each PHA to post a notice of its PHMAP score and status in appropriate conspicuous and accessible locations in its offices and in each of its developments within two weeks of receipt of the score and status. In addition, HUD would publish every PHA's score and status in the Federal Register.

#### *State/Area Office Functions—§ 901.120*

Section 901.125, *Regional Administrator functions*, has been eliminated from this proposed rule as a result of the reorganization of the Department and the redelegation of authority to State/Area Offices. Applicable functions have been included in this portion of the regulation.

This section will require a State/Area Office to notify a PHA of its PHMAP score and the grade of the RMC or AME (if any) assuming management functions at any of the PHA's developments, and will require a PHA to notify in writing, immediately upon receipt of the State/Area Office notification, the RMC or AME (if any) of the RMC/AME's grades.

*PHA Right of Appeal—§ 901.125*

Former Regional Administrator functions that are applicable have been included in this portion of the regulation.

*Incentives—§ 901.130*

All high- and standard-performing PHAs have been afforded substantial relief by the Department and this section of the regulation has been revised to reflect the available relief. This section also includes recognition of RMCs that receive a grade of A on each of the indicators for which they are assessed.

*Memorandum of Agreement—§ 901.140*

The scope of the Memorandum of Agreement (MOA) may vary depending upon the extent of the problems present in the PHA, and now provides for the inclusion of other relevant areas identified as problematic, i.e., areas other than deficient PHMAP indicators. The Department believes that the use of one document to track troubled and mod-troubled PHA progress is in the best interest of PHAs and the Department.

Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and the execution of an MOA by the Assistant Secretary for Public and Indian Housing.

*Improvement Plan—§ 901.145*

The option of requiring RMCs or AMEs to develop an improvement plan is included in the regulation. As with a PHA, if an RMC or AME receives a D or E in any indicator, the State/Area Office may require an RMC or AME to develop an improvement plan. If an RMC or AME receives an F in any indicator, the State/Area Office shall require an RMC or AME to develop an improvement plan.

*Resident Participation in Competitive Proposals and Resident Petitions, §§ 901.220 and 901.225*

The statutory authority for the PHMAP is section 6(j) of the 1937 Act. Section 113 of HCDA 1992 amends section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), which deals with the actions that may be taken upon the occurrence of a substantial default by a PHA.

Section 113(b)(1) amends 1937 Act section 6(j)(3)(A)(i), which permits the Department to solicit competitive proposals from other PHAs and private housing management agents (which may be selected by existing residents) to

manage the housing administered by a PHA in substantial default, by allowing residents the opportunity to participate in the selection process through administrative procedures established by the Department. These administrative procedures are being proposed in this rule.

This proposed rule would provide in § 901.220 that when a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP), the PHA would be required to post a notice and a copy of the RFP on the premises of each housing development subject to new management under the RFP for the purposes of notifying affected residents. Residents would be required to notify HUD by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify HUD must equal at least five percent of the PHA's residents, or the notification of interest must be from an organization or organizations of residents whose membership must equal at least five percent of the PHA's residents. Because of the urgency that is appropriately present when the extraordinary measure of selecting new management for a PHA in substantial default must be taken, the Department has determined that this minimal five percent showing of resident concern is necessary to justify the additional selection procedures required by resident participation.

If the required number of interested residents notify HUD, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory member(s) are subject to all applicable confidentiality and disclosure restrictions.

Section 113(b)(5) allows the residents of a PHA designated as troubled to petition the Department to take any of the remedial actions listed under subparagraph 6(j)(3)(A) of the 1937 Act. The Department is required to respond to such petitions in a timely manner with a written description of the actions, if any, the Department plans to take, and, where applicable, explain why such actions differ from the course proposed by the residents. As with the procedure for permitting residents to participate in the selection of management agents, the proposed rule would require, at § 901.225, that the petition has the support of at least five percent of the troubled PHA's residents.

*Substantial Default and Intervention Procedures, §§ 901.200—901.215*

This proposed rule adds language that would require the Department to take action regarding troubled PHAs or AMEs that have not improved their management performance over a specified period of time. The current PHMAP regulation has a wide variety of options for dealing with troubled PHAs subsequent to a finding of substantial default. What the current regulation does not have is a built-in time frame that would require the Department to make a finding of substantial breach or default, or request a court-ordered receivership. Therefore, under § 901.200(c), the Department will be required to declare a troubled PHA or AME in substantial breach or default if a PHA does not show significant improvement (10 point increase) in its PHMAP score within one year. A PHA or AME will be notified of such action in accordance with § 901.205(c).

A PHA or AME may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA or AME would concur on the existence of substantial default conditions which can be remedied by technical assistance. At that time, the Department would immediately proceed with interventions as provided in § 901.210, including the provision of technical assistance necessary to address identified deficiencies. In such a case, the PHA or AME shall provide the Department with written assurances that all deficiencies will be addressed by the PHA or AME.

The affect of this proposal would be that chronically troubled PHAs or AMEs would be subject to immediate intervention by the Department. Section 901.210(a) of the current PHMAP regulation gives a PHA an opportunity to initiate corrective action to resolve identified deficiencies. Section 901.210(c) of the current PHMAP rule requires a PHA to demonstrate (in no more than 30 days) that the Department's finding of substantial breach or default is incorrect. The burden of proof is placed upon the PHA. The rationale is that troubled PHAs have already had more than adequate time to implement corrective action, or will have at least one year from the time of initial troubled designation.

This approach essentially uses the regulation that has been in place for years. The only difference is that the Department would be required to impose the existing standard. The only new performance standard rests upon the Department, not the PHA or AME.

A new § 901.235, *Technical assistance*, has been added to address situations where a substantial default is likely to occur if deficiencies are not addressed, and to ensure that a PHA or AME that has just been removed from troubled status will not become troubled again within a two year period.

#### Request for Comments

The Department recognizes that PHMAP scores should not be interpreted as the sole determinant of housing agency performance. While PHMAP is an important yardstick to measure PHA performance, it should not be the sole driving force behind PHA actions. Sometimes a PHA should do the "right" thing and receive a lower PHMAP score. For example, a PHA

decides to demolish nonviable units rather than to program these nonviable units for modernization in quest of a better PHMAP score. When a PHA makes the "right" decision, it should be commended, not punished. Therefore, the Department is particularly interested in receiving comments concerning ways in which PHAs can receive positive recognition within the context of this regulation for making the right decision.

