

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**
**24 CFR Part 903**
**[Docket No. FR-4420-F-05]**
**RIN 2577-AB89**
**Public Housing Agency Plans**
**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** On February 18, 1999, HUD published an interim rule implementing section 511 of the Quality Housing and Work Responsibility Act of 1998. Section 511 introduces the public housing agency (PHA) plans—a 5-Year Plan and an Annual Plan. Through these plans a PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. This rule makes final the policies and procedures described in the February 18, 1999 interim rule, taking into consideration the public comments received on the interim rule.

**DATES:** Effective Date: November 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708-0713 (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. Background**
**A. The February 18, 1999 Interim Rule**

On February 18, 1999 (64 FR 8170), HUD published an interim rule to implement section 511 of the Quality Housing and Work Responsibility Act of 1998 (Public law 105-276, approved October 21, 1998; 112 Stat. 2461) (referred to as the "Public Housing Reform Act"). Section 511 of the Public Housing Reform Act, which added a new section 5A to the U.S. Housing Act of 1937 Act (42 U.S.C. 1437 *et seq*; see 1437c-1), introduces the public housing agency (PHA) plans—a 5-Year Plan and an Annual Plan. Through these plans a

PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs.

The 5-Year Plan describes the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the subsequent 5 years. The Annual Plan provides details about the PHA's immediate operations, program participants, programs and services, and the PHA's strategy for handling operational concerns, residents' concerns and needs, programs and services for the upcoming fiscal year. Both planning mechanisms (the 5-Year Plan and the Annual Plan) require PHAs to examine their existing operations and needs (particularly the needs of the families they serve) and to design long-range and short-range strategies to address those needs.

The February 18, 1999 interim rule established the initial procedures and requirements for development, submission and implementation of the PHA plans. The interim rule became effective on March 22, 1999, and is codified at 24 CFR part 903 (entitled "Public Housing Agency Plans"). The preamble to the February 18, 1999 interim rule described in detail the provisions of 24 CFR part 903. This preamble to the final rule does not repeat that description.

**B. Electronic Template for the PHA Plans**

In the preamble to the February 18, 1999 interim rule, HUD announced that it would develop software and eventually require electronic submission of the PHA Plan that would provide uniform formats and layouts. On July 30, 1999, HUD announced the availability of the PHA Plan Template, including instructions and supplemental guidance on preparation and submission of PHA Plans. The template is currently provided as a word processing document that will be downloaded by PHAs, completed, and submitted to HUD via the Internet. HUD's goal is to quickly transform the PHA Plans into an on-line submission system that will further facilitate streamlined PHA submissions to HUD. By using the electronic template, PHAs will provide responses to a number of structured questions designed to provide the most relevant data regarding local operations in a concise manner.

The PHA Plan template also serves as a central reference point for very detailed information about the PHA's operations and activities. This is accomplished through the template's

listing of required "supporting documents" that must be available locally for public review and serve as a resource library for the community, while eliminating the need for extensive submissions to HUD. The PHA Plan template is available at HUD's homepage website at <http://www.hud.gov/pih/pha/plans/phaps-home.html>. In keeping with HUD's move to an electronic government, the PHA Plan website will become the primary source of information and resources regarding the PHA Plans. In addition, this PHA Plans website will serve as the location from which agencies download the electronic PHA Plan template for their use in developing the Plans. Once completed and ready for submission, PHAs will transmit the electronic PHA Plans to HUD via the HUD internet site. After HUD approval, these Plans will be placed on display on this same webpage.

**C. The September 21, 1999 Amendments to the Interim Rule**

On September 21, 1999 (64 FR 51045), HUD published a rule making two amendments to the February 18, 1999 interim rule. First, the September 21, 1999 rule amended § 903.3 to extend the due date for initial PHA plan submissions made by PHAs with fiscal years beginning on January 1, 2000. Specifically, the September 21, 1999 rule provides that these PHAs must submit their first PHA plans to HUD by December 1, 1999. Second, the September 21, 1999 rule amended § 903.23 to add a new paragraph (c) which provides that, for purposes of the submission of the first PHA plans, the date on which the PHA submits its plan will be considered to be the submission due date. This final rule reflects the changes made by the September 21, 1999 document.

Section II of this preamble highlights the significant changes made to the February 18, 1999 interim rule at this final rule stage. Section III of the preamble discusses the basic objectives of the PHA planning process. Section IV of the preamble discusses the participation of PHAs, residents, and other groups in this rulemaking through public forums held on this rule. Section V of the preamble discusses the issues raised on the rule by the groups that attended four public forums and the issues raised by the members of the public that commented on the rule during the 60-day public comment period.

## II. Significant Changes Between the February 18, 1999 Interim Rule and This Final Rule

This rule makes final the policies and procedures contained in the February 18, 1999 interim rule, and takes into consideration the public comments received on the interim rule. The significant changes made to the interim rule are described below.

- In § 903.1 (What are the Public Housing Agency Plans?) paragraph (c) is revised in this rule to note that HUD also may prescribe the format of certain required attachments to be submitted with the PHA Plan or documents to be made available locally, but not submitted.

- Section 903.3 (When Must a PHA Submit the Plans to HUD?) reflects the changes that were made by the September 21, 1999 rule, discussed in Section II.B of this preamble.

- In § 903.7 (What Information Must a PHA Provide in the Annual Plan?), HUD removed the language in the introductory paragraph that lists the information that need not be included in the first Annual Plan. This paragraph is revised in this final rule to provide that HUD will advise PHAs by separate notice of the information that must be included in the first Annual Plan, as well as any special instructions or directions that may be applicable to first year filing of the Annual Plan.

In this introductory paragraph, HUD also has added language to clarify that the Annual Plan must be consistent with the goals and objectives of the 5-Year Plan.

In § 903.7(a)(2), HUD added language to require PHAs to make reasonable efforts to identify the housing needs of each group listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and generally available data.

In § 903.7(b) (statement of financial resources), HUD removed the word "significant" to describe resources that PHAs must list, and revised this language to provide that PHAs must list, by general categories, their resource commitments, such as PHA operating, capital, and other proposed resources.

In § 903.7(c) (statement of the PHA's policies that govern eligibility, selection and admissions), HUD has added language to paragraph (c)(2)(i) that simplifies and clarifies the provisions regarding deconcentration of poverty and income-mixing. Most importantly, HUD has clarified that the initiative

applies to all family (general occupancy) developments; and that with respect to the identification of families, developments and buildings as higher income or lower income, PHAs that use a dividing line of the average income in these developments will be considered to be in compliance with the law.

With respect to the actions then to be taken, PHAs may offer incentives to eligible families that would help accomplish the deconcentration and income mixing objectives. Skipping of a family on a waiting list to reach another family with a lower or higher income is required, provided that such skipping is uniformly applied. Such skipping must be adopted by a PHA to the extent necessary to implement the statute's requirements. Skipping families is consistent with site-based and community-wide waiting lists. Admissions policies related to deconcentration do not impose specific quotas.

PHAs may consider a number of approaches as they examine designing an admissions policy to achieve the goals of deconcentration and income mixing, such as the use of skipping over certain families on waiting lists based on incomes; the establishment of certain preferences such as worker preferences; appropriate affirmative marketing efforts; additional applicant consultation and information; provision of additional supportive services and amenities; and rent incentives authorized by the Act. Of course, PHA policies must be in writing and followed consistently, and must affirmatively further fair housing.

In § 903.7(c)(1)(A), HUD has revised this paragraph to provide that the MTCS occupancy data upon which the PHA must assess changes in racial, ethnic or disability-related tenant composition, has been confirmed to be complete and accurate by an independent audit or is otherwise satisfactory to HUD.

In § 903.7(c)(1)(B), HUD revised this paragraph to provide that at least every three years (as opposed to biannually as required by the interim rule), PHAs must use independent testers or means satisfactory to HUD to assure that the site-based waiting list is not being implemented in a discriminatory manner.

In § 903.7(e) (statement of the PHA's operation and management), HUD revised paragraph (e)(1) to reflect that PHAs need only list (not describe) their rules, standards and policies that govern maintenance and management of their housing.

In § 903.7(g) (statement of the capital improvements needed), HUD revised the last sentence of this paragraph to state that PHAs receiving capital funding are required to include 5-year plans covering large capital items. This will both facilitate basic capital planning and asset management, and allow more flexible use of capital funds by increasing the number of items that have been subject to public review.

In § 903.7(h), (i), (j), and (k) which concern, respectively, statements pertaining to demolition and/or disposition, designated housing, required or voluntary conversion, and homeownership programs, HUD added language to each of these paragraphs to clarify that the application and approval processes discussed in these paragraphs are separate application and approval processes from the PHA Annual Plan submission and approval process.

In § 903.7(h), HUD has added a new paragraph concerning submission of an interim plan for demolition/disposition that was previously described in the preamble to the February 18, 1999 interim rule.

In § 903.7(l) (statement of the PHA's community service and self-sufficiency programs), HUD added language that requires the PHA to address any cooperation agreements, as described by section 12(d)(7) of the 1937 Act that the PHA has entered into or plans to enter into. This statutory section requires the PHA to make best efforts to enter into cooperation agreements with State, local, and other agencies that provide assistance to target supportive services to covered families and provide information to facilitate administration of requirements for community service and tying rents to welfare compliance.

In § 903.7(m), HUD revised paragraph (1)(iv) of this section to clarify that if a PHA expects to receive public housing drug elimination grant funds, the information required to be included by the Public Housing Drug Elimination Program regulations must be submitted with the PHA Plan.

In § 903.7(q) (statement of asset management), HUD clarifies that the PHA need not repeat information concerning asset management that is covered by other plan components.

In § 903.7(r) (additional information to be provided), HUD removed the requirement to submit a Table of Contents and Executive Summary. HUD's template eliminates the necessity of a separate requirement in the

regulation for a table of contents or executive summary.

In § 903.7(r), HUD adds language to provide that a PHA must identify in the Annual Plan the basic criteria that a PHA will use to determine what constitutes a "substantial deviation" from the 5-Year Plan, and a "significant amendment or modification" to either the 5-Year Plan or Annual Plan for purposes of § 903.21. HUD also added language to provide that a PHA must include in the PHA plan such other information as HUD may request. HUD will advise PHAs of any additional information through advance notice.

- In § 903.9 (Must a Troubled PHA Include Additional Information in its Annual Plan?), HUD has added a reference to the regulations of the Public Housing Management Assessment Program (PHMAP) (the predecessor to HUD's new assessment system, the Public Housing Assessment System (PHAS)) in recognition that some PHAs may have been designated as troubled under the PHMAP regulations (24 CFR part 901).

- In § 903.11 (Are Certain PHAs Eligible to Submit a Streamlined Annual Plan?), HUD added, in paragraph (b)(2), a cross reference to section 6(j)(2) of the 1937 Act that addresses PHAs at risk of being troubled.

- In § 903.13 (What Is a Resident Advisory Board and What Is Its Role in Development of the Annual Plan?), HUD revised paragraph (a)(1) to more closely track the statutory language. In paragraph (a)(2), HUD added language concerning the reasonable resources to be provided to Resident Advisory Boards by PHAs. In HUD's Capital Fund Formula proposed rule, published on September 14, 1999 (64 FR 49924), HUD advised in the preamble to this proposed rule that it would clarify in the PHA Plan final rule that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

In § 903.13(b)(1), HUD provides an exception to the requirement to appoint a jurisdiction-wide resident council. This language as revised provides that if a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory

Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where necessary.

In § 903.13(b)(2), HUD clarifies that a tenant-based assistance program of significant size is one that is 20% or more of the PHA's assisted households.

In § 903.13(c), HUD clarifies that the PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing not only the final Annual Plan but also any significant amendment or modification to the Annual Plan. Section 511(g)(2) of the Public Housing Reform Act imposes this requirement.

- In § 903.15 (What is the Relationship of the Public Housing Agency Plans to the Consolidated Plan), HUD has revised this section to allow PHAs, subject to HUD approval, to change their fiscal years to encourage coordination with local Consolidated Plans.

- For § 903.17, HUD changed the title of this section to read "What is the Process for Obtaining Public Comment on the Plans?" In paragraph (b) of this section, HUD clarifies that not only the proposed PHA plans, but all attachments and documents related to the plans must be available for review by the public. HUD also added a new paragraph (c) to require PHAs to conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

In § 903.21, HUD added a new paragraph (b) to clarify that any significant amendment or modification to a PHA Plan is subject to the requirements of §§ 903.13, 903.15, and 903.17. As noted earlier, this requirement is consistent with section 511(g)(2) of the Public Housing Reform Act.

