

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PART 901

[Docket No. FR-4313-P-01]

RIN 2577-AB81

Public Housing Assessment System

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

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes an entirely new system for the assessment of public housing in the United States. The nation's public housing system houses 1.2 million families in 20,000 projects across the 50 States, Puerto Rico, Guam and the U.S. Virgin Islands, operated by 3,400 public housing agencies. The major components of the new system include:

The rule provides for the first-ever assessment of the physical condition, financial health, and resident services in public housing. For the first time, the physical condition of every project in the nation's public housing inventory will be inspected on a regular basis with uniform standards to ensure that residents receive decent, safe, and sanitary housing. For the first time, the financial condition of every public housing agency will be assessed on generally accepted accounting principles. For the first time, resident satisfaction with public housing services will be measured and counted in HUD's assessment of public housing agency management.

The rule provides for increased flexibility for top performers. Public housing agencies which score in the top ten percent in their physical condition, financial health, resident satisfaction, and management operations will receive substantial flexibility and bonus points for funding competitions.

The rule provides for the establishment of a Troubled Agency Recovery Center to improve poor performers. Public housing agencies which perform unsuccessfully on these factors will be referred to a new Troubled Agency Recovery Center to improve poor performers.

The rule provides for the establishment of an Enforcement Center and Receivership for agencies which fail to improve performance. Public housing agencies which fail to post significant improvement within a year will be automatically referred to the new HUD Enforcement Center which will institute

proceedings for judicial receivership to remove failed agency management.

The purpose of the new Public Housing Assessment System is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable, and provides real rewards for high performers and consequences for poor performers. As more fully discussed in the Supplementary Information section of the preamble, the proposed rule was developed with the assistance of public housing agency officials, representatives of public housing agency organizations, and representatives of public housing residents organizations.

DATES: *Comment due date:* July 30, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. 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.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center, Attention William Thorson, Department of Housing and Urban Development, 4900 L'Enfant Plaza East, SW, Room 8204, Washington, DC 20410; telephone (202) 755-0102 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. HUD Constituents Participation in the Proposed Rule

President Clinton's Executive Order on Regulatory Planning and Review (E.O. 12866, issued September 30, 1993) provides in section (6)(a) that:

Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local and tribal officials).

Consistent with President Clinton's Executive and HUD's own partnership initiatives with its constituents and clients, the new assessment system for public housing was developed with extensive discussion and consultation with public housing agency (PHA) officials, officials from PHA representative organizations, representatives of public housing resident groups, experts in the fields of finance and audit and physical inspection of properties, and other interested parties such as housing advocacy groups and local government representatives. These discussions and consultations began in October 1997 and continued through April 1998. It was important to HUD that these entities and individuals have input in the development of a proposal for a new assessment system for public housing.

The consultation and discussions with PHA agency officials and representative groups will continue through the final rulemaking process and in the implementation of this new system. During the transition period to the new system, HUD will work closely with PHAs and resident groups to make any necessary refinements to the system. HUD, PHAs and public housing residents all want to see an effective and efficient management system for public housing, and will work together to make this a successful system for all concerned.

II. HUD 2020 Management Reforms

On June 26, 1997, HUD released its plan, the "HUD 2020 Management Reform Plan," for significant management reforms at HUD. HUD published the plan in the **Federal Register** on August 12, 1997 (62 FR 43204). The HUD 2020 Management Reform Plan is directed to (1) empowering people and communities to improve themselves, and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of HUD's programs, operations, and delivery of services. To improve the efficiency and effectiveness of HUD's programs, operations, and delivery of services, the HUD 2020 Management Reform Plan calls for the restructuring of HUD's internal operations to reallocate resources and consolidate major functions.

Under the HUD 2020 Management Reform Plan, resources will be allocated in a way that is designed to align HUD's resources with its long-term mission of empowering people and communities to improve themselves and succeed in today's world. Consolidation of functions is designed to avoid duplication of effort, achieve

consistency and uniformity in the performance of these functions, and ensure fairness. With respect specifically to HUD's public housing programs, the consolidation of certain functions is critical to the survival of public housing as an affordable housing option for low-income persons. Those consolidated functions that will significantly impact and benefit public housing operations include the establishment of a Real Estate Assessment Center, a Troubled Agency Recovery Center (TARC) and an Enforcement Center. These centers provide the backbone of HUD's new system for Federal management of the nation's public housing. The following provides a brief overview of the functions of the three centers and their relationship to public housing, as well as to other HUD assisted properties.

A. Measuring Program Performance—the Real Estate Assessment Center

The Real Estate Assessment Center (the "Assessment Center" or "REAC") is charged with the responsibility for assessing and scoring the condition of properties in which HUD has an interest and the performance of entities that manage and own those properties. Until the establishment of the Assessment Center, HUD's Office of Housing and the Office of Public and Indian Housing independently operated separate real estate assessment operations, yet the administration of both organization's multifamily portfolios is a common function of asset management. Under the Assessment Center, the assessment of all of the properties of the Office of Housing and the Office of Public and Indian Housing is consolidated and the evaluation standards and procedures are made uniform, to the greatest extent feasible.

The establishment of the Assessment Center marks an important change in HUD's way of doing business. Until the establishment of the Assessment Center, HUD has never had an effective and comprehensive property assessment system. Under HUD 2020 Management Reform, for the first time in HUD's history, all properties will be physically inspected and financially assessed using a comprehensive and uniform protocol. The Assessment Center will play a key role in evaluating and scoring the condition of public housing properties and the performance of PHAs, and it also will play a key role in evaluating and scoring the condition of other HUD-assisted housing and FHA-insured properties, and the performance of the entities that manage and own those properties. The Assessment Center will be staffed with individuals who are

experts in the areas of finance and audit, real estate functions, and housing management operations.

In order for the Assessment Center to effectively perform its functions, certain assessment tools—specifically, physical condition standards for HUD properties, and financial information from HUD reporting entities—need to be made uniform to the greatest extent possible. As discussed later in this preamble, establishment of uniform protocols for assessing physical condition and financial information is underway. These new standardized protocols will become significant diagnostic tools for the Assessment Center. For public housing, as will be discussed in more detail later, these uniform protocols will form part of the basis by which the Assessment Center will analyze the performance of public housing agencies (PHAs) and assign a score. The score assigned to a PHA will identify that PHA as a high performer, standard performer or troubled PHA. High performers will receive increased regulatory flexibility, bonus points and other incentives. Those PHAs designated as troubled will be referred to the Troubled Agency Recovery Center to improve performance.

The uniform protocols to be used by the Assessment Center, although standardized, will not be static. The Assessment Center will provide an ongoing analysis and evaluation of assessment methods to determine the accuracy, the effectiveness and the relevance of inspection, management and financial protocols, including factors, scoring, weights, sampling and algorithms. The Assessment Center will keep the public and HUD program participants advised of the findings obtained through this ongoing analysis and of any recommended changes to the protocols and indicators through issuance of **Federal Register** notice or other appropriate notice.

One of HUD's objectives under HUD 2020 Management Reform is not only to identify where performance by program participants fails to meet acceptable standards, but to assist these participants in raising their level of performance. For PHAs, such assistance will be provided either by the appropriate HUD area HUB/Program Center, or by the TARC if the PHA is designated as troubled.

B. Assisting Troubled Public Housing Agency Performers—Troubled Agency Recovery Centers (TARCs)

The Troubled Agency Recovery Centers established by HUD will assist PHAs designated as troubled to reach improved performance through the

development and implementation of sustainable solutions. Upon designation as troubled, a PHA will be referred to the TARC for assistance. The TARC will work with the PHA to develop and implement an intervention strategy to help raise the PHA's level of performance. The TARC will provide technical assistance to troubled PHAs on a variety of public housing operation issues, including: property needs and maintenance; occupancy procedures; resident and applicant relations; and financial management. One of the principal objectives of the TARC is to determine the appropriate course of action for the troubled PHA to achieve recovery, considering the resources and the recovery period best suited for the individual PHA, its community and the families the PHA serves. If a troubled PHA is found to be making substantial progress toward addressing its problems, consideration may be given to allowing the PHA additional time to continue the recovery effort. If a troubled PHA's problems are not addressed within the period established by this rule, the PHA will be referred to the Enforcement Center.