#### APPENDIX 1.—SAMPLE WORKSHEET—INDICATOR #6, CASH AND OPERATING EXPENSES

[Analysis of available cash, examination of operating expenses/available cash]

PHA Name:	FYE
To estimate cash available at fiscal year end for routine operating expenditures.	
<b>Current Assets</b>	
1. Balance of Cash and Investment Accounts at fiscal year end. Do not include the balance of cash accounts that are restricted to a specific purpose and are, therefore, not available for routine operating expenditure purposes (e.g., modernization accounts, security deposit accounts, escrow accounts, homebuyer reserves, replacement reserves, etc.).	
(a) General Fund Account 1111.1 .....	
(b) Petty Cash, Account 1117 .....	
(c) Investments, Account 1162 .....	
(d) Other (describe) .....	
2. Add Accounts Receivable and Advances that are due for the period covered and can be collected within the next 30 days.	
(a) Tenants/homebuyers .....	
(b) HUD Contributions receivable for Operating Subsidy .....	
(c) Interfund accounts receivable due from other ACCs .....	
(d) Other Receivables (describe) .....	
3. Total Current Assets (add items 1 and 2). ....	
<b>Current Liabilities</b>	
4. Liabilities payable within 30 days after fiscal period ends.	
(a) Vendors/contractors, Account 2111 .....	
(b) Payroll deductions and contributions, Account 2117 .....	
(c) Amounts due to HUD for subsidy adjustment, residual receipts, Account 2118 .....	
(d) Accrued Expenses (e.g., utilities, payroll, PILOT) .....	
(c) Interfund accounts payable due to other ACCs .....	
(d) Other current obligations (describe) .....	
5. Total Current Liabilities (Add items 4(a) through 4(d)). ....	
6. Available Cash (Deficiency) (Line 3 Minus Line 5). ....	
7. Total Routine Expenses (Line 520, form HUD-52599). ....	
8. Cash Reserves divided by Total Actual Routine Expenses (Line 6 divided by Line 7). ....	

#### APPENDIX 2.—SAMPLE WORKSHEET—INDICATOR #6, ENERGY/UTILITY CONSUMPTION OPTION A

[Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption]

PHA:	FYE
1. Total energy/utility cost in fiscal year for which adjustment is requested (form HUD-52722B, line 13, column 3): .....	\$
2. Costs of estimated energy/utility consumption at average rate for appropriate PHA fiscal year (form HUD-52722B, line 17, column 3): .....	\$
3. Costs of actual energy/utility consumption divided by costs of estimated energy/utility consumption (line 1 divided by line 2): .....	\$
4. Subtract 1.00 from line 3 and multiply the remainder by 100 to calculate the percentage of increase or decrease. For example: .....	%
If line 3 equals .95, then .95 minus 1.00 equals $-.05 \times 100 =$ a 5% decrease; or.	
If line 3 equals 1.15, then 1.15 minus 1.00 equals $.15 \times 100 =$ a 15% increase.	

Source: Most recent form HUD-52722B, Adjustment for Utility Consumption and Rates.

#### SAMPLE WORKSHEET—INDICATOR #6, ENERGY CONSUMPTION OPTION B

[Energy audit and implementation of recommendations]

PHA:	FYE
Grade	Response
Grade A: The PHA has completed its energy audit and has implemented all of the recommendations determined to be cost effective.	
Grade C: The PHA has completed its energy audit and is in the process of implementing all of the recommendations.	
Grade F: The PHA has not completed its energy audit, or has not implemented all of the recommendations.	

Source: PHA's energy audit and/or maintenance plan.

## APPENDIX 3.—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM (PHMAP) CERTIFICATION

[Instructions: A PHA/RMC/AME's responses to this certification form must be the PHA/RMC/AME's actual data; e.g., prior to any adjustments for modifications and/or exclusion requests to the indicators. Round percentages to the nearest two decimal points.]

PHA/RMC/AME Name:

For FY Ending:

Submission Date:

Indicator 1: Vacancy rate and unit turnaround

	Units	Days	Rate
Actual vacancy total .....	/	/	/ %
Vacancy exemptions .....	/	/	/
Adjusted vacancy total .....	/	/	/ %
Percent reduction of actual vacancies over prior three years (enter percent or N/A) .....			%

PHA/RMC/AME shall respond to the question, below, if it scored below a grade of C on the vacancy component

Average number of calendar days for vacant unit to be prepared for re-rental and for a new lease to take effect (unit turnaround) .....

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) .....

Indicator 3: Rents uncollected

Rents billed .....	\$
Rents collected .....	\$
Rents uncollected .....	\$
Balance of rents uncollected as a percentage of total rents to be collected .....	%

Indicator 4: Work orders

Percent of emergency items corrected/abated within 24 hours .....

Average number of calendar days for non-emergency work orders to be completed .....

Average number of days PHA/RMC/AME has reduced the time it takes to complete non-emergency work orders over the past three years (enter average number of days or N/A) .....

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) .....

Indicator 5: Annual inspection of units and systems

Percent of units inspected annually using standards that were at least equivalent to HQS .....

Percent of units meeting HQS .....

PHA/RMC/AME completed all repairs where necessary for code compliance either during the inspection, issued work orders for the repairs, or referred the deficiency to the current year's or next year's modernization program (enter Yes or No) .....

Percent of buildings and sites, according to the maintenance plan, where major systems were inspected .....

Additional percentage points for the percent of units subject to physical condition and/or neighborhood environment (enter .5; .6; .7; .8; .9; or 1 or N/A) .....

Indicator 6: Financial management

PHA/RMC/AME has cash reserves of \$3 million or more (enter Yes or No) .....

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

Percent of cash reserves to total actual routine expenditures .....

PHA/RMC/AME shall respond to the questions, below, if it scored below a grade of C on the cash reserves component; however, PHA/RMC/AME with tenant-paid utilities in all their units will not be assessed on energy/utility consumption even if they score below a grade of C on the cash reserve component

PHA/RMC/AME has completed its energy audit and has implemented all of the recommendations that were cost effective (enter Yes or No) .....

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

PHA/RMC/AME has completed its energy audit and is in the process of implementing all of the recommendations that were cost effective (enter Yes or No) .....

If the answer is Yes, proceed to indicator #7; if the answer is No, continue with the next question

PHA/RMC/AME has completed its energy audit (enter Yes or No) .....

If the answer is No, proceed to indicator #7

PHA/RMC/AME has completed its energy audit, but has not implemented all of the recommendations that were cost effective (enter Yes) .....

Indicator 7: Resident involvement (applies only to PHAs with 100 units or less)

PHA Board, by resolution, has adopted a Section 3 program (enter Yes or No) .....

PHA/RMC/AME staff monitors progress and issues reports concerning progress under the program (enter Yes or No) .....

At each family development site where a resident council exists, there has been a development-wide election of resident council board members/officers (enter Yes or No) .....

At each family development site where a resident council does not exist, the PHA/AME during the past year has encouraged development-wide elections of resident board members/officers (enter Yes or No or N/A) .....

PHA Board, by resolution, has adopted mechanisms to ensure that residents have ample opportunity for input into planning and goal setting for ongoing management issues, including capital improvement programs (enter Yes or No) .....