In § 903.23, HUD added a new paragraph (b)(4) to clarify that a plan deemed approved as a result of HUD's failure to respond by the 75th day after the PHA's submission does not apply to the plan of a troubled PHA. This provision is consistent with section 511(i)(4)(A) of the Public Housing Reform Act. In paragraph (d) of this section, HUD added language to clarify that not only the approved PHA plan, but all attachments and documents related to the approved plan must be available for review by the public.

In addition to these changes, HUD made editorial changes to certain provisions of the regulation.

### **III. The Goals of the PHA Plans—Comprehensive Planning; Local Accountability; Reduction in Submissions; and Increased Flexibility**

The PHA plan concept is based on the highly successful consolidated planning process used for HUD's community planning and development programs. Like the Consolidated Plan for CPD programs, the PHA plans provide a planning mechanism by which a PHA can examine its long-range needs and its short-range needs, specifically the needs of the families that it serves, and design both long-term strategies and short-term strategies for addressing those needs. Like the Consolidated Plan, the PHA plans involve consultation with affected groups in the development of the plan. Through this planning mechanism, PHAs will make more efficient use of Federal assistance, more effectively operate their programs, and better serve their residents.

HUD has strived, in developing its PHA plan regulations, to keep the plan submission requirements complete but simple. A significant step in meeting this objective is HUD's issuance of the electronic template for the PHA Plans (as discussed earlier in this preamble). The electronic template with its "question and answer" format provides a comprehensive yet easy mechanism for PHAs to record and submit the information required for the PHA Plans.

To the extent practicable, the PHA Annual Plan will eventually consolidate all PHA information that is required to be submitted under existing HUD planning and reporting requirements into one document. The objective is for the PHA Annual Plan to eventually supersede submission requirements currently imposed on PHAs under various HUD programs. For example, see HUD's September 14, 1999 final rule regarding formula allocation for the Public Housing Drug Elimination Program (64 FR 4990), which provides that PHAs must submit their drug elimination plans with their PHA Annual Plan. In addition, the process for distributing capital funds is being combined with the PHA Plan process. (HUD's proposed rule on the allocation of capital funds was published on September 14, 1999 at 64 FR 49924.) HUD intends that the new PHA planning process, to the extent practicable, will allow for a PHA to plan for all of its program needs based on the PHA's fiscal year. This will assist PHAs in planning in a comprehensive manner and will expedite the release of public housing funds.

Further, as part of the HUD 2020 Management Reform effort, HUD is

moving toward electronic reporting for all required submissions under its programs. In addition to making submissions easier for its program participants (paper reduction), electronic data assists HUD and its program partners to exchange information more easily and to monitor activity, note trends in programs and the performance of the program participants (weaknesses and strengths) and better serve the families and communities that HUD programs are designed to serve. HUD believes that its electronic template for the PHA Plans is a significant first step in achieving these objectives.

#### **IV. Public Participation in the Development of this Final Rule**

Section 511 of the Public Housing Reform Act requires that before issuance of a final rule, HUD seek the recommendations on implementation of the PHA plans from organizations representing (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. Section 511 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations. In addition to the general solicitation of public comments on the February 18, 1999 interim rule, HUD specifically invited recommendations on implementation of the PHA plans from the three groups specified in the statute, and included under the third category, representatives of affected communities (See preamble discussion of the February 18, 1999 interim rule at 64 FR 8170).

In order to ensure broad public participation in this rulemaking, HUD held four public forums to discuss implementation of the PHA plans. These forums were held in Atlanta, Georgia, on May 4, 1999; Omaha, Nebraska, on May 19, 1999; Syracuse, New York, on June 28, 1999; and Washington, DC, on July 28, 1999. The final forum in Washington, DC allowed persons to participate via telephone from 33 sites around the country. At each of the forums, helpful recommendations and suggestions were made by the forum participants, issues were discussed and ideas exchanged on the PHA planning process, specifically the requirements established by the February 18, 1999 interim rule. Consistent with the statutory requirements, HUD advised the forum participants of its proposed disposition of the participants' recommendations

when HUD had formulated a proposed disposition of a specific view or recommendation offered. For certain issues, HUD was unable to offer the forum participants a proposed disposition, because the issues required further deliberation by HUD, but HUD discussed with the participants the considerations involved in HUD's decisionmaking process.

Section V of this preamble, which immediately follows, provides a summary of the comments, issues and recommendations made on the February 18, 1999 interim rule, those made at the public forums, and those provided as written comments during the 60-day comment period on the rule.

#### **V. Discussion of Public Comments Raised on the February 18, 1999 Interim Rule**

The public comment period on the February 18, 1999 interim rule closed on April 19, 1999. Written comments were submitted by PHAs, organizations representing PHAs, legal services organizations, public interest/housing policy organizations, and various other organizations and individuals. In addition to the written comments, HUD also received comments and suggestions at the four public forums held throughout the country.

This section of the preamble presents a summary of the significant issues raised by the public commenters on the February 18, 1999 interim rule, both through written submission of comments and at the forum. The heading "Comment" states the comment or comments made by the commenter or commenters, and the heading "Response" presents HUD's response to the issue or issues raised by the commenters.

##### **1. General Comments**

*Comment.* HUD should view the planning process and the Plan itself as a mechanism for PHAs to express local choices. HUD should not use the Plan as a tool to impose substantive requirements on PHAs.

*Response.* HUD's views of the PHA planning process are consistent with those of the commenters. HUD views the PHA planning process as a mechanism for PHAs to express local choices consistent, however, with Federal statutory requirements. The requirements imposed by HUD on PHAs with respect to the PHA planning process are those required to be imposed by statute. The substantive requirements imposed on PHAs are those imposed through the statutes and regulations that govern the various HUD programs in which PHAs participate.

The statutory and regulatory requirements governing the PHA planning process are directed to compiling basic information about PHA operations, missions and goals, and making that information available to HUD and to the public.

*Comment.* In order to ensure accuracy, HUD needs to work with PHAs to ensure software compatibility. HUD needs to address the problems with the MTCS and Community 2020 software packages, which are burdensome to use. HUD should provide PHAs with software early in the process. PHAs should be able to request local HUD offices to provide various MTCS printouts to help with preparation of the Plan.

*Response.* HUD is cognizant of PHA concerns about problems with the MTCS software and Community 2020 software. HUD has been working with PHAs to minimize problems and increase MTCS reporting. Based on data received through the end of September 1999, MTCS reporting is as follows: tenant-based section 8 is reported at 95%; public housing at 86%; and overall reporting at 88%. As with all new software products, problems will be uncovered and have been uncovered with respect to HUD 2020 software and MTCS but HUD is working to eliminate these problems. With respect to local assistance, HUD's local Public and Indian Housing offices are available to offer all needed assistance to PHAs.

*Comment.* It will be difficult to complete the Plan without additional funding.

*Response.* The PHA Plans provide for compilation in one location information that PHAs already have been required to put together under various other program regulations. By requiring, however, that this information be put together one time annually in one source, the administrative burden placed on PHAs will be decreased rather than increased. While there may be increased burden during the first year of PHA Plan submissions, once the first Plans are submitted the subsequent submissions should be prepared and submitted with significantly less burden. Additionally, HUD believes that the electronic template for the PHA Plans issued July 30, 1999, helps to reduce administrative burden in the preparation and submission of the PHA Plans. As requested by commenters HUD has made (and plans to continue to make) the PHA Plan software available at no cost.

*Comment.* HUD's decision to maintain separate submission and approval processes for activities such as demolition, disposition, conversion to

vouchers, designation, and public housing homeownership programs seems to contradict the Public Housing Reform Act's mandate to deregulate and consolidate. By creating the PHA Plan process, Congress intended to dramatically limit HUD's traditional discretionary powers to review and approve these specific programs. Maintaining submission and approval processes separate from the PHA Plan thwarts this intent.

*Response.* The PHA Plan regulations reference separate submission and approval processes for various activities such as demolition, disposition, and conversion to vouchers because the Congress did not provide for a common approval process in its enactment of the PHA Plan, and in particular provided for different approval standards for these activities. PHAs are encouraged to coordinate public consultation processes for these applications and simultaneously submit such Plans, but the approval processes remain separate.

*Comment.* The currently available census data is too old. Annual Plans should not be required until new census data is available in 2002.

*Response.* HUD has no statutory authority to defer submission of Annual Plans until the year 2002. HUD recognizes that the census data is not the optimum planning mechanism as the decade draws to a close; nevertheless it remains the official census data. To the extent that PHAs need to refer to census data, which is limited, PHAs can continue to use this data.

*Comment.* "One size fits all" approach of the PHA Plan does not work well for PHAs because of differences in size, number, and type of programs.

*Response.* HUD believes that the PHA planning mechanism provides sufficient flexibility for PHAs to make the necessary adjustments given the PHA's size, number and type of programs. This flexibility is also reflected in HUD's electronic template for the PHA Plans.

*Comment.* HUD has added oversight in the rule that is beyond what the Public Housing Reform Act requires.

*Response.* HUD's oversight of PHA programs and activities is consistent with the Public Housing Reform Act and the statutes and regulations governing the individual HUD programs covered by the PHA Plan.

*Comment.* HUD should set parameters for who can sue a PHA over a Plan.

*Response.* HUD has no authority to limit legal action in connection with a PHA Plan.

*Comment.* Fair housing considerations should be addressed in

all aspects of the Plan. The final rule should specifically direct PHAs to comply with fair housing laws when making choices related in the Plan.

*Response.* Fair housing considerations are an important part of the PHA planning process and are addressed in the regulation. Please see § 903.7(o) the PHA certification requirement and the PHA's obligation to affirmatively further fair housing.

*Comment.* All policies should be in the Plan, not just discretionary ones. The purpose of the Plan is to provide a framework for local accountability. The Plan must be complete. All material must be included, even material already submitted to HUD. All rent policies should be included. Even with mandatory policies, PHAs have a lot of discretion.

*Response.* HUD believes that the rule provides for a PHA Plan that presents the necessary framework for local accountability. In addition, the rule provides that PHAs must make HUD-specified documents (which includes documents covering all critical operations of a PHA) available locally to the public for inspection. Therefore, the public has a complete view of the PHA's operations.

*Comment.* In the preamble to the interim rule, quantifiable goals are discussed. Where the Family Self-Sufficiency (FSS) Program is discussed, the goal should be determined by looking at how many families have replaced welfare income with earnings.

*Response.* PHAs are welcome to frame an FSS goal as suggested by the commenter.

## 2. Comments Regarding Timing of the Rule

*Comment.* The time frame for implementation in the interim rule is too short to do all the work and will create a serious burden for PHAs. This is particularly so given all the new changes required by the Public Housing Reform Act. HUD should allow for extensions and delay publication of the final rule to allow adequate time for enhanced rulemaking sessions. Additionally, HUD's estimate of time needed to complete the planning process does not take into account the lack of guidance and instructions provided by HUD. HUD should issue guidance, not prescriptive rules, and this help should be given early in the process, not later.

*Response.* The Public Housing Reform Act does not permit HUD to delay issuance of this final rule. HUD recognized, however, that additional time was needed by PHAs for submission of their first PHA Plans and

HUD has provided the additional time in the rule published on September 21, 1999, and discussed earlier in this preamble. In addition to allowing more time to prepare and submit the plans, HUD believes that the electronic template assists PHA's in significantly reducing the time for preparation and submission of the plan elements. Issuance of the electronic template was accompanied by additional HUD guidance on the PHA Plans. (See Notice PIH 99-33 (HA), issued July 30, 1999.)

## 3. Comments Regarding Small PHAs

*Comment.* The rule will create a real hardship for small PHAs, who have limited staffs, budgets, and relatively few units. It is unrealistic to expect small PHAs to comply with the timelines established by the rule and the extra paperwork required by the rule. The requirement that Plans be submitted 75 days prior to end of FY 2000 is a major burden for small PHAs, who need time to complete an in-depth analysis. Another commenter stated that the requirement is also a burden because small PHAs will need extra funds to complete the Plan and the commenter stated that "CDBG funds" will not be available until after the Plan is due. In addition, coordination with the State's Consolidated Plan and forming Resident Advisory Boards will take considerable time for small PHAs. Small PHAs are also already overburdened with paperwork. The final rule should be delayed until HUD works with PHAs to further streamline the rule.

*Response.* As noted in responses to earlier comments, HUD has made considerable effort to reduce the administrative burden of the PHA planning process on all PHAs, and especially small PHAs. With respect to the timing, HUD provided through the September 21, 1999 final rule, the maximum additional time that it could provide in accordance with the statutory requirements. The statute itself is cognizant of the burden that uniform requirements can place on small entities, and allows HUD to provide streamlined PHA Plans for small PHAs which it has done. As HUD also has noted earlier, HUD believes that its electronic template considerably reduces the administrative burden on all PHAs especially small PHAs.