C. Restoring Public Trust—the Enforcement Center

The greatest breach of the public trust at HUD is the waste, fraud and abuse in HUD's existing portfolio of millions of housing units. Until recently, each of HUD's program offices (the Offices of Public and Indian Housing, Housing, and Community Planning and Development) operated independent enforcement functions, with different standards and procedures. HUD has combined non-civil rights enforcement actions for the program offices into one authority—the Enforcement Center. The Enforcement Center is a fundamental programmatic reform that HUD will take to restore public trust in fulfilling its mission to provide decent, safe and sanitary housing for lower and moderate income households. The Enforcement Center is intended to be the central Departmental focus for taking aggressive action against owners of HUD's troubled assisted housing and public housing portfolios. The Enforcement Center will be responsible for correcting long-standing noncompliance issues with HUD grantees, and will take action against owners who do not cooperate with HUD during any recovery process or who may have put housing projects in jeopardy by engaging in waste, fraud or abuse.

With respect to public housing, the Enforcement Center will be responsible for troubled PHAs that fail to improve their performance during the

established time period. The actions taken by the Enforcement Center against such PHAs include judicial receivership to remove failed management, and referrals for the imposition of civil and criminal sanctions to the applicable Federal government agencies or offices, where appropriate.

D. Achieving Fairness By Transferring Responsibility to Independent Units

Each of the three centers, the Assessment Center, the TARC, and the Enforcement Center, will be separate units, independent from traditional HUD program areas and functions. This separation from traditional program areas reflects a key objective of HUD 2020 Management Reform and that is to treat program participants and assess program performance on the basis of uniform standards, not on the basis of which HUD program office administers the assistance. Before the HUD 2020 Management Reforms, program office staff all too often were handed conflicting mandates. On the one hand, staff were asked to provide assistance to HUD program participants (communities, housing agencies, multifamily owners, etc.) to help them meet their housing and urban development needs; and on the other hand, these employees were directed to monitor the actions of the program participants. HUD realizes that both roles are important to HUD's mission and have a place in HUD, but the role of facilitator and the role of monitor are inherently in conflict. The creation of the Assessment Center, the TARC and the Enforcement Center as independent units is designed to address the inconsistent responsibilities previously handled by program staff. Dividing the important functions of community facilitator and program monitor into different offices is a critical step in restoring public trust in HUD.

Restoring public trust not only will be achieved through independence of the Assessment Center, TARC and the Enforcement Center, but in the consistent uniform approach the centers take to the performance of their respective functions. As discussed earlier, for the Assessment Center, a consistent and fair approach to the evaluation of HUD properties requires uniform assessment standards in two critical areas: (1) The physical condition of properties receiving HUD financial assistance; and (2) the financial condition of the owners and managers of these properties.

E. Standardization of Physical Assessment of Properties—Uniform Physical Condition Standards

As part of the HUD 2020 Management Reform objective to create a uniform, assessment process for all HUD assisted properties, HUD is establishing uniform physical conditions standards and inspection procedures for its assisted housing, FHA related properties and public housing. These standards are intended to ensure that such housing is decent, safe, sanitary and in good repair—the physical condition standard to which HUD assisted housing always has been subject. HUD's Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing currently must undergo an annual physical inspection to determine that the housing qualifies as decent, safe, sanitary and in good repair. The description or components of what constitutes acceptable physical housing quality and the physical inspection procedures by which the standards are determined to be met, however, vary from HUD program to HUD program. To the extent possible, HUD believes that housing assisted under its programs should be subject to uniform physical standards, regardless of the source of the subsidy or assistance. Additionally, to the extent feasible, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform in the covered programs. Therefore, for the physical condition indicator of the Public Housing Assessment System (PHAS), this proposed rule provides for public housing properties to be evaluated on the basis of uniform physical condition standards that ensure that the public housing is decent, safe, and sanitary. Through separate rulemaking, HUD will propose to apply these uniform physical condition standards to properties assisted under other HUD housing programs. These standards are discussed in greater detail later in this preamble.

F. Standardization of the Financial Assessment of Program Participants—Uniform Financial Reporting

The uniform assessment of HUD properties under HUD 2020 Management Reform also includes a uniform financial assessment process. To achieve this objective, HUD is establishing uniform standards for annual financial reporting for HUD's public housing, Section 8 housing, and multifamily insured housing programs, and will require public housing agencies, project owners, and managers (if applicable) of HUD-assisted housing

to submit to HUD annually in an electronic mode and standardized format, to be established by HUD, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as prescribed by the Governmental Accounting Standards Board (GASB). Electronic submission is necessary because the manual submission of annual financial information has become a significant administrative burden to PHAs, project owners, and mortgagees, as well as to HUD. HUD is developing a standardized format for the reporting of the annual financial information, which will be ready for dissemination in sufficient time to allow PHAs to comply with the provisions of this rule. This format will be substantially the same for all covered programs, but the format may vary in certain respects to reflect different types of reporting entities (e.g., owners of multifamily/Federal Housing Administration (FHA)-related entities vs. PHAs). The objective of the uniform financial reporting requirements is to standardize the annual financial information submission process and, through standardization, bring consistency to the evaluation of the financial condition of housing assisted under HUD programs. Therefore, for the financial condition indicator of the PHAS, this proposed rule provides for PHAs to submit electronically to HUD annual financial reports prepared in accordance with GASB GAAP. Through separate rulemaking, HUD will propose to apply these uniform financial reporting requirements to program participants in other HUD housing programs. The financial reporting requirements are discussed in greater detail later in this preamble.

G. Enhancing Public Trust Through Improved Assessment of Public Housing and PHAS

The new Public Housing Assessment (PHAS), proposed by this rule, is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS represents a major rethinking of public housing management. The parties most involved in, and affected by, public housing—PHAs and public housing residents—have expressed concerns that the existing system largely ignores the physical conditions of public housing.¹

¹ The current Public Housing Management Assessment Program (PHMAP), for which the regulations are codified at 24 CFR part 901, was established in accordance with section 502 of the

Under the current system, a PHA's management performance may be assessed as acceptable when its residents are living in unacceptable housing conditions. Other concerns are that the current system is almost totally dependent on PHA self-certification, rather than on objective evidence or third-party verification; does not focus on basic real estate functions; and does not provide for opportunity for input from those directly served by the PHA—the public housing residents. The new PHAS responds to these concerns by adding indicators that provide for independent assessment and specifically assess these components of a PHA's operation—physical condition of the property; financial condition; and resident feedback.

Under the PHAS, HUD will evaluate a PHA based on the following indicators: (1) the physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) residents' assessment (through a resident survey) of the PHA's performance. The management indicator of this new assessment system will incorporate the majority of the existing statutory management assessment indicators (the remaining statutory indicators will be part of the other PHAS indicators). Each of these major indicators is comprised of components. The PHAS indicators are discussed in further detail below. The PHAS, although applicable only to public housing, reflects HUD's approach under HUD 2020 Management Reform to all properties assisted by HUD. HUD will assess all HUD-related properties in a manner similar to that outlined in this proposed rule, utilizing uniform financial and physical indicators, and resident feedback.

III. The Public Housing Assessment System (PHAS)

A. Overview of the PHAS

The new PHAS is designed to instill trust in public housing as a cost effective and affordable housing option by demonstrating that there is in place an assessment system that accurately determines whether a PHA is doing an outstanding, acceptable, or unacceptable job in providing decent, safe and sanitary housing to its residents. An accurate assessment of a PHA's performance is critical because the consequences of that assessment can be

significant. For PHAs determined to be performing well, the consequences will be less scrutiny and additional flexibility. For PHAs determined not to be performing well, the consequences will be intensive technical assistance, deadlines for improvement and possible punitive actions for failure to improve during established periods.

The approach provided by the PHAS maximizes the best use of public funds by concentrating resources on those PHAs in most need of attention and recognizing outstanding performers. The system is fundamentally designed to provide relevant and verifiable measures that directly relate to PHA performance. Additionally, the system is designed to allow HUD to act upon the findings produced from four comprehensive indicators.