PHA Board has invited residents to participate in planning for capital improvement programs (enter Yes or No or N/A) .....

If the PHA/RMC/AME has any special resident initiative program(s), the percent of goals being met under the implementation plan for any and all programs (enter percent) .....

Indicator 8: Security

PHA/RMC/AME has a mechanism for tracking crime related problems (enter Yes or No) .....

PHA/RMC/AME can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention (enter Yes or No) .....

PHA Board, by resolution, has adopted policies that screen out public housing applicants with a history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents (enter Yes or No) .....

PHA/RMC/AME has implemented procedures and can document that it appropriately screens out and denies admission to public housing applicants with a history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents (enter Yes or No) .....

PHA Board, by resolution, has adopted policies that appropriately evict a public housing resident who engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act [42 U.S.C. 1437d(l)]) on or off the PHA's property; or who the PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents (enter Yes or No) .....

PHA/RMC/AME has implemented procedures and can document that it appropriately evicts a public housing resident who engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act [42 U.S.C. 1437d(l)]) on or off the PHA's property; or who the PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents (enter Yes or No) .....

If the PHA/RMC/AME has any special drug prevention program or crime reduction program funded by any HUD funds, the percent of goals being met under the implementation plan for any and all programs (enter percent) ..... %

## V. Other Matters

### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

### *Regulatory Planning and Review*

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

### *Regulatory Flexibility Act*

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

### *Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or

their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. In addition, the proposed rule carries out, as unobtrusively as possible, a Federal statutory mandate. The proposed rule does not create any new significant requirements of its own. As a result, the proposed rule is not subject to review under the Order.

### *Family Impact*

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

### List of Subjects in 24 CFR Part 901

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

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

## **PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM**

### Sec.

- 901.1 Purpose and applicability.
- 901.5 Definitions.
- 901.10 Indicator #1, vacancy rate and unit turnaround time.
- 901.15 Indicator #2, modernization.

- 901.20 Indicator #3, rents uncollected.
  - 901.25 Indicator #4, work orders.
  - 901.30 Indicator #5, annual inspection of units and systems.
  - 901.35 Indicator #6, financial management.
  - 901.40 Indicator #7, resident involvement.
  - 901.45 Indicator #8, security.
  - 901.100 Data collection.
  - 901.105 Computing assessment score.
  - 901.110 PHA request for exclusion or modification of an indicator or component.
  - 901.115 PHA score and status.
  - 901.120 State/Area Office functions.
  - 901.125 PHA right of appeal.
  - 901.130 Incentives.
  - 901.135 Memorandum of Agreement.
  - 901.140 Removal from troubled status and mod-troubled status.
  - 901.145 Improvement Plan.
  - 901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).
  - 901.155 PHMAP public record.
  - 901.200 Events or conditions that constitute substantial default.
  - 901.205 Notice and response.
  - 901.210 Interventions.
  - 901.215 Contracting and funding.
  - 901.220 Resident participation in competitive proposals to manage the housing of a PHA.
  - 901.225 Resident petitions for remedial action.
  - 901.230 Receivership.
  - 901.235 Technical assistance.
- Authority: 42 U.S.C. 1437d(j) and 3535(d).

### **§ 901.1 Purpose and applicability.**

(a) *Purpose.* This part establishes the Public Housing Management Assessment Program (PHMAP) to implement and augment section 6(j) of the 1937 Act (42 U.S.C. 1437d). PHMAP provides policies and procedures to identify public housing agency (PHA), resident management corporation (RMC), and alternative management entity (AME) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve

the management practices of troubled PHAs and mod-troubled PHAs.

(b) *Applicability.*

(1) The provisions of this part apply to PHAs and RMCs as noted in the sections of this part.

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

(i) If the AME assumes only a portion of the PHA's management functions, the provisions of this part that apply to RMCs apply to the AME; or

(ii) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME.

(3) To ensure quality management results from a contract between an AME and a PHA, or between an AME and HUD, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in such contract. Failure to meet the performance criteria would be a basis for termination of the contract.

However, even in the absence of explicit contractual provisions, this part applies to AMEs in accordance with paragraph (b)(2) of this section.

**§ 901.5 Definitions.**

*Actual vacancy rate* is the vacancy rate calculated without any adjustments. It is calculated by dividing the total number of vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

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

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

*Annual average* is an average computed from data from a PHA's immediate past fiscal year for applicable indicators.

*Approved demolition and/or disposition program* exists when a PHA's application for demolition and/or disposition of low-rent public housing

units has received written approval from HUD.

*Approved funded, on-schedule annual modernization program* includes any modernization program, funded out of the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the Vacancy Reduction Program (VRP), the Hope VI Program, or any other source, if a PHA is in conformance with its current implementation schedule as approved by the PHA Board of Commissioners and/or HUD.

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

*Available unit* is a dwelling unit (occupied or vacant) under a PHA's Annual Contributions Contract.

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

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

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

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

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

*Cyclical work orders* are work orders issued for the performance of routine maintenance work that is done in the same way at regular intervals. Examples of cyclical work include, but are not limited to, mopping hallways; picking up litter; cleaning a trash compactor;

changing light bulbs in an entryway; etc. (Cyclical work orders should not be confused with preventive maintenance work orders.)

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

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

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

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

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

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

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

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

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

*Non-emergency work order* is any work order that covers a situation that is not an immediate threat to life,

health, safety, or property, or that is unrelated to fire safety.

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

*Percentage of rents uncollected* is the proportion of current dwelling rent that was billed during the assessment year, but not collected during the assessment year. The calculation is made as of the close of business on the last business day of the fiscal year. It is calculated by subtracting the total dwelling rent collected in the immediate past fiscal year from the total dwelling rent billed in the immediate past fiscal year to determine the amount of rents uncollected; and dividing the amount of rents uncollected by the total dwelling rent billed.

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

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

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

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

*Reduced actual vacancy rate in the previous three years* is a comparison of the vacancy rate in the PHMAP assessment year (the immediate past fiscal year) to the vacancy rate in the first year of the previous three year period. It is calculated by subtracting the vacancy rate in the assessment year from the vacancy rate in the earlier year.

*Reduced the average time it took to complete work orders over the previous three years* is a comparison of the average time it took to complete work orders in the PHMAP assessment year (the immediate past fiscal year) to the average time it took to complete work orders in the first year of the previous

three year period. It is calculated by subtracting the average time it took to complete work orders in the PHMAP assessment year from the average time it took to complete work orders in the earlier year.

*Rents uncollected* means unpaid resident dwelling rent for residents in possession.

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

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

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

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

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

*Turnaround days* are the days between the last move-out and the date a new lease takes effect, including any turnaround days in prior fiscal years.

*Vacancy day* is a day when a unit is not under lease by an eligible low-income resident, unless the vacancy day is exempted for an eligible reason.