*Comment.* Small PHAs should not have to submit homeownership statements. Most small PHAs will probably never implement a homeownership program because they do not have the personnel or resources to undertake such a program.

*Response.* Under the streamlined submission for small PHAs, small PHAs are only required to provide statements for Section 8 Homeownership programs that they plan to operate. Again, HUD believes that the statements required by the PHA Plan electronic template significantly reduce the PHA's administrative burden.

*Comment.* Small PHAs should not be automatically required to address the crime prevention item because they have not had to address the security indicator in PHMAP.

*Response.* Small PHAs are only required to address the crime prevention items if they receive funding under the Public Housing Drug Elimination Program (PHDEP).

*Comment.* Numerous small PHAs have Federal expenditures of less than \$300,000 per year. Since these PHAs are exempt from the Single Audit Act, they should only be required to submit audit information if HUD has approved the PHAs request for payment for a financial audit.

*Response.* The PHA Plan regulations do not require the submission of any financial information inconsistent with the Single Audit Act (31 U.S.C. 7501-7507) or OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations), and do not in themselves add audit requirements.

*Comment.* Small PHAs have limited resources. One commenter specifically asked whether CIAP funds can be used to complete the Plan. Another commenter asked whether operating reserves be used and reimbursed from capital funds.

*Response.* Capital and operating funds can be used to complete the Plan, consistent with the regulatory requirements of these programs.

#### 4. Comments Regarding Section 8-Only PHAs

*Comment.* Why are high performing and small PHAs exempt from submitting a grievance procedures section and not Section 8-only PHAs. This must be unintended.

*Response.* Section 8-only PHAs are not exempt from the grievance procedures element of the PHA Plan. The template, however, basically requires that these PHAs make these procedures available locally.

*Comment.* Section 8-only PHAs should not have to comply with anything in this rule. Use of Section 8 is in the hands of residents. The Consolidated Plan already covers Section 8 issues and public notice is already required for Section 8 Administrative Plans.

*Response.* The statute includes PHAs that receive assistance under section 8(o) of the U.S. Housing Act of 1937. HUD has no authority to exclude these PHAs from the PHA planning process required under section 5A of the 1937 Act.

#### 5. Issues on Which HUD Specifically Sought Comment

In the preamble to the February 18, 1999 interim rule, HUD specifically sought comment on certain issues (see 64 FR 8179). Those issues are listed here, as well as the comments received on these issues, and HUD's responses to the comments.

##### The Feasibility of Combining the 5-Year Plan and/or Annual Plan With the Submission of the Consolidated Plan Either in Whole or in Part

*Comment.* In response to this issue, many commenters would like to see the Consolidated Plan and the Annual Plan combined so that the process is not so burdensome and duplication is kept at a minimum. Most of these commenters, however, requested that this be an option and not a requirement. The commenters stated that while combining the plans makes sense for "joint agencies" (by this it is understood to mean agencies administering both Consolidated Plan and PHA Plan programs), it makes no sense for independent PHAs. At the very least, combining the two types of plans should not be a requirement for the first few years of plan submissions.

*Response.* PHAs have the option of submitting the Annual Plan simultaneously with the submission of the Consolidated Plan and coordinating public processes, provided that the statutory and regulatory requirements of both are met. Although the Congress provided for the Annual Plan to be consistent with the Consolidated Plan, it did not provide for the Annual Plan to be part of the Consolidated Plan. The Congress established separate requirements for development, submission and approval of the Annual Plan. Therefore the requirements of both plans must be met.

*Comment.* For PHAs that want to combine the planning process, HUD should assist by offering guidance on how to combine the processes and allowing PHAs to change fiscal years to match localities. The plans should be due at the same time.

*Response.* This rule allows PHAs, subject to HUD approval, to change fiscal years to match localities. HUD's July 30, 1999 Notice includes guidance that is helpful to PHAs interested in

combining the PHA planning process with the Consolidated Planning process.

##### Ways to Streamline or Merge Current Information Requirements Already Reported Electronically by PHAs to HUD With the Additional Requirements Listed in This Rule

*Comment.* In order to streamline reporting, HUD should increase the accuracy of reports on the HUD website and should standardize budgeting, requisitioning, and reporting requirements for all funding.

*Response.* HUD believes that the electronic template is a significant step forward in meeting the commenter's concerns. HUD's Office of Public and Indian Housing, as well as other HUD offices, are working on standardization of required reports under HUD programs, and converting these to a simple electronic format that can be accessed through the internet.

*Comment.* PHAs should not have to include components that do not apply them.

*Response.* The PHA Plan regulation includes only those components of the Plan that PHAs are required by statute to submit. PHAs are only required to make available information that pertains to programs and activities they actually conduct.

##### How Should the Term "Substantial Deviation" be Defined

*Comment.* In the February 18, 1999 interim rule, HUD stated that a PHA would not be required to submit an annual update of the 5-Year Plan, but the PHA would be required to explain any substantial deviation from the 5-Year Plan in its Annual Plan. HUD solicited comment on how substantial deviation should be defined. Comments on how this term should be defined were as follows. Substantial deviation should be defined as any changes to a PHA's overall mission, any changes to the goals or objectives that affect services to residents, or significant changes to a PHA's financial situation. Substantial deviation should be defined as a complete revision or abandonment of one or more of the components in a PHA's 5-Year Plan. A substantial deviation should not include a delay in the implementation of any particular component caused by a PHA's business needs. Substantial deviation should apply only to the mission statement and not to goals or objectives. Community planning is not a static process, and goals and objectives must be able to be changed without requiring HUD approval each time. It should be sufficient that Resident Advisory Boards

and PHA Boards review and approve these changes. The definition of substantial deviation needs to take into account the social, political, and economic conditions of an area because if any of these factors changes, adjustments will need to be made in planning documents. Substantial deviation should mean a change in a PHA's mission statement or in the PHAs goals or objectives. Substantial deviation should not deal with meeting objectives, nor should it include deviations based on emergencies or circumstances out of a PHA's control. HUD should combine the 5-Year Plan and the Annual Plan. This would simplify the definition of substantial deviation because the issue would be covered by the term significant amendments. The definition of substantial deviation should be determined locally.

*Response.* HUD appreciates all the suggestions on how this term should be defined. These comments convince HUD that the definition of substantial deviation should be defined at the local level, as suggested by some of the commenters. HUD believes that substantial deviation should be defined at the local level as part of the public participation in the PHA planning process. PHAs together with their residents, local partners and affected and interested members of the public are in a better position to define these terms. The definition of this term, as well as others defined locally, must be noted in the PHA Plan. The definition must be applied to the goals and objectives as well as the mission statement.

With respect to combining the two plans, HUD notes that to a certain extent the 5-Year Plan and the Annual Plan are combined because they must be submitted at the same time, and the Annual Plan reflects the mission and long range goals of the PHA as provided in the 5-Year Plan. Additionally, HUD's electronic template for the PHA Plans provides for the submission to be made as one.

What Constitutes an Acceptable 5-Year Plan?

*Comment.* An acceptable 5-Year Plan should be one that a PHA believes in. HUD will not be able to review all 5-Year Plans, so this requirement only matters to PHAs.

*Response.* HUD is required to review all PHA Plans, 5-Year Plans and Annual Plans. A PHA's 5-Year Plan should provide for a mission and goals and objectives that a PHA believes in. HUD believes that these goals are likely to be consistent with the goals and objectives

of the HUD programs under which the PHA receives funding.

*Comment.* The February 18, 1999 preamble statement about what constitutes an acceptable 5-Year Plan is correct, but meeting any goals depends on annual appropriations. Any 5-Year Plan should have to preface any goal with this acknowledgement. HUD cannot expect PHAs to meet goals if funding is lower than expected. HUD should make specific allowances in 5-Year Plans for the fact that increasing housing supply is dependent on HUD and Congress.

*Response.* PHAs may condition the achievement of goals on at least level annual appropriations where appropriate. PHAs should establish goals and objectives that are ambitious given current funding levels.

*Comment.* The 5-Year Plan should be a strategic plan outlining goals and objectives, strategies to meet goals and objectives, and barriers and measurements of achievements.

*Response.* HUD believes that this is exactly what the 5-Year Plan is, but to make the goals and objectives ones that can be practically achieved, they need to be described in terms of quantifiable goals and objectives.

*Comment.* HUD should consider a 5-Year Plan that substantially meets or in good faith attempts to address the 18 components.

*Response.* The 18 components constitute the substance of the Annual Plan. However, a 5-Year Plan that establishes quantifiable goals and objectives that substantially meet or show a reasonable good faith effort to address the purposes of the 18 components of the Annual Plan (which components describe the PHA's overall strategy for handling operations on an annual basis) will be considered acceptable.

The Manner of Submission of the Information Required Under the Annual Plan.

*Comment.* The manner of submission should be as flexible as possible and include fax, email, postal service, and Internet.

*Response.* With the introduction of the PHA Plan electronic template, HUD believes that it has provided a highly flexible manner of submission. Electronic submission provides for ease in preparation, revisions, and submission. For PHAs that do not have the capability to make electronic submission via the internet, HUD's local Offices of Public and Indian Housing will assist PHAs with electronic submission.

*Comment.* Several commenters expressed concern about electronic submission of the plan. Their concerns were as follows. HUD should provide free software for submission of the Plan, but should not require electronic submission in initial years so PHAs can focus on formulating Plans and not have to fit parameters of preconceived format. This is especially important because PHAs do not know how difficult the software will be to master, what "bugs" the software will have, and whether it will be compatible with other PHA systems. The Plan should not be submitted electronically because the Plan has to be available for public view. HUD and the public should review identical copies of the Plan.

*Response.* With respect to the Plan software, HUD has adopted an internet submission system that utilizes commonly-used office software. The electronic template for the Plan has been available free of charge. HUD has been testing the submission system before and after announcement of the template's availability on July 30, 1999. HUD believes that there should not be any delay in the use of the template for PHA Plan submissions. The template will significantly reduce the administrative burden on PHAs. HUD is ready to assist PHAs with its use and will respond rapidly to correct any "bugs" in the system.

With respect to the capability of PHAs to submit information electronically, in today's environment, HUD believes that all PHAs have access to computers and therefore this type of electronic capability but may not have internet capability. HUD's local Offices of Public and Indian Housing will assist these PHAs with electronic submission of PHA Plans to HUD Headquarters via the internet.

With respect to public review of the plan, electronic submission does not preclude a hard copy printout by the PHA of the information submitted electronically to HUD.

*Comment.* The Plan software used for submission should allow for hyperlinked access to public information found in other electronic submissions or as part of the Consolidated Plan.

*Response.* The PHA Plan is required to be submitted in electronic form, and HUD is working on quick and easy electronic access to public information found in other electronic submissions or as part of the Consolidated Plan.

*Comment.* The rule offers a positive feature in providing that PHAs will not have to resubmit previously submitted items. HUD should, however, move expeditiously to consolidate all required

submissions. Do previously submitted items include previously submitted unfunded CIAP applications? What does HUD mean by the local availability of previously submitted items? Does this mean a file cabinet, specific building, city, town, or can a PHA identify the local HUD office?

*Response.* With advancements in technology, HUD believes that eventually it as well as its program partners will be able to consolidate information (including items previously submitted in non-electronic forms) into an easily downloadable electronic document. HUD's Office of Information Technology is working to move HUD closer to that objective for this program as well as others. With respect to the location of locally available information, the PHA will identify in the PHA Plan the location closest to its main offices (if not made available at its main office) that contains the information that must be made available locally, including items previously submitted to HUD.

*Comment.* The final rule should clarify exactly where in HUD the Plan should be submitted.

*Response.* The PHA Plans are to be submitted to HUD via the internet. Through this submission, HUD offices that need to review the plans or elements of the plans can do so simultaneously.

HUD's addition of items to the Annual Plan submission and whether commenters recommend any other items for inclusion.

*Comment.* If HUD wants to add items to the Plan, they must do so by public notice and comment. HUD should not be allowed to add items not required by the Public Housing Reform Act.

*Response.* To the extent that items added by HUD to the Plan are not reasonably within the Plan's scope and do not constitute clarifications of information that clearly the statute envisions to be submitted, HUD will provide the opportunity for notice and comment. HUD also notes that it may be required to add items to the Plan as a result of new statutory requirements and subsequently enacted statutes may provide for immediate implementation of new Plan components and preclude the opportunity for notice and comment.

*Comment.* The regulation should require that PHAs state reasons for decisions made and any policy choices.

*Response.* The PHA Plan electronic template requires PHAs to indicate the reasons they selected particular strategies for addressing housing needs.