Under the PHAS, the Assessment Center assumes responsibility from the Office of Public and Indian Housing for assessing the performance of PHAs. The Assessment Center will examine four essential areas of housing operations to determine a PHA's performance in delivering HUD programs and services. These indicators are: (1) the physical condition of public housing (addressed in subpart B of the rule); (2) the financial condition of a PHA (addressed in subpart C of the rule); (3) the management operations capabilities of PHAs, which will incorporate the majority of the existing statutory assessment requirements (addressed in subpart D of the rule); and resident service and satisfaction (addressed in subpart E of the rule). To assess the performance of a PHA on the basis of the first two indicators, the Assessment Center will utilize comprehensive and standardized protocols to conduct physical inspections of public housing properties, as described above, and to assess the financial condition of PHAs. For the Management Operations Indicator and the Resident Service and Satisfaction Indicator, the Assessment Center will gather and analyze data and information provided by the PHA.

In order to determine a composite score for each PHA, the four indicators of the PHAS will be individually scored and then combined to present a composite score that reflects the overall performance of PHAs for a total of 100 possible points. The 100 points are distributed as follows:

- 30 total points for the physical condition;
- 30 total points for the financial condition;
- 30 total points for management operations; and
- 10 total points for resident service and satisfaction.

The following discussion presents a brief overview of each of the four indicators to be used under the PHAS.

1. PHAS Indicator #1—Physical Condition of Public Housing Properties

Subpart B of part 901 of this proposed rule addresses the Physical Condition Indicator. This indicator provides for the assessment of the physical condition of a PHA's public housing. A PHA must maintain its housing in decent, safe, and sanitary condition.

Statutory Standard of Decent, Safe and Sanitary. This well established and longstanding physical condition standard has several statutory sources, including section 3(b)(1) of the 1937 Act, which provides in relevant part as follows:

The term "low-income housing" means decent, safe, and sanitary dwellings assisted under this Act. The term "public housing" means low-income housing, and all necessary appurtenances thereto, assisted under this Act other than under section 8.

Section 14 of the 1937 Act, which addresses public housing modernization, also emphasizes a decent, safe, and sanitary housing standard. Section 14(j)(2) provides, in relevant part, that "the Secretary shall issue rules and regulations establishing standards which provide for decent, safe, and sanitary living conditions in low-rent public housing projects.

* * * ² In adopting uniform physical condition standards for public housing, this proposed rule would not alter the statutory standard for maintaining public housing. Instead, the proposed rule, by using the statutory terminology, clearly acknowledges that public housing must be maintained in "decent, safe, and sanitary" condition.³

No Preemption of State and Local Building and Maintenance Codes. The new uniform physical condition standards established by HUD do not supersede or preempt State and local building and maintenance codes with

² The current regulatory provisions addressing the physical condition of public housing projects are found in several sections of HUD's regulations in Title IX of 24 CFR: §§ 901.30 (of the PHMAP regulations), 941.203 (of the Public Housing Development regulations), 965.704 (of the PHA-Owned or Leased Projects regulations), and 968.315 (of the Comprehensive Improvement Program Regulations).

³ As the proposed regulatory text will show, the physical condition standards are referred to as "decent, safe, sanitary and in good repair." As the preamble discussion notes the statutory physical condition standard for public housing is expressed in terms of "decent, safe and sanitary." For FHA-related properties, the statutory standard is expressed in terms of "good repair and condition." In adopting physical condition standards that are applicable to both public housing and FHA-related properties, HUD uses the descriptive term—"decent, safe, sanitary and in good repair."

which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

Uniform Physical Condition Standards. The uniform physical standards being established would set parameters under which public housing (as well as other HUD assisted housing) must be maintained and will be evaluated. These standards are designed to analyze, score, and rank the overall and general physical condition of a project. This evaluation would not focus on a single element, but would take into consideration significant observable deficiencies and score compliance taken as a whole. A single critical element with a major defect (for example, an inoperable heating system), however, could have a significant impact on a project's overall evaluation. The standards address six major areas of the housing to be evaluated: (1) site; (2) building exterior; (3) building systems; (4) dwelling units; (5) common areas; and (6) health and safety. The standards emphasize health and safety considerations as essential to housing that is decent, safe, and sanitary. Appendix A to the proposed rule lists the items to be inspected within each of the six major areas.

Physical Inspection of Public Housing. Public housing is not only currently subject to a standard of decent, safe and sanitary, there is also an obligation on the PHA to "inspect" public housing units. Section 6(j)(1)(G) of the 1937 Act requires the PHA to inspect units to ascertain "maintenance or modernization needs." This corresponding regulatory requirement is found in HUD's regulations at 24 CFR 901.30. Section 901.30, captioned "Indicator #5, Annual Inspection of Units and Systems," provides in relevant part that: "All occupied units are required to be inspected." This rule would not change the current requirement for an annual inspection. That requirement remains and is provided for under subpart D of this proposed rule, Management Operations.

Under this proposed rule, an assessment of the physical condition of a PHA's properties would be determined by an independent inspection of the properties by HUD. Consistent with HUD's responsibilities under the Assessment Center, HUD intends to conduct independent physical inspections, using a new uniform, objective, and computerized inspection software developed by HUD, of a statistically valid number of public housing units for each PHA, in order to confirm compliance with the uniform physical condition standards. The determination of whether public

housing meets the standard of decent, safe, and sanitary would be based on a review of observable deficiencies of the site, the building exterior, the building systems, the dwelling units, the common areas, and the health and safety conditions of such housing. The computer program will generate a score for these components. The scores will allow HUD to assess the overall physical condition of the public housing as determined by the computer-based inspection.

To ensure the independence of the physical inspection, HUD intends to contract with private inspection firms to perform the inspections. All inspectors will be trained under HUD auspices in the use of the inspection protocol. Upon being certified, inspectors will obtain their PHA inspection assignment from the Assessment Center. The inspector will download property profile information on the selected PHA's projects via the Internet from the HUD Home page. The inspector will complete the inspection using a hand-held computer that uses the HUD software. After the inspection is completed, the inspector will upload the inspection results to HUD's central information data repository (CIDR) where it will be verified for accuracy and then scored using predetermined weights based on the relative importance of the property areas inspected and factual observed deficiencies identified during the inspection. HUD will exercise quality control procedures over the contractor inspections to assure the validity and quality of the inspections.

Total Points for PHAS Indicator #1. The total point value of the Physical Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Physical Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

2. PHAS Indicator #2—Financial Condition

Subpart C of this proposed rule addresses the Financial Condition Indicator and would establish the process for the assessment of a PHA's financial condition. The rule would require PHAs to submit to HUD, on an annual basis, certain financial information, prepared in accordance with generally accepted accounting principles (GAAP), as those principles are prescribed by the Governmental Accounting Standards Board (GASB). The rule also requires that the annual financial report due to HUD must be submitted electronically and in a uniform format, with the electronic mode and format to be determined by

HUD. The objective of the Financial Condition Indicator is to measure the financial condition of PHAs for the purpose of evaluating whether they have sufficient financial resources and are managing those financial resources effectively to support the provision of decent, safe, and sanitary housing.

Generally Accepted Accounting Principles (GAAP). Accounting and reporting in accordance with GAAP would bring much needed consistency to HUD program evaluation. GAAP requires the participant to manage its accounting and reporting in accordance with a standard set of rules published by auditing and accounting professionals and recognized both within and outside of government. The use of GAAP, therefore, would enable HUD and program participants to account for transactions and report results of operations using widely accepted protocols. The audit process would be enhanced by the use of GAAP, reducing audit costs. The resulting reports are widely accepted by industry and government and are, therefore, widely understood. The relative consistency of GAAP would allow HUD to perform analysis on its large housing portfolio in ways that assure the overall reliability and validity of the results.

The discussions that HUD had with PHAs, PHA representatives, residents and other interested parties about the new PHAS included conversion of PHA financial reports to GAAP. From these discussions, HUD has learned that GAAP accounting and reporting is more meaningful than present HUD accounting, and that the majority of PHAs seek the benefits of the change. A number of PHAs already have begun using GAAP or are in the process of converting to GAAP. At least two States (Louisiana and Tennessee) require that all PHAs in those States convert their HUD basis of accounting financial statements to a GAAP basis for State reporting purposes. Therefore, PHAs, as well as the accountants and auditors in those two States, have experience with the GAAP conversion process. Additionally, several large PHAs (New York, Chicago, Denver, Seattle, and Baltimore, for example) have already converted to GAAP. Further, it is expected that many PHAs have quantified the effect of the differences between GAAP and the HUD basis of accounting because of the guidance given in the Public and Indian Housing Low Rent Technical Accounting Guide and because of other business and operating needs (e.g., the need to fund liabilities for sick and vacation leave).

