

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR-4707-P-01]

RIN 2577-AC32

Changes to the Public Housing Assessment System (PHAS)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Public Housing Assessment System (PHAS) regulation at 24 CFR part 902 to provide additional information, revise certain procedures and establish others for the assessment of the physical condition, financial condition, management operations, and resident services and satisfaction with services provided to public housing residents. This proposed rule takes into consideration additional examination of the PHAS by HUD, as well as comments and suggestions on the PHAS provided through research conducted with representatives of public housing agencies (PHAs) and public housing residents.

The purpose of the PHAS is to function as a management tool that effectively and fairly measures a PHA's performance based on standards that are uniform and verifiable.

DATES: *Comment Due Date:* April 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. Eastern time weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate Assessment Center (PIH-REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888)-245-4860 (this is 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 (this is a toll-free number). Additional information is available from the PIH-REAC Internet site, <http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:

I. Background

Regulatory Background

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established the PHAS, a new system for the assessment of America's public housing. Under the PHAS, HUD evaluates PHAs based on four key indicators: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' service and satisfaction assessment (through a resident survey). On the basis of these four indicators, PHAs receive a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. The PHAs that are designated high performers receive public recognition and relief from specific HUD requirements. The PHAs that are designated troubled or substandard receive remedial action.

The PHAS regulation became effective for all PHAs with fiscal years ending (FYE) on and after September 30, 1999.

To provide further information about the PHAS scoring process for each of the PHAS indicators, HUD published four scoring notices. The scoring notices which are periodically updated were first published on May 13, 1999: the Physical Condition Scoring at 64 FR 26166; the Financial Condition Scoring at 64 FR 26222; the Management Operations Scoring at 64 FR 26232; and the Resident Service and Satisfaction Scoring at 64 FR 26236.

On January 11, 2000 (65 FR 1712), HUD issued a final rule that made certain amendments to the PHAS regulation applicable to PHAs with FYE on or after June 30, 2000. In the January 11, 2000, amended rule, HUD deferred full implementation of the PHAS for PHAs with FYE on September 30, 1999, and December 31, 1999. These PHAs would receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of part 902 and an overall PHAS advisory score.

On June 6, 2000 (65 FR 36042), HUD issued a technical correction to the January 11, 2000, final rule, and further deferred full implementation of the PHAS for PHAs with FYE through March 31, 2000. On May 30, 2001, HUD

issued a notice (66 FR 29342) further deferring full implementation of the PHAS until after June 30, 2001.

On March 15, 2002 (67 FR 11844), HUD issued a notice advising that the PHAS became effective for PHAs with FYE on September 30, 2001. All PHAs now receive an overall PHAS score based on the four PHAS indicator scores and a corresponding designation based on the overall score. The notice advised that PHAs with FYE on September 30, 2001, through and including September 30, 2002, would be assessed in accordance with the interim scoring procedures described in the scoring notices published in the **Federal Register** on November 26, 2001, at 66 FR 59084 for the Physical Condition Indicator and at 66 FR 59126 for the Financial Condition Indicator.

Then on August 30, 2002 (67 FR 55860), HUD published a notice that extended the interim scoring methodology to all PHAs with FYE December 31, 2002, March 30, 2003, and June 30, 2003.

Recommendations for Changes to the PHAS

Since its inception in 1998, the PHAS has been the subject of discussion and further consideration both internally within HUD, and among the public and the public housing industry. A report by the National Academy of Public Administration (Evaluating Methods for Monitoring and Improving HUD-Assisted Housing Programs, 2001), issued at the request of Congress, found that "the credibility of HUD's new system has been undermined by its adversarial relationship with many of the entities that implement HUD-assisted housing programs." They stated, "The Academy panel believes that HUD cannot achieve an effective, well-run quality-assurance program for its assisted housing programs without a more effective working relationship with the assisted housing industry. Improved working relationships are needed to raise the credibility of the assessment tools being used, reduce the administrative burden, and better align the system's goals with the outcomes that well-run assisted housing providers are trying to achieve. Failing this, the industry and HUD will continue to have unproductive confrontations over the assessment scores from HUD's new quality-assurance system." The Academy recommended that, "In consultation with all of the affected parties, HUD should proceed to refine and modify its current quality-assurance system * * *."

In 2001, the Department followed this recommendation and met with public

housing stakeholders (including representatives of PHAs, residents, housing advocacy representatives, governmental representatives, and other groups) to discuss specific PHAS concerns and possible solutions.

In the November 26, 2001, **Federal Register** notice proposing the interim scoring changes to the PHAS, the Department stated it expects to give extensive consideration to potential improvements in the PHAS, and that this consideration might lead to further changes in the PHAS.

II. Compliance Monitoring and Quality Assurance Procedures

As a companion to implementation of the PHAS regulation that assesses a PHA's performance, HUD is expanding its programs for PHA compliance and quality assurance (QA) reviews. This places additional emphasis on the principle that with increased PHA flexibility comes additional accountability.

HUD is also expecting more from itself through this increased emphasis on compliance and QA reviews, and is committing resources to both areas.

The process to select PHAs for compliance and QA reviews will minimize duplication of resources and repetition of reviews for PHAs. Both review areas will share information obtained during PHA reviews, thus increasing efficiency and streamlining HUD's accountability efforts.

A. Compliance Monitoring

HUD is introducing a new compliance monitoring initiative which is a management tool designed to focus and enhance HUD's compliance monitoring of PHAs.

This new PHA compliance monitoring initiative will determine a PHA's compliance levels and direct the compliance monitoring resources accordingly. HUD will look at pre-selected business flags in the individual PHAS indicators that are most related to issues of compliance. When the indicator flags indicate that a PHA may have compliance issues, that PHA will be referred to the appropriate field office for further observation. HUD will use this information to identify the PHAs that will be scheduled for on-site compliance reviews conducted by field offices, thereby more accurately deploying the Department's compliance resources.

HUD anticipates that field offices will conduct a minimum of 350 annual, on-site compliance reviews nationwide. Approximately 150 of the PHAs that receive 80 percent of all funds will be reviewed annually and approximately

200 of the remaining PHAs will be reviewed annually.

B. Quality Assurance Procedures

The QA procedures are designed to ensure that (1) Overall PHAS grades, as well as the individual indicator grades, are based on standards that are uniform and verifiable; and (2) the PHA maintains proper and accurate records supporting PHAS and Section 8 Management Assessment Program (SEMAP) certifications.

Each of the PHAS subsystems undergoes rigorous quality assurance to ensure fair and accurate scores. For the Physical Assessment Subsystem, the QA plan is a multi-step procedure that employs both automated and manual reviews, the cornerstone of which is the QA inspection process.

In the QA inspection process, trained HUD inspectors go on-site to verify the results of the physical inspections performed by HUD contract inspectors. These quality assurance reviews may be conducted at any time, including during the course of a property inspection, following an inspection, or as a separate analysis. The reviews seek to verify that the contract inspector has followed HUD's procedures and correctly assessed the property. An inspector who is not performing within HUD's protocol is subject to administrative action in the form of performance deficiency letters that may lead to decertification. Other measures in the QA plan include ongoing training of inspectors in HUD's protocol, and the use of automated systems that flag anomalies in the inspections as they are processed.

Another QA procedure is the new PHAS Exigent Health and Safety (EHS) certification review. This certification review, performed by HUD staff, validates certain information that the PHA has provided to HUD. It is an on-site property review of the EHS deficiencies cited in the property inspection reports against the PHA's certification that these deficiencies have been corrected. Annually, HUD will conduct certification reviews for a minimum of 25 percent of the PHAs that were assessed under the PHAS and certified to the correction of EHS deficiencies.

Both the Financial Assessment Subsystem and the Management Assessment Subsystem conduct automated reviews of all of their respective submissions when they are transmitted to HUD. This automated review is followed by a manual review. If corrections, changes, or further information are necessary, HUD contacts the PHA.

There also is an independent audit review of the PHA's financial submission and management operations submission. The Independent Public Accountant (IPA) or Certified Public Accountant (CPA) performs the PHA's annual audit reviews and verifies the supporting documentation for these submissions. Then, in the audited submission, the IPA/CPA reports any findings to HUD. When the findings indicate inaccuracies or discrepancies, HUD adjusts the financial indicator, management indicator, and overall PHAS grade.

For the Financial Assessment Subsystem, the Quality Assurance Subsystem (QASS) addresses the reliability of financial data collected and assessed by the PIH-REAC. The QASS staff conducts Quality Assurance Reviews (QARs) of IPA and CPA firms that perform financial statement and compliance audits of PHAs. The CPA firms are selected based on three established risk factors. These factors are: The number of audit clients; the total dollar amount (revenue and assets audited); and referrals from field offices, HUD management, or the PIH-REAC subsystems. Annually, the QASS staff performs a minimum of 15 reviews of CPA firms that audit PHAs. Teams of QASS auditors visit the firms and review a sample of audits and the associated working papers for compliance with professional auditing standards promulgated by the General Accounting Office and the American Institute of Certified Public Accountants (AICPA), as well as the Office of Management and Budget and the HUD audit requirements.

When the QASS team identifies material departures from professional standards the team recommends administrative sanctions which may include referrals to one or more oversight bodies, such as state boards of accountancy, the AICPA Professional Ethics Division, state societies of CPAs, and HUD's enforcement office.

The QA for the Resident Service and Satisfaction Subsystem includes a manual review of the random sample of addresses to ensure that they are complete and that there are no duplications. When the grade for the survey is generated, HUD performs a QA review of all grades of D or F to assure that the survey process was successful.

The final PHAS QA procedure is the seven-day field office review of a PHA's overall PHAS grade. All PHAs' grades are transmitted to the field office for this review period prior to release of the grade to the PHA.

In addition to the QAR reviews, the QASS staff also will perform two other

types of reviews, both of which are new. The first additional review is the PHA monitoring review using the OMB A-133 Compliance Supplement. All major requirements associated with PIH programs are covered in the OMB A-133 Compliance Supplement and the monitoring review is to verify the PHA's adherence with statutes, regulations, and contract provisions; verify the documents supporting the PHAS (*e.g.*, Management Operations (MASS) Certification) and SEMAP certifications; and verify the results of the testing that the PHA's CPA is to perform during the annual financial statement audit. The PHAs who will be visited for a monitoring review will be selected both randomly and through a targeted risk-based approach. Each year the QASS team will conduct approximately 45 to 50 monitoring reviews nationwide. Once again, these reviews will be coordinated with field office staff to avoid repetitive reviews at the same PHA. Reported PHA findings, including false MASS certification, will result in appropriate follow-up action by the field office staff, such as referral for limited denial of participation (LDP), suspension, or debarment. The QASS staff will follow-up with CPAs who are not conducting the appropriate compliance testing. Follow-up actions include, but are not limited to, referring the CPA to one or more oversight bodies and HUD's enforcement office and/or including the CPA firm in the risk ranking process for QARs.

The second type of new review performed by QASS staff is an internal control review of PHA service providers (*e.g.*, fee accountants). The QASS staff will perform independent internal control reviews of the largest PHA service providers and determine whether follow-up action is required. Depending on the deficiencies identified, referrals will be made to HUD's enforcement office for action if the PHA service provider failed to comply with HUD requirements.

III. Proposed Amendments to the PHAS

Policy Considerations

After further research involving public housing stakeholders, as well as far-reaching internal review, HUD has developed proposed amendments to the PHAS. These proposed amendments to the PHAS make important improvements to the system, while retaining the core principle of ensuring housing is decent, safe, sanitary, and in good repair for public housing residents.

HUD received suggestions for changes to the PHAS from representatives of the public housing industry, public housing

directors, HUD program experts, residents, and recommendations from the Millennial Housing Commission. HUD evaluated all of these suggestions in a deliberative process that led to this latest version of the PHAS. As a result, the Department has made numerous changes to the PHAS.

Above all, this proposed rule strives to be simpler to understand and utilize. It places more emphasis on assessing those items that directly affect day-to-day living conditions.

The proposed amendments to the PHAS retain the basic structure of the rule that they replace. A PHA will continue to be evaluated in four areas: physical condition, financial condition, management operations, and resident service and satisfaction. The PHAS continues to rely on information that is verifiable by a third party wherever possible, but with clearer QA standards.

Under current PHAS protocols, the evidence is clear there has been improvement generally in the management of the PHAs.

Recognizing this improvement, this proposed PHAS rule gives PHAs increased flexibility and regulatory relief without sacrificing accountability. Under the proposal, Grade A PHAs will be assessed less often. The physical inspection scoring process is revised and places a stronger emphasis on the concept of livability and the immediate correction of exigent health and safety deficiencies. In the financial assessment, four of the component thresholds have been lowered for Small and Very Small PHAs. In addition, the penalty for high liquidity and reserves is eliminated. Along with this additional flexibility and regulatory relief, the Department is placing increased accountability on PHAs for the information they supply. The Department expects the highest standards of integrity from providers of public housing. All information to which PHAs self-certify will be subject to audit and verification. When this information is false, fraudulent, or otherwise justifies enforcement, the Department will take aggressive action against those who would abuse the public trust. The Department has also increased the penalties for late submissions.

The proposed amendments to the PHAS are a collaborative effort between HUD and its partners. They have been developed out of mutual respect between HUD and the affected parties.

Highlights of Changes

Under the proposed rule, a PHA will receive letter grades of A, B, C, D, or F, and the frequency of assessments is

based on the designation. Under the current PHAS rule, a PHA receives numeric scores and is assessed annually. Further, under the proposed rule, a PHA will no longer be designated high performer, standard performer, or troubled. A PHA's designation will be a letter grade based on the overall PHAS grade and indicator grades. In addition to publishing the proposed amendments to the PHAS rule, HUD is also publishing five proposed grading notices for comment. Four of the notices explain the grading process for each of the four PHAS indicators, and there is one overall notice explaining the grading process in general.

All observed deficiencies determine the physical condition score under the current rule. Under the proposed rule, only observed deficiencies that primarily impact "livability" determine the property grade.

In the proposed rule, the penalty points under Current Ratio (CR) and Months Expendable Fund Balance (MEFB) for high liquidity or reserves are eliminated.

In the proposed rule, the management operations self-sufficiency sub-indicator has four components rather than a stand-alone sub-indicator. Furthermore, self-sufficiency questions have been added to the resident survey. The proposed rule changes the standards for rating vacant unit turnaround time, work orders, and annual inspection of dwelling units and building systems. The maximum time periods have decreased, and the percentages of units, and buildings and systems required to be inspected for a given grade have increased.

Currently, the Resident Service and Satisfaction (RASS) indicator points are apportioned between the survey, and the implementation plan and follow-up plan certification. Under the proposed PHAS, the entire RASS assessment is based on survey results. If the survey process is not properly managed as directed by HUD, the PHA shall receive a zero and a grade of F under this indicator.

Under the current PHAS rule, a PHA may be designated "troubled in one area" based on the physical, financial, or management score. In this proposed rule, a PHA may be referred to the appropriate HUD office for remedial action if it receives a grade of F in any one of the four PHAS indicators.

The point deductions from the overall PHAS score for any late submission under the current rule are replaced with grade deductions from the affected indicators under the proposed rule. When a submission is late, the time period for a presumptive rating of

failure for that indicator is changed from 90 days to 49 days.