*Comment.* Several commenters offered suggestions on items that should

or should not be part of the streamlined plans. PHAs that have been high performing for two consecutive years should only have to submit Plans with admissions, demolition/disposition, and fair housing certification. High performers and small PHAs should also be required to submit grievance policies, conversions, and community service programs because these programs directly affect residents. Streamlined Plans should include conversion, description of asset management, and Family Self-Sufficiency information because so many PHAs are either high performing or small.

*Response.* HUD appreciates the suggestions made by the commenters. At this time, HUD is not making changes to the streamlined plans to be submitted by high performing PHAs or small PHAs that are not troubled. The PHA Plan electronic template makes the Plan submission significantly easier. With respect to submissions regarding conversions, the conversion submission and approval process is a separate process as HUD has noted earlier in this preamble. Other documents covered by the PHA Plan but that are not part of the Plan submission are required to be available locally for review. The addition of documents to be made available locally but not submitted to HUD also will facilitate the public review.

*Comment.* What should high performing PHAs who are also small PHAs submit (1)?

*Response.* PHAs that are small PHAs and also designated high performing PHAs should submit the Plan elements described for high performing PHAs.

*Comment.* The final rule should clarify the definition of high performing PHA by adding the following language "as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan".

*Response.* HUD agrees with this comment and has added clarification language to the regulation.

What Should Constitute "Significant" Amendments or Modifications to Either the 5-Year Plan or Annual Plan?

*Comment.* Comments on what constitutes significant amendments or modifications were as follows. The final rule must clarify what a significant amendment is and when HUD needs to approve it. PHAs should be able to correct errors or omissions without having to restart the entire process. The final rule should define significant amendments as anything that substantively alters the policies as

originally proposed or that might result in a different outcome for or treatment of tenants, participants, or applicants. Any amendment should be subject to a fair housing analysis. The definition of significant amendments should exclude any changes that are made as a result of new HUD regulations not in effect when the Plan was developed.

*Response.* HUD appreciates these comments and has decided that the changes that constitute significant amendment or modification should be defined at the local level. As noted earlier in this preamble (under the section which highlights changes made at the final rule stage), HUD has amended § 903.7(r) to provide that a PHA must include in the PHA Plan a brief statement identifying the basic criteria it will use for determining what constitutes a significant amendment or modification of its plan for purposes of § 903.21.

Whether the Final Rule Should Provide That a PHA Must Post Notice in the Projects Owned, Operated or Administered by the PHA That the Plan has Been Approved and Provide Information on Where the Plan may be Inspected, and Also Whether the PHA Should Post Notice in a Newspaper of General Circulation That the Plan has Been Approved and Information About its Availability for Review.

*Comment.* The final rule should adopt a requirement that PHAs should post a notice in a newspaper of general circulation that the Plan has been approved and information about its availability for review. The final rule should require that notices be posted at all developments and that copies of pending and final plans should be made available at all developments, not just the principal office of the PHA. In addition, residents should be able to view these plans in the evening and not just during normal business hours. The final rule should not require posting and publication of notice after the Plan is completed and approved.

*Response.* HUD appreciates the comments in response to this issue. HUD has decided not to change the rule at this time. HUD, however encourages PHAs to adopt these suggestions. Additionally, as part of the public input on the plans, the PHAs and the public may wish to adopt such a requirement as part of their local process.

Is the rule organized in a manner that is helpful and should the rule include a definition section?

*Comment.* The final rule should not adopt the conversational tone and question-and-answer format used in the

interim rule. This format is best reserved for supporting documents that are designed to provide additional guidance for complying with HUD regulations. The conversational tone and question-and-answer format detracts from the ability of governed entities to easily ascertain what is required of them and to locate provisions that govern specific questions with optimal speed and efficiency.

*Response.* The question-and-answer format is strongly encouraged by the Administration's Plain Language initiative. The concern is that too many regulations are incomprehensible because they are written using terms that are too legalistic and too entrenched in the language of Federal bureaucracy. The majority of HUD's regulations are now being written in this format, and without complaint from HUD's constituents. HUD notes that only one commenter made this comment. HUD notes that the PHA Plan template provides for consolidated, easily referenced information.

*Comment.* The final rule should contain a definition section.

*Response.* Many of the terms that HUD would generally define are already defined in regulations governing HUD programs in which PHAs are participants. HUD declines to repeat these definitions in this part. For other terms, HUD declines to be overly prescriptive and prefers to give PHAs greater flexibility by allowing them to define terms at the local level given local considerations.

#### 6. Comments on Specific Provisions of the Interim Rule

##### Section 903.1 What are the Public Housing Agency Plans?

*Comment.* As the following comments indicate, several commenters were concerned about the format of the plans. Comments were as follows. HUD should not require PHAs to submit Plans when HUD has not specified the format for the Plan nor given guidance to PHAs on all issues. HUD should delay publication of the final rule until the rule can be clarified. HUD needs to define the format, substance, and length of the Plan. If HUD does not specify a format by July 1, 1999, initial Plans should be accepted in any format. PHAs should be able to simply reference other documents in the Plan and insert only brief summaries of those documents.

*Response.* As noted earlier in this preamble, HUD has addressed these concerns through its July 30, 1999 issuance of the PHA Plan electronic template and accompanying guidance,

and HUD's decision to delay the date for the first submissions to December 1, 1999.

##### Section 903.3 When Must a PHA Submit the Plans to HUD?

*Comment.* HUD needs to clarify when the 75-day process starts and stops. The interim rule is not clear about when PHAs are required to submit their Plans.

*Response.* HUD's rule published on September 21, 1999, clarifies this process, and this language is included in this final rule.

*Comment.* Large PHAs should be able to submit separate Annual Plans for different jurisdictions or be allowed to submit Plans in phases.

*Response.* The statute does not allow for this type of submission. HUD believes that the framework for the Annual Plan adopted by the Congress is similar to that of the Consolidated Plan, and the objective of this framework is to consolidate information and present a single unifying plan that crosses jurisdictional lines where there are more than one jurisdiction. The additional objective is to provide for one annual submission by a PHA, not staggered submissions.

##### Section 903.5 What Information Must a PHA Provide in the 5-Year Plan?

*Comment.* Why is HUD requiring a 5-Year Plan when PHAs only get funding on a yearly basis?

*Response.* The 5-Year Plan is a statutory requirement. Even if PHAs only receive funding annually, it is funding that is assured annually at some level, and therefore the PHA should plan for its uses on a long-term basis.

*Comment.* The 5-Year Plan guidance needs further development. The guidance appears to be a vision statement and not actual work items to implement long range strategy. The required statements for the 5-Year Plan should be combined into the Annual Plan (as part of the Executive Summary) because the Annual Plan has to contain changes in the 5-Year Plan anyway.

*Response.* The guidance and PHA Plan template issued on July 30, 1999, provides additional guidance to PHAs on development and preparation of the 5-Year Plan, and on the format. PHAs are welcome to develop more detailed plans than that provided by the template.

*Comment.* The 5-Year Plan should be subject to only cursory HUD review.

*Response.* HUD's review must be consistent with the statutory mandate imposed on HUD.

##### Section 903.7 What Information Must a PHA Provide in the Annual Plan?

This section of the rule describes the information that the PHA must provide as part of the Annual Plan. There were a number of comments praising HUD's approach to not require the submission of certain items. There was also praise for elements of the Plan that high performing PHAs and small PHAs were not required to submit. The following presents the questions and concerns raised about the Plan elements.

*Comment.* The final rule needs to contain more detailed descriptions of what information is required under each section of the Plan so that PHA submissions are more consistent. For example, under § 903.7(b) (financial resources) how is funding to be broken down for Section 8; § 903.7(c) (eligibility, selection, and admissions) should state exactly what information is required; § 903.7(e) (operation and management) needs a clear list of what will satisfy a "description of the management organization"; § 903.7(l) (community service and self-sufficiency) is unclear about what information is to be submitted.

*Response.* These comments were submitted before HUD issued its July 30, 1999 guidance and the PHA Plan electronic template. The PHA Plan template and guidance address these concerns.

*Comment.* The PHA Annual Plan should only include the information necessary to reach the strategies and goals described in the PHA 5-Year Plan. The final rule should not expand the list of items that are required, under section 511 of the Public Housing Reform Act, to be included in the Annual Plan. This will bring certainty to the PHA planning process and allow PHAs to steadfastly pursue the goals outlined in the 5-Year Plan.

*Response.* HUD believes that the PHA Plan regulation closely adheres to the statutory requirements and does not go beyond these requirements.

*Comment.* The February 18, 1999 interim rule provides that, before submission of the first PHA Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition and disposition. However, the interim Annual Plan must include a certification of consistency with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. (See the preamble discussion at 64 FR 8177-8178.) HUD should extend the interim plan provision to cover: (1) The new voucher payment standard; (2)

deconcentration and rent choice policies; and (3) any voluntary changes in admission preferences prior to the submission of the complete initial annual plan. This will help to ensure that residents participate in the development of these important policies, and that the policies are consistent with the Consolidated Plan.

*Response.* The interim plans for demolition or disposition addressed a particular issue in the statute and legislative history, to allow continued submission of applications for demolition or disposition prior to submission of the first annual PHA Plans. Interim plans are unnecessary for the other plan elements raised by the commenter.

#### Comments Regarding the Statement of Housing Needs

*Comment.* The provision of this data will be difficult for PHAs that do not collect the required waiting list information. It would be easier for the PHAs to provide the required information for families admitted during the PHA's last fiscal year.

*Response.* The statutory language is clear that the information that must be submitted under this Annual Plan element is waiting list information. The guidance to the template makes clear that PHAs are not being required to change their procedures regarding data verification to supply this data.

*Comment.* It is unclear what information PHAs are being requested to provide or what constitutes "housing need." The final rule should clarify terms such as: "affordable," "supply," "quality," "accessibility," "location," and "size of units." Further, the rule is ambiguous as to what income groups should be considered for purposes of determining housing need. This must also be clarified.

*Response.* These terms are addressed in the guidance accompanying the PHA Plan template.

*Comment.* PHAs should not be required to assess housing needs based on the race or ethnicity of applicants for assisted housing. The interim rule is unclear whether a threshold number of applicants belonging to a certain racial/ethnic group triggers the need assessment, or whether a single applicant from that group is sufficient. Further, it is unclear how the information will help the PHA meet its obligation to serve low, very-low, and extremely low-income families. The rule is ambiguous regarding the ethnic/racial groups a PHA must identify. The collection of this data may also conflict with civil rights and fair housing requirements.

*Response.* The assessment of housing needs as provided in the regulation is consistent with HUD's obligation to affirmatively further fair housing. The guidance accompanying the PHA Plan template also addresses this issue.

*Comment.* PHAs should be able to use the "Housing Needs and Market Analysis" section of Consolidated Plan as their plan statement of housing needs. However, the terms used in the PHA plan interim rule differ from that used in the Consolidated Plan. HUD should provide guidance to assist PHAs in using the relevant provisions of the Consolidated Plan in preparing the annual plan statement of housing needs. Another commenter expressed the opposite viewpoint. The Consolidated Plan should not be used to develop the statement of housing needs. The Consolidated Plan is based on outdated 1990 census data. Further, the Consolidated Plan is rarely prepared by the PHA. PHA waiting list data is the most accurate indicator of the potential resident base. Accordingly, the PHA waiting list should be used to develop the annual plan statement of housing needs. Another commenter expressed opposition to use of waiting list data. The commenter stated that gathering waiting list data will create significant administrative burden for PHAs.

*Response.* The Consolidated Plan can serve as the basic source of the PHA's housing needs statement. The PHA, however, needs to complete the statement of housing needs as provided in the PHA Plan regulation. The PHA Plan template significantly simplifies this task. The use of waiting list data is a statutory requirement and HUD has no authority to remove this requirement.

#### Comments Regarding the Statement of Financial Resources

*Comment.* The interim rule is overly prescriptive when it asks PHAs to identify the planned uses of the financial resources by major category (i.e., operations, modernization and or development, etc.). This is addressed elsewhere in the Annual Plan and, therefore, it is redundant to require PHAs to address them in this portion of the plan.

*Response.* The financial information required by the rule is consistent with statutory intent and is the minimum necessary to allow public housing residents, local representatives, taxpayers, and other interested members of the public to sufficiently determine a PHA's planned uses of its financial resources. The PHA Plan template reduces the administrative burden of compiling and submitting this information.

*Comment.* HUD should clarify what financial data is required in the statement of financial resources. Are PHAs required to provide end data from the most recent calendar year, or from the most current fiscal year?

*Response.* The PHA Plan template clarifies that the financial data required to be included in the Plan concerns funds anticipated to be available during the upcoming fiscal year.