For those PHAs that may not be familiar with GAAP or that have not had

occasion to prepare GAAP financial reports for other submissions (for example, reports that may be required to be submitted to State or local governments), accounting support services are an eligible expense under the Performance Funding System (PFS). To ease the conversion, the current PHA accounting guide and chart of accounts will not be modified except to add those additional accounts needed to record new transactions in accordance with GAAP or to enhance the existing chart of accounts to address current business operation requirements. Some illustrative examples of these new accounts are: (1) an allowance for uncollectible receivables and the related bad debt expense; (2) an allowance for depreciation of buildings, structures and equipment and the related depreciation expense; and (3) liability and expense accounts for probable losses expected from litigation, claims, and other contingencies. While a PHA's accounting staff will have to quantify the amounts to be recorded in these new accounts, the PHA's independent public accountants can provide guidance on GAAP. HUD also will offer guidance for purposes of standardizing the conversion results. Since HUD funds all audit costs as an add-on to the performance funding system (PFS), PHAs should not bear any increase in the costs of an audit that may result in converting to GAAP.

Electronic Submission. HUD is aware that automated systems are being used more extensively among the various entities that participate in HUD programs, and the use of such systems is expanding within HUD itself. Vice President Gore's Report of the National Performance Review has, as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government. (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2). Requiring the electronic submission of financial data in HUD housing programs is another step in implementing the Vice President's objective. The electronic submission of information results in significant benefits, such as increasing the speed of information preparation and exchange, cost savings from reduced need for storage space, improved product because electronic preparation generally results in reduced errors, and faster HUD review and analysis.

This rule would require PHAs to submit their financial reports to HUD electronically, via the Internet, rather than through tape, diskette, or paper. HUD, however, may approve

transmission of the data by tape or diskette if HUD determines that the cost of electronic Internet transmission would be excessive. HUD anticipates that the instances in which covered entities will not be able to comply with submission of financial data electronically via Internet will be very few. This rule would help to bring HUD up to speed with its program partners in terms of modern technology.

Assessing Financial Condition. The key indicators used to distinguish PHAs in strong financial condition from those which may be financially troubled include: (1) A measure of liquidity, the Current Ratio (defined as current assets divided by current liabilities), and (2) a measure of viability, the Number of Months Expendable Fund Balance (defined as the Expendable Fund Balance divided by monthly Operating Expenditures); (3) Days Receivable Outstanding (defined as the average number of days tenant receivables are outstanding); (4) Vacancy Loss (defined as the loss of potential rental income due to vacancy); (5) Expense Management/Energy Consumption (defined as expense per unit for key expenses); and (6) Net Income or Loss divided by the Expendable Fund Balance (defined as the net income or loss, if any, for the operating year, divided by the expendable fund balance).

The liquidity measure is evidence of the property's ability to cover its near term obligations with resources available in the near term. The viability measure is evidence of the PHA's ability to operate using its expendable fund balance without relying on additional funding. Prudent financial management practices, appropriate to the PHA environment, suggest that these components be maintained at certain levels, although a range may be acceptable for peer groups of PHAs.

The Days Receivable Outstanding component measures the ability of the PHA to collect its tenant receivables in a timely fashion. The inability to collect tenant receivables in a timely fashion might help explain poor performance in the liquidity and viability measures.

The Vacancy Loss component measures the extent to which the PHA is maximizing its revenue from operations.

The Expense Management/Energy Consumption component, adjusted for size and region, and includes energy consumption expenses as well as any other factors that would reasonably contribute to differences in expense ratios, will provide a measure of the PHA's ability to maintain its expense

ratios at a reasonable level relative to its peers.

Net Income or Loss divided by the Expendable Fund Balance will provide a measure of how the year's operations have affected the PHA's viability to a substantial degree.

Total Points for PHAS Indicator #2. The total point value of the Financial Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

Financial Reporting Compliance Dates. HUD intends that the requirement of electronic submission of GAAP-based financial reports, in the manner and in the format prescribed by HUD, will begin with those PHAs with fiscal years ending September 30, 1999 and later. This compliance schedule will allow sufficient conversion time for PHAs that are not currently using GAAP. Unaudited financial statements will be required 60 days after the PHA's fiscal year end (i.e., November 30, 1999), and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133. A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report electronically and prepared in accordance with GAAP, in the manner and in the format prescribed by HUD, as provided by this rule. On or after September 30, 1998 but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with the financial reporting requirements of this rule, but would not be required to do so.

3. PHAS Indicator #3—Management Operations

Subpart D of this proposed rule addresses the Management Operations Indicators of PHAs and provides for the assessment of a PHA's management operations. PHAS Indicator #3 (Management Operations) basically reflects the requirements of the existing PHMAP system.

The PHAS preserves the statutory indicators found in section 6(j) of the 1937 Act, with some minor reorganization (from that in the existing system) which is designed to reflect their integration into the broader PHAS assessment and to establish their new point values within the PHAS. The statutory indicators are: (1) Vacancy rate; (2) unexpended Section 14 (of the

1937 Act) funds; (3) rents uncollected; (4) energy consumption; (5) unit turn-around time; (6) outstanding work orders; and (7) annual inspection of units. The Management Operations Indicator of the PHAS incorporates the seven statutory indicators. As is currently the case under the existing system, statutory indicators (1) and (5) are combined under the new PHAS. The statutory energy consumption indicator is part of PHAS Indicator 2 (Financial Condition), just as it was folded into the financial management indicator of existing system. The energy/utility consumption expenses faced by a PHA on an annual basis will be part of the PHA's annual financial report to HUD.

With respect to non-statutory indicators, the security indicator remains part of the Management Operations assessment under the PHAS. The resident services and community building indicator is now replaced by a separate indicator (PHAS Indicator #4—Resident Service and Satisfaction). Similarly, the financial condition indicator is now replaced by a separate indicator (PHAS Indicator #2—Financial Condition).

The analysis of the individual statutory management indicators will not deviate significantly from the existing assessment system. Scores will continue to be based on a PHA's certification to the various management operations indicators. For example, under Management Indicator #1 (Vacancy Rate and Unit Turnaround Time), a low vacancy rate will score higher than a high vacancy rate. Under Management Indicator #4 (Work Orders) a high percentage of emergency work orders completed or abated within 24 hours or less will score better than a lower percentage of emergency work orders completed or abated within 24 hours or less.

As under the existing system, for the Management Operations Indicator of the PHAS, a PHA will continue to submit certifications as to its performance under each of the management indicators, and a PHA's certifications will be subject to independent verification. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories.

Total Points for PHAS Indicator #3. The total point value of the Management Operations Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Indicator #3 (Management Operations), a PHA must receive a score of at least 60 percent of the 30 points available.

4. PHAS Indicator #4—Resident Service and Satisfaction

Subpart E of this rule addresses PHAS Indicator #4, Resident Service and Satisfaction. This indicator assesses the level of resident satisfaction with PHA housing and services. This assessment would consist of existing PHMAP Indicator #7, resident services and community building, revised to (1) be consistent with the framework of the new PHAS, and (2) provide a separate resident services satisfaction survey. The objective of this Indicator #4 is to seek input from all public housing residents. To achieve an acceptable score under this indicator, a PHA must obtain a response from a statistically significant sample of public housing residents. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

The resident service and satisfaction assessment score will include three components of the survey process.

The first component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions to include topics such as: (1) Resident organizations; (2) program activities; (3) surrounding environment; (4) management responsiveness; (5) safety; (6) involvement; (7) resources; and (8) communication.

The second component will be a score based on the PHA's level of implementation and its follow-up or corrective actions based on the results of the survey.

The third component is verification that the data collection, tabulation and submission was undertaken consistent with guidelines to be provided by HUD. HUD reserves the right to conduct the survey at any time on its own.