Overview of Changes

The following paragraphs describe the significant changes that will increase the fairness and accuracy of the assessments, and allow for more flexibility and regulatory relief for PHAs, while at the same time holding them increasingly accountable for performance.

- Under the proposed PHAS system, PHAs would receive an overall PHAS grade, four indicator grades, and sub-indicator/component grades. This grading system would replace the scoring system of the current regulation. The grades would be A, B, C, D, and F. The sub-indicator/component grades would determine the indicator grade. The four indicator grades would determine the overall PHAS grade. The weight of each of the four indicators would remain the same, *i.e.*, 30 percent for the physical condition indicator, 30 percent for the financial condition indicator, 30 percent for the management operations indicator, and 10 percent for the resident service and satisfaction indicator. To implement the new grading approach for assessing PHAs, HUD will publish five proposed grading notices for comment in the **Federal Register**.

- A new assessment schedule is being proposed which recognizes and rewards superior performance. The frequency of a PHA's assessments would be based on its PHAS designation. All PHAs would be assessed under the four PHAS indicators in the first year after implementation of the revised PHAS rule. Each PHA's designation from that year would serve as its baseline. That baseline designation would determine the PHA's next PHAS assessments. When a PHA is designated Grade A, under this proposal the PHA will next be assessed in three years. When a PHA is designated Grade B, under this proposal the PHA will next be assessed in two years. When a PHA is designated Grade C, D, or F, under this proposal the PHA will be assessed the next year. Thereafter, the PHA's most recent designation would determine the intervals between PHAS assessments. These assessment intervals and the grading bands are modeled after those HUD uses for physical inspections of multifamily housing.

- The designations "high performer, standard performer, and troubled performer," would be replaced with grade designations. The grades proposed are A, B, C, D, and F, with A being the highest, similar to a "high performer"

under the current system, and F being the lowest.

- For a PHA that receives an overall PHAS grade of A, B or C, and that does not receive a grade of less than C in any of the indicators, the PHA's overall grade would serve as its designation. However, a PHA that receives a grade D in one or more indicators would be designated Grade D, regardless of the overall grade. Similarly, a PHA that receives a grade F in any of the indicators would be designated Grade F, regardless of the overall grade. Finally, a PHA that receives a grade F in the Capital Fund management operations sub-indicator would be designated Capital Fund Grade F. This proposed grading system reflects the principle that designations signify the level of risk HUD assigns to PHAs, rather than a subjective categorization of their overall performance. A PHA that is underperforming in one or more indicators is assumed to be at higher risk than a PHA that is performing at a level of least C across the indicators. The designations of Grade D or Grade F for PHAs that under-perform in one or more indicators will reflect that heightened level of risk and will serve to increase the level of attention these PHAs receive from HUD field offices and other interested parties.

- HUD would continue to assess the physical condition of properties in compliance with HUD's housing standard of decent, safe, sanitary, and in good repair. The characterization and reporting of the results, however, would be changed. The proposed approach would continue to use the existing inspection methodology but would place a stronger emphasis on the concept of livability and the correction of EHS deficiencies. Specific deficiencies that have a direct impact on residents would be identified and categorized in the new deficiency class "livability." All EHS deficiencies would remain the same and require immediate correction or remedy. Deficiencies not classified as directly affecting livability or EHS concerns would be recorded and reported to the PHA, but will not impact a property's assessment grade.

- Under the proposed livability concept, the existing property level numeric scoring approach would be changed to a letter-based grading system of A, B, C, D, and F. PHAS Indicator #1 grades would then be derived from the property grades. As in the current regulation, PHAS Indicator #1 grades for PHAs with more than one property would be calculated as a weighted average of the individual property results using the number of dwelling units in each property as weights.

- The grading scale for the six Financial Condition Indicator components would be redistributed to allow equal weight for the financial condition and the financial management of a PHA.

- In the financial condition assessment, the penalty points for PHAs with high liquidity or reserves under CR and MEFB would be eliminated. This will prevent PHAs with high liquidity or reserves from being unfairly penalized.

- The proposed rule would reinstitute the peer group and threshold assessment methodologies for the CR and MEFB components of the Financial Condition Indicator. A PHA will receive a letter grade of A, B, C, D, or F for each component.

- The proposed rule would establish an additional size category in the financial condition peer groupings. The Large size-based category (*i.e.*, those PHAs administering 1,250 to 9,999 units) will be divided into two large peer groups: Large (1,250–4,999 units) and Very Large (5,000–9,999 units). Further analysis demonstrates there is a statistically significant difference in distribution of component values between the Large and Very Large size categories, and that this will lead to a more accurate assessment.

- The assessment thresholds for four of the financial condition components would be less stringent for small PHAs (less than 250 units).

- The number of components in MASS sub-indicator #2, Capital Fund, is proposed to be reduced from five to two. The two components that assess a PHA's compliance with statutory requirements for expending (component #1) and obligating (component #2) capital funds would be retained. Grade A would be available to PHAs whose time for obligation and expenditure is extended because of those exemptions for obligation of funds that are provided in the statute, including an exemption that the Secretary may establish by notice. The Grade F standard would apply if there are unexpended or unobligated funds for any other reason.

- Recognizing the importance of self-sufficiency to improving the lives of residents of public housing, the proposed PHAS amendment places greater emphasis on assessing a PHA's performance under HUD's various self-sufficiency programs. The management operations self-sufficiency sub-indicator would be amended to better capture the PHA's performance in administering the various self-sufficiency programs. Questions regarding self-sufficiency would also be added to the resident survey, as residents' awareness of these

programs is key to their potential for success.

- The standards for rating vacant unit turnaround time, work orders, and the annual inspection of dwelling units and systems are proposed to be changed. The maximum time permitted before a PHA will receive a grade of F for vacant unit turnaround time and completion of work orders would be decreased, as would the maximum time permitted in order to receive the highest grade. The grades between these two extremes would be distributed accordingly. Similarly, the percent of dwelling units and systems that are required to be inspected before the PHA will receive a grade of F would be increased. These proposed standards more closely reflect the standards in the private rental market.

- Under the previous version of the PHAS, five of the available ten points in the RASS assessment went to the PHA for the follow-up plan and the implementation plan. To obtain a more accurate accounting of resident satisfaction, this assessment and the PHA's RASS grade would be based entirely on the responses to the resident survey, although, as a threshold matter, a PHA would receive a zero and a grade of F if it fails to implement the survey as HUD directs.

- As in the three other PHAS indicators, a PHA that receives a grade of F under the RASS indicator would be designated a Grade F PHA. All Grade F PHAs are referred to the appropriate HUD office for remedial action, including execution of a Memorandum of Agreement.

- The penalties for late submissions would be changed from point reductions to grade reductions. The time period before a PHA will receive a presumptive rating of zero for failing to make a submission would be reduced. In addition, the late penalties would apply to late submissions under each indicator. Accordingly, when a PHA submits its unaudited financial information or management certification more than 7 days after the submission due date, but no more than 21 days after that date, the PHA's grade for each indicator submitted late would be lowered one letter grade. When a PHA submits its unaudited financial information or management certification more than 21 days, but no more than 35 days after the submission due date, the PHA's grade for each indicator submitted late would be lowered two letter grades. When a PHA submits its unaudited financial information or management certification more than 35 days, but no more than 49 days after the submission due date, the PHA's grade

for each indicator submitted late would be lowered three letter grades. After 49 days, the PHA would receive a late presumptive rating of zero and a grade of F for each indicator submitted late.

IV. Section-by-Section Overview of the PHAS Amendments

To assist the reader in identifying those sections of the existing PHAS regulation that are proposed to be revised and the new sections that would be added, the following provides a section-by-section overview of the amendments being proposed by this rule.

Subpart A—General Provisions

Section 902.1 (Purpose and general description). Paragraph (a) would be amended to remove superfluous editorial comments pertaining to the purpose of the PHAS. Paragraph (b) would be removed because the Real Estate Assessment Center (REAC) is no longer independent of the Office of Public and Indian Housing (PIH). Following the administrative reorganization of HUD, REAC was incorporated into PIH. Paragraph (c), which briefly describes the PHAS Indicators, would be redesignated paragraph (b) and amended to add information pertaining to the objectives of each of the PHAS Indicators in former paragraphs §§ 902.20(a), 902.30(a), 902.40(a) and 902.50(a). Paragraph (d) would be redesignated paragraph (c) and amended to reflect the proposal that PHAs be graded and not numerically scored. The proposed rule would remove paragraph (e) pertaining to changes in a PHA's fiscal year end because it is no longer applicable.

Section 902.3 (Scope). This section proposes minor editorial changes.

Section 902.5 (Applicability). This section would be amended to clarify the applicability of the PHAS to resident management corporations (RMCs), direct-funded resident management corporations (DF-RMCs) and alternate management entities (AMEs). Paragraph (a) would be divided into new paragraphs (a) and (b). The information in paragraph (b) pertaining to implementation of the PHAS is proposed to be placed in paragraph (d). The information in paragraph (b) pertaining to the issuance of PHAS advisory scores is removed because it is no longer applicable.

Section 902.7 (Definitions). The proposed rule would delete the following definitions that are no longer applicable or are not used in the regulation: Occupancy loss; reduced actual vacancy rate within the previous three years; and tenant receivable

outstanding. The following definitions are proposed to be added: Annual contributions contract (ACC); Assistant Secretary; certification review; decent, safe, sanitary, and in good repair; entity-wide; family self-sufficiency; Grade A PHA; Grade B, C, or D PHA; Grade F PHA; Memorandum of Agreement (MOA); the acronym PIH-REAC; and self-sufficiency. The following definitions would be clarified and rewritten in plain language: adjustment for physical condition and neighborhood environment; deficiency; reduced average number of days non-emergency work orders were active during the previous three years; and work order deferred to the Capital Fund Program. Section 902.9 (PHAS grading). This proposed new section would explain the letter-based grading system and organize PHAS scoring information in a more logical fashion. Additionally, this section would consolidate general grading information in one location, rather than placing it at the end of the subpart for each Indicator. Proposed paragraph (a) briefly describes the grading process. Proposed paragraphs (b) and (c) include information about the distribution of PHAS indicator grades among the four indicators, and availability of grading notices that is in current §§ 902.25(a), 902.27, 902.35(a)(1), 902.37, 902.45(a), 902.47, 902.53(a)(2) and 902.55.

Section 902.10 (PHAS designation). This proposed new section presents the PHAS designation information in the first part of the regulation. The performance designations high performer, standard performer, and troubled, would be replaced by a grading system of the following letter grades: A, B, C, D, and F. Paragraphs (a) through (e) of this proposed section would contain amended information about the performance requirements for the PHAS designations that is in § 902.67(a), (b) and (c) of the current rule. Under this proposal, a PHA's designation would be A, B, or C, when its overall grade is an A, B, or C, and there are no indicator grades of D or F. A PHA would be designated a Grade D PHA if any of the indicator grades are a grade of D. A PHA would be designated a Grade F PHA if any of the indicator grades are a grade of F. If a PHA has a grade of F under the Capital Fund component of the management operations indicator, the PHA would be designated a Capital Fund Grade F PHA.

Section 902.13 (Frequency of PHAS assessments). This proposed new section would describe the revised frequency of PHAS assessments. Under the new PHAS, the frequency of

assessment would be based on the performance of the PHA.

Section 902.15 (Posting and publication of PHAS grades and designations). This proposed new section would include information about the provisions for posting and publication of PHAS grades that is in § 902.63(e) of the current rule. This section proposes that HUD will continue to post final PHAS grades on the Internet, but removes the existing provision that HUD will publish final overall PHAS grades in the **Federal Register**.

Subpart B—PHAS Indicator #1: Physical Condition

Section 902.20 (Physical condition assessment). This proposed rule would reorganize this section. Paragraph (a) pertaining to the objective of the physical condition assessment would be moved to new § 902.1(b)(2). Paragraph (b)(1) and § 902.24(a), which briefly describe the method of assessment, would be incorporated into new paragraph (a). Paragraph (b)(2) describing the assessments is proposed to be moved to § 902.24(a). New paragraph (b) would include the information about transmission of inspection results included in § 902.24(a)(3). New paragraph (c) would include information pertaining to the frequency of physical inspections. Paragraph (c) pertaining to physical inspection requirements would be redesignated paragraph (d). New paragraph (e) pertaining to HUD access to PHA properties would contain the information in § 902.24(d).

Section 902.23 (Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR)). The title for this section is proposed to be changed to “Inspectable areas.” Paragraph (a) would be revised because information regarding DSS/GR has been moved to § 902.7, “Definitions.” There would be minor editorial changes to paragraphs (b)(4) and (c), such as substituting the word “housing” with the term “PHA properties.”

Section 902.24 (Physical inspection of PHA properties). The information in current § 902.24(a) pertaining to inspection of PHA properties would be moved to § 902.20(a). The information in current § 902.23(a)(1) pertaining to PHA compliance with DSS/GR standards would be moved to proposed § 902.24(a). Proposed § 902.24(a) would also clarify that a random sample of dwelling units is to be inspected. Proposed §§ 902.24 (a)(1) and (2) pertaining to inspection of occupied units contain the information in current

§ 902.20(b)(2). The paragraph on off-line units currently in § 902.20(b)(2)(iii) would be revised to be more specific and would be located in § 902.24(a)(2)(iii) of the proposed rule. The information in current § 902.24 (a)(1) pertaining to inspector actions during a property inspection would be moved to new § 902.24(b). The information in current § 902.24(a)(2) pertaining to PHA notification of health and safety deficiencies would be moved to new § 902.24(c). Paragraph (c)(1) would state the requirement that PHAs correct all health and safety deficiencies. Paragraph (c)(2) would address procedures for EHS deficiencies. Each PHA must correct all EHS deficiencies within 24 hours and must certify to HUD that the corrections have been made. HUD will provide additional guidance on the certification requirements. Section 902.24(a)(3) pertaining to inspectors transmitting inspection results to HUD would be moved to new § 902.20(b). Section 902.24(b), entitled “definitions,” would be redesignated new § 902.24(d). This paragraph would be amended to remove the reference to the publishing for comment of significant amendments in the definition for “Dictionary of Deficiency Definitions.” The references to publishing proposed amendments to the Dictionary of Deficiency Definitions for comment would be moved to new § 902.24(e). The definitions for criticality, Item Weights and Criticality Levels Document, normalized weights, score, and sub-area are removed because they are no longer applicable. The definitions for base grade, deficiency classification, Deficiency Classification Summary Document, grading class, livability, property grade, property livability points, and PHAS Indicator #1 grade are added. Section 902.24(c) pertaining to civil rights and nondiscrimination compliance would have minor editorial changes and would be redesignated § 902.24(f). Section 902.24(d) regarding access to properties would be moved to new § 902.20(f).