*Comment.* The statement of financial resources should include detailed PHA budgets with information regarding the operating and modernization of the public housing, as well as personnel, consultant and other contractors, equipment, supplies, utilities, and travel. With fully disclosed information, residents and the public will better be able to participate and reach the goals of the Public Housing Reform Act.

*Response.* Current operating and modernization budgets are required to be made available locally for review by the public.

#### Comments Regarding the Statement of Eligibility, Selection, and Admission Policies

##### 1. Transfers

*Comment.* The PHA Annual Plan should include specific policies for the transfer of public housing residents to other public housing units within the PHA. Transfer policies and practices are of critical concern to residents and Resident Advisory Boards. Accordingly, all PHAs should have written policies and procedures governing transfers, which should be included in the PHA Annual Plan.

*Response.* Transfer policies are covered by the PHA Plan template. These policies typically also will be in the PHA's admissions and continued occupancy policies, which are required to be made available to the public locally.

##### 2. Deconcentration

*Comment.* Several commenters raised concern about the deconcentration policies. Their concerns are as follows. Deconcentration requirements will lower occupancy rates, make waiting lists longer, and increase PHA administrative costs. HUD therefore should not expand on the statutory language and impose a deconcentration requirement on PHAs. HUD should accept the good faith, best efforts made by a PHA to achieve deconcentration. HUD should permit deconcentration to be addressed at a local level, and not establish prescriptive Federally mandated requirements. There are differences between rural, urban and

suburban agencies and individual reason for which families move. Any Federal requirements should acknowledge variations in local conditions, and provide PHAs with the flexibility to address those local issues. HUD should provide additional guidance on what constitutes an acceptable deconcentration policy. The final rule should provide that PHA deconcentration policies must affirmatively further fair housing and not discriminate against a protected class. Further, the final rule should explicitly prohibit PHAs from establishing or enforcing racial or financial quotas. The rule should also require that PHAs perform an Analysis of Impediments as part of their PHA plan process. (The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice).

*Response.* Section II of this preamble addresses the changes that HUD has made with respect to deconcentration. HUD believes that these changes address and balance the concerns of the commenters.

*Comment.* There is a conflict between the mission of the PHA to serve low-income families and the deconcentration requirements of the interim rule. If the PHA is supposed to focus on the needs of low income families, how can it also be expected to undertake efforts to attract higher-income families?

*Response.* HUD understands that these two objectives may appear in conflict with each other. HUD's focus and the PHA's focus remain on addressing the needs of low income families, but these needs are often best served and best addressed by housing that provides for a mix of family incomes—families that need HUD assistance but are not all in the same income range.

*Comment.* The deconcentration requirements should not apply if the PHA's developments all have similar average incomes. In such a situation there is no income concentration. Deconcentration should only be required if the difference hits a specific threshold, e.g. a 25% disparity.

*Response.* HUD declines to adopt a threshold disparity as recommended by the commenter. However, the new provisions added to the final rule on deconcentration provide a measurement for compliance. The rule provides that PHAs shall be considered to be in compliance with the deconcentration requirements if they determine the average household income in such developments and define higher-income families as those with incomes over

115% of this average, higher-income developments as those where the average family income is over 115% of this average, lower-income families as those with incomes under 115% of this average and lower-income developments as those where the average family income is under 115% of this average.

*Comment.* The deconcentration requirements should only be applicable to "traditional" public housing developments occupied entirely by households eligible for public housing. Mixed income developments, Jobs Plus sites, Welfare-to-Work sites, and other housing developments hosting other demonstration programs should not be subject to the deconcentration rules. These developments have special work incentives, different rent structures and other factors that attract or retain special subpopulations of public housing residents. Accordingly, they are not suitable for deconcentration efforts.

*Response.* The statute does not limit applicability of the deconcentration requirements to traditional public housing developments. Generally, HUD has no authority to set such limitations.

*Comment.* In order to realize deconcentration, FMRs must be increased in cities where the cost of housing is constantly increasing. This is one of the most critical methods that will allow housing residents a choice and an opportunity to lease in higher-income neighborhoods.

*Response.* HUD believes that its system for setting fair market rents generally meets this objective, but can be improved. HUD currently is reviewing this system.

*Comment.* HUD should not require a PHA to perform an analysis of household incomes until the MTCS data system can facilitate this type of analysis.

*Response.* The analysis is not dependent upon the MTCS data system but HUD recognizes that this system may facilitate the PHA's analysis. HUD has worked to correct problems with MTCS, and is working with PHAs to increase the level of reporting, as noted earlier in this preamble. HUD believes that PHAs should be able to utilize this system in performing their analysis.

*Comment.* The interim rule requires that PHAs use census tracts for purposes of developing their deconcentration policies. The use of census tracts for comparison of relative income does not work for many scattered-site developments as they are in multiple census tracts. The final rule should accommodate this problem by exempting scattered-site projects from the deconcentration plan requirements.

*Response.* The final rule does not require an analysis based on census tract data.

*Comment.* PHAs should be able to identify other factors (such as the size of units) that play a role in relative income in order to distinguish developments.

*Response.* The rule provides a safe harbor for defining lower income and higher income which is simple, then leaves substantial flexibility for implementation.

### 3. Targeting

*Comment.* The final rule should state that admissions policies must include income targeting policies and must specify that local preferences are subordinate to Congressional directive of targeting. HUD needs to publish regulations covering how targeting must work soon.

*Response.* These policies were first addressed in HUD's proposed rule on "Changes to Admission and Occupancy Requirements in Public Housing and Section 8 Housing Assistance Programs" published on April 30, 1999 (64 FR 23460). The final rule on this subject is expected to be published soon.

*Comment.* HUD should provide clear guidance about the interaction between targeting, deconcentration, and site-based waiting lists. Which takes precedence? How will HUD monitor or evaluate PHA success?

*Response.* Full compliance with both the specific income targeting minimum percentages of extremely low-income households and with deconcentration and income mixing provisions is required.

### 4. Site-Based Waiting Lists

Various proposals were made to modify the February 18, 1999 interim rule's treatment of site-based waiting lists. As the preamble to the interim rule discussed, the Senate Committee Report on the Senate version of the Public Housing Reform Act (Congressional Record of October 8, 1998, p. S11840) provides the most detailed statement on site-based waiting lists. That report cites several of the possible benefits of site-based waiting lists, but also acknowledges that past HUD limitations were based on concern about racial steering and a desire to prevent housing discrimination. HUD believes that the approach proposed in the February 18, 1999 interim rule is appropriately balanced in view of that legislative history. The approach generally allows adoption of site-based waiting lists, with protections to assure that applicants are aware of their choices and rights, but also calls for careful monitoring of

implementation. This final rule therefore generally retains these provisions, except that the requirement that MTCS data be confirmed by independent audit is supplemented by other means of verification acceptable to HUD and testing or other HUD-approved means of verifying appropriate implementation are required at least every three years rather than two years.

*Comment.* PHAs should not be required to use testers biannually. The requirement is excessive if there is no indication of possible civil rights violations. Testers should only be used to confirm problems where there is an indication of steering or other illegal activities. Other requirements such as the review of MTCS, absence of court orders, PHA certifications, ongoing review of policies and HUD's monitoring through FHEO are sufficient safeguards. HUD, and not PHAs, should provide testers.

*Response.* As noted in Section II of the preamble and in the introduction to this section of the public comments, HUD has revised this requirement on the frequency of the use of testers. The final rule provides that testers are to be used every three years. HUD believes that the role of testers is not only to confirm problems but to determine if problems exist that have not yet been raised.

*Comment.* Language in § 903.7(c)(1)(v)(C) (any steps necessary) is too broad and will result in a large burden for PHAs. The final rule should be revised to state, "any reasonable or business practicable steps necessary." Additionally, site-based waiting lists should be subject to no more scrutiny than review of the Plan.

*Response.* HUD believes that the additional language recommended by the commenter is not necessary. "Any steps necessary" would include business practicable steps. With respect to review of site-based waiting lists, site-based waiting lists are part of the PHA Plan approval process; that is the only approval necessary.

*Comment.* Additional concerns raised about site-based waiting lists included the following. The final rule should ensure that site-based waiting lists increase housing choice and options for minorities. Policies should require that public housing applicants are advised of all subsidized housing in the area. PHAs should supply applicants with a list of every assisted housing development in the market area, including tax credit properties, and HUD should give this list to PHAs. HUD should design a standardized pre-application so that applicants could copy the form and

submit to various projects. PHAs should be required to do a preliminary racial impact analysis. Requiring testers is a good idea. For projects going into initial occupancy, HUD should require a lottery system.

*Response.* HUD appreciates these comments, but declines to adopt up-front the recommendations for additional procedures to be imposed on PHAs. HUD believes that the rule takes the appropriate approach to site-based waiting lists, which is to provide the necessary direction and guidance to PHAs on the establishment of site-based waiting lists and describe the circumstances in which a PHA may adopt a site-based waiting list and provide for careful monitoring of implementation.

#### *E. Rent Determination Policies*

*Comment.* Does the statement of rents charged include the exception procedures for minimum rents?

*Response.* Yes, this statement includes the exception procedures for minimum rents.

*Comment.* Several comments on this rule were directed to the changes in rent policies made by the Public Housing Reform Act. These comments raised the following issues and questions. Since PHAs have to give residents 90 days to prove they have a long term hardship and cannot evict for nonpayment of rent, what effect will uncollected minimum rents have on PHMAP indicator? Can PHAs submit a modification request? Flat rents are based on rental value of units. What if rental value is more than the actual monthly cost to provide and operate? The final rule should clarify that PHAs can evict for nonpayment families on minimum rent who fail to request hardship exemption or on the 91st day for families who are denied hardship exemptions. PHAs will be at a disadvantage if residents can set their maximum rent payments. How can PHAs set a year-long budget when residents can change their rent payments at will? HUD should limit rent payment changes to once per year. The final rule should clarify minimum rent is discretionary for PHAs and can be between \$0 and \$50.

*Response.* All these issues will be addressed in HUD's final rule on Changes to Admission and Occupancy, expected to be published soon.

*Comment.* All rent policies should be in Plans, including mandatory policies.

*Response.* It is an unnecessary administrative burden imposed on PHAs to have them include in the Plan those PHA policies that only repeat statutory or regulatory requirements.

Additionally, the addition of these policies would make the PHA Plan unwieldy.

#### *F. Operations and Management*

*Comment.* The Administrative Plan should be incorporated into the Annual Plan. HUD should provide guidance on what information from the Administrative Plan must be included in the Annual Plan.

*Response.* The PHA template provides guidance on information in the Administrative Plan that must be included in the Annual Plan. The PHA Plan regulation requires the Administrative Plan to be made available for review by the public locally.

*Comment.* The preamble to the interim rule states that this section is required for public housing and Section 8. The rule text only mentions public housing. The final rule should clarify the applicability of this requirement. Limiting the requirement to public housing is not allowed by the Public Housing Reform Act. Congress did not limit the statement to public housing. PHAs must be required to submit Section 8 Administrative Plans.

*Response.* The regulatory text mentions both public housing and Section 8 tenant-based assistance. Section 903.7(e) which addresses the statement of a PHA's operation and management provides in paragraph (e)(2) that the information pertaining to the PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. This is the only portion of this subsection that applies only to public housing. The rest of § 903.7(e) applies to both public housing and Section 8 tenant-based assistance.

#### *G. Grievance Procedures*

No significant issues were raised on this element of the plan.

#### *H. Capital Improvements*

*Comment.* The final rule should be revised to state that Comprehensive Grant Program (CGP) updates will continue to satisfy this requirement. HUD must distribute CGP formula amounts in a timely fashion to ensure inclusion in the Plan. Additionally, Annual Plans are due before CGP planning process would normally take place. Unless a separate notice is issued that describes how modernization program submission will be satisfied by Plans, PHAs should be able to reference existing submissions.

*Response.* HUD's Comprehensive Grant Program is being replaced by the Capital Fund Program. Accordingly, all

forms are being updated to reflect the new program. Guidance on the PHA Plan template, issued July 30, 1999, addresses how PHAs may satisfy Capital Fund planning requirements. As a transitional phase, PHAs will be permitted to use properly updated CGP forms.

#### I. Demolition/Disposition

*Comment.* This section should be incorporated in the Asset Management section.

*Response.* The statute provides for separate statements to be submitted on demolition/disposition and asset management. (See section 511(d)(8) and (d)(17)). However, HUD's PHA Plan template includes an optional chart by which the PHA can combine these and other plan sections.