Total Points for PHAS Indicator #4. The total point value of the Resident Service and Satisfaction Indicator is 10 of the 100 points available under the PHAS. A PHA will not receive any points if the survey is not conducted in accordance with HUD prescribed methodology or if the survey results are determined to be altered by the PHA.

5. Scoring Performance Under the PHAS and Consequences of the Score

Issuance of the PHAS Score. An overall PHAS score will be issued by HUD for each PHA 60 to 90 days after the end of the PHA's fiscal year. As discussed earlier in this preamble, each of the four PHAS indicators will be graded individually and these four

indicators will then be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be graded individually and will be used to determine a single score for the major indicator. Based on the score, a PHA will fall into one of three categories:

High Performer PHAs. A PHA that achieves a score of at least 60% of the points available for each of the four indicators and achieves an overall score of 90% or greater shall be designated as a high performer. A PHA shall not be designated as a high performer if it scores below the threshold established for any of the four indicators. High performers will be afforded incentives and include relief from reporting and other requirements as described in the rule.

Standard Performer PHAs. A PHA that achieves a total score of less than 90% but not less than 60% shall be designated as a standard performer. All standard performers must correct reported deficiencies. A standard performer PHA that receives a score of less than 70% but not less than 60% shall be referred to the appropriate HUD area HUB/Program Center and will be required to submit an improvement plan to correct and eliminate deficiencies in the PHA's performance. Standard performers that receive a score over 70% may also be required to submit an improvement plan to correct or eliminate any deficiency.

Troubled Performer PHAs. A PHA that receives a total score of less than 60% shall be designated as a troubled performer. Upon designation as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with the requirements of this rule, the PHA shall be referred to the TARC for longer term intensive assistance in raising its performance level.

The actions that HUB/Program Centers and the TARC with respect to PHAs receiving low or failing scores under the PHAS are discussed further in the following section.

6. Consequences of a PHAS Score

As under the existing system, PHAS scores will be made public. PHAS designated as high performers will be relieved of certain HUD requirements, effective upon notification of a high performer designation. Additionally, high performer PHAs may be eligible for bonus points for funding competitions, where permissible by the statute and regulations governing the grant program. High performer PHAs also will receive a Certificate of Commendation from HUD and public recognition of their

outstanding performance.

Representatives of high performer PHAs may be requested to serve on HUD working groups that will advise HUD in such areas as troubled PHAs and performance standards for all PHAs.

Referral to the HUB Program Center. PHAs that are designated as standard performer and have a score of less than 70% but not less than 60% will be referred to HUD's area HUB/Program Center. The HUB/Program Center will work with the PHA to correct any deficiency indicated in its assessment within a period of 90 days, as described in the Improvement Plan to be submitted to HUD. The Improvement Plan will, among other things, describe the procedures that the PHA will follow to correct the deficiencies. If the PHA fails to submit an acceptable Improvement Plan or correct deficiencies within the time specified in an Improvement Plan, the HUB/Program Center will refer the PHA to the TARC for appropriate action.

Referral to the TARC. PHAs that are designated as troubled are referred to the TARC. The TARC will require the troubled PHA to prepare and execute a Memorandum of Agreement (MOA), a binding contractual agreement by which the PHA will commit to take certain action that will lead to its recovery from a troubled status. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include, among other things, annual and quarterly performance targets and strategies to be used by the PHA in achieving the performance targets. The TARC may impose budget and/or management controls on a PHA referred to the TARC.

Referral to the Enforcement Center. A troubled PHA that fails to execute or meet the requirements of the MOA will be referred to the Enforcement Center. The Enforcement Center shall initiate judicial appointment of a receiver, and where appropriate, the Enforcement Center may investigate the PHA and seek the imposition of civil or criminal penalties through the appropriate Federal government agencies or offices.

The purpose of the referral to one of the three centers discussed above is to provide for a more effective, efficient and expeditious resolution of a PHA's problems than is currently the case under the existing assessment system. The HUB/Program Center and the TARC will work with PHAs to quickly address performance deficiencies. The Enforcement Center will seek quick action to replace the management of PHAs that fail or refuse to address their performance deficiencies.

Appeal of "Troubled" Designation. As provided by section 6(j) of the 1937 Act, a PHA may appeal designation as a trouble agency (including designation as troubled with respect to the modernization program); petition for removal of such designation; and appeal any refusal to remove such designation as permitted under section 6(j)(2)(A)(iii) of the 1937 Act. The appeal shall be submitted by a PHA to the Assessment Center within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the Assessment Center without appropriate documentation will not be considered and will be returned to the PHA. Upon receipt of an appeal from a PHA, the Assessment Center will convene a Board

of Review (the Board) to evaluate the appeal and its merits for purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate (excluding, however, representation from the TARC).

HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the time period provided is grounds for denial of an appeal.

7. Timeline for Implementation of Inspection and Reporting Dates Under the PHAS

The new PHAS is proposed to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs' fiscal years ending in September, 1999 and later must be prepared on a GAAP basis. The first scores under the new PHAS will be issued not later than December, 1999 for PHAs with FYs ending in September, 1999. Thus, PHAs will have at least one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. During this one year transition period, advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. The implementation schedule for inspection of public housing properties and reporting is as described in the following table:

REAL ESTATE ASSESSMENT CENTER (REAC)

[Assessment Periods and Reporting Dates]

REAC assessment results		Financial reporting	Physical inspection	Management operations	Resident survey
Score issued	Period covered fiscal year end (1)	Due date (2)	Inspection dates (3)	Submission due date (4)	Survey dates (5)
12/1999	9-30-99	11-30-99	7/99-9/99	11-30-99	4/99-9/99
03/2000	12-31-99	2-28-2000	10/99-12/99	2-28-2000	10/99-12/99
06/2000	3-31-2000	5-31-2000	1/2000-3/2000	5-31-2000	1/2000-3/2000
09/2000	6-30-2000	8-31-2000	4/2000-6/2000	8-31-2000	4/2000-6/2000
12/2000	9-30-2000	11-30-2000	7/2000-9/2000	11-30-2000	7/2000-9/2000

Notes:

1. The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of three years.

2. PHAs with fiscal years ending 9-30-99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A-133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than \$300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an "Agreed-Upon Procedures" report that could be specifically directed at verifying calculations.

3. Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

4. The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

5. Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

8. Other Issues Related to the New PHAS

PHA Fiscal Year for First Three Years of the new PHAS. As noted in footnote 1 to the chart, to allow for a period of consistent assessments to refine and make necessary adjustments to the new PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of the PHAS.

Compliance with Other Departmentwide and Program Specific Requirements. The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with every departmentwide or program specific requirement. For example, a PHA must comply with fair housing and equal opportunity requirements, requirements under Section 504 of the Rehabilitation Act of 1973, and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's annual contributions contract.

Adding, Subtracting and Modifying Indicators. HUD reserves the right to add new indicators or components of indicators, or remove indicators or modify indicators of the new PHAS if HUD believes that such action will contribute to a comprehensive and more accurate assessment of a PHA's performance. For example, HUD may include in the Management Operations Indicator a component on verification of tenant income by a PHA. PHAS and the public will be notified of any change in indicators or components through issuance of the appropriate type of notice.

Streamlining of Regulation. Consistent with Executive Order 12866 on Regulatory Planning and Review, HUD reviews its regulations to determine, among other things, whether the regulations are redundant or duplicative of other HUD or other agency regulations, and should therefore be streamlined or consolidated. As part of this review, streamlining or consolidation changes may be made to this rule at the final rule stage.

IV. Justification for 30-Day Comment Period

In general, it is HUD's policy that notices of proposed rulemaking are to

afford the public not less than 60 days for submission of comments, in accordance with its regulations on rulemaking in 24 CFR part 10. However, HUD has determined that there is good cause to reduce the public comment period for this proposed rule to 30 days. As discussed in more detail earlier in this preamble, the announcement, through this proposed rule, of HUD's new PHAS has been developed with the participation of PHAs, PHA representatives, residents, representatives from resident organizations, and experts in the field of finance and real estate. Therefore, the proposal of a new assessment system, and the fundamental concepts and components of this new system are not unfamiliar to PHAs and public housing residents. As discussed earlier in the preamble and in this section, the diagnostic tools (physical assessment, financial assessment and resident services and satisfaction) that are added to the current "management" assessment of the existing system are requirements and standards familiar to PHAs.