*Vacant unit* is a dwelling unit that is not under lease to an eligible family. Units under lease for police substations, social service providers, etc., are treated the same as units under lease to eligible families.

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

*Vacant unit undergoing modernization* is a vacant unit in an otherwise viable development, as defined in 24 CFR 970.6, when the development is undergoing modernization that includes work that is necessary to reoccupy the vacant unit,

and in which either: The vacant unit is under construction (i.e., the construction contract has been awarded or force account work has started); or the treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., an approved Annual Statement for the Comprehensive Grant Program (CGP) or Comprehensive Improvement Assistance Program (CIAP) budget), but the time period for placing the vacant units under construction has not yet expired. The PHA must place the vacant units under construction within two Federal fiscal years (FFYs) after the FFY in which the modernization funds are approved. In addition, the following apply when computing time periods for a vacant unit undergoing modernization:

(1) If a unit is vacant prior to being included in the construction budget of an approved funded on-schedule annual modernization plan, those vacancy days that had accumulated prior to the unit being included in the construction budget of an annual modernization plan must be included as non-exempted vacancy days in the calculation.

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

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

(4) Units remaining vacant more than two FFYs after the FFY in which the modernization funds are approved, may no longer be exempted from the calculation of the adjusted vacancy rate if the construction contract has not been let. These units may be exempted again, but only after a contract is let.

*Work order* is a directive, containing one or more tasks issued to a PHA employee or contractor to perform one or more tasks on PHA property. This directive describes the location and the type of work to be performed; the date and time of receipt; date and time issued to the person or entity performing the work; the date and time the work is satisfactorily completed; the parts used to complete the repairs and the cost of the parts; whether the damage was caused by the resident; and the charges to the resident for resident-



caused damage. The work order is entered into a log which indicates at all times the status of all work orders as to type (emergency, routine, etc.), when issued, and when completed.

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

*Work order deferred for modernization* is any work order that is combined with similar work orders and completed within the current PHMAP assessment year, or will be completed in the following year, under the PHA's modernization program or other PHA capital improvements program.

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

This indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. This indicator has a weight of x2.

(a) For the calculation of the adjusted vacancy rate and turnaround time, the vacancy days for units in the following categories shall be exempted:

(1) Vacant unit undergoing modernization.

(2) Vacant units in an approved demolition or disposition program (not applicable to vacant unit turnaround).

(3) Vacant units that are documented to be uninhabitable for reasons beyond the PHA's control:

(i) Due to high/unsafe levels of hazardous/toxic material (e.g., lead-based paint or asbestos);

(ii) By order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA; and

(iii) That are structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations, or as a result of natural disasters).

(4) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law.

(5) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received.

(6) Units that are used for non-dwelling purposes and dwelling units that are occupied by employees of the PHA and units that are used for resident services.

(7) Vacant units required to remain vacant because of fire/police investigations, coroner's seal, or court order.

(8) Units kept vacant because of code violations caused for reasons beyond the

control of the PHA, rather than as a result of management and/or maintenance failures by the PHA.

(9) Units vacant for circumstances and actions beyond the PHA's control that prevent the PHA from being able to occupy, sell, demolish, rehabilitate, reconstruct, consolidate, or modernize vacant units. Such circumstances and actions may include:

(i) Litigation, such as a court order or settlement agreement that is legally enforceable. For example, units that are being held vacant as part of a court-ordered or HUD-approved desegregation effort would be exempted.

(ii) Federal or, when not preempted by Federal requirements, State law of general applicability or their implementing regulations. This category does not include units vacant only because they do not meet minimum standards established, for example, in housing and building codes.

(iii) Changing market conditions. For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after aggressive marketing and outreach measures by the PHA have been undertaken. Documentation of marketing efforts must be maintained by the PHA.

(iv) Natural disasters.

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

(vi) Pending resolution of insurance claims or settlements. The period between a casualty loss and the receipt of funds from an insurer to cover the loss in whole or in part.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) An adjusted annual vacancy rate of greater than 6%.

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

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

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

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

(4) *Grade D:* The average number of calendar days between the time when a

unit is vacated and a new lease takes effect for units re-occupied during the PHA's immediate past fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

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

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

#### **§ 901.15 Indicator #2, modernization.**

This indicator is automatically excluded if a PHA does not have a modernization program. This indicator examines the amount of unexpended funds over three years old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. It applies to both the Comprehensive Grant Program (CGP) and the Comprehensive Improvement Assistance Program (CIAP). This indicator has a weight of x1.

(a) *Component #1, unexpended funds over three Federal Fiscal Years (FFYs) Old*. This component has a weight of x1.

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

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

(ii) The HUD-approved original implementation schedule allows longer than three FFYs to expend all funds; or

(iii) The PHA has self-executed a time extension within 30 calendar days after the expenditure deadline and the extension is based on valid reasons outside of the PHA's control, such as litigation, material shortages, or other institutional delay.

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

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

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

(i) The HUD-approved original implementation schedule allows longer than two FFYs to obligate all funds; or

(ii) The PHA has self-executed a time extension within 30 calendar days after the obligation deadline and the extension is based on valid reasons outside of the PHA's control, such as litigation, material shortages, or other institutional delay.

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

(c) *Component #3, adequacy of contract administration*. This component has a weight of x1.5.

(1) *Grade A*: Based on HUD's latest on-site inspection and/or audit, there were no significant findings related to contract administration or the PHA has corrected all such findings.

(2) *Grade C*: Based on HUD's latest on-site inspection and/or audit, there were significant findings related to contract administration and the PHA is in the process of correcting all such findings.

(3) *Grade F*: Based on HUD's latest on-site inspection and/or audit, there were significant findings related to contract administration and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(d) *Component #4, quality of the physical work*. This component has a weight of x3.

(1) *Grade A*: Based on HUD's latest on-site inspection, there were no significant findings related to the quality of the physical work or the PHA has corrected all such findings.

(2) *Grade C*: Based on HUD's latest on-site inspection, there were significant monitoring findings related to the quality of the physical work and the PHA is in the process of correcting all such findings.

(3) *Grade F*: Based on HUD's latest on-site inspection, there were significant monitoring findings related to the quality of the physical work and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(e) *Component #5, adequacy of budget controls*. This component has a weight of x1.

(1) *Grade A*: The *CGP PHA* has expended modernization funds only on work items in HUD-approved CGP Annual Statements/Five-Year Action

Plan or has obtained prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds only on work items in HUD-approved CIAP budgets, or within the HUD-established threshold for CIAP budget revisions, or has obtained prior HUD approval for required budget revisions.

(2) *Grade F*: The *CGP PHA* has expended modernization funds on work items that were not in HUD-approved CGP Annual Statements/Five-Year Action Plan and did not obtain prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds on work items that were not in HUD-approved CIAP budgets, or within the HUD-established threshold for CIAP budget revisions, and did not obtain prior HUD approval for required budget revisions.