Section 902.25 (Physical condition scoring and thresholds). The title for this section would be changed to “Adjustments to physical condition property grade.” Paragraph (a) pertaining to the Federal Register Scoring Notice (now Grading Notice) for the physical condition indicator would be moved to the new § 902.9(c). As proposed, § 902.25(a) would only address the adjustments for physical condition and neighborhood environment currently in § 902.25(b). The portion of paragraph (b) describing adjustments would be moved to

paragraph (a), with editorial changes. The content of current paragraph (b)(1) would be removed. The definitions currently in paragraph (b)(2) would be moved to paragraphs (c)(1) and (2), with changes. Specifically, property age and percentage of families with incomes below the poverty rate would no longer be used as factors for the physical condition adjustment. Instead, the physical condition adjustment would apply to properties with documented design or structural defects that a PHA cannot correct, and the neighborhood environment adjustment would apply to documented conditions existing in the immediate surrounding neighborhood such as a landfill, floodplain, or other environmentally hazardous area. Current paragraph (b)(3) would become paragraph (b), rephrased in terms of a one-letter grade adjustment, and revised to remove the reference to property age and to add the concept that the adjustment would be determined by HUD on a case by case basis. Material on scattered-site properties, currently in paragraph (b)(4), would be deleted. Paragraph (b)(5), on supporting documentation, would be redesignated paragraph (e), with editorial changes. Proposed new paragraph (d) would clarify that a PHA would certify to the adjustment for physical condition and/or neighborhood environment as part of the management operations submission. Paragraph (c) regarding database adjustments would be redesignated as § 902.26. Current § 902.25(d) regarding overall physical inspection score would be moved to new § 902.28(d). The provision in current § 902.25(e)(1) establishing the number of points (now percentage of grade) for this indicator would be moved, with changes, to new § 902.9(b)(1). Paragraph (e)(2) pertaining to score (now grade) thresholds would be moved, with changes, to proposed § 902.29.

Section 902.26 (Physical inspection report). The title for this section would be changed to “Database adjustments to physical condition assessments” to reflect that this section now only addresses database adjustments. The information in paragraph (a) that describes the physical inspection report would be moved to proposed new § 902.27. Paragraphs (a)(1) through (a)(5) pertaining to reinspections when EHS deficiencies are corrected are proposed to be removed. The provisions in paragraphs (a)(1) through (5) have not been used by PHAs, and therefore are proposed to be replaced by provisions elsewhere in the proposed rule that are more beneficial to PHAs. Section 902.25(c) describing database

adjustments to physical inspection scores (as proposed, “grades”) would be reorganized and redesignated as § 902.26 (a) through (d). The language would be amended to clarify the circumstances in which a PHA may request a database adjustment.

Section 902.27 (Physical condition portion of total PHAS points). The title for this section would be changed to “Physical inspection report.” The material in § 902.26(a) that describes the physical inspection report would be moved to proposed § 902.27(a). The section would reflect the proposed new scoring based on grade and livability and the changes to the inspection report.

Section 902.28 (Overall Physical Condition Indicator grade). This is proposed as a new section. Paragraph (a) would describe the new system of property grades. Paragraph (b) would describe the impact of EHS deficiencies on property grades. Paragraph (c) would describe the requirements and consequences of PHA certification to EHS corrections, and to adjustments to physical condition and neighborhood environment. Paragraph (d) pertaining to the overall Physical Condition Indicator grade would contain the information in current § 902.25(d), with revisions reflecting the new grading system for PHA properties.

Section 902.29 (Threshold). This proposed new section would contain information pertaining to the performance threshold, currently found in § 902.25(e), revised to reflect the proposed grading system.

Subpart C—PHAS Indicator #2: Financial Condition

Most of the changes proposed to Subpart C are to provide clarification to the current regulation. Three of the changes would amend the financial condition grading. First, the reference in § 902.35(a)(3) to penalty points for PHAs with high liquidity or reserves under CR component and MEFB component would be eliminated. Second, the proposed § 902.35(d) amends the Occupancy Loss (OL) component to clarify that the calculation for OL would not include Section 8 assistance. Third, the grading thresholds for four of the components would be made less stringent for small PHAs (less than 250 units). Further changes to the financial condition grading will be provided in a separate PHAS Notice on the Financial Condition Grading Process.

Section 902.30 (Financial condition assessment). Paragraph (a) pertaining to the objective of the financial condition assessment would be moved to proposed § 902.1(b)(2). Proposed

§ 902.30(a) would state the annual financial filing requirement for both the unaudited and audited financial information, currently found in § 902.33(b) and (c). Proposed paragraph (b) contains the requirement for an IPA or CPA to certify to audited financial submissions. Proposed paragraph (c) contains the requirements and format of the financial information. Proposed paragraph (d) would list the components of the financial condition indicator. Proposed paragraph (e) would describe the annual electronic submission requirement for financial information.

Section 902.33 (Financial reporting requirements). The title for this section is proposed to be changed to “Financial condition grading.” Sections 902.33(a), (b), and (c) of the current rule would be moved to § 902.30 of this proposed rule. Proposed §§ 902.33(a) and (b) pertain to grading. The information in those sections is analogous to current § 902.35(a) on scoring, amended to clarify the role of peer groups in financial grading. Proposed paragraph (c) pertains to grade adjustments after submission of audited financial information, similar to § 902.63(b) of the current rule.

Section 902.35 (Financial condition scoring and thresholds). The title for this section is proposed to be changed to “Financial condition components.” Section 902.35(a) would be removed and replaced by proposed §§ 902.33(a) and (b). Section 902.35(a)(1) would be removed. Similar content would be reflected in the proposed rule § 902.9(c) on grading procedures, and § 902.33 on financial condition grading. Paragraph (a)(2), regarding PHAS advisory scores, is proposed to be removed because it is no longer applicable. Paragraph (a)(3) regarding penalty points for PHAs with high liquidity or reserves under CR component and MEFB component is proposed to be removed. HUD will no longer penalize a PHA for having high liquidity or reserves under either the CR component or MEFB component.

Section 902.35, as proposed, would only describe the six components of PHAS Indicator #2. The six components would remain the same as in current § 902.35(b) except for revisions to the Occupancy Loss component in proposed § 902.35(d) (currently in § 902.35(b)(4)).

Section 902.37 (Financial condition portion of total PHAS points). The title for this section would be changed to “Threshold.” This section is analogous to current § 902.35(c), revised to reflect the grading system.

Subpart D—PHAS Indicator #3: Management Operations

The Management Operations Indicator would be significantly changed, with new sections describing the general requirements for management operations assessments and grading. Two new components would be added, evaluating a PHA’s performance in the areas of income verification (#7) and tenant rent calculation (#8), in compliance with the President’s management agenda goal of reducing overpayments of rent subsidies. Each of the eight sub-indicators, including their components, specific exemptions, and grades are described in a separate section in this proposed rule. Each sub-indicator would be of equal weight. More detailed information is provided in the PHAS Notice on the Management Operations Grading Process.

Section 902.40 (Management operations assessment and performance standards). Paragraph (a) pertaining to objectives of the management operations assessment would be incorporated into proposed § 902.1(b)(3). Proposed § 902.40(c) lists the management operations sub-indicators, as well as the specific exemptions for two of the sub-indicators, the components and the ratings, of each sub-indicator and/or component. The grading for management operations would be a scale of grades A, B, C, D, and F. All of the sub-indicators would be graded either under the A, B, C, D, F scale, the A, C, F scale, or, in the case of the Capital Fund sub-indicator, the new rent and income verification sub-indicators, and two components of the security sub-indicator, on an A and F scale. Proposed paragraph (d) states that in the case of PHAs reviewed less often than annually under proposed § 902.13(a), the management operations certification shall include only information for the assessed fiscal year. Proposed paragraph (e) states the HUD existing requirement that the management operations submission is subject to the PHA’s annual audit. It would provide for HUD on-site review of the submission and supporting documentation. Paragraph (e) also proposes consequences for failure to maintain supporting documentation.

Section 902.41 (Management operations sub-indicator #1—vacant unit turnaround time). This proposed new section would state the specific exemptions for the vacant unit turnaround time sub-indicator, as well as guidance for maintaining documentation to support such exemptions (see proposed § 902.41(a)).

This section would make one important change to current practice. Where it is currently HUD's practice to exempt employee occupied units from the unit turnaround time calculation, as provided at 24 CFR § 901.10, proposed § 902.41(a) would not retain that exemption. Proposed § 902.41(e) would state the standards for grades A, B, C, D, and F.

Section 902.42 (Management operations sub-indicator #2—Capital Fund). This sub-indicator would be changed from five components to two components in accordance with § 9(j) of the 1937 Act as amended by § 519 of the Quality Housing and Work Responsibility Act of 1998, Pub. L. 105–276 (approved Oct. 21, 1998) (QHWRA). Section 9(j) specifically states the time limits for expenditure and obligation of funds to be four years and two years, respectively, except for extensions or waivers as approved by the Secretary. Section 9(j) also provides that the Secretary shall enforce the expenditure and obligation requirements. Therefore, the proposed rule would follow closely the requirements of section 9(j). The three components that would be eliminated are budget controls, quality of the physical work, and contract administration. The two components that would be measured are timeliness of expenditure of funds and timeliness of obligation of funds. This sub-indicator, and its components, would be graded on an A and F scale. This sub-indicator would be automatically excluded if a PHA chooses not to receive capital funding under § 9(d).

Section 902.43 (Management operations performance standards). The title for this section would be changed to "Management operations sub-indicator #3—work orders." This proposed rule would redesignate §§ 902.43(a)(1) through 902.43(a)(5), which describe the management operations sub-indicators, as §§ 902.41 through 902.46, respectively, and would move § 902.43(b)(2) pertaining to requests for manual rather than electronic submissions to § 902.60(a).

As proposed, § 902.43 describes work orders, and states the standards for grades A, B, C, D, and F. The standards for component #1, emergency work orders, would remain the same as the current standard, which is similar to the standard for indicator number four in the Public Housing Management Assessment Program (PHMAP) regulation, 24 CFR 901.25(a). The Grade F standard would apply when less than 96 percent of emergency work orders were completed or the emergency was abated within 24 hours or less. The standards for non-emergency work

orders (component #2) would be shortened. The standard for a Grade A for this component would be shortened to seven days, and, for a Grade F, the standard would be shortened to greater than 30 calendar days rather than greater than 60 calendar days. These new standards more realistically reflect the standards in the private market.

Section 902.44 (Management operations sub-indicator #4—annual inspection of dwelling units and systems). This section would incorporate the information in § 902.43(a)(4) of the current rule. This section would state the specific exemptions for this sub-indicator, as well as provide guidance for maintaining documentation to support such exemptions. It would state the standards for grades A, B, C, D, and F. The standards for a Grade F for component #1, annual inspection of dwelling units, and component #2, annual inspection of systems, would be less than 96 percent of inspected component #1, annual inspection of dwelling units, and to less than 85 percent for component #2, annual inspection of systems, to more closely reflect the standards in the private market.

Section 902.45 (Management operations scoring and thresholds). The title for this section would be changed to "Management operations sub-indicator #5—security." The information in paragraph (a) pertaining to the Federal Register Scoring Notice (as proposed, the "grading notice") for the management operations indicator is moved to the new § 902.9(c). Paragraph (b) pertaining to scoring thresholds would be moved to new § 902.49 and rewritten to reflect the proposed new grading system.

Proposed § 902.45 incorporates the information in § 902.43(a)(5) regarding the security sub-indicator, and lists the standards for grades A, B, C, D, and F for component 1, tracking and reporting crime and crime-related problems by category of crime and date, time, and place of incident, and the standards for A and F for components #2 and #3, screening of applicants and lease enforcement, respectively. Component #4, grant program goals, would be removed from this sub-indicator. The standards for components #1, tracking and reporting crime-related problems by category and date, time, and place of incident, would be stated as grades A, B, C, D, and F, and would require tracking of crimes by category as well as tracking of actions taken by the PHA to address the crime-related issue. The standards for components #2 and #3, screening of applicants and lease

enforcement, respectively, would be stated as A and F, revising the approach taken in 24 CFR 901.45(b) and (c) of PHMAP.

Section 902.46 (Management operations sub-indicator #6—self-sufficiency). This proposed new section would incorporate the information in § 902.43(a)(6) on the self-sufficiency sub-indicator. This sub-indicator would be changed in its entirety. There would be four new components: component #1, economic self-sufficiency; component #2, Family Self-Sufficiency (FSS); component #3, resident job training and employment; and component #4, resident participation in management, business development, and public housing administration. Each of these components would be graded A, C, or F. The FSS component is proposed to be analogous to the FSS component under SEMAP, 24 CFR § 985.3(o), and would be based on percentage of participation and percentage of participating families who have escrow accounts greater than zero.

Section 902.47 (Management operations sub-indicator #7—income verification). This sub-indicator would be new, and would evaluate the PHA's performance in properly verifying all residents' income, including such matters as exclusions from income and utility allowances. The grades would be either A or F. The information in current § 902.47 would be moved to proposed § 902.9(b).

Section 902.48 (Management operations sub-indicator #8—rent calculation). This new sub-indicator would evaluate a PHA's performance in correctly calculating tenant rent for all tenants. The possible grades would be A or F.

Section 902.49 (Threshold). This proposed new section describes the grading threshold for the Management Operations Indicator. It contains information pertaining to the scoring threshold currently in § 902.45(b), revised to reflect the proposed grading system.

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

This subpart would be substantially revised to present the information in a clearer manner and to reflect that the grade is based primarily on the survey results, although a PHA will receive an F if it fails to implement the survey according to HUD's instructions. Under this proposed rule, a PHA would continue to receive the media package from HUD and is required to certify to the implementation of the survey in the RASS. However, a PHA would not be graded for the performance of the

implementation plan, other than to receive an F if it fails to properly implement it according to HUD's instructions. A PHA would be required to update unit addresses in the Public and Indian Housing Information Center (PIC) database and certify to updating unit addresses in RASS. The follow-up plan would no longer be required and would not be graded. The survey would include new questions on family self-sufficiency. More detailed information on the grading of this indicator would be provided in the PHAS Notice on the Resident Service and Satisfaction Grading Process.

Section 902.50 (Resident service and satisfaction assessment). Paragraph (a) of current § 902.50, pertaining to the objectives of the resident service and satisfaction assessment, would be incorporated into new § 902.1(b)(4). Current § 902.50(b) would be redesignated paragraph (a), and would briefly describe the method of assessment. Current § 902.50(c), describing the survey process, would be redesignated paragraph (b). Proposed paragraph (c) parallels proposed § 902.40(e) regarding HUD on-site review of the required certifications and activities. The paragraph also describes the consequences for failure to maintain supporting documentation.

Section 902.51 (Updating of public housing unit address information). The title for this section would be changed to "Certifications and updating of unit address information." This section would be amended and would clarify the responsibilities of a PHA regarding the survey process. The information in paragraph (c) pertaining to requests for manual rather than electronic submissions is moved to proposed § 902.60(b).

Section 902.52 (Distribution of survey to residents). The title for this section would be changed to "Resident survey sampling." Current § 902.52(a), pertaining to resident survey sampling, would comprise the entire proposed § 902.52. The most significant change is that the proposed section would require the sample of units to be random. Current § 902.52(b), pertaining to a third party survey administrator, is moved to § 902.53.