With respect to the uniform standards for physical condition and financial reporting, the components of these standards are not significantly "new." HUD's physical condition standards closely resemble the Section 8 housing quality standards and, are therefore, standards that the PHAs are familiar with. The financial reporting requirements, as discussed earlier in this preamble, provide for a new submission format, electronic and in a uniform format prescribed by HUD, but the overall content of the report largely includes the financial information that PHAs are already submitting in their annual financial reports. The requirement to prepare the financial reports in accordance with GAAP will be a change for some PHAs, but many PHAs are already preparing GAAP financial reports. The rule provides a sufficient period for PHAs to convert to GAAP. HUD also will offer guidance for purposes of standardizing the conversion results, and since HUD funds audit costs, PHAs should bear minimal, if any, increase in the costs of an audit that may result in converting to GAAP.

With respect to the Management Operations Indicator, this is substantially the same as in existing

PHMAP, and therefore already familiar to PHAs.

With respect to the new Resident Service and Satisfaction Indicator, this indicator builds on the existing resident indicator in PHMAP.

For the above reasons, HUD has determined that the 30-day comment period for this proposed rule should provide sufficient notice and opportunity for interested entities to comment. In order to provide the fullest and most expedient access to the provisions of this proposed rule, HUD will make it available on the HUD Home Page on the World Wide Web at <http://www.hud.gov>, on the date of publication in the **Federal Register**.

V. Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained at §§ 901.25(b)(3) (Certification of the extent to which the physical condition and neighborhood environment adjustment applies; 901.25(b)(5) (Maintenance of supporting documentation for physical condition and neighborhood environment adjustment); 901.33(a) (Annual financial reports); 901.50(b) (Reporting information on resident service and satisfaction); 901.60 (Data collection); 901.63 (Exclusion request); 901.69 (PHA right of petition and appeal); 901.75 (MOA); 901.77 (Improvement Plan); and 901.81 (Notice and response), 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), HUD is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Public Housing Assessment System (PHAS)

(2) Summary of the collection of information:

PHAs shall be required to maintain certain records and submit certain information, as specified in the rule text, for the purpose of HUD review. The HUD review will result in a numerical score and the designation of a PHA's status. A PHA's status may result in: the award of recognition and incentives from HUD, the requirement

to design and implement a plan to increase the PHAS score, or the referral of the PHA for enforcement action. The PHA may petition or appeal certain aspects of the scoring and designation, and is provided an opportunity to respond before the imposition of enforcement actions.

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

The information is needed to assess the performance of a PHA in essential housing operations. The information will be used to reward good performance and improve or correct deficient performance.

(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 AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hours)
901.25(b)(3)	3,268	1	.5	1,634
901.25(b)(5)	750	1	.5	375
901.33(a)	3,268	1	1.0	3,268
901.50(b)	3,268	1	10.0	32,680
901.50(b)	1.2 million	1	.5	600,000
901.60	3,268	1	25.0	81,700
901.63	350	1	2.0	700
901.69	200	1	2.0	400
901.75	100	1	25.0	2,500
901.77	500	1	10.0	5,000
901.81	5	1	2.0	10
Total Reporting and Recordkeeping Burden (Hours)	728,267

(b) In accordance with 5 CFR 1320.8(d)(1), HUD 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-4313) and must be sent to:

Joseph F. Lackey, Jr., UD 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 & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This proposed rule would revise HUD's existing regulations for the assessment of public housing (PHMAP). The new the PHAS incorporates the statutory indicators of PHMAP, and adds three additional indicators. One of the new indicators—physical condition—would assess the extent to which PHAs are providing public housing that is decent, safe, and sanitary. As explained above, public housing has always been subject to a statutory standard of “decent, safe, and sanitary.” This rule proposes to simply provide a clear and objective statement of the standard. This indicator would also entail an annual independent HUD inspection of public housing, but it would not impose additional inspection requirements upon PHAs. The clarity and consistency of this new indicator would provide a fair, accurate, and reliable assessment of the physical condition of the large public housing portfolio. However, since this proposed rule would not alter the statutory standard for physical condition, nor impose additional inspection obligations, the new physical condition indicator would not have a

significant economic impact on a substantial number of small entities.

The second indicator—financial condition—would assess the financial condition of PHAs, requiring them to submit financial reports to HUD electronically and in accordance with GAAP. HUD estimates that electronic submission of financial information will be less burdensome to PHAs, since many PHAs are making more extensive use of automated systems. This proposed rule would allow exceptions if the cost of electronic submission would be excessive. GAAP-based accounting reports, which are widely accepted and recognized, are not substantially different than the reports that PHAs are currently submitting. A number of PHAs are already required to use GAAP or are otherwise using GAAP, and the majority of the PHAs with which HUD has consulted support the change to GAAP. For those PHAs that are not yet using GAAP, HUD is taking several steps to ease the conversion, including making only simple additions to the current PHA accounting guide and chart of accounts, and providing other conversion guidance and training, particularly to small entities. Increasing the speed of information exchange (through electronic submission) and the consistency and accuracy of the information (through GAAP) would greatly enhance the assessment of a PHA's financial condition. However, this new indicator would not have a significant economic impact on a substantial number of small entities.

The fourth indicator—resident service and satisfaction—entails a new resident service and satisfaction survey. This survey is key to obtaining input from public housing residents, which is an important aspect of assessing public housing. HUD intends that this survey will be conducted through an automated process, and accordingly, will present a minimal administrative burden for PHAs in terms of administering and evaluating the survey. HUD intends to provide the survey format and the electronic reporting format, as well as software specifications. Therefore, this survey would not have a significant economic impact on a substantial number of small entities.

HUD is also seeking to minimize any burden on PHAs by allowing a significant transition period for converting to the new PHAS. PHAs will have at least one year before new scores are issued under the PHAS. During that transition period, HUD intends to issue advisory scores regarding physical condition and financial management to provide guidance to PHAs and to ease the conversion to the new PHAS.

The new PHAS is fundamentally designed to provide relevant and verifiable measures that directly relate to a PHA's performance and that result in an accurate and reliable score. This improved assessment process will allow HUD to target its oversight resources on those PHAs most in need of attention; high-performing PHAs will receive recognition, along with reduced HUD scrutiny and additional flexibility. Since the revised assessment system in this rule would not impose any significant new requirements upon PHAs, and since HUD will assist PHAs in their conversion to the system, this rule would not have a significant economic impact on a substantial number of small entities. However, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on 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. The proposed rule would not create any new significant requirements. As a result, the proposed rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 901

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

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

PART 901—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.

- 901.1 Purpose and general description.
- 901.3 Scope.
- 901.5 Applicability.
- 901.7 Definitions.

Subpart B—PHAS Indicator #1: Physical Condition

- 901.20 Physical condition assessment.
- 901.23 Physical condition standards for public housing—decent, safe, sanitary and in good repair (DSS/GR).
- 901.25 Physical condition scoring and thresholds.
- 901.27 Physical condition portion of total PHAS points.

Subpart C—PHAS Indicator #2: Financial Condition

- 901.30 Financial condition assessment.
- 901.33 Financial reporting requirements.
- 901.35 Financial condition scoring and thresholds.
- 901.37 Financial condition portion of total PHAS points.

Subpart D—PHAS Indicator #3: Management Operations

- 901.40 Management operations assessment.
- 901.43 Management operations performance standards.
- 901.45 Management operations scoring and thresholds.
- 901.47 Management operations portion of total PHAS points.

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

- 901.50 Resident service and satisfaction assessment.
- 901.53 Resident service and satisfaction scoring and thresholds.
- 901.55 Resident service and satisfaction portion of total PHAS points.

Subpart F—PHAS Scoring

- 901.60 Data collection.
- 901.63 PHAS scoring.
- 901.67 Score and designation status.
- 901.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

- 901.71 Incentives for high performers.
- 901.73 Referral to an Area HUB/Program Center.
- 901.75 Referral to a TARC.
- 901.77 Referral to the Enforcement Center.
- 901.79 Substantial default.
- 901.83 Interventions.
- 901.85 Resident petitions for remedial action.