#### **§ 901.20 Indicator #3, rents uncollected.**

This indicator examines the PHA's ability to collect rent by measuring the percentage of dwelling rent it failed to collect during its immediate past fiscal year. This indicator has a weight of x1.5.

(a) *Grade A*: Percent of rents uncollected in the immediate past fiscal year is less than or equal to 2% of total rents billed.

(b) *Grade B*: The percent of rents uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of total rents billed.

(c) *Grade C*: The percent of rents uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of total rents billed.

(d) *Grade D*: The percent of rents uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of total rents billed.

(e) *Grade E*: The percent of rents uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of total rents billed.

(f) *Grade F*: The percent of rents uncollected in the immediate past fiscal year is greater than 10% of total rents billed.

#### **§ 901.25 Indicator #4, work orders.**

This indicator examines the average number of days it takes for a work order to be completed, and any progress a PHA has made during the preceding three years to reduce the period of time required to complete maintenance work orders. This indicator has a weight of x1.5.

(a) *Component #1, emergency work orders completed within 24 hours or less*. This component has a weight of x1.

(1) *Grade A*: At least 99% of emergency work orders were completed or the emergency was abated within 24

hours or less during the PHA's immediate past fiscal year.

(2) *Grade B*: At least 98% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(3) *Grade C*: At least 97% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(4) *Grade D*: At least 96% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(5) *Grade E*: At least 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(6) *Grade F*: Less than 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(b) *Component #2*, average number of days for non-emergency work orders to be completed. All work orders should be tracked, except non-emergency work orders exempted for modernization, issued to prepare a vacant unit for rental, or issued for the performance of cyclical maintenance. This component has a weight of x2.

(1) *Grade A*: All non-emergency work orders are completed within an average of 25 calendar days.

(2) *Grade B*: All non-emergency work orders are completed within an average of greater than 25 calendar days and less than or equal to 30 calendar days.

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

(i) All non-emergency work orders are completed within an average of greater than 30 calendar days and less than or equal to 40 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 30 days.

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

(i) All non-emergency work orders are completed within an average of greater than 40 calendar days and less than or equal to 50 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 20 days.

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

(i) All non-emergency work orders are completed within an average of greater than 50 calendar days and less than or equal to 60 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders over the past three years by at least 10 days.

(6) *Grade F*: All non-emergency work orders are completed within an average of greater than 60 calendar days.

#### **§ 901.30 Indicator #5, annual inspection of units and systems.**

This indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. This indicator has a weight of x1.

(a) Units in the following categories are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or a part of a building where all of the dwelling units in the building are exempted, are also exempted from the calculation of this indicator:

(1) Occupied units where the PHA has made two documented attempts to inspect, but only if the PHA can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)), has been taken under provisions of the lease to ensure that the unit can be subsequently inspected.

(2) Vacant unit undergoing modernization.

(3) Vacant units in an approved demolition or disposition program.

(4) Vacant units that are documented to be uninhabitable:

(i) Due to high/unsafe levels of hazardous/toxic material (e.g., lead-based paint or asbestos);

(ii) By order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA; and

(iii) That are structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations).

(5) Units vacant for the full immediate past fiscal year that have been exempted under indicator #1, at § 901.10, for any of the reasons for which exemptions are permitted under that indicator (except those units that are used for non-dwelling purposes or that are occupied by employees of the PHA and units that are used for resident services).

(b) *Component #1, annual inspection of units*. This component refers to an inspection using either the local housing/occupancy code, or HUD HQS if there is no local code or the local code is less stringent than HQS. This component has a weight of x1.

(1) *Grade A*: The PHA inspected 100% of its units and, if repairs were

necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(2) *Grade B*: The PHA inspected less than 100% but at least 97% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(3) *Grade C*: The PHA inspected less than 97% but at least 95% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(4) *Grade D*: The PHA inspected less than 95% but at least 93% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(5) *Grade E*: The PHA inspected less than 93% but at least 90% of its units and, if repairs were necessary for code compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred the deficiency to the current year's or next year's modernization program.

(6) *Grade F*: The PHA has failed to inspect at least 90% of its units; or failed to correct deficiencies during the inspection or issue work orders for the repairs; or failed to refer deficiencies to the current year's or next year's modernization plan.

(c) *Component #2, annual inspection of systems*. This component examines the inspection of buildings and sites according to the PHA's maintenance plan, including performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for future maintenance/repairs, or including identified deficiencies in the Comprehensive Modernization Plan. This component has a weight of x1.

(1) *Grade A*: At 100% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(2) *Grade B*: At a minimum of 90% but less than 100% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(3) *Grade C*: At a minimum of 80% but less than 90% of its buildings and

sites, according to its maintenance plan, the PHA inspected all major systems.

(4) *Grade D*: At a minimum of 70% but less than 80% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(5) *Grade E*: At least 60% but less than 70% of its buildings and sites, according to its maintenance plan, the PHA inspected all major systems.

(6) *Grade F*: The PHA failed to inspect at least 60% of its buildings and sites, all major systems, as defined herein, and perform the required maintenance on these systems in accordance with manufacturers specifications and established local/PHA standards, or issue work orders for future maintenance/repairs, or include identified deficiencies in the Comprehensive Modernization Plan.

#### **§ 901.35 Indicator #6, financial management.**

This indicator examines the amount of cash reserves and, for PHAs scoring below a grade C on cash reserves, energy/utility consumption. This indicator has a weight of x1.

(a) *Component #1, cash reserves*. This component has a weight of x2.

(1) *Grade A*: Cash reserves are greater than or equal to 15% of total actual routine expenditures, or the PHA has cash reserves of \$3 million or more.

(2) *Grade B*: Cash reserves are greater than or equal to 12.5%, but less than 15% of total actual routine expenditures.

(3) *Grade C*: Cash reserves are greater than or equal to 10%, but less than 12.5% of total actual routine expenditures.

(4) *Grade D*: Cash reserves are greater than or equal to 7.5%, but less than 10% of total actual routine expenditures.

(5) *Grade E*: Cash reserves are greater than or equal to 5%, but less than 7.5% of total actual routine expenditures.

(6) *Grade F*: Cash reserves are less than 5% of total actual routine expenditures.

(b) *Component #2, energy/utility consumption*. Either option A or option B of this component is to be completed only by PHAs that score below a grade C on component #1. Regardless of a PHA's score on component #1, it will not be scored on component #2 if all its units have tenant paid utilities. Annual energy/utility consumption includes water and sewage usage. This component has a weight of x1.

(1) *Option A, Annual Energy/Utility Consumption*.—(i) *Grade A*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has not increased.

(ii) *Grade B*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has not increased by more than 3%.