Section 902.53 (Resident service and satisfaction scoring and thresholds). The title for this section would be changed to "Third party administrator." Paragraph (a)(1) pertaining to scoring (now grading) would be moved to new § 902.54. Paragraph (a)(2) pertaining to **Federal Register** Scoring Notice (as proposed, the "grading notice") for the resident service and satisfaction indicator would be moved to new

§ 902.9(c). Section 902.53(b) pertaining to performance threshold would be moved to § 902.55. The information in § 902.52(b) pertaining to the third party survey administrator would comprise this proposed section.

Section 902.54 (Resident service and satisfaction grading and survey contents). This proposed section would explain the grading and contents of the resident survey. This section would reflect that the grade for this indicator is proposed to be based on survey results only. This section also would reflect that the content of the survey is proposed to be changed to include questions regarding self-sufficiency. The survey questions regarding services would be moved to the category of maintenance and repair in order to consolidate questions in these categories.

Section 902.55 (Resident service and satisfaction portion of total PHAS points). The title for this section would be changed to "Threshold." The information in this section pertaining to scoring ("grading" in this proposed rule) would be moved to new § 902.9(b). This section would contain the information pertaining to performance thresholds in § 902.53(b), revised to reflect the proposed grading system.

Subpart F—PHAS submissions and grading adjustments

Section 902.60 (Data collection). This section would be completely redrafted and renamed "Requests for manual and late submissions." The information currently in paragraph (a) pertaining to fiscal year reporting periods would be removed because the information is no longer applicable. The information currently in paragraph (b) pertaining to collection of physical inspection data would be moved to proposed § 902.9(b)(1). The information currently in paragraph (c) pertaining to the submissions of financial information would be moved to the new § 902.9(b)(2). The information currently in paragraph (d) pertaining to management operations submissions would be moved to new § 902.9(b)(3). The information currently in paragraph (d)(2) pertaining to the retention of documentation that supports the submissions and calculations is moved to new § 902.63(c). Proposed § 902.60(a), pertaining to the request to manually submit information for Indicators #2 and #3, contains the information currently in § 902.43(b)(2). Proposed § 902.60(b) pertaining to the request to manually submit information for Indicator #4 contains the information currently in § 902.51(c). Proposed § 902.60(c) would pertain to the request

for extension of time to make submissions. Proposed § 902.60(d) would provide for a request for extension of time to submit audited financial information. The information currently in §§ 902.60(f)(1) and (2) pertaining to circumstances in which HUD may make adjustments to a PHA's score would be moved to proposed §§ 902.63(c)(2) and (3), respectively. The information currently in § 902.60(g) regarding RMCs and DF-RMCs would be in proposed § 902.5(a).

Section 902.61 (Failure to submit data). This proposed new section would state the information currently in § 902.60(e). The penalties for late submissions would be increased, and the time period before a PHA will receive a presumptive rating of zero would be reduced. Proposed § 902.61(b) would provide for presumptive ratings of zero in the case of late submissions, similar to current § 902.60(e)(2). The penalties and late presumptive rating provisions also would be presented in table format for clarity.

Section 902.63 (PHAS grading adjustments). Paragraph (a) pertaining to the computation method of a PHAS score (now grade) would be moved to proposed § 902.9(a). Paragraph (b) would be amended to reflect the proposed grading system and to organize the information in a more logical fashion. Paragraph (c) pertaining to issuance of a PHAS score by HUD would be redesignated new paragraph (a) and revised to reflect the proposed grading system. This proposed paragraph expressly states when a PHAS grade is final, and this meaning is used throughout the proposed rule to prevent misunderstanding. Paragraph (d) would contain minor editorial changes. Paragraph (e) pertaining to posting and publication of PHAS grades would be moved to proposed § 902.15.

Section 902.67 (Score and designation status). The title for this section would be changed to "Withholding, denying, and rescinding grades" because it would, as proposed, only address situations when a grade may be withheld, denied, or rescinded. Paragraphs (a), (b), and (c) pertaining to performer designation status would be moved to proposed §§ 902.10(a), (b), and (c) and amended to reflect the new grading system. The amendments describe the proposed terms for PHAS designation, which would be Grade A PHA, Grade B PHA, Grade C PHA, Grade C PHA, and Grade F PHA. Section 902.67(d) pertaining to withholding, denying, and rescinding designations would comprise proposed §§ 902.67(a) through (c), which clarify

when HUD may withhold or rescind a PHA's PHAS designation.

Section 902.68 (Technical review of results of PHAS Indicators #1 or #4). This section would be rewritten, in part, for the purposes of providing clarity. A new paragraph (d) would be added, providing that the Assistant Secretary reviews all technical reviews that are denied.

Section 902.69 (PHA right of petition and appeal). This section would be rewritten to provide more clarity and consistency in terminology. Throughout this section, reference is made to Grade A PHA, Grade B PHA, Grade C PHA, Grade D PHA, Grade F PHA, and Capital Fund Grade F PHA. Two situations in which a PHA has a right to appeal would be added. As proposed, a PHA may appeal its final overall PHAS grade if the change would result in a higher grade. In addition, a PHA that is under the jurisdiction of the HUD office with jurisdiction over Grade F PHAs would have the right to appeal after one year if granting the appeal would result in meeting the requirements to substantially improve its performance under PHAS pursuant to § 902.75(f).

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for high performers). The title for this section would be changed to "Incentives for Grade A PHAs." This proposed section contains editorial changes and would be amended to reflect that the highest designation would be "Grade A PHA." Although exempt from annual assessments, Grade A PHAs would be required to submit financial information annually.

Section 902.73 (Referral to an area Hub/Program Center). The title for this section would be changed to "Referral of Grade B, C, and D PHAs." This section is proposed to be rewritten to more clearly present the process and

content of the Improvement Plan. Information currently in this section regarding RMCs and DF-RMCs would be moved to § 902.5.

Section 902.75 (Referral to a Troubled Agency Recovery Center (TARC)). The title for this section would be changed to "Referral of Grade F PHAs." All of the paragraphs in this section would be rewritten to streamline and clarify the information pertaining to the performance requirements of PHAs that have been referred to the HUD office with jurisdiction over Grade F PHAs. The information in paragraph (b) pertaining to MOAs would be reorganized for clarity into paragraphs (b) and (c). Paragraph (c), discussing a PHA's review of the MOA, would be deleted. Paragraph (d) addressing the statutorily prescribed maximum time a PHA may remain under the jurisdiction of the HUD office responsible for Grade F PHAs would be redesignated paragraph (f). Paragraph (f) regarding resident participation would be deleted. The involvement of resident leadership in the MOA would be described in paragraph (c)(7). Because the time periods that a Grade F PHA can remain under the jurisdiction of the remedial HUD office would be explained in subparagraphs (f)(1) and (f)(2), the example that is in current paragraph (g)(3) is deleted. Paragraph (h) providing for HUD audit reviews of Grade F PHAs would be redesignated paragraph (g). Paragraph (i) providing for continuation of service to residents would be redesignated paragraph (h).

Section 902.77 (Referral to the Departmental Enforcement Center (DEC)). The name of this section would be changed to "Actions and sanctions." All references to the DEC would be changed to reflect a reorganization within the Department. This section would be rewritten to streamline and clarify the information pertaining to

PHA nonperformance and the actions that HUD may take against a PHA.

Section 902.79 (Substantial default). Proposed § 902.79(a)(1), like the current section, describes the events or conditions that constitute a substantial default. Paragraph (a)(5) of this section would be redesignated paragraph (b) of this proposed section. Paragraph (b) of this section would be redesignated paragraph (c) of this proposed section. This section also proposes minor editorial changes.

Section 902.83 (Interventions). This section would be rewritten to clarify the information pertaining to interventions HUD may initiate if HUD determines that a PHA is in substantial default.

Section 902.85 (Resident petitions for remedial action). This section would be rewritten to more clearly present the information pertaining to the percentage of residents required to participate in a petition for remedial action.

V. Findings and Certifications

Paperwork Reduction Act Statement

The revised information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, 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.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Under OMB control No.	Number of respondents	Total annual responses	Hours per response	Total hours
Financial Management Template	2535–0107	5,964	5,964	5	29,850
Management Operations Certification	2535–0106	3,169	3,169	2	6,274.5
Assessment of Resident Satisfaction:	2507–0001	637,629	267,382	0.25 —Res. 4.8—PHA	78,104
Residents		631,283	262,398	.25	65,600
PHAs—Unit Addresses		3,173	2,394	2.24	5,371
PHAs—Implementation Plan		3,173	2,590	2.75	7,133
RASS Totals		637,629	267,382	78,104

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

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

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

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by April 7, 2003. Comments must refer to the proposal by name and docket number (FR-4707-P-01) and must be sent to:

Lauren Wittenberg, OMB Desk Officer,
Office of Management and Budget,
Room 10235, New Executive Office
Building, Washington, DC 20503, Fax
number (202) 395-6947, E-mail
Lauren_Wittenberg@omb.eop.gov.

and

Rules Docket Clerk, Office of the
General Counsel, Room 10276, U.S.
Department of Housing and Urban
Development, 451 Seventh Street,
SW, Washington, DC 20410.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are 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 20410-0500.

Unfunded Mandates Reform Act

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

Environmental Review

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding remains available for public inspection during regular business hours in the

Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to revise certain procedures to clarify the regulation and to simplify the PHAS process. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism

The General Counsel, as the Designated Official under Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. This rule will not create any new significant requirements. As a result, the rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR part 902

Administrative practice and procedure, Public Housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

Sec.

- 902.1 Purpose and general description.
- 902.3 Scope.
- 902.5 Applicability.
- 902.7 Definitions.
- 902.9 PHAS grading.
- 902.10 PHAS designation.
- 902.13 Frequency of PHAS assessments.
- 902.15 Posting and publication of PHAS grades and designations.

Subpart B—PHAS Indicator #1: Physical Condition

- 902.20 Physical condition assessment.
- 902.23 Inspectable areas.
- 902.24 Physical inspection of PHA properties.
- 902.25 Adjustments to physical condition property grade.
- 902.26 Database adjustments to physical condition assessments.
- 902.27 Physical inspection report.
- 902.28 Overall physical condition indicator grade.
- 902.29 Threshold.

Subpart C—PHAS Indicator #2: Financial Condition

- 902.30 Financial condition assessment.
- 902.33 Financial condition grading.
- 902.35 Financial condition components.
- 902.37 Threshold.

Subpart D—PHAS Indicator #3: Management Operations

- 902.40 Management operations assessment and performance standards.
- 902.41 Management operations sub-indicator #1—vacant unit turnaround time.
- 902.42 Management operations sub-indicator #2—Capital Fund.
- 902.43 Management operations sub-indicator #3—work orders.
- 902.44 Management operations sub-indicator #4—annual inspection of dwelling units and systems.
- 902.45 Management operations sub-indicator #5—security.
- 902.46 Management operations sub-indicator #6—self-sufficiency.
- 902.47 Management operations sub-indicator #7—income verification.
- 902.48 Management operations sub-indicator #8—rent calculation.
- 902.49 Threshold.

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

- 902.50 Resident service and satisfaction assessment.
- 902.51 Certification and updating of unit address information.
- 902.52 Resident survey sampling.
- 902.53 Third party administrator.
- 902.54 Resident service and satisfaction grading and survey contents.
- 902.55 Threshold.

Subpart F—PHAS Submission Requests and Grade Adjustments

- 902.60 Requests for manual and late submissions.

- 902.61 Failure to submit data.
- 902.63 PHAS grade adjustments.
- 902.67 Withholding, denying, and rescinding grades.
- 902.68 Technical review of results of PHAS Indicators #1 or #4.
- 902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

- 902.71 Incentives for Grade A PHAs.
- 902.73 Referral of Grade B, C, and D PHAs.
- 902.75 Referral of Grade F PHAs.
- 902.77 Actions and sanctions.
- 902.79 Substantial default.
- 902.83 Interventions.
- 902.85 Resident petitions for remedial action.

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

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The Public Housing Assessment System (PHAS) provides a management tool for effectively and fairly measuring the performance of a public housing agency (PHA) in essential housing operations, including rewards for strong performers and consequences for poor performers.

(b) *PHAS Indicators.* PHAS assesses and grades a PHA's performance based on four indicators.

(1) PHAS Indicator #1 assesses the physical condition of a PHA's properties (see subpart B of this part). The objective of the Physical Condition Indicator is to determine whether a PHA is meeting HUD's standard for acceptable basic housing conditions—decent, safe, sanitary and in good repair (DSS/GR)—and the level to which the PHA is maintaining its public housing in accordance with this standard.

(2) PHAS Indicator #2 assesses the financial condition of a PHA (see subpart C of this part). The objective of the Financial Condition Indicator is to measure the financial condition of a PHA to evaluate whether it has sufficient financial resources and is capable of managing those financial resources effectively to provide housing that is DSS/GR.

(3) PHAS Indicator #3 assesses the management operations of a PHA (see subpart D of this part). The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations performance.

(4) PHAS Indicator #4 assesses the resident service and satisfaction feedback on a PHA's operations (see subpart E of this part). The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(c) *Assessment tools.* HUD shall use uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and shall gather relevant data from the PHA and the PHA's public housing residents to assess management operations and resident service and satisfaction, respectively. On the basis of this data, HUD shall assess and grade the results, advise PHAs of their grade and identify low graded PHAs so that these PHAs shall receive the appropriate guidance to improve performance and provision of services to residents.

§ 902.3 Scope.

(a) The PHAS measures a PHA's essential housing operations. All PHAs remain responsible for complying with requirements such as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of programs under which the PHA is receiving assistance even though these other requirements are not specifically referenced in this part. A PHA's adherence to all requirements will be monitored in accordance with the applicable program regulations, HUD compliance and review policies, and the PHA's Annual Contributions Contract (ACC).

(b) All PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including an independent auditor review. Failure to maintain and provide supporting documentation for any indicator(s), sub-indicator(s) and/or component(s) shall result in a zero and grade of F for the indicator(s), sub-indicator(s) and/or component(s), and a lower overall PHAS grade. Appropriate sanctions for false certifications shall be imposed, including civil penalties, limited denial of participation, suspension or debarment of the signatories, the loss of Grade A PHA designation, pursuant to § 902.67, and a lower grade under the PHAS indicators. See § 902.63.

§ 902.5 Applicability.

(a) *PHAs, RMCs, DF-RMCs, and AMEs.* This part applies to PHAs (as described in §§ 902.1 and 902.3) and to Resident Management Corporations (RMCs), RMCs that receive direct funding from HUD in accordance with § 20 of the Act (DF-RMCs) (42 U.S.C. 1437r) and alternate management entities (AMEs). When management operations of a PHA's properties have been assumed by an RMC, the PHA's certification shall identify the property

and the management functions assumed by the RMC.

(b) *Assessments of RMCs, DF-RMCs and AMEs.* (1) RMCs and DF-RMCs will be assessed and issued grades under PHAS based on the public housing properties or portions of public housing properties that they manage and the responsibilities they assume that can be graded under PHAS. All RMCs and DF-RMCs are subject to the requirements of this part.

(2) AMEs are not issued PHAS grades. The performance of the AME contributes to the PHAS grade of the PHA or PHAs for which the AME assumed management responsibilities. The PHA shall obtain a certification from the AME of the management functions undertaken by the AME. The PHA shall include the information regarding the management functions undertaken by the AME as part of its own management operations certification under subpart D.