*Comment.* The final rule should require that the PHA Annual Plans include: Reasons for demolition; a description of how the planned demolition meets statutory criteria for demolition or sale; identification of any studies relied upon that support the demolition (and the studies should be available to Resident Advisory Boards); a statement of specific requirements if consolidation of vacancies is planned; relocation plans; and an evaluation in light of the Consolidated Plan. The final rule also should require that the application for demolition and any supporting documents be available at PHA office.

*Response.* The PHA Plan regulation requires that demolition and/or disposition applications must be made available locally for review by members of the public. Affected or interested parties therefore have the opportunity to review and comment to the PHA on these applications if they so choose. As noted earlier in this preamble, demolition and/or disposition activities are subject, by statute, to a submission and approval process separate from the PHA Plan submission and approval process. It would be an unnecessary administrative burden to have a PHA duplicate in the PHA Annual Plan extensive information on planned demolition and/or disposition that the PHA must provide under the separate demolition/disposition approval process.

*Comment.* The interim demolition/disposition plan is unauthorized by law and is inconsistent with deregulation and streamlining goals the Public Housing Reform Act. HUD is prohibited from enacting early any piece of the Plan.

*Response.* The Public Housing Reform Act provisions concerning demolition/disposition were effective upon the

statute's enactment. The interim plan fulfills Congressional intent that demolition/disposition activities not be interrupted or halted and that HUD continue to process demolition/disposition applications before, if necessary, approval of the first PHA plans.

*Comment.* The rule needs to clarify the contents of the interim demolition/disposition plan. Is the submission a statement or does the PHA have to submit all components of the Annual Plan.

*Response.* As noted earlier in this preamble, HUD has added language at the final rule stage to address submission of an interim demolition/disposition plan. Also, HUD's notice to PHAs on demolition/disposition processing requirements under the Public Housing Reform Act, PIH Notice 99-19, issued April 20, 1999, describes the information to be submitted in the interim demolition/disposition plan.

#### J. Designated Housing

*Comment.* PHAs that submit streamlined Plans should have to submit this information. The final rule needs to address how currently approved designated housing plans meet the requirements of the Public Housing Reform Act.

*Response.* Designated housing is subject to a separate application and approval process, and designated housing is subject to separate regulations. A streamlined plan does not need to repeat information that is already required to be submitted under a separate approval process, and the PHA Plan regulation does not need to duplicate information addressed in other regulations. Designated housing applications, however, are required to be made available locally for review by members of the public.

#### K. Conversion

*Comment.* The final rule should require an evaluation of conversion in relation to the Consolidated Plan, include certification from local officials, describe any demolition/disposition plan for units, set forth time table, and provide for certification of resident consultation.

*Response.* Demolition/disposition and conversion plans are subject to a submission and approval process separate from the PHA plan submission and approval process. These applications, however, are required to be made available locally for review by members of the public.

#### L. Homeownership

*Comment.* PHAs should be allowed to propose creative ways to increase homeownership opportunities.

*Response.* The PHA Plan rule reflects the statutory requirement with respect to the information that must be part of the PHA Plan. The statute requires a description of any homeownership programs of the agency under section 8(y) or for which the public housing agency has applied or will apply for approval under section 32 of the U.S. Housing Act of 1937. The fact, however, that the statute requires this information, and the rule reflects the statutory requirement, does not preclude PHAs from proposing creative ways to increase homeownership opportunities and these proposals can be part of the PHA's 5-Year Plan or other information that it may choose to provide in its Annual Plan.

*Comment.* PHAs should be required to establish measures to increase accessibility to homeownership programs for persons who have successfully participated in the Continuum of Care Program.

*Response.* HUD believes that establishing such a requirement exceeds HUD's statutory authority with respect to the PHA planning process.

#### M. Community Service and Self-Sufficiency

*Comment.* Several commenters addressed concerns not about information required to be included in the PHA Annual Plan with respect to community service and self-sufficiency, but implementation of these requirements. The comments raised the following concerns. Eviction for noncompliance with this requirement will be difficult to uphold in courts. PHAs will need additional insurance protection to cover increased number of volunteers. Residents who volunteer at a church/temple should be exempt from community service requirements. Does service on a Resident Advisory Board count towards community service. PHAs should not have to monitor community service unless they have an FSS program. Welfare agencies should conduct monitoring. The final rule should list the exemptions to the community service requirement listed in section 512(a)(2) of the Public Housing Reform Act. This requirement will create a huge burden with limited benefit. Residents should be able to self-certify compliance with this requirement.

*Response.* These issues will be addressed in HUD's final rule on "Changes to Admissions and

Occupancy Requirements in Public Housing and Section 8 Housing Assistance Programs," which expected to be published soon.

*Comment.* Rulemaking for this requirement is incomplete. Will PHAs be required to submit an amendment to their Plans when the final rules are published. The community service requirement should not be implemented before January 1, 2001.

*Response.* HUD has completed the rulemaking for this requirement. HUD's final rule on Changes to Admission and Occupancy Requirements, which is expected to be published soon, addresses this requirement. HUD has informed the PHAs with fiscal years commencing January 1, 2000, that community service need not be a part of their PHA Plans for that fiscal year.

#### N. Safety/Crime Prevention

*Comment.* The requirement to check for lifetime registration for sex offenders is an unfunded mandate. Such checks undertaken by the Federal Bureau of Investigation (FBI) cost \$27 and take 30-90 days. HUD should arrange for PHAs to obtain this data at no charge.

*Response.* This issue is not relevant to this rule, but pertains to HUD's rule on "One Strike Screening and Eviction for Drug Abuse and Other Criminal Activity." The proposed rule for this subject was published on July 23, 1999 (64 FR 40262). HUD is developing the final rule.

*Comment.* The submission requirements should be modified to require submission of Public Housing Drug Elimination Program (PHDEP) grants only.

*Response.* For high performing and small PHAs, the final rule limits the submission to PHDEP grant information only.

*Comment.* Until HUD issues a separate notice how PHDEP will be satisfied by Plans, PHAs should be able to reference existing submissions.

*Response.* HUD issued its final rule on PHDEP formula allocation on September 14, 1999 (64 FR 49900).

#### O. Pets

**Note:** A number of commenters made substantive suggestions regarding how pet policies should be structured (as opposed to comments about the structuring of the PHA Plans). These comments will be responded to in the final rule concerning pet ownership in public housing.

*Comment.* The final rule should clarify when this submission is required. The February 18, 1999 interim rule states that this submission is not required until HUD issues its pet regulations, but there are already pet

rules covering elderly and people with disabilities projects. In addition, the final rule should clarify whether PHAs must make a submission if they have their own pet policy in effect.

*Response.* The regulations governing pets in housing for the elderly or persons with disabilities are not required to be covered by the PHA Annual Plan. The Public Housing Reform Act requires a statement concerning the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the 1937 Act. HUD's proposed rule to implement section 31 of the 1937 Act was published on June 23, 1999 (64 FR 33640). Approximately 4,000 timely public comments were received on this rule, and approximately 3,000 public comments continued to be submitted to HUD well past the August 23, 1999 comment deadline. HUD is developing the final rule.

#### P. Civil Rights

*Comment.* The deconcentration policies contradict the affirmatively furthering fair housing policies.

*Response.* HUD disagrees. Both policies work to improve housing options for low-income families.

*Comment.* HUD needs to issue further guidance regarding the maintenance of records to reflect analysis of programs and impediments. The guidance needs to address which programs will be analyzed, how the analysis is to be documented, and how often must the analysis be done?

*Response.* This final rule provides guidance concerning these analyses.

#### Q. Asset Management

*Comment.* This requirement is confusing and redundant. Much of this area is covered in other areas of the Plan.

*Response.* As noted earlier in this preamble, the statute requires a separate submission on asset management. However, the PHA Plan regulation (and the PHA Plan template) clarify that information related to asset management addressed under other Plan elements is not to be repeated in the asset management section.

*Comment.* This requirement is unclear, especially with regards to Section 8. More guidance is needed in the final rule.

*Response.* The electronic template issued by HUD on July 30, 1999, provides the additional guidance that is needed to satisfactorily respond to this element of the PHA Annual Plan.

*Section 903.13 What is a Resident Advisory Board and What is its Role in Development of the Annual Plan?*

*Comment.* When a Resident Advisory Board files a written request with HUD claiming that a PHA has failed to provide adequate notice and opportunity for comment, HUD's 75-day review limit should be tolled so that the PHA may respond to the claim.

*Response.* Section 903.13(c)(2) of the PHA Plan regulation addresses the commenter's concern.

*Comment.* It is very difficult and even impossible in some projects to obtain resident participation. In those cases where PHAs are unsuccessful in forming Resident Advisory Boards because of a lack of resident interest, the Resident Advisory Board requirement should be considered satisfied if the PHA has made adequate efforts to establish a Board. PHAs can only make resident participation opportunities available, they cannot require participation. Additionally, confidentiality is very important to section 8 participants and results in less of a desire to participate. If HUD wants to ensure residents participation, they should make such participation part of the lease requirement.

*Response.* HUD believes that the cases in which PHAs were unable to form Resident Advisory Boards will be few. If, however, PHAs have been unsuccessful in forming Resident Advisory Boards, they should notify HUD immediately and advise the efforts undertaken to establish Resident Advisory Boards. HUD will determine at that time what additional action may be necessary.

*Comment.* Resident Advisory Boards should be involved in the preparation of the 5-Year Plan as well as the Annual Plan.

*Response.* Section 903.19 of the rule permits the PHA to adopt its 5-Year Plan only after, among other things, the PHA has consulted with the Resident Advisory Board or other resident organizations about any changes made to the plan. Additionally, the 5-Year Plan is subject to public input and through this process, Resident Advisory Boards have the opportunity to be involved in the preparation of the 5-Year Plan.

*Comment.* The interim rule is unclear about whether Resident Advisory Boards can contact HUD directly to protest the 5-Year Plan in addition to the Annual Plan. The final rule should protect PHAs by providing only a restricted right of protest.

*Response.* Any party may complain to HUD concerning a PHA's

noncompliance with its plan or with the PHA Plan regulations.

*Comment.* The final rule should identify how Resident Advisory Boards will be financially supported, what funds are available, and what funds PHAs will provide. For example, can a PHA give stipends to residents and exclude them from rent calculations, or can the PHA use CIAP, CGP, or Capital funds? The final rule should make clear that the resources for Resident Advisory Boards include technical assistance. HUD should provide sufficient resources to Resident Advisory Boards to ensure that residents are effectively represented.

*Response.* The funds available to Resident Advisory Boards, resident organizations and for resident activities are generally the funds appropriated for HUD's public housing funded programs. For example, in the preamble to HUD's Capital Fund formula proposed rule published on September 14, 1999 (64 FR 49924), HUD noted that various funds allocated to Resident Advisory Boards, other resident organizations and for resident participation are eligible Capital Fund management expenses if the activities engaged in by these groups are directly related to Capital Fund activities. Funds are available to Resident Advisory Boards and other resident organizations from the public housing Operating Fund, and other HUD funded programs.

*Comment.* PHAs should be allowed to self-certify to compliance with Resident Advisory Board requirement.

*Response.* Section 903.13 only requires that PHAs, in submitting their final plans to HUD for approval, must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations. If the Resident Advisory Board did not provide recommendations, the PHA need only note that in its plan submission.

*Comment.* The final rule should require broader collaboration between PHAs and Resident Advisory Boards. The final rule should require PHAs to: produce a Plan development time-line before the Plan development process begins and share this time-line with Resident Advisory Boards; give Resident Advisory Boards early notice of when Plan development process begins and provide copies of drafts to Resident Advisory Boards; hold joint meetings with Resident Advisory Boards throughout the Plan development process; and give Resident Advisory Boards written notice of their right to seek recourse from HUD, the

mechanisms to seek this recourse, and HUD contact information.

*Response.* The final rule clarifies that Resident Advisory Boards are to assist and make recommendations to PHAs regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan. HUD declines to impose, by regulation, requirements beyond those required by statute. HUD, however, encourages PHAs to involve Resident Advisory Boards as early in the plan development process as possible. Since PHAs must, by statute, involve Resident Advisory Boards in the PHA Planning process, PHAs should find it advantageous to consult with these Boards as early as possible.

*Comment.* Section 903.13 is confusing. HUD should add some discussion of the different scenarios a PHA may face forming a Resident Advisory Board and ensuring adequate Section 8 representation.

*Response.* A discussion of different scenarios that a PHA may face in forming a Resident Advisory Board is not appropriate for regulatory text. HUD will provide guidance on this issue through direct notices to PHAs and through the Office of Public and Indian Housing website at HUD's homepage.