(iii) *Grade C*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 3% and less than or equal to 5%.

(iv) *Grade D*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 5% and less than or equal to 7%.

(v) *Grade E*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 7% and less than or equal to 9%.

(vi) *Grade F*: Annual energy/utility consumption, as compared to the average of the three years' rolling base consumption, has increased by more than 9%.

(2) *Component #2, option B, energy consumption*.—(i) *Grade A*: The PHA has completed its energy audit and has implemented all of the recommendations that were cost effective.

(ii) *Grade C*: The PHA has completed its energy audit and is in the process of implementing all of the recommendations that were cost effective.

(iii) *Grade F*: The PHA has not completed its energy audit, or has not implemented all of the recommendations that were cost effective.

#### **§ 901.40 Indicator #7, resident involvement.**

This indicator examines the PHA's efforts to encourage partnerships with residents and the local community that help improve management operations at the PHA; to encourage programs that develop self-sufficiency, individual responsibility and community involvement among residents; and, if applicable, PHA performance under any special HUD grant(s). PHAs with 100 units or less will not be assessed under this indicator. This indicator has a weight of x1.

(a) *Grade A*: The PHA meets each of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program and the PHA staff monitors progress under the program and issues reports concerning progress under the program.

(2) The PHA has documentation that at each PHA family development site where a resident council exists, there has been a development-wide election of resident council board members and/

or officers, and where no resident council exists, the PHA has encouraged the formation of such a council.

(3) The PHA Board has, through resolution, adopted mechanisms to ensure that residents have ample opportunity for input into planning and goal setting for ongoing management issues, as well as for capital improvements programs such as the Comprehensive Grant Program and the Comprehensive Improvement Assistance Program.

(4) If the PHA has any special resident initiative program, such as a Technical Assistance Grant (TAG), the Tenant Opportunity Program (TOP), Family Investment Center (FIC), Youth Sports (YS), Youth Apprenticeship Program (YAP), or Family Self-Sufficiency (FSS), the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(b) *Grade C*: The PHA meets each of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program.

(2) At each PHA family development site where a resident council does not exist, the PHA during the assessment year has encouraged development-wide elections of resident council board members and/or officers.

(3) The PHA Board has invited residents to participate in planning for capital improvements.

(4) If the PHA has any special resident initiative program, such as TAG, TOP, FIC, YS, YAP, or FSS, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(c) *Grade F*: The PHA fails to meet any one of the following criteria:

(1) The PHA Board, by resolution, has adopted a Section 3 program.

(2) At each PHA family development site where a resident council does not exist, the PHA during the assessment year has encouraged development-wide elections of resident council board members and/or officers.

(3) The PHA Board has invited residents to participate in planning for capital improvements.

(4) If the PHA has any special resident initiative program, such as TAG, TOP, FIC, YS, YAP, or FSS, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

#### **§ 901.45 Indicator #8, security.**

This indicator evaluates the PHAs performance in tracking crime-related problems in their developments, cooperating with local law enforcement and local courts, the adoption and

implementation of tough applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any special HUD grant(s). PHAs with 100 units or less will not be assessed under this indicator. This indicator has a weight of x1.

(a) *Grade A:* The PHA meets the following criteria:

(1) The PHA has a mechanism (such as the logging of serious incidents in its various developments) for tracking crime related problems and can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention.

(2) The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately screens out and denies admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately evicts a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in such a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(b) *Grade C:* The PHA meets the following criteria:

(1) The PHA can demonstrate a system for taking action with local police authorities to improve law enforcement, lease enforcement and crime prevention.

(2) The PHA Board, by resolution, has adopted policies but cannot document results in appropriately screening out and denying admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA Board, by resolution, has adopted policies but cannot document results in appropriately evicting a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(c) *Grade F:* The PHA meets any one the following criteria:

(1) The PHA is not cooperating with local police authorities in an effort to provide safe and secure environments in its public housing developments.

(2) The PHA has not adopted policies or procedures that result in screening out and denying admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or

property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937 within three years of the projected date of admission, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA determines is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) The PHA has not adopted policies or procedures that document results in the eviction of a public housing resident who:

(i) Engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents;

(ii) Engages in any drug-related criminal activity (as defined in section 6(l) of the 1937 Act (42 U.S.C. 1437d(l))) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(4) If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA does not have a system for documenting or cannot document that it is meeting 60% or more of its goals under the implementation plan for any and all of these programs.

#### **§ 901.100 Data collection.**

(a) Information on some of the indicators will be derived by the State/Area Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 45 calendar days after the end of the fiscal year covered by the certification:

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(3) A PHA may include in its certification, rather than through an exclusion or modification request, any information bearing on the accuracy or completeness of the data being used by

HUD in grading an indicator. HUD will consider this assertion in grading the affected indicator.

(4) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

(5) A PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

(c) For those developments of a PHA where management functions have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. The PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer of whatever title.

#### **§ 901.105 Computing assessment score.**

(a) Grades within indicators and components have the following point values:

- (1) Grade A = 10.0 points;
- (2) Grade B = 8.5 points;
- (3) Grade C = 7.0 points;
- (4) Grade D = 5.0 points;
- (5) Grade E = 3.0 point; and
- (6) Grade F = 0.0 points.

(b) If indicators or components are designated as having additional weight (e.g., x1.5 or x2), the points in each grade will be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to two decimal places. The total number of component weights for this purpose includes a one for components that are unweighted (i.e., they are weighted x1, rather than x1.5 or x2).

(d) Adjustment for physical condition and neighborhood environment. The overall PHMAP score will be adjusted by adding weighted points that reflect the weight to be given to the differences

in the difficulty of managing developments that result from physical condition and neighborhood environment:

(1) Weighting shall apply to the following three indicators only:

(i) Indicator #1, vacancy rate and unit turnaround;

(ii) Indicator #4, work orders; and

(iii) Indicator #5, annual inspection and condition of units and systems.

(2) Definitions of physical condition and neighborhood environment are:

(i) *Physical condition*: refers to units located in developments over ten years old that require major capital investment in order to meet minimum HQS standards or local codes, whichever is applicable. This excludes developments that have been comprehensively modernized.

(ii) *Neighborhood environment*: refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued a weighted PHMAP score in addition to the regular score based solely upon the certification of the PHA. The weighted score shall be calculated as follows:

Percent of units subject to physical condition and/or extra neighborhood environment:	Extra points
At least 5% but less than 10% .....	.5
At least 10% but less than 20% .....	.6
At least 20% but less than 30% .....	.7
At least 30% but less than 40% .....	.8
At least 40% but less than 50% .....	.9
At least 50% .....	1.0

(i) These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD-50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added.

(ii) Developments that have received comprehensive modernization within the past ten years are not eligible for a weighted score for the physical condition factor.