(3) For an RMC, the PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's Executive Director, Chief Executive Officer, or other responsible party must approve its certification.

(4) A DF-RMC shall submit directly to HUD its certified statement concerning the management functions that it has undertaken. The DF-RMC's Executive Director, Chief Executive Officer, or other responsible party must approve the certification prior to submission to HUD.

(c) *PHA responsible entity under ACC, except where DF-RMC assumes management operations.* (1) Because the PHA and not the RMC or AME is responsible to HUD under the ACC, the PHAS grade of a PHA shall be based on all of the properties covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(2) A PHA's overall PHAS grade will not be based on properties managed by a DF-RMC.

(d) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after September 30, 2003.

§ 902.7 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Adjustment for physical condition and neighborhood environment is one

letter grade increase in the property grade. The letter grade increase, however, shall not result in a property grade of more than an A.

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a Regulatory or Operating Agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action) to manage all or part of a PHA's operations.

Annual Contributions Contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the Act and the PHA agrees to comply with HUD requirements for the program.

Assessed fiscal year is the PHA fiscal year that is being assessed under the PHAS.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Average number of days non-emergency work orders were active is calculated:

(1) By dividing the total of—

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

(ii) The number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active non-emergency work orders were open in the assessed fiscal year, but not completed;

(2) By the total number of non-emergency work orders that were used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Certification review means the HUD on-site property review of the exigent health and safety deficiencies observed in the property inspection against the PHA's certification that these deficiencies have been corrected.

Days means calendar days unless otherwise specified.

Decent, safe, sanitary and in good repair (DSS/GR) is HUD's standard for acceptable basic housing conditions and the level to which a PHA is to maintain its public housing.

Deficiency means any PHAS indicator, sub-indicator, or component for which the PHA has received a PHAS grade of F. In the context of PHAS Indicator #1, deficiency is an observed physical condition of an inspectable item that is recorded during a physical condition inspection. Examples of

deficiencies are a hole in the wall or a damaged refrigerator in the kitchen (see § 902.24).

Entity-wide means all programs and activities regardless of funding source (federal and non-federal) of a PHA. The determination of entity-wide shall be made in accordance with generally accepted accounting principles (GAAP) authoritative literature.

Family self-sufficiency (FSS) program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the Act.

Improvement Plan is a document developed by a PHA that sets forth the required actions to be taken, including timetables, to correct deficiencies in any of the PHAS indicators, sub-indicators and components identified during the PHAS assessment. An Improvement Plan may be required when a Memorandum of Agreement (MOA) is not required.

Memorandum of Agreement is a binding contractual agreement between a PHA and HUD that is required for each Grade F PHA as described in this subpart. The MOA sets forth target dates, strategies, and incentives for improving management performance, and provides sanctions if improved performance does not result.

Memorandum of Understanding (MOU) is a binding agreement by and among a PHA and other parties outlining activities, responsibilities, and timelines for social services and property management and maintenance services.

PIH-REAC means HUD's Office of Public and Indian Housing Real Estate Assessment Center.

Property is a project or development with a separate identifying project number.

Reduced average number of days non-emergency work orders were active during the previous three years is a comparison of the average time non-emergency work orders were active in the assessed fiscal year to the average number of days non-emergency work orders were active in the fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the average number of days non-emergency work orders were active in the assessed fiscal year from the average number of days non-emergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time non-emergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its

certification for HUD review as described in subpart F.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any federal, state, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds.

Unit months available is the total number of units managed by a PHA multiplied by 12 (adjusted by new units entering a PHA's public housing stock during the assessed fiscal year) exclusive of units months vacant due to demolition, conversion, ongoing modernization, and units approved for non-dwelling purposes.

Unit months leased is the actual number of months each unit was rented during the fiscal year based on the PHA's tenant rent rolls or Housing Assistant Payment (HAP) records.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items under the PHA's Capital Fund Program or other PHA capital improvements program and is completed within the assessed fiscal year, or shall be completed in the following fiscal year when there are fewer than three months remaining before the end of the assessed fiscal year from the time the work order was generated.

§ 902.9 PHAS grading.

(a) *Overall PHAS grade.* Each PHA will receive an overall PHAS grade of A, B, C, D, or F. Sub-indicators and components within each of the four PHAS indicators are graded individually, and the grades for the sub-indicators and components are used to determine a single grade for each of the four PHAS indicators. Then, the four indicator grades are combined to determine a PHA's final overall PHAS grade.

(b) *Indicator grades.* The overall PHAS grade is derived from a weighted average of grade values for the four indicators as follows:

(1) *Physical Condition Indicator #1—* Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on the results of the physical inspections of PHA properties performed by contract inspectors using HUD's Uniform Physical Condition Standards (UPCS) inspection protocol. The results of the inspections are electronically submitted to HUD.

(2) *Financial Condition Indicator #2—* Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on year-end financial information,

prepared in accordance with GAAP, which is electronically submitted to HUD. All PHAs that meet the federal assistance threshold set forth in the Single Audit Act and the Office of Management and Budget (OMB) Circular A-133 (see 24 CFR 84.26) also submit year-end audited financial information. The audited information is transmitted to HUD electronically after the independent public accountant (IPA) or certified public accountant (CPA) certifies or attests to the accuracy of the financial information.

(3) Management Operations Indicator #3—Weighted 30 percent of the overall PHAS grade. The PHA's grade is based on the management certification that is electronically submitted to HUD. The certification is approved by PHA Board resolution and signed and attested to by the Executive Director. In accordance with § 902.63, appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of participation, suspension, or debarment of the signatories.

(4) Resident Service and Satisfaction Indicator #4—Weighted 10 percent of the overall PHAS grade. The PHA's grade is based on the responses to the resident survey that is conducted by a third party administrator.

(c) *Grading procedures.* (1) The grades for each PHAS indicator are calculated in accordance with the grading procedures described in the grading notices published separately in the **Federal Register**. The PHAS grading notices, with their respective appendices, are:

(i) Public Housing Assessment System (PHAS); Changes to the PHAS; Introduction to PHAS Grading;

(ii) Physical Condition Grading Process;

(iii) Financial Condition Grading Process;

(iv) Management Operations Grading Process; and

(v) Resident Service and Satisfaction Grading Process.

(2) HUD will publish for comment any significant proposed amendments to the notices. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS grading notices currently in effect are posted on the PIH-REAC Internet site at <http://www.hud.gov/reac> or may be obtained from the PIH-REAC Technical Assistance Center at 888-245-4860 (this is a toll-free number).

§ 902.10 PHAS designation.

All PHAs shall receive a designation. The designation is based on the overall PHAS grade and the four indicator grades as set forth below.

(a) *Grade A PHA, Grade B PHA, and Grade C PHA.* A PHA's overall PHAS grade is its designation if none of its indicator grades are less than a grade of C.

(1) Grade A PHAs are eligible for incentives that include relief from reporting and other requirements, as described in §§ 902.13 and 902.71.

(2) Grade B PHAs are eligible for relief as described in § 902.13.

(3) Grade B and C PHAs shall be referred to the Hub Office/Program Center pursuant to § 902.73 and shall correct all deficiencies.

(b) *Grade D PHAs.* A PHA shall be designated a Grade D PHA if at least one of the four indicator grades is a grade of D and none of the indicator grades is a grade of F.

(1) Grade D PHAs shall be referred to the Hub Office/Program Center pursuant to § 902.73 and shall correct all deficiencies.

(2) A PHA that is designated a Grade D PHA is at risk of being designated a Grade F PHA.

(c) *Grade F PHAs.* A PHA shall be designated a Grade F PHA if at least one of the four indicator grades is a grade of F.

(d) *Capital Fund Grade F PHA.* A PHA that receives a grade of F for the Capital Fund sub-indicator under Management Operations Sub-Indicator #2 (see § 902.42) shall be a Capital Fund Grade F PHA. In accordance with section 6(j)(2) of the Act (42 U.S.C. 1437d(j)(2)), a Capital Fund Grade F PHA is subject to the sanctions in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)), as appropriate.

(e) *Referral of Grade F PHAs.* A Grade F PHA and Capital Fund Grade F PHAs shall be referred to the appropriate HUD office for remedial action pursuant to § 902.75.

§ 902.13 Frequency of PHAS assessments.

(a) *Frequency.* The PHA's PHAS designation determines the frequency of the PHAS assessments.

(1) When a PHA is designated a Grade A PHA, the PHA's next assessment shall be in three years.

(2) When a PHA is designated a Grade B PHA, the PHA's next assessment shall be in two years.

(3) When a PHA is designated a Grade C, D, or F PHA, the PHA's next assessment shall be the following year.

(b) *Baseline.* In the first calendar year after implementation of this regulation, all PHAs shall be assessed in accordance with the requirements of this part and graded in accordance with the most recent grading notices. For PHA's with fiscal years ending September 30, 2003, December 31, 2003,

March 31, 2004, and June 30, 2004, this PHAS assessment shall be the baseline assessment. The baseline assessment will determine each PHA's next PHAS assessment. Thereafter, the PHA's most recent final overall PHAS grade will determine the intervals between PHAS assessments.

(c) *Financial submissions.*

Notwithstanding the foregoing, a PHA shall electronically submit the unaudited and audited financial information to HUD every year pursuant to subpart C of this part. HUD shall not issue a grade for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

§ 902.15 Posting and publication of PHAS grades and designations.

Each PHA and DF-RMC shall post its overall PHAS grade, each of the four indicator grades and its designation in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of the overall grade. In addition, HUD shall post every PHA's and DF-RMC's overall PHAS grade, indicator grades, and designation on the PIH-REAC Internet site.

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Method of assessment, generally.* The physical condition assessment is based on an independent physical inspection of a PHA's properties provided by HUD and conducted using HUD's UPCS inspection protocol. This assessment determines the extent of a PHA's compliance with the DSS/GR standards.

(b) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD where the results are verified for accuracy and then graded in accordance with the procedures in this subpart. The PHA's property inspection reports for the assessed fiscal year are used to determine the PHA's physical condition grade under this subpart.

(c) *Frequency of inspections.* HUD will conduct a physical inspection of PHA properties only for the fiscal years for which the PHA is assessed under this part.

(d) *PHA physical inspection requirements.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)) and § 902.44.

(e) *Compliance with State and local codes.* The physical condition standards

in this subpart do not supersede or preempt state and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

(f) *HUD access to PHA properties.* All PHAs are required by the ACC to provide the Government with full and free access to all facilities in its property(ies). All PHAs are required to provide HUD or its representative with access to its property(ies), and all units and appurtenances in order to permit physical inspections, certification reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA shall be given a zero and grade of F for the property or properties involved which shall be reflected in the PHAS Indicator #1 grade and the overall PHAS grade.

§ 902.23 Inspectable areas.

(a) *General.* The physical inspections address five major physical areas of public housing: site, building exteriors, building systems, dwelling units, and common areas. The physical inspections also identify health and safety considerations (including exigent health and safety (EHS) considerations). The inspections focus on acceptable basic housing conditions, not the adornment, decor, or other cosmetic appearance of the properties.

(b) *Major inspectable areas.* The five major inspectable areas of public housing are the following:

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

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

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

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

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

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

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

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

(c) *Health and safety concerns.* All areas and components of PHA properties must be free of health and safety hazards. Health and safety hazards include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked, and have handrails that are undamaged and have no other observable deficiencies. PHA properties must have no evidence

of infestation by rats, mice, or other vermin, or of garbage and debris. PHA properties must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The PHA must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards, and must have all appropriate certifications available for review (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* During the physical inspection of a property, an inspector inspects a random sample of dwelling units and buildings in the PHA's public housing portfolio to determine the extent of compliance with HUD's DSS/GR standards. The dwelling units inspected in a property are a randomly selected sample of the units in the properties. The buildings inspected include all buildings with sampled units plus additional buildings, including all common (non-residential) buildings.

(1) Only occupied units shall be inspected as dwelling units. Units approved by HUD for non-dwelling purposes, such as daycare or meetings, are inspected as common areas. Certain categories of vacant units that are not under lease at the time of the physical inspection (e.g., units undergoing rehabilitation or extensive repair, vacant units during the turnaround period prior to lease-up) shall not be inspected, but shall be assessed under the Financial Condition Indicator #2 (subpart C).

(2) The categories of vacant units that are not under lease that are not inspected are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turnover; i.e., the period between which one resident vacates a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and for which there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded; and

(iii) Off-line units—vacant units that have significant unanticipated repair requirements, such as fire damage, that prevent the units from being occupied after a normal period of time (considered to be between 5 and 7 days)

and which are not included in an approved rehabilitation plan.

(b) *Observed deficiencies.* During the inspection of a property, the inspector looks for deficiencies in each inspectable item within the inspectable areas. For example, the inspector looks for holes (deficiencies) in the walls (item) of a dwelling unit (area).

(c) *Health and safety deficiencies and EHS deficiencies.*

(1) *Health and safety deficiencies.* The PHA is required to promptly correct all health and safety deficiencies.

(2) *EHS deficiencies.* Before leaving the site, the inspector gives the property representative the list of every observed EHS deficiency (*i.e.*, every life-threatening health and safety deficiency). The property representative acknowledges receipt of the list of the observed deficiencies by signature. The PHA must immediately correct or remedy all EHS deficiencies cited in the deficiency report and the property inspection report within 24 hours. In addition, the PHA must certify, as directed by HUD, that all EHS deficiencies were corrected or remedied within 24 hours.

(d) *Definitions for grading.* The following definitions apply to the physical condition grading process in this subpart:

Base grade means the initial property grade derived from the number of livability deficiencies.

Deficiencies means the specific problems, such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for the inspectable items.

Deficiency Classification Summary Document refers to the Deficiency Classification Summary Document that is included as Appendix 2 to the PHAS notice on the Interim Physical Condition Scoring Process published in the **Federal Register** on November 26, 2001.

This document is also available from the Real Estate Assessment Center, 1280 Maryland Ave., SW., Suite 800, Washington, DC 20410. This document shows the grading class for each severity level of each deficiency listed in the Dictionary of Deficiency Definitions.

Dictionary of Deficiency Definitions ("Dictionary") refers to the Dictionary of Deficiency Definitions document that is included as Appendix 2 to the PHAS Notice on the Physical Condition Grading Process. The Dictionary lists each deficiency that may be observed, defines each deficiency, and sets forth the severity levels for each deficiency under this subpart.

Grading class is a group of deficiencies that are treated alike. Each

deficiency within a grading class has the same type of impact on a property grade. There are three grading classes:

(1) *Livability:* deficiencies that have a major impact on livability for residents (*e.g.*, toilet not working);

(2) *EHS:* deficiencies that are life-threatening and require immediate attention or remedy. This category includes all of the deficiencies for which the PHA receives a notice at the end of the physical inspection (*e.g.*, exposed wires); and

(3) *Other:* deficiencies that have little or no impact on livability for residents (*e.g.*, small hole in an interior door) but are a valuable management tool because they provide information on the condition of the property.

Inspectable areas (or area) means any of the five major components of the property that are inspected. They are: site; building exteriors; building systems; dwelling units; and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each inspectable area.

Livability is the concept of grading the physical condition of PHA properties that focuses on the impact of the deficiencies on the residents. The severity levels of each deficiency in the Dictionary have been classified into one of three grading classes: livability, EHS or other.