*Comment.* Several comments were directed to the rule's requirement that where a PHA has a tenant-based assistance program of significant size, the PHA shall assure that the Resident Advisory Board or Boards has reasonable representation of families receiving tenant-based assistance. The comments raised the following issues. The definition of significant size for a Section 8 program should be 1,250 or more certificates. The definition of significant size should not be based on the ratio of public housing to Section 8 units. A Section 8-only PHA should be required to form an Resident Advisory Board regardless of the size of the program. The Resident Advisory Board requirement should be satisfied for Section 8-only PHAs if the PHA has an Family Self-Sufficiency (FSS) coordinating committee with resident participation.

*Response.* HUD continues to believe that only PHAs with a tenant-based assistance program of significant size should be subject to the Resident Advisory Board requirement. HUD has defined significant size to mean at least 20 percent of assisted households receive tenant-based assistance.

*Comment.* Any waiver of this requirement should be granted only after notice of waiver is given to all residents.

*Response.* The waiver of this requirement can only occur, in accordance with the statute, if the PHA demonstrates to the satisfaction of HUD that there exist resident councils or other organizations that adequately represent the interests of the residents of the public housing agency, and have the ability to perform the functions of a Resident Advisory Board. Since this requirement can only be waived if the residents are represented through some other organization, notification of the waiver of this requirement to all residents is unnecessary.

*Comment.* The final rule needs to provide criteria and guidelines for what constitutes adequate representation and what is an appropriate size for an Resident Advisory Board. The final rule should require that Resident Advisory Board composition take into account representation based on geographic neighborhood location and reflect the racial/ethnic makeup of resident households. In addition, all Resident Advisory Boards should be required to meet the requirements concerning the structure and selection of authority-wide resident councils contained in 24 CFR part 964.

*Response.* Resident Advisory Boards should not be viewed as a totally new concept. Both PHAs and public housing residents have experience with similar boards through resident councils. One of the responsibilities of resident councils is to advise PHAs in all aspect of public housing operations. Given the experience to date between PHAs and resident councils, HUD declines to provide more specific guidelines regarding representation. It is important to note, however, that the final rule provides for appointment of a jurisdiction-wide resident council that complies with HUD's regulations in 24 CFR part 964, or its representatives as the Resident Advisory Board. If a jurisdiction-wide resident council does not exist, local resident councils that are in compliance with part 964 shall be appointed, provided that the PHA may require the local council to choose a limited number of representatives. The PHA may appoint other members only to cover public housing or section 8 families not represented by a tenant council that complies with 24 CFR part 964.

*Comment.* It will take time for PHAs to include Section 8 participants in Resident Advisory Boards. PHAs should be required to address how they will address Section 8 participation in the Plan, but actual participation should not be required for the initial submission.

*Response.* HUD does not believe that the inclusion of Section 8 participants

in Resident Advisory Boards will take such time that PHAs will be unable to rely on this type of resident involvement in its first plans, especially considering that the first plan submission dates have been delayed by HUD.

*Comment.* The final rule should not require PHAs that already have resident councils to form Resident Advisory Boards. The final rule should specify, however, that any resident councils that are appointed as Resident Advisory Boards can be expanded and that PHAs can use both resident councils and Resident Advisory Boards.

*Response.* The statute provides for formation of Resident Advisory Boards. HUD's PHA Plan regulation, however, requires PHAs to appoint existing resident councils as Resident Advisory Boards when these councils meet the statutory and regulatory requirements.

*Comment.* There should be no automatic appointments to Resident Advisory Boards. The interim rule places too great a burden on PHAs to ensure compliance with 24 CFR part 964 and may lead to perception that PHAs are intruding into the internal workings of resident councils. Using resident councils as Resident Advisory Boards is unwieldy—a resident council could consist of as many as 50 residents. The Public Housing Reform Act does not require that any particular group have an absolute right to serve. HUD should leave it up to PHAs to design their own Resident Advisory Boards.

*Response.* HUD believes that the rule is clear on the appointment of Resident Advisory Boards. The rule provides that if a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where necessary. If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives. The PHA would appoint other representatives of families not represented by qualifying resident councils. HUD believes that this best supports the purposes and administration of part 964, which is the

only regulation specifically protected by the Public Housing Reform Act.

*Comment.* Participation by Section 8 participants is not required by Public Housing Reform Act. Section 8 participants have little significant relationship with a PHA after initial lease up, and Section 8 program lacks the communication structure of public housing. Section 8 participants should not be included in Resident Advisory Board requirement.

*Response.* Section 8 tenant-based assistance is covered by the PHA planning process. HUD believes that it is important that Section 8 participants are therefore included in this process as well.

*Comment.* A PHA's city-wide resident council is an appropriate entity to discuss the Plan. Why does HUD require the group to change its name when it is discussing the Plan? It will only serve to confuse.

*Response.* There is no requirement for a resident council to change its name. The statute uses the term Resident Advisory Board and describes specific functions that the Resident Advisory Board must perform. The city-wide council need not change its name to Resident Advisory Board, but it should be clear to the residents that the council has been appointed the Resident Advisory Board as provided by the statute.

*Section 903.15 What is the Relationship of the Public Housing Agency Plan to the Consolidated Plan?*

*Comment.* Several comments were directed to the requirement that the PHA plan be consistent with the Consolidated Plan. These comments raised the following issues. Consistency should be defined as broadly as possible and should be worked out at the local level. HUD official who approves Consolidated Plan should be the same official who determines consistency. HUD should give examples of what it considers to be consistent Plans. Thirty days should be adequate for local government review Plan and certify that it is consistent with Consolidated Plan. HUD should work with States to ensure a workable process of determining consistency with Consolidated Plan.

*Response.* HUD appreciates these comments and agrees that consistency should be worked out at the local level. HUD, therefore, declines to include a definition in the rule.

*Comment.* HUD should devise an appeals process or a waiver of certification process to resolve disputes between Consolidated Plans and PHA Plans. There are several concerns about the Consolidated Plan process. For

example, what if PHAs are not given adequate notice of the State process and Consolidated Plan does not adequately cover housing needs? What if the PHA Plan has to be consistent with various Consolidated Plans? What if the Consolidated Plans are themselves not consistent? What if a city's goals are not consistent with a PHA's goals and the PHA's goal are more consistent with national goals?

*Response.* HUD will take these comments into consideration but HUD is not adopting these concerns in this final rule. HUD notes that the statute requires a PHA Plan to be consistent with the consolidated plan and does not provide for exceptions. HUD believes that any inconsistencies between a PHA's plan and the Consolidated Plan would probably surface during the public hearing process. HUD also notes that the Consolidated Plan process is subject to HUD's regulations in 24 CFR part 91, which require public participation and consultation. Before adopting regulatory measures to address possible inconsistencies, HUD would like experience with the PHA planning process first to determine if there are these problems as suggested by the commenters, and these problems would not be resolved by either of the public participation and consultation processes that govern the Consolidated Plan and the PHA Plan.

*Comment.* The interim rule is not clear about what happens if the Consolidated Plan has expired. HUD should allow PHAs to certify that there is no active Consolidated Plan.

*Response.* Once a Consolidated Plan, once approved, continues in existence until a new or updated Consolidated Plan is submitted and approved.

*Comment.* If a deconcentration plan is inconsistent with Consolidated Plan's identified needs, PHAs should be required to explain steps taken to address this impact.

*Response.* PHAs are required to indicate why they chose the strategy they did for addressing housing needs.

*Section 903.17 Must the PHA Make Public the Contents of the Plans?*

*Comment.* Notices should be given to other organizations and agencies, such as legal services organizations, welfare agencies, local governments, and non-profit housing providers. Copies of Plans should be available at no cost to those who cannot afford to pay.

*Response.* With respect to notification about the plan to other organizations and agencies, the final rule requires PHAs to undertake reasonable outreach to encourage participation. With respect to copies of the plan, the final rule is

clear that this information must be available for public review.

*Comment.* The final rule should specify that notices must be in compliance with State public meeting laws.

*Response.* HUD need not adopt this requirement in the rule. PHAs must operate in accordance with applicable State laws.

*Comment.* The final rule should provide PHAs with alternate ways to provide residents with notice.

*Response.* The rule tracks the statutory requirement, and makes clear the extent of the public's opportunity for participation in the PHA Plan process. PHAs are encouraged to contact residents about the PHA plan and the public hearing process in ways that the PHA believes will provide for wide dissemination of this information and better solicit interest.

*Comment.* The final rule should require that the notice list the components of the Plan so that the public is clear as to the purpose of the Plan. The notice should also make clear that this is the public's only opportunity to comment.

*Response.* HUD declines to adopt such a requirement in the final rule. PHAs are welcome to list the Plan's components in the notice and are also encouraged to emphasize to the public that the hearing is the opportunity for the public to provide comments and have input before the plan's adoption.

*Comment.* The final rule should require a PHA Board to wait 30 days after the public hearing before it can approve the Plan).

*Response.* HUD declines to adopt this requirement. The 30-day wait may be a delay that is unnecessary given local circumstances. The public housing residents, the public and local officials may be totally supportive of the plan, and under these circumstances a 30-day delay for submission of the plan would serve no clear purpose.

*Comment.* The final rule should provide for public participation during the development of the Plan, not just when the Plan is ready to be adopted.

*Response.* The rule reflects the statutory requirement. HUD declines to impose a public participation requirement beyond that established by statute. PHAs, however, are free to involve the public in the development of the plan beyond the requirements imposed by the statute.

*Comment.* Some commenters suggested that the 45-day notice requirement should be reduced to 15 days. One commenter suggested that the requirement should be increased to 60 days.

*Response.* The 45-day notice requirement is set by statute. While HUD could extend the time period, HUD cannot reduce this period. The final rule reflects HUD's decision to adhere to the minimum statutory time period.

*Comment.* Items submitted in advance of the Plan, such as deconcentration policies and new preferences, should not be accepted without input from Resident Advisory Boards and public comment.

*Response.* All items that are part of the PHA Plan, regardless of whether submitted in advance, are subject to Resident Advisory Board input and the public hearing process.

#### *Section 903.21 May the PHA Amend or Modify the Plan?*

*Comment.* Several concerns were raised about the PHA's amendment or modification of the plan. Concerns were as follows. Section 903.21(a) may strip a PHA's executive director of the authority to reasonably modify certain policies, rules, or regulations without formal Board approval. Further, the final rule should clarify that a "duly called" meeting is not subject to the 45-day notice requirement. Section 903.21(b) will significantly slow implementation of changes by giving HUD 75 days to review amendments or modifications to the Plan. The final rule should delete this provision and, instead, require PHAs to submit significant changes as part of next Annual Plan. The final rule should require that only modifications to the mission statement be provided to HUD for approval. HUD should not be allowed more than 30 days to approve/disapprove amendments. The final rule should provide that when PHAs amend or modify a Plan, the public should be given 45 days notice of the meeting to discuss the change. The notice should include a description of any proposed changes.

*Response.* These requirements and time period with which the commenters are concerned derive directly from the statute, and track the statutory language.

*Comment.* Section 903.21 does not track all the required statutory language. In particular, § 903.21 does not include the requirements to meet with Resident Advisory Boards and to conduct a public hearing process.

*Response.* Consultation with the Resident Advisory Board is covered in § 903.13, and the public hearing process is covered in § 903.17.

*Comment.* Amendments should not be necessary for any changes made in response to HUD actions or decisions.

*Response.* Depending upon HUD's actions or decisions regarding its review of the PHA Plan, a PHA's failure to amend its Plan in response to HUD actions or decisions may mean that the PHA does not have an approved plan. If HUD's action requires no discretionary PHA action, no amendment would be required. Section 903.23 addresses these issues.

*Comment.* PHAs should be able to inform HUD of any modifications in the yearly progress report.

*Response.* PHAs are free to inform HUD of any modifications in its yearly progress report, but PHAs must comply with the provisions of the PHA Plan regulation for significant amendments and modifications.

*Comment.* The amendment process should not interfere with the day-to-day operations of a PHA.

*Response.* None of the PHA planning process should disrupt the day-to-day operations of a PHA. The PHA plan should contribute to more effective operations.

*Comment.* The final rule should require that Resident Advisory Boards be included in the amendment or modification process.

*Response.* The statute provides for this and the rule reflects this requirement.

#### *Section 903.23 What is the Process by Which HUD Reviews, Approves, or Disapproves an Annual Plan?*

*Comment.* HUD should indicate that any provisions of the Public Housing Reform Act that are not yet fully implemented by HUD and are components of the Plan will not be considered in the approval process.

*Response.* The PHA Plan template addresses what is currently required to be included in the PHA Plan. As provisions of the Public Housing Reform Act become implemented and are required by statute to be included in the PHA Plan, the template will be updated to reflect these provisions, and PHAs will be notified.

*Comment.* HUD should use a checklist to conduct reviews of Plans, and this checklist should be distributed to PHAs.