(iii) A PHA that receives a grade of A under indicators #4 and #5 may not claim the additional weight for indicator #1 since the physical condition of its developments is not applicable.

(iv) None of the weighted indicators may have a score that is more than its total weighted points, including the additional point, or fraction thereof, awarded for weighting.

(4) PHAs shall maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to weighting.

(i) If the basis was neighborhood environment, the PHA shall have on file the appropriate maps showing the census tracts surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received modernization funds.

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

#### **§ 901.110 PHA request for exclusion or modification of an indicator or component.**

(a) A PHA shall have the right to request the exclusion or modification of any indicator or component in its management assessment, thereby excluding or modifying the impact of those indicator's or component's grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the State/Area Office along with supporting documentary justification, rather than during the appeal process.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

(d) Indicator #2, modernization, shall be automatically excluded by the State/Area Office if a PHA does not have an open modernization program.

(e) Indicator #7, resident involvement, shall be automatically excluded by the State/Area Office for PHAs with 100 or fewer units.

#### **§ 901.115 PHA score and status.**

(a) PHAs that achieve a total weighted score of 90% or greater may be designated high performers. A PHA shall not be designated as a high performer if it scores below a grade of

C for any indicator. High performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.130.

(b) PHAs that achieve a total weighted score of 90% or greater on indicator #2, modernization, may be designated mod-high performers.

(c) PHAs that achieve a total weighted score of less than 90% but not less than 60% may be designated standard. Standard performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.130.

(d) PHAs that achieve a total weighted score of less than 60% may be designated as troubled.

(e) PHAs with more than 100 units that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(f) Each PHA must post a notice of its PHMAP score and status in appropriate conspicuous and accessible locations in its offices and in each of its developments within two weeks of receipt of the score and status. In addition, HUD will publish every PHA's score and status in the Federal Register.

(g) Even though a PHA has satisfied all of the indicators for high or standard performer designation, the State/Area Office may reinstate any review as necessary to address the particular deficiencies, deny or rescind incentives or high performer status, as described in paragraphs (a) and (b) of this section in the case of a PHA that:

- (1) Is operating under a special agreement with HUD;
- (2) Is involved in litigation that bears directly upon the management of a PHA;
- (3) Is operating under a court order;
- (4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as routine reports and reviews, an Office of Inspector General investigation/audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHMAP). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD-53012A, Section 4, Mission of the PHA). Substantial

noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(h) When a State/Area Office Public Housing Director acts for any of the reasons stated in paragraph (e) of this section, the State/Area Office will send written notification to the PHA with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(i) A PHA may appeal denial of high performer status in accordance with § 901.125.

#### **§ 901.120 State/Area Office functions.**

(a) The State/Area Office will assess each PHA within its jurisdiction on an annual basis:

(1) The State/Area Office will make determinations for high-performing, standard, troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score.

(2) The State/Area Office will also make determinations for exclusion and modification requests.

(b) Each State/Area Office will notify each PHA of the PHA's grade and the grade of the RMC (if any) assuming management functions at any of the PHA's developments, in each indicator, the PHA's management assessment total weighted score and status, and if applicable, its handicapped score; any determinations concerning exclusion and modification requests; and any deadline date by which appeals must be received. PHA notification may include offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status. The PHA must notify the RMC (if any) in writing, immediately upon receipt of the State/Area Office notification, of the RMC's grades.

(c) An on-site confirmatory review may be conducted of a PHA by the State/Area Office. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the State/Area Office pertaining to the remaining indicators.

(1) If, in an exceptional circumstance, a confirmatory review is conducted after the State/Area Office issues the initial notification letter, the State/Area Office should explain the results of the confirmatory review in writing, correct the PHAs total weighted score, if

appropriate, and reissue the initial notification letter to the PHA.

(2) The State/Area Office shall conduct a confirmatory review of a PHA prior to the removal of troubled or mod-troubled designation.

(d) Determinations on appeals and on petitions to remove troubled or mod-troubled status will be made by the State/Area Office.

(e) Determinations of intentional false certifications will be made by the State/Area Office.

(f) The State/Area Office may deny or rescind a PHA's status as a standard or high performer, in accordance with § 901.115(e), so that it will not be entitled to any of the areas of relief and incentives.

(g) The State/Area Office will maintain PHMAP files for public inspection in accordance with § 901.155.

#### **§ 901.125 PHA right of appeal.**

(a) A PHA has the right to appeal its PHMAP score to the State/Area Office, including a troubled designation or designation as troubled with respect to the program under section 14. A PHA may appeal its management assessment rating on the basis of data errors, the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, or a determination of intentional false certification:

(1) A PHA may appeal its management assessment rating to the State/Area Office only for the reasons stated in paragraph (a) of this section:

(i) A PHA may not appeal its PHMAP score to the State/Area Office unless it has submitted its certification to the State/Area Office.

(ii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a deficient grade in any indicator or component was due to the fact the PHA did not submit a required report in a timely manner.

(2) The appeal shall be submitted to the State/Area Office and shall include supporting documentary justification of the reasons for the appeal.

(3) The State/Area Office will make determinations on initial appeals and will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(4) Appeals submitted to the State/Area Office without appropriate documentation will not be considered and will be returned to the PHA.

(5) A PHA may not appeal its PHMAP score if the reason the PHA received a deficient grade in any indicator or



component was due to the fact that the PHA did not submit a required report(s) in a timely manner.

(6) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary for Public and Indian Housing.

(b) A PHA may appeal the denial of an initial appeal by the State/Area Office to the Assistant Secretary for Public and Indian Housing, including initial appeals denying high performer designation, designation as troubled or designation as troubled with respect to the program under section 14, the denial of an appeal of a determination of intentional false certification, and the rescission of high performer designation. A PHA may appeal its management assessment rating on the basis of data errors, the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, or a determination of intentional false certification.

(1) A PHA may appeal its management assessment rating to the Assistant Secretary for Public and Indian Housing only for the reasons stated in paragraph (b) of this section.

(2) A PHA may not appeal its PHMAP score to the Assistant Secretary unless it has submitted its certification to the State/Area Office.

(3) Appeals submitted to the Assistant Secretary for Public and Indian Housing without appropriate documentation will not be considered and will be returned to the PHA.

(c) A PHA has the right to appeal any refusal of a petition in accordance with § 901.140 to remove designation of troubled or troubled with respect to the program under section 14 to the Assistant Secretary for Public and Indian Housing.

(d) The date and place by which any appeal must be submitted will be specified in the letter from the State/Area Office notifying the PHA of any determination or action. For example, the State/Area Office initial notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

#### **§ 901.130 Incentives.**

(a) A PHA that is designated high performer or standard performer will be relieved of specific HUD requirements,

effective upon notification of high or standard performer designation.

(b) A PHA shall not be designated a mod-high performer and be entitled to the applicable incentives unless it has been designated an overall high performer.