PHAS Indicator #1 grade is a letter grade (A, B, C, D, or F) that corresponds to the weighted average of all of the property grades, reflecting the physical condition of all of a PHA's properties.

Property grade is a letter (A, B, C, D, or F), based on counts of deficiencies in grading classes, that reflects the physical condition of a property.

Property livability points mean a value derived from the number of deficiencies in the livability grading class that is used to assign a base grade to a PHA property.

Reported grade means the grade reported to a PHA, including any change in the base grade due to observed EHS deficiencies. Deficiencies in grading class "other" are recorded, but do not affect the base grade or the reported grade.

Severity means one of three levels (*i.e.*, level 1, level 2, and level 3) that reflects the extent of the damage or problem associated with each deficiency. The severity levels for each deficiency are set forth in the Dictionary. The Dictionary also sets forth the specific definitions for each severity level.

(e) *Dictionary and Deficiency Classification.* HUD shall publish for comment any significant proposed amendments to the Dictionary and the Deficiency Classification Summary Document. After comments have been considered, HUD shall publish a notice adopting the final Dictionary and Document or the amendments. The Dictionary and the Deficiency Classification Summary Document that are currently in effect can be found at HUD's Internet site at <http://www.hud.gov/reac> or obtained from the PIH-REAC Technical Assistance Center at 888-245-4860 (this is a toll free number).

(f) *Compliance with civil rights/nondiscrimination requirements.* HUD reviews certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601-19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). All Fair Housing Act and Rehabilitation Act observations recorded by an inspector are classified as "other" deficiencies under livability and are not included in the property grade. All information is provided to HUD's Office of Fair Housing and Equal Opportunity for further review.

§ 902.25 Adjustments to physical condition property grade.

(a) *Adjustment for physical condition and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical condition grade for a property shall be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment.

(b) *One-letter grade adjustment.* A PHA shall receive a one-letter grade adjustment (*i.e.*, increase) in the property grade if the property satisfies the criteria for either physical condition or neighborhood environment or for both. To be eligible for this adjustment, the PHA must certify that the property meets the definitions of physical condition and/or neighborhood environment. An adjustment made under this section will be an adjustment to an individual property grade determined by HUD on a case by case basis.

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

(1) Physical condition applies to documented structural or design defects in a property that a PHA cannot correct.

(2) Neighborhood environment applies to documented conditions within the immediate surrounding neighborhood that adversely impact a property's physical condition such as:

(A) A landfill;

(B) Flood plain; or

(C) Other environmentally hazardous areas.

(d) *Certification to an adjustment for physical condition and/or neighborhood environment.* The PHA certifies to the adjustment for physical condition and/or neighborhood environment as part of its management operations submission.

(e) *Maintenance of supporting documentation.* A PHA shall maintain supporting documentation (pursuant to § 902.63(c)) to show how it determined that the property's grade is subject to adjustment under this section.

(1) If the basis for adjustment was neighborhood environment, the PHA shall have on file the appropriate documentation supporting the adjustment. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(2) For the physical condition adjustment, a PHA must maintain documentation showing the structural or design defects. A PHA shall also maintain documentation showing that any property exempted for other reasons was not included in the calculation.

§ 902.26 Database adjustments to physical condition assessments.

(a) *Generally.* HUD may review the results of a PHA's physical inspection and make adjustments to the property grade based on certain circumstances such as:

(1) Factors not reflected or inappropriately reflected in the physical property grade;

(2) Adverse conditions beyond the PHA's control; and

(3) Modernization work in progress.

(b) *Adjustments for factors not reflected or inappropriately reflected in the property grade.* (1) Factors not reflected or inappropriately reflected in the property grade include inconsistencies between local code requirements and the HUD UPCS physical inspection protocol (24 CFR part 5, subpart G); conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's UPCS physical inspection protocol; or the inspector grading the PHA for elements (e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that the PHA

does not own and is not responsible for maintaining, and for which it has notified the proper authorities regarding the deficient structure.

(2) The PHA may request an adjustment due to these circumstances through the applicable Hub Office/Program Center. The request shall be in writing and include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request shall be made within 15 days of issuance of the Physical Inspection Report and grade for the property. Based on the recommendation of the applicable HUD Hub Office/Program Center following its review of the PHA's documentation, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

(c) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the property grades of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(1) Adverse conditions beyond the PHA's control may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing property that results in damage to the property) or natural disasters.

(2) A PHA may request an adjustment due to these circumstances through the applicable HUD Hub Office/Program Center. The request shall be submitted within 15 days of the issuance of the Physical Inspection Report and grade for the property to the PHA and shall be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD Hub Office/Program Center after its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

(d) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA property, subject to physical inspection under this subpart, which are undergoing modernization work in progress require an adjustment to the physical condition grade.

(1) Occupied dwelling units or other areas of a PHA property undergoing

modernization are not exempt from physical inspection. All elements of the dwelling units or of the other areas of the PHA property that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) shall be subject to HUD's physical inspection protocol without adjustment. For those elements of the dwelling units or of the property that are undergoing modernization, deficiencies shall be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition grade as a result of modernization work in progress.

(2) The PHA may request an adjustment due to modernization work in progress through the applicable HUD Hub Office/Program Center. The request shall be in writing and include supporting documentation of the modernization work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request shall be made within 15 days of issuance of the Physical Inspection Report and grade for the property. Based on the recommendation of the applicable HUD Hub Office/Program Center, HUD may determine that a reinspection and/or re-grading of the PHA's property is necessary.

§ 902.27 Physical inspection report.

(a) *Report generally.* Following the physical inspection of each property and the determination of the property grade under this subpart, the PHA shall receive an Inspection Summary Report. The Inspection Summary Report allows the PHA to see all observed deficiencies by inspectable area, and the impact of livability and EHS deficiencies on the property grade.

(b) *Report contents.* The Inspection Summary Report includes the following items:

(1) A list of the livability, EHS, and other deficiencies observed;

(2) The health and safety deficiencies for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of health and safety deficiencies that the inspector potentially would see in an inspection of all buildings and all units;

(3) The overall property grade;

(4) The values of the livability points; and

(5) The reported property grade.

§ 902.28 Overall physical condition indicator grade.

(a) *Property grade.* To determine a property's base grade, all livability deficiencies reported for dwelling units, buildings (which combines the inspectable areas of building exterior, building systems and common areas), and site are counted. To quantify the impact of the cited deficiencies on the inspectable areas, values called "livability points" are calculated separately for dwelling units, buildings (adjusted for the number of units in each building and to account for any sampling of the buildings), and site. The livability points are then combined into overall livability points for the property, with dwelling units, buildings, and site each contributing 60 percent, 30 percent, and 10 percent, respectively. Property livability points are translated into the base grade as specified in the Physical Condition Grading Process notice. When there are no EHS deficiencies cited, the base grade is the property's reported grade.

(b) *Impact of EHS deficiencies on a property grade.* If at least one EHS deficiency is cited, other than for smoke detectors, then the reported grade will be one grade lower than the base grade (*i.e.*, A becomes B, B becomes C, C becomes D, D becomes F, and F remains as F).

(c) *Correction of EHS deficiencies.* When a PHA corrects all of the EHS deficiencies on a property inspection report and certifies to HUD that they have been corrected pursuant to section § 902.24 (c), the property grade will revert to the base grade. If an EHS certification review later shows that all of the EHS deficiencies to which the PHA certified were not corrected, then the PHA's property grade will be reduced one-letter grade below the reported property grade and the PHA's overall physical inspection grade also may be reduced, with F being the lowest possible grade.

(d) *PHAS Indicator #1 grade.* The PHAS Indicator #1 grade for a PHA is based on the grades for all the properties in a PHA's portfolio. To determine the PHAS Indicator #1 grade, each property grade is assigned a numerical value. Then a weighted average of property grade values is calculated with weights equal to the number of units in the property divided by the total number of units in the PHA. This PHAS Indicator #1 grade is the letter grade corresponding to the weighted average of property grade values.

§ 902.29 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be

designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart C—PHAS Indicator #2: Financial Condition**§ 902.30 Financial condition assessment.**

(a) *Annual financial filing dates.* Under this indicator, PHAs shall submit unaudited and audited financial information to HUD on an annual basis.

(1) *Unaudited financial information filing date.* The unaudited financial information shall be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year in accordance with Uniform Financial Reporting Standards (see 24 CFR part 5, subpart H).

(2) *Audited financial information filing date.* The audited financial information shall be submitted no later than nine months after the end of the PHA's fiscal year, in accordance with the Single Audit Act and OMB Circular A-133 (see 24 CFR 84.26). A PHA that has an audit conducted, but is not subject to the Single Audit Act, shall also submit audited information no later than nine months after the end of the PHA's fiscal year.

(b) *Certification or attestation.* Prior to the electronic submission of the PHA's audited statement, the PHA's IPA or CPA shall certify or attest that the financial information being submitted electronically accurately reflects the audited "hard copy" financial information.

(c) *Annual financial information.* The financial information shall be:

- (1) Submitted on an entity-wide basis;
- (2) Prepared in accordance with GAAP; and
- (3) Submitted electronically in the format prescribed by HUD.

(d) *Components of Financial Condition Indicator.* A PHA's financial condition shall be assessed on the basis of six components described in § 902.35. The six components are:

- (1) Current Ratio;
- (2) Number of Months Expendable Fund Balance;
- (3) Tenant Receivables Outstanding;
- (4) Occupancy Loss;
- (5) Expense Management/Utility Consumption; and
- (6) Net Income or Loss Divided by the Expendable Fund Balance.

(e) *Annual submission requirement.* A PHA shall electronically submit its unaudited and audited financial information to HUD every year. In accordance with § 902.13, HUD will not grade the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

§ 902.33 Financial condition grading.

(a) Under PHAS Indicator #2, HUD will determine a grade based on the calculated values of the six financial condition components, and the results of the audit.

(b) Each financial condition component value will be converted to a grade. The grade from each financial condition component will then be combined to create the overall financial condition assessment grade. A PHA's grade for a financial condition component depends upon both the calculated value of the financial condition components and the PHA's peer group. A PHA's peer group will be determined based on a PHA's size and regional location. HUD will use a region as part of the peer group only if a peer group based solely on size would not allow an equitable assessment. A PHA's size will be based on the number of public housing, Section 8, and other units the PHA operates.

(c) HUD may adjust a PHA's Financial Conditioner Indicator grade after receipt of the PHA's audited submission for the assessed fiscal year. Any adjustment to the Financial Conditioner Indicator grade (*i.e.*, increase or decrease) shall result in a corresponding adjustment to the PHA's final overall PHAS grade. In addition, if there is a significant difference between the unaudited and audited submissions, a PHA's financial condition grade and final overall PHAS grade shall be adjusted (*i.e.*, a letter grade reduction) as described in the PHAS notice on the Financial Condition Grading Process. Findings, qualifications, or other conditions reported as the result of an audit may also reduce the Financial Condition grade by one or more letter grades. The letter grade reductions are based on the severity of the finding, qualifications, or reported condition, as described in the PHAS notice on the Financial Condition Grading Process.

§ 902.35 Financial condition components.

The six Financial Condition Indicator components are:

(a) *Current Ratio.* This component is calculated by dividing the current assets by current liabilities. This component measures a PHA's liquidity position. This component is calculated on an entity-wide basis.

(b) *Number of Months Expendable Fund Balance.* This component is calculated by dividing the expendable fund balance by the monthly operating expenses. This component measures the adequacy of the PHA's reserves. This component is calculated on an entity-wide basis.

(c) *Tenant Receivables Outstanding.* This component is calculated by dividing the gross tenant receivables by the amount of tenant rents collected during the assessed fiscal year. This component measures a PHA's ability to collect rent. This component is calculated on an entity-wide basis.

(d) *Occupancy Loss.* This component is calculated by dividing the unit months leased by the unit months available, and then subtracting that number from one. This component measures the ability of a PHA to maximize rental income. This component is calculated on all programs, excluding any units associated with the Section 8 Housing Choice Vouchers, Section 8 Rental Vouchers and Section 8 Certificates programs.

(e) *Expense Management/Utility Consumption.* This component is calculated by dividing key expenses, including the expense for utility consumption, by months leased. This component measures the ability of a PHA to maintain utility expenses at a reasonable level relative to its peers. This component is calculated only on the low rent program.

(f) *Net Income or loss divided by the Expendable Fund Balance.* This component is calculated by dividing net income or loss by the expendable fund balance. This component measures how the results of the PHA's operations for the assessed fiscal year affect the PHA's viability. This component is calculated on an entity-wide basis.

§ 902.37 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment and performance standards.

(a) *Management certification filing date.* Under this indicator, a PHA shall electronically submit to HUD its annual management operations information no later than two months after the end of the assessed fiscal year.

(b) *Board resolution and attestation.* The management operations certification shall be approved by a resolution of the PHA Board and signed and attested to by the Executive Director. In accordance with § 902.63, appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of

participation, suspension, or debarment of the signatories.

(c) *Sub-indicators of Management Operations Indicator.* The PHA's management operations shall be assessed on the basis of eight sub-indicators described in the sections below. Five sub-indicators have two or more components. Two sub-indicators have specific exemptions. The eight sub-indicators are:

(1) Vacant unit turnaround time. This sub-indicator has a single component and has specific exemptions.

(2) Capital Fund. This sub-indicator has two components.

(3) Work orders. This sub-indicator has two components.

(4) Annual inspection of dwelling units and systems. This sub-indicator has two components and has specific exemptions.

(5) Security. This sub-indicator has three components.

(6) Self-sufficiency. This sub-indicator has four components.

(7) Income verification. This sub-indicator has a single component.

(8) Rent calculation. This sub-indicator has a single component.

(d) *Assessed period.* The Management Operations certification shall include only information for the assessed fiscal year. No information is required for and no certification is required during the years a PHA is not assessed under this part in accordance with § 902.13(a).

(e) *Audit and HUD review.* A PHA's management operations submission is subject to the annual IPA or CPA audit required by the Single Audit Act and OMB Circular A-133. A PHA's management operations submission also is subject to HUD on-site review at any time in accordance with § 902.63. A PHA that is unable to provide supporting documentation for the information under any of the sub-indicators or components to which it certified will receive a zero and a grade of F for the sub-indicator or component, and its management operations grade and final overall PHAS grade will be lowered.

§ 902.41 Management operations sub-indicator #1—vacant unit turnaround time.

This sub-indicator measures a PHA's efforts during the assessed fiscal year to reduce unit turnaround time, and assesses the adequacy of a PHA's system to track unit downtime, make ready time, and lease up time.

(a) *Units Exempted.* The following two categories of units that are not considered available for occupancy are exempted from the computation of vacant unit turnaround time.

(1) Units approved for non-dwelling use. Units approved for non-dwelling

use that are exempt during the assessed fiscal year are HUD-approved units used to promote self-sufficiency and anti-drug activities or for non-dwelling purposes, such as police substations, day care centers, public safety activities, or resident job training.

(2) Vacant units approved for deprogramming. Vacant units approved for deprogramming that are exempt during the assessed fiscal year are HUD-approved units for demolition and/or disposition, or units that have been combined.