Appendix A to Part 901—Areas and Items to be Inspected

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

Subpart A—General Provisions

§ 901.1 Purpose and general description.

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

including rewards for high performers and consequences for poor performers.

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

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

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

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

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

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

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

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following [effective date of final rule to be inserted at final rule stage].

§ 901.3 Scope.

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

§ 901.5 Applicability.

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs). The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program 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/AME.

(b) *PHA ultimate responsible entity under ACC.* Due to the fact that the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable).

(c) *Assumption of management operations by AME.* When a PHA's management operations have been assumed by an AME:

(1) If the AME assumes only a portion of the PHA's management operations, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(2) 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 (pursuant to a court ordered receivership agreement, if applicable).

§ 901.7 Definitions.

As used in this part:

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

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

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

(1) By dividing the total of—

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

(ii) The number of days it takes to complete nonemergency work orders

issued and closed during the assessed fiscal year; and

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

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

Days Receivable Outstanding is Tenant Receivables divided by Daily Tenant Revenue.

Deficiency means any PHAS score below 60% of the available points in an indicator or component.

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

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time nonemergency work orders were active during the previous 3 years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) with the average time nonemergency work orders were active in that fiscal year that is 2 years previous to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous 3 years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Vacancy loss is vacant unit potential rent divided by gross potential rent.

Work order deferred for modernization is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in

the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

Subpart B—PHAS Indicator #1: Physical Condition

§ 901.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is maintaining its public housing in a condition that is decent, safe, sanitary and in good repair (DSS/GR), as this standard is defined § 901.23.

(b) *Physical inspection under PHAS Indicator #1.* REAC will provide for an independent physical inspection of, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine compliance with DSS/GR standard.

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(1)), and § 901.43(a)(5).

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

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

(a) Public housing must be maintained in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of public housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

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

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

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

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

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

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

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

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

(6) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the

buildings must have fire exits that are not blocked and are accessible to all residents, and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(b) Appendix A to this part lists the areas to be inspected and the items in each area to be inspected.

§ 901.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score of the overall condition of the PHA's public housing portfolio which reflects weights based on the relative importance of the individual inspectable areas and the deficiencies observed.

(b) *Adjustment for physical condition (project age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)(2)), the physical score for a project will be upwardly adjusted to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the project or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to not unfairly penalize the PHA, and to appropriately apply the adjustment.

(1) Adjustments in three areas.

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

- (i) Physical condition of the site;
- (ii) Physical condition of the common areas on the project; and
- (iii) Physical condition of the building exteriors.

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

(i) Physical condition applies to projects over ten years old and that have not been had substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to projects located where the immediate surrounding neighborhood (that is a majority of the census tracts or

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

(i) These extra points will be added to the score of the specific inspectable area, by project, to which these conditions may apply. A PHA is required to certify on form HUD-50072, PHAS Certification (which is available from the Department of Housing and Urban Development, HUD Custom Service Center, 451 Seventh Street, SW, Room B-102, Washington, DC 20410; telephone (800) 767-7468), the extent to which the conditions apply, and to the inspectable area the extra scoring point should be added.

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

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

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

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with

supporting census data showing the level of poverty. Projects 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 projects and the record of capital improvements, indicating that these particular projects have not received modernization funds.

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

(c) *Thresholds.* In order to receive a passing score under the Physical Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Physical Condition Indicator.

§ 901.27 Physical condition portion of total PHAS points.

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

Subpart C—PHAS Indicator #2: Financial Condition

§ 901.30 Financial condition assessment.

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

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator on the basis of the annual financial report provided in accordance with § 901.33.

§ 901.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must provide to HUD, on an annual basis, such financial information, as required by HUD. The financial information must be:

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

(2) Submitted electronically in the electronic format designated by HUD; and

(3) Submitted in such form and substance prescribed by HUD.

(b) *Annual financial report filing dates.* The financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending September 30, 1999 and thereafter. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited report earlier than the due date of November 30, 1999 must submit its financial report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

§ 901.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score that relies on the key components of financial health and management as well as audit and internal control flags.

(1) The key components of PHAS Indicator #2 include:

(i) Current Ratio—current assets divided by current liabilities;

(ii) Number of Months Expendable Fund Balance—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;

(iii) Days Receivable Outstanding—average number of days tenant receivables are outstanding;

(iv) Vacancy Loss—loss of potential rent due to vacancy;

(v) Expense Management/Energy Consumption—expense per unit for key expenses, including energy consumption; and

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

(2) *Additional components.*

Additional components may be used to identify circumstances in which there

exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate "flags" that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers.

(b) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this indicator. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Financial Condition Indicator.

§ 901.37 Financial condition portion of total PHAS points.

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

Subpart D—PHAS Indicator #3: Management Operations

§ 901.40 Management operations assessment.

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

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the U.S. Housing Act of 1937, and an additional non-statutory indicator (security) as provided in § 901.43.

§ 901.43 Management operations performance standards.

(a) *Management operations indicators.* The following indicators will be used to assess a PHA's management operations:

(1) *Management Indicator #1—Vacancy rate and unit turnaround time.* This management indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this management indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time.

(2) *Management Indicator #2—Modernization.* This management indicator is automatically excluded if a

PHA does not have a modernization program. This management indicator examines the amount of unexpended funds over three Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components of this management indicator #2 apply to the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), the HOPE VI assistance, vacancy reduction, and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP.

(3) *Management Indicator #3—Rents uncollected.* This management indicator examines the PHA's ability to collect dwelling rents owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected.

(4) *Management Indicator #4—Work orders.* This management indicator examines the time it takes to complete or abate emergency work orders, the average number of days non-emergency work order were active, and any progress a PHA has made during the preceding three years to reduce the period of time non-emergency maintenance work orders were active. Implicit in this management 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.

(5) *Management Indicator #5—PHA annual inspection of units and systems.* This management 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 management indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(6) *Management Indicator #6—Security.* This management indicator evaluates the PHA's performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (One-Strike and You're Out) (42 U.S.C. 1437d(r)), of applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug

prevention or crime reduction grant(s). A PHA may receive credit for performance under non-HUD funded programs if it provides auditable financial and statistical documentation for these programs. A PHA with fewer than 250 units will not be assessed under this management indicator unless it provides auditable financial and statistical documentation for these programs.

(b) *Reporting on performance under the Management Operations Indicator.* Each PHA will provide to HUD a certification on its performance under each of the management indicators in paragraph (a) of this section. The certifications shall comply with the requirements of § 901.60.

§ 901.45 Management operations scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA which reflects weights based on the relative importance of the individual management indicators.

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA's score must fall above a minimum threshold of 18 points or 60% of the available points under this PHAS Indicator #3. Further, in order to receive an overall passing score under the PHAS, the PHA must receive a passing score on the Management Operations Indicator.

§ 901.47 Management operations portion of total PHAS points.

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

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

§ 901.50 Resident service and satisfaction assessment.

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

(b) *Reporting information on resident service and satisfaction.* The assessment will be performed through the use of a resident service and satisfaction survey to be administered by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for maintaining original copies of completed survey data, subject to independent audit, and for developing a follow-up plan to address issues resulting from the survey.

§ 901.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #4, REAC will calculate a score that includes three components of the survey process. One component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions, to include topics such as: resident organizations; program activities; surrounding environment; management responsiveness; safety; involvement; resources; and communication. The second component will be a score based on the level of implementation and follow-up or corrective actions based on the results of the survey. The final component is verification that the data collection, tabulation and submission was conducted in a manner consistent with guidance provided by HUD.

(b) *Thresholds.* A PHA will not receive any points under this PHAS Indicator if the survey is not conducted in accordance with a HUD prescribed methodology or the survey results are determined to be altered by the PHA. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if it receives at least 6 points, or 60% of the available points under this PHAS Indicator #4.

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

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

Subpart F—PHAS Scoring**§ 901.60 Data collection.**

(a) *Fiscal Year Reporting Period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following the effective date of this part.

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

(c) *Financial Condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than 60 days after the end

of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management Operations and Resident Service and Satisfaction Information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Services Satisfaction, of this part not later than 60 days after the end of the PHA's fiscal year.