*Response.* The PHA Plan template serves as the checklist that will guide HUD in reviewing PHAs plans.

*Comment.* Troubled PHAs should not be "deemed approved" if HUD does not respond in 75 days. Section 511 contains exceptions for troubled PHAs. HUD needs to add language to § 903.23 to address this issue.

*Response.* The PHA Plan final rule reflects the exceptions for troubled PHAs provided in section 511(i)(4)(A).

*Comment.* In the initial year, HUD should not penalize PHAs for late or incomplete Plans. Generally, HUD should not penalize PHAs for late or incomplete Plans who make a good faith effort to comply.

*Response.* For the initial PHA plans, HUD has delayed the date of first submission as provided in the September 21, 1999 rule. Additionally, the PHA Plan template makes preparation and submission of the Plan much easier. With the template and additional time to prepare and submit plans, HUD does not believe that PHAs will be late or plans will be incomplete.

*Comment.* The final rule should clarify what the process is when HUD does not approve a Plan.

*Response.* HUD's notice to the PHA disapproving the plan will not only advise the PHA of the reasons for the disapproval but what action the PHA needs to take to obtain approval.

*Comment.* Based on experiences with MTCS and the physical inspection process, HUD has problems improving the accuracy of its information about PHAs. HUD should provide a mechanism for resolving disputes over inconsistencies in information contained in HUD databases. HUD should be required to identify the specific information it says is inconsistent and give PHAs the opportunity to corroborate or correct the information.

*Response.* The relevancy of this comment to the PHA Plan rule is not totally clear. HUD notes, however, that its physical inspection process has a mechanism for resolving disagreements over claims that information in HUD databases is inaccurate. This process is part of the Public Housing Assessment System. HUD has similar systems for correcting inaccurate information in other programs.

*Comment.* The final rule should provide a means for technical corrections, re-submission, and conditional approval if HUD review shows a need for minor changes.

*Response.* For minor changes, HUD believes that a formal process mandated by regulation is not necessary. HUD and PHAs should be able to easily address technical corrections and any necessity for minor changes.

*Comment.* Complaints about PHA non-compliance with the Plan should have to pass a materiality test before disrupting the HUD approval process.

*Response.* The regulation does not provide that any complaint about a PHA's non-compliance with the Plan will disrupt the HUD approval process. Whether a complaint is filed with HUD during the review process or after HUD

approval has been given, HUD will investigate, but this investigation will not interfere with HUD's responsibilities to PHAs either as part of the PHA plan review and approval process or in other areas. When the investigation is complete, and a finding made, HUD will take appropriate action if action is required.

*Comment.* The final rule should make clear that a PHA will not need HUD approval for anything the PHA does not currently need HUD approval for.

*Response.* This is a broad statement but HUD believes that with respect to the PHA plans, the rule is clear on what requires HUD approval. This rule, however, only addresses the PHA Plan requirements.

#### *Section 903.25 How Does HUD Ensure PHA Compliance With its Plan?*

*Comment.* The final rule needs to contain more detail on how HUD will measure PHA compliance and what actions will be taken if a PHA is not in compliance.

*Response.* For the majority, if not all, of the elements that constitute the PHA Plan, compliance is measured by a PHA's compliance with existing program regulations. The PHA Plan brings together in one source, the PHA's policies, financial information, operating procedures, grievance procedures, and similar information, but a PHA's compliance with these policies or procedures is covered by other program regulations. Therefore, assuming that a PHA has an approved PHA Plan and follows it, a PHA's compliance will be measured by the PHA's compliance with existing program regulations.

*Comment.* HUD should refrain from taking enforcement actions against PHAs and should use the Plan for monitoring purposes only. The final rule should provide a process, similar to the one at 24 CFR part 135, subpart D, for receiving complaints against non-complying PHAs.

*Response.* HUD believes that its response to the preceding comments covers these issues as well. HUD's enforcement actions will largely be based on a PHA's compliance with existing program regulations.

## **VI. Findings and Certifications**

### *Paperwork Reduction Act*

The information collection requirements for the interim rule were approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and have been assigned OMB

Control Number 2577-0226. Changes made to the information collection requirements at the final rule stage are not yet approved. The approval when received will be announced by separate notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

### *Executive Order 12866*

This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington DC, 20410.

### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule implements, by statutory directive, a comprehensive planning system for PHAs (which also provides for a consolidated statement of PHA policies on various PHA operations) and also provides a consolidated reporting mechanism. The PHA plans ultimately should minimize administrative burden on all PHAs, including small PHAs, consistent with reasonable accountability. HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. In this regard, the final rule provides for submission of a streamlined plan by small entities. For all PHAs, HUD's PHA plan electronic template, issued July 30, 1999, significantly reduces the burden of preparation and submission of the PHA Plan.

### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal

government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule pertains solely to Federal assistance and no programmatic or policy changes would result from this final rule that affect the relationship between the Federal Government and State and local governments.

#### *Environmental Impact*

A Finding of No Significant Impact with respect to the environment was prepared at the interim rule stage, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule, and 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.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

#### **List of Subjects in 24 CFR Part 903**

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements

For the reasons stated in the preamble, HUD adopts as final, the interim rule published on February 18, 1999 (64 FR 8170), by revising 24 CFR part 903 to read as follows:

#### **PART 903—PUBLIC HOUSING AGENCY PLANS**

- 903.1 What are the public housing agency plans?
- 903.3 When must a PHA submit the plans to HUD?
- 903.5 What information must a PHA provide in the 5-Year Plan?
- 903.7 What information must a PHA provide in the Annual Plan?
- 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?
- 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?
- 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan.

- 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?
- 903.17 What is the process for obtaining public comment on the plans?
- 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?
- 903.21 May the PHA amend or modify a plan?
- 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?
- 903.25 How does HUD ensure PHA compliance with its plans?
- Authority.** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

#### **§ 903.1 What are the public housing agency plans?**

- (a) There are two public housing agency plans. They are:
- (1) The 5-year plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every 5 PHA fiscal years; and
- (2) The annual plan (Annual Plan) that the PHA must submit to HUD for each fiscal year for which the PHA receives:
- (i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or
- (ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).
- (b) The purpose of the plans is to provide a framework for local accountability and an easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning its operations, programs and services.
- (c) HUD may prescribe the format of submission (including electronic format submission) of the plans, as well as the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.
- (d) The requirements of this part only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.
- (e) In addition to the waiver authority provided in 24 CFR 5.110, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary

determines that such waiver is necessary for the effective implementation of this part.

(f) References to the "1937 Act" in this part refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

#### **§ 903.3 When must a PHA submit the plans to HUD?**

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning January 1, 2000. The first 5-Year Plans for such PHAs are due on December 1, 1999. For PHAs whose fiscal years begin after January 1, 2000, the 5-Year Plans are due no later than 75 days before the commencement of their fiscal year. For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(2) PHAs may choose to update their 5-Year Plans every year as good management practice. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans.

(b) *The Annual Plan.* The first fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first Annual Plans for such PHAs are due December 1, 1999. For PHAs whose fiscal years begin after January 1, 2000, the first Annual Plans are due 75 days in advance of PHAs fiscal year commencement dates. For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due 75 days in advance of the commencement of a PHA's fiscal year.

#### **§ 903.5 What information must a PHA provide in the 5-Year Plan?**

(a) A PHA must include in its 5-Year Plan for the 5 PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD, a statement of:

- (1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and
- (2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, PHAs must adopt quantifiable goals and objectives for serving those needs wherever possible.
- (b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year

Plans, in addition to addressing its mission, goals and objectives for the next 5 years, must address the progress it has made in meeting the goals and objectives described in its previous 5-Year Plan.

**§ 903.7 What information must a PHA provide in the Annual Plan?**

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan submission date, of the information, described in this section that must be included in the first Annual Plan, and any additional instructions or directions that may be necessary with respect to preparation and submission of the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. Additionally, the information that the PHA must submit for HUD approval under the Annual Plan are the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these components. The PHA's Annual Plan also must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) on this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data. The identification of housing needs should address issues of affordability, supply, quality, accessibility, size of units and location. The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and

the PHA's reasons for choosing its strategy.

(b) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(c) *A statement of the PHA's policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies governing resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any assignment and occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act. The requirement to submit PHA policies governing assignment only applies to public housing. This statement also must include the following information:

(1) The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing projects. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act. This section permits PHAs to establish a system of site-based waiting lists that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes

and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that such adoption is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD; and

(C) Taking any steps necessary to remedy the problems surfaced during the review and the steps necessary to affirmatively further fair housing.

(2) The PHA's admissions policy with respect to deconcentration of very low-income families and income-mixing, as required by section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n). To implement this requirement, which is only applicable to public housing, PHAs must:

(i) Determine and compare the relative tenant incomes of each development occupied predominately by families with children. PHAs shall be considered to be in compliance with these requirements if they determine the average household income in all such developments combined and define higher-income families as those with incomes over this average, higher-income developments and buildings as those where the average family income is over this average, lower-income families as those with incomes under this average and lower-income developments and buildings as those where the average family income is under this average;

(ii) Consider what admissions policy measures or incentives, if any, will be needed to bring higher-income families into lower-income and buildings developments and lower-income families into higher income developments and buildings. PHA policies must devote appropriate attention to both of these goals. PHA policies must affirmatively further fair housing; and

(iii) Make any appropriate changes in their admissions policies.

(3) The policies governing eligibility, selection and admissions are applicable to public housing and tenant-based assistance, except that the information requested on site-based waiting lists and deconcentration, which information is applicable only to public housing.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that pertain to rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA. The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation which includes cockroach infestation. Additionally, this statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(2) The information pertaining to PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information pertaining to PHA and program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. This includes public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only, this statement

describes the capital improvements necessary to ensure long-term physical and social viability of the public housing projects, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* (1) *Plan for Demolition/Disposition.* With respect to public housing only, a description of any public housing project, or portion of a public housing project, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) *Interim Plan for Demolition/Disposition.* Before submission of the first Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition/disposition. The interim plan must provide the required description of the action to be taken, include a certification of consistency with the Consolidated Plan, and description of how the plan is consistent with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25) except that if a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted. The actual application for demolition or disposition could be submitted at the same time or at a later date.

(i) *A statement of the public housing projects designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.* With respect to public housing only, this statement identifies any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated for occupancy only by the elderly families or only by families with disabilities, or by elderly families and families with disabilities or will apply for designation for occupancy by only elderly families

or only families with disabilities, or by elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e). The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) *A statement of the conversion of public housing to tenant-based assistance.* (1) This statement describes any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5), or the status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note), or describes that the PHA plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t). The statement also must include an analysis of the projects or buildings required to be converted under section 33. For both voluntary and mandatory conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion. The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(2) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.* This statement describes any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y)), or under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h)), or an approved HOPE I program (42 U.S.C. 1437aaa) or for any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z-4). The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.* With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments, and the plan must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(1) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(2) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see 24 CFR part 761).

(3) If HUD determines at any time that the security needs of a public housing project are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a-3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and also certify that it will affirmatively further fair housing. The certification is applicable to both the 5-Year Plan and the Annual Plan.

(2) PHAs shall be considered in compliance with the certification requirement to affirmatively further fair housing if they examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement, and maintain records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* The PHA's plan must include the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* To the extent not covered by other

components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

#### **§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?**

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled under section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), under the Public Housing Management Assessment Program (24 CFR part 901) or under the Public Housing Assessment System (24 CFR part 902) include its operating budget, and include or reference any applicable memorandum of agreement with HUD or other plan to improve performance and such other material as HUD may prescribe.

#### **§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled under section 6(j)(2); and

(3) PHAs that only administer tenant-based assistance and that do not own or operate public housing.

(b) All streamlined plans must provide information on how the public

may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. A streamlined plan must include the following information:

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHA's that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

**§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?**

(a) A Resident Advisory Board is a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking

into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section. If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on or more Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives.

(2) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board or Boards has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(3) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the Plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response

to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

**§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?**

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

**§ 903.17 What is the process for obtaining public comment on the plans?**

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

**§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?**

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

- (a) The PHA has conducted the public hearing;
- (b) The PHA has considered all public comments received on the plan;
- (c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

**§ 903.21 May the PHA amend or modify a plan?**

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

- (1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and
- (2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.
- (b) Each significant amendment or modification to a PHA Plan submitted to HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

**§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any significant amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD and with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(3) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iii) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the PHA submits the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that

were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(c) *Designation of due date as submission date for initial plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted on their due date (December 1, 1999 or 75 days before the start of the PHA fiscal year, as appropriate; see § 903.3).

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make its approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

**§ 903.25 How does HUD ensure PHA compliance with its plan?**

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

Dated: October 14, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

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