(b) *Vacancy days exempted.* The vacancy days for units in the following two categories shall be exempted from the calculation of vacant unit turnaround time in the assessed fiscal year. The two categories are:

(1) Vacancy days associated with vacant units receiving section 9(d) Capital Funds during the assessed fiscal year. Vacancy days associated with a vacant unit prior to the time the unit meets the conditions of being a unit receiving section 9(d) Capital Funds, and vacancy days associated with a vacant unit after construction work has been completed or after the time period for placing the vacant unit under construction has expired, shall not be exempted.

(2) Vacancy days associated with units vacant during the assessed fiscal year due to circumstances and actions beyond a PHA's control. Circumstances and actions beyond a PHA's control may include:

(i) A legally enforceable court order or settlement agreement resulting from litigation during the assessed fiscal year;

(ii) Federal law or state law, not preempted by federal law, or the implementing regulations;

(iii) Natural disasters during the assessed fiscal year; or

(iv) Vacant units during the assessed fiscal year that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claims are settled.

(c) *Supporting documents for section 9(d) Capital Fund units.* A PHA shall maintain information to support its determination of vacancy days associated with a vacant unit that meets the conditions of being a unit receiving section 9(d) Capital Funds under paragraph (b)(1) of this section. The PHA shall maintain:

(1) The date on which the unit met the conditions of being a vacant unit receiving section 9(d) Capital Funds; and

(2) The date on which construction work was completed or the time period

for placing the vacant unit under construction expired.

(d) *Supporting documents for vacancies beyond PHA's control.* A PHA shall maintain information to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the PHA's control under paragraph (b)(2) of this section. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The PHA shall, at a minimum, maintain:

(1) The date on which the unit met the conditions of being a unit vacant due to circumstances and actions beyond a PHA's control;

(2) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond a PHA's control;

(3) A description or list of the actions taken by a PHA to eliminate or mitigate these conditions; and

(4) The date on which the unit ceased to meet such conditions and became an available unit.

(e) *Ratings for vacant unit turnaround time.*

(1) Grade A: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is less than or equal to 5 days.

(2) Grade B: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 5 days and less than or equal to 10 days.

(3) Grade C: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 10 days and less than or equal to 20 days.

(4) Grade D: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 20 days and less than or equal to 30 days.

(5) Grade F: When the average number of days during the assessed fiscal year between the time a unit is vacated and a new lease takes effect for units reoccupied is greater than 30 days.

§ 902.42 Management operations sub-indicator #2—Capital Fund.

This sub-indicator grades the funds provided to a PHA from the Capital Fund under section 9(d) of the Act (42 U.S.C. 1437g(9)(d)) that during the assessed fiscal year remain unobligated by a PHA after two years beyond the

date on which the funds became available to a PHA for obligation in the case of modernization, or the date on which the agency accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units, and/or remain unexpended by a PHA after four years beyond the date on which the funds became available to a PHA for obligation. Funds from the Capital Fund under section 9(d) of the Act (42 U.S.C. 1437g(d)(2)) do not include HOPE VI program funds and Vacancy Reduction program funds.

(a) *Applicability.* This sub-indicator is not applicable for PHAs that choose not to receive Capital Funds under section 9(d) of the Act.

(b) *Components of Capital Fund sub-indicator.* The two components of the Capital Fund sub-indicator are:

(1) Unexpended funds over four years old; and

(2) Timeliness of fund obligation.

(c) *Grades for Capital Fund sub-indicator.*

(1) Component #1. Unexpended funds over four years old.

(i) Grade A: When a PHA has no unexpended funds during the assessed fiscal year that are over four years old beyond the date on which the funds became available to a PHA for expenditure, or when the Secretary has approved a time extension because of litigation, obtaining approvals of the federal, state, or local government, complying with environmental assessment or abatement requirements, relocating residents, or any other reason established by the Secretary by notice published in the **Federal Register**.

(ii) Grade F: When a PHA has unexpended funds during the assessed fiscal year over four years old beyond the date on which the funds became available to a PHA for expenditure and is unable to demonstrate any of the above conditions.

(2) Component #2. Timeliness of fund obligation.

(i) Grade A: When a PHA has no unobligated funds during the assessed fiscal year over two years old beyond the date on which the funds became available to a PHA for obligation, or the Secretary has approved a time extension because of litigation, obtaining approvals of the federal, state, or local government, complying with environmental assessment or abatement requirements, relocating residents or any other reason established by the Secretary by notice published in the **Federal Register**.

(ii) Grade F: When a PHA has unobligated funds during the assessed fiscal year over two years old beyond

the fiscal year in which funds were obligated by HUD to the PHA and is unable to demonstrate any of the above conditions.

§ 902.43 Management operations sub-indicator #3—work orders.

This sub-indicator examines the time it takes to complete or abate emergency work orders; the average number of days non-emergency work orders were active during the assessed fiscal year; and any progress a PHA has made during the preceding three fiscal years to reduce the period of time non-emergency work orders were active.

(a) *Adequacy of work order system.* It is implicit in this sub-indicator that the PHA have an adequate work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(b) *Grades for work orders.*

(1) Component #1. Emergency work orders.

(i) Grade A: When at least 99 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(ii) Grade B: When at least 98 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(iii) Grade C: When at least 97 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(iv) Grade D: When at least 96 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(v) Grade F: When less than 96 percent of emergency work orders during a PHA's assessed fiscal year were completed or the emergency was abated within 24 hours or less.

(2) Component #2. Non-emergency work orders. The PHA shall track all non-emergency work orders that were active during the assessed fiscal year (including preventive maintenance work orders). A PHA is not required to track non-emergency work orders from the date they are deferred for the Capital Fund Program, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance.

(i) Grade A: When the average number of days non-emergency work orders were active during the assessed fiscal year is 7 days or less.

(ii) Grade B: When the average number of days non-emergency work

orders were active during the assessed fiscal year is more than 7 days and less than or equal to 15 days.

(iii) Grade C: When a PHA is in one of the following categories:

(A) The average number of days non-emergency work orders were active during the assessed fiscal year is more than 15 days and less than or equal to 22 days; or

(B) The PHA has reduced the average number of days non-emergency work orders were active during the assessed fiscal year by at least 15 days during the past three fiscal years.

(iv) Grade D: When a PHA is in one of the following categories:

(A) The average number of days non-emergency work orders were active during the assessed fiscal year is more than 22 days and less than or equal to 30 days; or

(B) The PHA has reduced the average number of days non-emergency work orders were active during the assessed fiscal year by at least 10 days during the past three fiscal years.

(v) Grade F: When the average number of days non-emergency work orders were active during the assessed fiscal year is more than 30 days.

§ 902.44 Management operations sub-indicator #4—annual inspection of dwelling units and systems.

This sub-indicator examines the percentage of dwelling units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. The PHA is required to conduct dwelling unit and systems inspections using the HUD Uniform Physical Condition Standards (UPCS) set forth in 24 CFR part 5, subpart G.

(a) *Adequacy of inspection program.* It is implicit in this sub-indicator that the PHA have an adequate inspection program in terms of tracking inspections, ensuring the thoroughness/quality of the PHA's inspections, and tracking needed repairs.

(b) *Units to be inspected.* All occupied units and/or units available for occupancy are required to be inspected. This includes units used for non-dwelling purposes, those occupied by an employee, and those used for resident services.

(c) *Units exempted.* Units in the following categories are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected for the assessed fiscal year.

(1) Occupied units for which a PHA has documented two attempts to inspect the unit during the assessed fiscal year,

but only if the PHA can document that it has initiated eviction proceedings, and is in the process of evicting the legal or illegal occupant(s) as provided under the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant during the assessed fiscal year for the following reasons:

(i) Vacant units that are receiving section 9(d) Capital Funds; or

(ii) Vacant units that are documented to be uninhabitable for reasons beyond a PHA's control due to:

(A) High/unsafe levels of hazardous/toxic materials;

(B) An order of the local health department or state agency or a directive of the Environmental Protection Agency;

(C) Natural disasters; or

(D) Units that are kept vacant because they are structurally unsound and documented action has been initiated to rehabilitate or demolish the units.

(d) *Systems exempted.* Systems that are a part of individual dwelling units that are exempted, or a part of a building where all of the dwelling units in the building are exempted, are also exempted from the calculation of this sub-indicator.

(e) *Grades for annual inspection of dwelling units and systems.*

(1) Component #1. Annual inspection of dwelling units.

(i) Grade A: When a PHA inspected 100 percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(ii) Grade B: When a PHA inspected less than 100 percent but at least 98 percent of the units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(iii) Grade C: When a PHA inspected less than 98 percent but at least 97

percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(iv) Grade D: When a PHA inspected less than 97 percent but at least 96 percent of its units during the assessed fiscal year and, if repairs were necessary for compliance with 24 CFR part 5, subpart G:

(A) Completed the repairs during the inspection;

(B) Issued work orders for the repairs; or

(C) Referred similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(v) Grade F: When a PHA has failed to:

(A) Inspect at least 96 percent of its units during the assessed fiscal year for compliance with 24 CFR part 5, subpart G;

(B) Correct deficiencies during the inspection or issue work orders for the repairs; or

(C) Refer similar work items to the current year's section 9(d) Capital Fund program, or to next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of a PHA's assessed fiscal year from the time the inspection was completed.

(2) Component #2. Annual inspection of systems (including common areas and non-dwelling space).

(i) Grade A: When a PHA inspected all major systems during the assessed fiscal year at 100 percent of its buildings and sites, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed

fiscal year at the time the inspection was performed.

(ii) Grade B: When a PHA inspected all major systems for less than 100 percent but at least 95 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(iii) Grade C: When a PHA inspected all major systems for less than 95 percent but at least 90 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(iv) Grade D: When a PHA inspected all major systems for less than 90 percent but at least 85 percent of its buildings and sites during the assessed fiscal year, according to its maintenance plan. The inspection must include:

(A) Performing the required maintenance on structures and systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issuing work orders for maintenance/repairs; or

(C) Including identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

(v) Grade F: When a PHA failed to:

(A) Inspect all major systems for at least 85 percent of its buildings and sites during the assessed fiscal year and

perform the required maintenance on these systems in accordance with 24 CFR part 5, subpart G, and manufacturers' specifications;

(B) Issue work orders for maintenance/repairs; or

(C) Include identified deficiencies in the current year's section 9(d) Capital Fund program, or in next year's section 9(d) Capital Fund program if there are fewer than three months remaining before the end of the PHA's assessed fiscal year at the time the inspection was performed.

§ 902.45 Management operations sub-indicator #5—security.

This sub-indicator evaluates a PHA's performance in tracking all types of crime-related problems by category of crime and date, time and place of incident in its properties; reporting incidents of crime to local law enforcement agencies; adopting and implementing applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordinating with local government officials and residents in the properties on the implementation of such strategies. There are three components.

(a) *Policies.* The applicant screening and resident eviction policies and procedures adopted by the Board and implemented by the PHA should be consistent with section 6(j)(1)(I) of the 1937 Act (42 U.S.C. 1437d(j)(1)(I)).

(b) *Grades for the components of resident and applicant information.*

(1) Component #1. Tracking and reporting crime-related problems.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 95 percent of its property during the assessed fiscal year, and the action taken, as appropriate;

(B) Had a cooperative system for tracking and reporting incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinated with local government officials and its residents during the assessed fiscal year on the implementation of anticrime strategies.

(ii) Grade B: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 85 percent of its property during the

assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(iii) Grade C: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 75 percent of its property during the assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(iv) Grade D: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 65 percent of its property during the assessed fiscal year, and the action taken, as appropriate; and

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(v) Grade F: When a PHA's Board, by resolution, did not adopt policies or a PHA did not implement procedures, did not track any crime, or cannot document that it:

(A) Tracked all types of crime and crime-related problems by category, date, time, and place in at least 65 percent of its property during the assessed fiscal year, and the action taken, as appropriate; or

(B) Reported incidents of crime during the assessed fiscal year to local police authorities to improve law enforcement and crime prevention.

(2) Component #2. Screening of Applicants.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it successfully screened out and denied admission to public housing applicants during the assessed fiscal year who:

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

(B) Were evicted, because of drug-related criminal activity, from housing assisted under the Act, for a minimum of a three year period beginning on the date of such eviction, unless the

applicant successfully completed, since the eviction, a rehabilitation program approved by a PHA;

(C) A PHA had reasonable cause to believe are illegally using a controlled substance; or

(D) A PHA had reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(ii) Grade F: When a PHA's Board has not adopted policies or has not implemented procedures that result in screening out and denying admission during the assessed fiscal year to a public housing applicant who meets the criteria as described in paragraph (b)(2)(i) of this section, or the screening procedures do not result in the denial of admission to a public housing applicant who meets the criteria as described in paragraph (b)(2)(i) of this section.

(3) Component #3. Lease enforcement.

(i) Grade A: When a PHA's Board, by resolution, adopted policies and a PHA implemented procedures and can document that it appropriately evicted during the assessed fiscal year any public housing resident who:

(A) A PHA had reasonable cause to believe engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel;

(B) A PHA had reasonable cause to believe engages in any drug-related criminal activity (as defined at section 3(b) of the Act (42 U.S.C. 1437a(b)(9)) on or off a PHA's property; or

(C) A PHA had reasonable cause to believe abuses alcohol in such a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(ii) Grade F: When a PHA's Board has not adopted policies or has not implemented procedures that document results in the eviction during the assessed fiscal year of any public housing resident who meets the criteria as described in paragraph (b)(3)(i) of this section, or the eviction procedures do not result in the eviction of public housing residents who meet the criteria as described in paragraph (b)(3)(i) of this section.

§ 902.46 Management operations sub-indicator #6—self-sufficiency.

This sub-indicator measures a PHA's efforts to coordinate, promote or provide effective programs and activities to promote the self-sufficiency of residents and resident participation in the administration of public housing.

(a) *General applicability.* A PHA that does not have a mandatory FSS program shall not be assessed under the applicable component of this sub-indicator. The weight for that component shall be redistributed among the remaining components of this sub-indicator.

(b) *Grades for self-sufficiency.*

(1) Component #1. Economic self-sufficiency. A PHA shall use its best efforts to enter into cooperative agreements with state, local and other agencies providing welfare or public assistance that may provide information to facilitate a PHA in targeting assistance and services supporting economic self-sufficiency.

(i) Grade A: When a PHA entered into an agreement with a public assistance provider and can document that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(ii) Grade C: When a PHA entered into an agreement with a public assistance provider, but cannot document that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(iii) Grade F: When a PHA has not entered into an agreement with a public assistance provider and has not documented that information is being provided to facilitate assistance to the PHA in targeting assistance and services supporting economic self-sufficiency.

(2) Component #2. FSS. After assessing the needs of families and the training and employment resources in the community, a PHA and other local partners, such as public assistance providers, work together to develop a comprehensive program that can provide each family with appropriate education, job training and other services to enable them to obtain employment.

(i) Grade A: When a PHA documents that it has a mandatory FSS program and documents that it:

(A) Met or exceeded at least 80 percent of the total proposed participation; and

(B) At least 30 percent of the FSS families have escrow accounts greater than zero.