(c) High-performing PHAs and RMCs that receive a grade of "A" on each of the indicators for which they are assessed will receive a Certificate of Commendation from the Department as well as special public recognition.

(d) Representatives of high-performing PHAs may be requested to serve on Departmental working groups that will advise the Department in such areas as troubled PHAs and performance standards for all PHAs.

(e) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36):

(1) PHAs will still be subject to regular Independent Auditor (IA) audits.

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

(f) The State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.115(e).

#### **§ 901.135 Memorandum of agreement.**

(a) After consulting the independent assessment team and reviewing the report identified in section 6(j)2(b) of the 1937 Act, a Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and mod-troubled. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem, or other relevant areas identified as problematic;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or

less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation, fewer conditions placed on grants, and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent actions, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(b) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a receiver- or other AME-designated Chief Executive Officer;

(3) The Director, State/Area Office of Public Housing; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the State/Area Office.

(c) The Department encourages the inclusion of the resident leadership in MOA negotiations and the execution of the MOA.

(d) Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and

the execution of an MOA by the Assistant Secretary of Public and Indian Housing.

(e) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

(f) A PHA will be removed from troubled status upon a determination by the State/Area Office that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or mod-troubled, i.e., a total weighted management assessment score of 60% or more.

**§ 901.140 Removal from troubled status and mod-troubled status.**

(a) A PHA has the right to petition the State/Area Office for the removal of a designation as troubled or mod-troubled.

(b) A PHA may appeal any refusal to remove troubled and mod-troubled designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.125.

(c) The State/Area Office shall conduct a confirmatory review of a PHA prior to the removal of troubled or mod-troubled designation.

**§ 901.145 Improvement Plan.**

(a) After receipt of the State/Area Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.125 or, in the case of an RMC, notification of its indicator grades from a PHA, a PHA or RMC shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the State/Area Office of its action to correct a deficiency. A PHA shall also forward to the State/Area Office an RMC's report of its action to correct a deficiency.

(c) If the State/Area Office determines that a PHA or RMC has not corrected a deficiency as required within 90 calendar days after receipt of its final notification letter, the State/Area Office may require a PHA, or a RMC through the PHA, to prepare and submit to the State/Area Office an Improvement Plan within an additional 30 calendar days:

(1) The State/Area Office shall require a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA or RMC scored a grade "F".

(2) The State/Area Office may require, on a risk management basis, a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA scored a grade D

or E, as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations.

(d) An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem in a PHA's or RMC's management assessment, or other relevant areas identified as problematic;

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

(3) Provide a timetable for the correction of each deficiency.

(e) The State/Area Office will approve or deny a PHA's or RMC's Improvement Plan, and notify the PHA of its decision. A PHA must notify the RMC in writing, immediately upon receipt of the State/Area Office notification, of the State/Area Office approval or denial of the RMC's Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the State/Area Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA or RMC within 30 calendar days of its receipt of the State/Area Office recommendations.

(g) If a PHA or RMC fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the State/Area Office will notify the PHA of its or the RMC's noncompliance. The PHA, or the RMC through the PHA, will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the Annual Contributions Contract and HUD regulations.

**§ 901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).**

(a) PHAs that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as mod-troubled.

(b) PHAs designated as mod-troubled may be subject, under the Comprehensive Grant Program, to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C) or under the Comprehensive Improvement Assistance Program to

disapproval of new funding or other sanctions (24 CFR part 968, subpart B).

**§ 901.155 PHMAP public record.**

The State/Area Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

**§ 901.200 Events or conditions that constitute substantial default.**

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant Annual Contributions Contract (ACC).

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.135 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department shall determine that a PHA that has been designated as troubled and does not show significant improvement (10 point increase) in its PHMAP score within one year are events or conditions that constitute a substantial default:

(1) A PHA shall be notified of such a determination in accordance with § 901.205(c).

(2) A PHA may waive, in writing, receipt of explicit notice from the Department as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide the Department with written assurances that all deficiencies will be addressed by the PHA. The Department will then immediately proceed with interventions as provided in § 901.210.

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

(e) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

**§ 901.205 Notice and response.**

(a) If information from an annual assessment, as described in § 901.100, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs," or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in non-compliance;

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

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

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency

conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (d) of this section, the Department will take control of the PHA, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 901.210, and any additional authority for such action.

(d) Upon receipt of the notification described in paragraph (c) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in the Department's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

**§ 901.210 Interventions.**

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management or to a single development or a group of developments). Under this limited intervention procedure, the Department could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA; and

(4) The provision of intervention and assistance necessary to remedy emergency conditions.

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

**§ 901.215 Contracting and funding.**

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a non-competitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

**§ 901.220 Resident participation in competitive proposals to manage the housing of a PHA.**

(a) When a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP) pursuant to section 6(j)(3)(A)(i) of the 37 Act, the RFP, in addition to publishing the selection criteria, will:

(1) Include a requirement for residents to notify the Department if they want to be involved in the selection process; and

(2) Include a requirement for the PHA that is the subject of the RFP to post a notice and a copy of the RFP in a prominent location on the premises of each housing development that would be subject to the management chosen under the RFP, for the purposes of notifying affected residents that

(i) Invites residents to participate in the selection process; and

(ii) Provides information, to be specified in the RFP, on how to notify the Department of their interest.

(b) Residents must notify the Department by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify the Department must equal at least five percent of the residents, or the notification of interest must be from an organization or

organizations of residents whose membership must equal at least five percent of the PHA's residents.

(c) If the required percentage of residents notify the Department, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory members are subject to all applicable confidentiality and disclosure restrictions.

**§ 901.225 Resident petitions for remedial action.**

The total number of residents that petition the Department to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least five percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least five percent of the PHA's residents.

**§ 901.230 Receivership.**

(a) Upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of

a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or the Department, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

**§ 901.235 Technical assistance.**

(a) The Department may provide technical assistance to a PHA that is in substantial default.

(b) The Department may provide technical assistance to a troubled or non-troubled PHA if the assistance will enable the PHA to achieve satisfactory

performance on any PHMAP indicator. The Department may provide such assistance if a PHA demonstrates a commitment to undertake improvements appropriate with the given circumstances, and executes an Improvement Plan in accordance with § 901.145.

(c) The Department may provide technical assistance to a PHA if without abatement of prevailing or chronic conditions, the PHA can be projected to be designated as troubled by its next PHMAP assessment.

(d) The Department may provide technical assistance to a PHA that is in substantial default of the Annual Contributions Contract.

(e) The Department may provide technical assistance to a PHA whose troubled designation has been removed and where such assistance is necessary to prevent the PHA from being designated as troubled within the next two years.

Date: February 26, 1996.

Kevin E. Marchman,

*Acting Assistant Secretary for Public and Indian Housing.*

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