(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.

(e) *Failure to submit data by due date.* If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15 day period past the due date. If all certifications or year-end financial information are not received within 90 days past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators and components certified to, which shall result in troubled and mod-troubled designations.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

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

(3) A PHA's PHAS score under individual indicators or components, or its overall PHAS score, may be changed by HUD pursuant to the data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal

Opportunity, or reinspection by REAC, as applicable.

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

§ 901.63 PHAS scoring.

(a) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA 60 to 90 days after the end of the PHA's fiscal year.

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

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

(d) *Posting and publication of PHAS scores.* Each PHA shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register**.

§ 901.67 Score and designation status.

(a) *Designation status corresponding to score.* A PHA will be scored with a corresponding designation of status as follows:

(1) *High Performer.* A PHA that achieves a score of at least 60% of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90% or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 901.71.

(2) *Standard Performer.* A PHA that achieves a total PHAS score of less than 90% but not less than 60% shall be designated a standard performer. All standard performers must correct reported deficiencies. A standard performer that receives a score less than 70% but not less than 60% shall be subject to other oversight, as described in § 901.73. A PHA that achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2 or 3 shall not be designated a standard performer, but shall be designated a troubled performer, as provided in paragraph (a)(3) of this section.

(3) *Troubled Performer.* A PHA that achieves a total PHAS score of less than 60%, or achieves a score of less than 60% of the total points available under PHAS Indicators 1, 2, or 3, shall be designated as troubled, and referred to the TARC as described in § 901.75. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60% of the maximum calculation for the modernization indicator under PHAS Indicator #3 (Management Operations, subpart D of this part) may be subject to the following sanctions: under the Comprehensive Grant Program to a reduction of formula allocation or other sanctions (24 CFR part 968, subpart C); under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR part 968, subpart B); or disapproval of funding under the HOPE VI Program.

(b) *Exceptional circumstances of high performer or standard performer—*(1) *Independent reviews, rescission of incentives or status.* In exceptional circumstances, even though a PHA has received designation as a high performer or standard performer, the HUB/Program Center may conduct any review as necessary, and deny or rescind incentives or high performer or standard performer status in the case of a PHA that:

- (i) Is operating under a special agreement with HUD;
- (ii) Is involved in litigation that bears directly upon the management of a PHA;
- (iii) Is operating under a court order;
- (iv) 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 an independent review, routine reports and reviews, an Office of Inspector General investigation/audit, an independent auditor's audit or an

investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHAS). 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.

(2) When a HUB/Program Center acts for any of the reasons stated in paragraph (b)(1) of this section, the HUB/Program Center will send written notification to the PHA with a specific explanation of the reasons. An informational copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

§ 901.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal.* As permitted under section 6(j)(2)(A)(iii), a PHA may:

- (1) Appeal designation as a troubled agency (including designation as troubled with respect to the modernization program);
 - (2) Petition for removal of such designation; and
 - (3) Appeal any refusal to remove such designation.
- (b) *Appeal process.* The appeal shall be submitted by a PHA to the REAC within 30 days of a PHA's receipt of its score, and shall include supporting documentation and justification of the reasons for the appeal. Appeals submitted to the REAC without appropriate documentation will not be considered and will be returned to the PHA.

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

the Board, and a new score will be issued, if appropriate.

(d) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary. Failure by a PHA to submit requested information within the 30-day period or any additional period granted by HUD is grounds for denial of an appeal.

Subpart G—PHAS Incentives and Remedies

§ 901.71 Incentives for high performers.

(a) *Incentives for high-performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives:

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

(2) *Public recognition.* High-performer PHAs and RMCs that receive a score of at least 90% on each of the indicators for which they are assessed, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high-performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program.

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

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

- (1) Regular independent auditor (IA) audits.
- (2) Office of Inspector General (OIG) audits or investigations will continue to

be conducted as circumstances may warrant.

(d) *HUB/Program Center to impose requirements.* The HUB/Program Center will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.67(b)(1).

§ 901.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action. A standard performer that receives a total score of less than 70% but not less than 60% shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance. A standard performer that receives a score of not less than 70% may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after a PHAS score is issued, a standard performer with a score less than 70% is required to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section and determined acceptable by the HUB/Program Center, for each indicator and/or component identified as deficient 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. A RMC that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70% to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator and/or component of a PHAS indicator identified as deficient.

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

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also

forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

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

- (1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator and/or component which was identified as a deficiency;
- (2) Describe the procedures that will be followed to correct each deficiency;
- (3) Provide a timetable for the correction of each deficiency; and
- (4) Provide for or facilitate technical assistance to the PHA.

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

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

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

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the TARC for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations.

§ 901.75 Referral to a TARC.

Upon designation of a PHA as troubled, in accordance with the requirements of section 6(j)(2)(B) of the

1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. The actions to be taken by the TARC and the PHA shall be as follows:

(a) *Recovery plan and MOA.* Within 30 days of notification of the designation of a troubled PHA within its area, the appropriate TARC will deploy an on-site team to develop a Recovery Plan. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and designation as troubled. The Recovery Plan will incorporate a memorandum of agreement (MOA) as described in paragraph (c) of this section.

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

(c) *Memorandum of Agreement (MOA).* The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

- (1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators or components identified as a deficiency;
- (2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator that is a problem, or the description of a goal to be achieved;
- (3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;
- (4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;
- (5) The PHA's commitment to take all actions within its control to achieve the targets;
- (6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management

controls by the TARC, declaration of substantial default and subsequent actions, including referral to the Enforcement Center for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the Enforcement Center; 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.

(d) *Maximum recovery period.* Unless extended by the TARC and documented in the MOA, the maximum recovery period for a troubled PHA is the first full fiscal year following execution of the MOA.

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

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUB/Program Center.

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

(g) *Failure to execute MOA or make substantial improvement under MOA.*

(1) If a troubled PHA does not execute an MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score by the REAC, the TARC shall refer the PHA to the Enforcement Center, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g),

substantial improvement is defined as 50% of the points needed to achieve a passing score.

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

Example. A PHA receives a score of 50; 60 is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a five point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the 5 point increase, the PHA will be referred to the Enforcement Center.

§ 901.77 Referral to the Enforcement Center.

Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 901.75 constitutes a substantial default in accordance with § 901.79 and shall result in referral to the Enforcement Center. The Enforcement Center is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The Enforcement Center shall initiate the judicial appointment of a receiver or the interventions provided in § 901.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the Enforcement Center including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

§ 901.79 Substantial default.

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

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 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 ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.75, or to make reasonable progress to execute or meet requirements included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement,

as defined in § 901.75(h), in its PHAS score in one year following issuance of the failed score is in substantial default;

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

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

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

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but are not limited to:

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

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

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

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the

determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 901.83, and determined to be appropriate to remedy the noncompliance, citing § 901.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 901.83.

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

§ 901.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all

programs, operational areas, and developments not so designated.

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

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

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

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

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

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

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

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

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or HUD, 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.

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

§ 901.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Appendix A to Part 901—Areas and Items To Be Inspected

AREA: Site

Items

Fencing and Retaining Walls
Grounds
Lighting
Mail Boxes/Project Signs
Market Appeal
Parking Lots/Driveways
Play Areas and Equipment
Refuse Disposal
Roads
Storm Drainage
Walkways

AREA: Building Exterior

Items

Doors
Fire Escapes
Foundations
Lighting
Roofs
Walls
Windows

AREA: Building Systems

Items

Domestic Water
Electrical System
Elevators
Emergency Power
Fire Protection
HVAC
Sanitary System

AREA: Dwelling Unit

Items

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

AREA: Common Areas

Items

Basement/Garage/Carport
Closets/Utility/Mechanical
Community Room
Day Care

Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restroom
Storage
Trash Collection Areas

AREA: Health and Safety

Items
Air Quality
Electrical Hazards
Elevator
Emergency/Fire Exits
Fire Escapes
Flammable Materials
Garbage and Debris
Ground Fault Interrupters
Handrails
Hazards
Hot Water Heater
Infestation
Lead Paint
Pools and Related Structures
Smoke Detectors

Dated: June 5, 1998.

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