(ii) Grade C: When a PHA documents that it has a mandatory FSS program and documents that it:

(A) Met at least 60 percent of the total proposed participation; and

(B) At least 30 percent of the FSS families have escrow accounts greater than zero.

(iii) Grade F: When a PHA documents that it has a mandatory FSS program

and cannot document its performance or documents that it:

(A) Met less than 60 percent of the total proposed participation; or

(B) Less than 30 percent of the FSS families have escrow accounts greater than zero.

(3) Component #3. Resident job training and employment. A PHA has executed a Memorandum of Understanding for partnering locally with a social service, labor, Temporary Assistance for Needy Families (TANF) or similar type agency or non-profit to supply employment and/or job training and placement for residents. A PHA has hired residents under in-house apprenticeship programs or through force account employment to perform maintenance and repairs, or Section 3 compliance requirements incorporated into agency procurement and contracting solicitations and awards. A PHA has provided space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(i) Grade A: When a PHA executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents and can document that it has hired residents under in-house apprenticeship programs or through force account employment to perform maintenance and repairs, or under Section 3 compliance requirements. The PHA documents that it has incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and provides space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(ii) Grade C: When a PHA executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents, but cannot document that it has hired residents under in-house apprenticeship programs, or through force account employment to perform maintenance and repairs and Section 3 compliance requirements. The PHA cannot document that it has incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and does not provide space and/or transportation for residents to access literacy, job training, and supportive services in connection

with residents obtaining and maintaining employment.

(iii) Grade F: When a PHA has not executed a Memorandum of Understanding for partnering locally with a social service, labor, TANF, or similar type agency or non-profit to supply employment and/or job training and placement for residents, and has not hired residents under in-house apprenticeship programs, through force account employment to perform maintenance and repairs and or Section 3 compliance requirements. The PHA has not incorporated Section 3 requirements in the agency's procurements and contracting solicitation and awards and does not provide space and/or transportation for residents to access literacy, job training, and supportive services in connection with residents obtaining and maintaining employment.

(4) Component #4. Resident participation in management, business property, and public housing administration. A PHA has executed a Memorandum of Understanding that provides for at least quarterly meetings with a Resident Advisory Board and/or duly elected resident organizations to assure quality service in the delivery of property management and maintenance services. For public housing administration, a PHA has entered into written agreements with RMCs and/or resident-owned businesses to provide full or partial property management and maintenance services, or supportive services to residents.

(i) Grade A: When a PHA executed a Memorandum of Understanding with a Resident Advisory Board and/or duly elected resident organizations and documents that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA entered into written agreements with RMCs and/or resident-owned businesses and can document that it provided full or partial property management and maintenance services.

(ii) Grade C: When a PHA executed a Memorandum of Understanding with a Resident Advisory Board and/or duly elected resident organizations, but cannot document that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA has entered into written agreements with RMCs and/or resident-owned businesses, but cannot document that it provided full or partial property management and maintenance services.

(iii) Grade F: When a PHA has not executed a Memorandum of Understanding with a Resident

Advisory Board and/or duly elected resident organizations, and cannot document that quarterly meetings were held to assure quality service in the deliverance of property management and maintenance services. The PHA has not entered into written agreements with RMCs and/or resident-owned businesses, and cannot document that it provided full or partial property management and maintenance services.

§ 902.47 Management operations sub-indicator # 7—income verification.

This sub-indicator evaluates a PHA's performance in and ability to properly verify applicant/resident income.

(a) *Grade A*: When a PHA, at the time of admission and annual reexamination, correctly verifies and determines adjusted annual income for 100 percent of assisted families.

(b) *Grade F*: When a PHA, at the time of admission and annual reexamination, does not correctly verify and determine adjusted annual income for 100 percent of assisted families.

§ 902.48 Management operations sub-indicator #8—rent calculation.

This sub-indicator evaluates a PHA's performance in and ability to correctly calculate resident rents.

(a) *Grade A*: When a PHA correctly calculates the rent of 100 percent of its residents by applying the appropriate deductions, exclusions and allowances; and when the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowance for the unit leased in determining gross rent.

(b) *Grade F*: When a PHA does not correctly calculate the rent of 100 percent of its residents by applying the appropriate deductions, exclusions and allowances; or when the family is responsible for utilities under the lease, the PHA did not use the appropriate utility allowance for the unit leased in determining gross rent.

§ 902.49 Threshold.

When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

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

§ 902.50 Resident service and satisfaction assessment.

(a) *Method of assessment, generally.* The resident service and satisfaction assessment, which measures the level of resident satisfaction with living conditions, is performed through a survey. A third party organization

administers the survey to the PHA residents.

(b) *Survey process.* The PHA shall manage the survey process in accordance with a methodology prescribed by HUD. In addition, PHAs must address any issues identified in the survey. As part of the survey process, the PHA is responsible for:

(1) Updating the unit addresses;

(2) Certifying to the update of the unit addresses; and

(3) Completing implementation plan activities and certifying to their completion.

(c) *HUD review.* The completion of the required actions and the corresponding certifications are subject to HUD on-site review at any time. A PHA that is unable to provide supporting documentation to HUD will receive a zero and a grade of F for this indicator and its final overall PHAS grade will be lowered.

(d) *Frequency of assessment.* In accordance with § 902.13(a), HUD will conduct a resident service and satisfaction survey for an assessed fiscal year only. For fiscal years when a PHA is not assessed under this part, the PHA may undertake a resident service and satisfaction survey on its own.

§ 902.51 Certifications and updating of unit address information.

(a) *Electronic unit address update and verification.* At the beginning of the annual survey process the PHA is required to ensure that its public housing unit addresses are accurate.

(1) All PHAs are required to electronically update unit address information in the Public and Indian Housing Information Center (PIC) database. All PHAs are required to make any additions, deletions and corrections to their respective unit addresses in PIC.

(2) After updating the unit address information electronically, the PHA will certify electronically in the resident assessment sub-system (RASS) database that the list of unit addresses for their property residents is correct.

(3) A PHA is required to both update and certify its unit address information to ensure that HUD has complete and accurate information, and to ensure that the surveys reach the residents. If a random sample of residents cannot be selected to participate in the survey because the unit addresses are incorrect or obsolete, HUD is not able to conduct the survey at that PHA. In that case, the PHA shall receive a zero and a grade of F for the Resident Service and Satisfaction Indicator.

(b) *Implementation plan certification.* All PHAs are required to certify to their implementation plans electronically in

the RASS database in accordance with HUD guidance.

§ 902.52 Resident survey sampling.

A random sample of units shall be chosen to receive the Customer Service and Satisfaction Survey at each PHA. The units shall be randomly selected based on the total number of occupied and vacant units at the PHA. The unit sampling for each PHA is based on the unit representation of each property in relation to the size of the entire PHA.

§ 902.53 Third party administrator.

The third party administrator designated by HUD is responsible for performing the following functions as part of the survey process.

- (a) Distributing the survey to a randomly selected sample of units at each PHA;
- (b) Receiving the completed surveys;
- (c) Collecting, scanning, and aggregating results of the survey;
- (d) Transmitting the survey results to HUD for analysis and grading; and
- (e) Maintaining the individual surveys and ensuring that the responses to the surveys are kept confidential.

§ 902.54 Resident service and satisfaction grading and survey contents.

(a) *Grading.* A PHA shall be graded A, B, C, D or F on the Resident Service and Satisfaction Indicator survey results. The overall resident service and satisfaction grade for a PHA is based on the numeric value for each property within the PHA. It is a weighted average of the numeric value of each property-level grade. The final grades are based on the percentage of points out of the total number of possible points that the PHA receives on the survey, converted to a 0.0 to 4.0 scale. The methods for obtaining the weighted average and the final resident service and satisfaction grades are more fully explained in the resident service and satisfaction grading process notice.

(b) *Survey contents.* The survey content focuses on resident evaluation of the overall living conditions. Residents are asked questions about:

- (1) Maintenance, repair, and services (e.g., work order response);
- (2) Communications (e.g., perceived effectiveness);
- (3) Safety (e.g., perception of personal security);
- (4) Property appearance; and
- (5) Self-Sufficiency.

§ 902.55 Threshold.

A PHA shall receive a zero and a grade of F under this indicator if the

survey process is not managed as directed by HUD, it is determined that the survey results have been altered, or it is determined that the surveys were completed by someone other than the designated residents. When a PHA receives a grade of F under this indicator, the PHA shall be designated a Grade F PHA. When a PHA receives a grade of D under this indicator, the PHA shall be designated a Grade D PHA.

Subpart F—PHAS Submission Requests and Grade Adjustments

§ 902.60 Requests for manual and late submissions.

(a) *Request to manually submit PHAS Indicators #2 and #3.* If the electronic submission requirement poses an administrative or cost burden, a PHA may request approval to submit the unaudited year-end financial information and management operations certification manually. The request must include the reasons why the PHA is unable to submit the data electronically. The PIH-REAC must receive the request for manual submission 60 days prior to the submission due date for each PHAS indicator. A PHA shall forward its request for manual submission in writing to the Director of PIH-REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024-2135 or submit its request to phas@hud.gov by e-mail. HUD shall respond to the PHA's request and forward its determination in writing or by e-mail to the PHA. Approvals are for the PHA's assessed fiscal year only.

(b) *Request to manually submit PHAS Indicator #4.* If the electronic updating and certification requirements pose an administrative or cost burden, a PHA may request approval to manually update resident unit addresses, certify to updated addresses and certify to the survey implementation plan. The request must include the reason why the PHA is unable to update and certify electronically. The PIH-REAC must receive the request 30 days prior to the due dates for the resident unit address update and certification and for the certification to the survey implementation plan. A PHA shall forward its request in writing to the Director of PIH-REAC, 1280 Maryland Avenue, SW., Washington, DC 20024-2135 or submit its request to phas@hud.gov by e-mail. HUD shall respond to the PHA's request and forward its determination in writing to the PHA. Approvals shall be only for the PHA's current survey cycle.

(c) *Request for extension of time to make submissions.* In the event of extenuating circumstances, a PHA may request an extension of time to submit its unaudited financial information, management operations certification, and resident service and satisfaction certifications. To receive an extension, a PHA must ensure that the PIH-REAC receives the PHA's extension request (electronic or written) 15 days before the submission due date. The PHA's extension request (electronic or written) must include a justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its request for an extension of time to the Director of PIH-REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024-2135, or submit its request to phas@hud.gov by email. HUD shall forward its determination (electronic or written) to the PHA.

(d) *Request for extension of time to submit audited financial information.* In accordance with OMB Circular A-133, HUD, for good cause, may grant PHAs an extension of time to submit audited financial information. HUD shall consider PHA requests for extensions of the report submission due date (established by OMB as no later than nine months after the end of the fiscal year). The PHA's extension request (electronic or written) must include a justification as to why the PHA cannot submit the information by the submission due date. The OMB requires that the request be submitted prior to the submission due date. A PHA shall submit its request for an extension of time to the Director of PIH-REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024-2135, or submit its request to phas@hud.gov by email. HUD shall forward its determination (electronic or written) to the PHA.

§ 902.61 Failure to submit data.

(a) *Failure to submit data by due date.* (1) HUD shall impose letter grade deductions if a PHA, without a finding of good cause by HUD, submits its year-end unaudited financial information or management operations certification, required by this part, past the due dates. The letter grade deductions will be imposed on each indicator beginning on the eighth day after the submission due date.

(2) A PHA shall receive a presumption rating of zero and a grade of F for each PHAS indicator for which the certification or year-end unaudited financial information is not received within 49 days after the due date.

(I) TABLE 1.—LATE SUBMISSION FOR EITHER UNAUDITED FINANCIAL INFORMATION OR MANAGEMENT OPERATIONS CERTIFICATION

If a PHA submits either its unaudited financial information or management operations certification * * *	Then * * *
(A) more than 7 days, but no more than 21 days after the submission due date.	the PHA's grade will be lowered one letter grade for the indicator submitted late.
(B) more than 21 days, but no more than 35 days, after the submission due date.	the PHA's grade will be lowered two letter grades for the indicator submitted late.
(C) more than 35 days, but no more than 49 days, after the submission due date.	the PHA's grade will be lowered three letter grades for the indicator submitted late.
(D) more than 49 days after the submission due date	the PHA will receive a late presumptive rating of zero and its grade for the indicator submitted late will be an F.

(II) TABLE 2.—LATE SUBMISSION FOR BOTH UNAUDITED FINANCIAL INFORMATION AND MANAGEMENT OPERATIONS CERTIFICATION

If a PHA submits both its unaudited financial information and management operations certification * * *	Then * * *
(A) more than 7 days, but no more than 21 days after the submission due date.	one letter grade will be deducted from each indicator submitted during this time period.
(B) more than 21 days, but no more than 35 days after the submission due date.	two letter grades will be deducted from each indicator submitted during this time period.
(C) more than 35 days, but no more than 49 days, after the submission due date.	three letter grades will be deducted from each indicator submitted during this time period.
(D) more than 49 days after the submission due date	the PHA will receive a late presumptive rating of zero and its grade for both indicators will be an F.

(3) The PHA shall receive a presumptive rating of zero and a grade of F for the Financial Condition Indicator, if a PHA, without a finding of good cause, submits its audited financial information after the due date.

(I) TABLE 3.—LATE SUBMISSION FOR AUDITED FINANCIAL INFORMATION

If a PHA submits its audited financial information * * *	Then * * *
(A) more than 9 months after the PHA's fiscal year end	the PHA will receive a late presumptive rating of zero and its financial condition indicator grade will be an F.
(B) [Reserved].	

(b) *Presumptive rating of zero and grade of F.* If the PHA receives a presumptive rating of zero and grade of F for any PHAS indicator due to failure to submit a certification, year-end financial information, or audited financial information by the due date, including any applicable extension of the due date, the PHA shall be designated a Grade F PHA or Capital Fund Grade F PHA pursuant to § 902.10.

(c) *Rejected submissions.* When HUD rejects a PHA's year-end unaudited financial information or management operations certifications after the due date, a PHA shall have 15 days from the date of the rejection to resubmit the information without a penalty being applied.

§ 902.63 PHAS grade adjustments.

(a) *Issuance of grade by HUD.* HUD will issue an overall PHAS grade for each PHA after the later of one month after the submission due date for financial information and the other required certifications, or one month after submission by the PHA of its

financial information and the other required information certifications. The overall PHAS grade becomes the PHA's final grade upon issuance by HUD.

(b) *Adjustments to the PHAS grade.* Adjustments may be made to a PHA's final overall PHAS grade as a result of:

- (1) The IPA or CPA audit, as provided in subpart C;
- (2) Property reinspections;
- (3) The appeal process provided in § 902.69;
- (4) Determinations as a result of HUD's Office of Inspector General (OIG) investigation and/or audit;
- (5) Investigations by HUD's Office of Fair Housing and Equal Opportunity;
- (6) A HUD conducted compliance review or quality assurance review;
- (7) A HUD conducted certification review;
- (8) A Field Office on-site review; and/or

(9) An investigation by any appropriate legal authority.

(c) *Record retention and verification of information submitted.* (1) A PHA shall maintain documentation for three years verifying information on all

indicators, sub-indicators, and components for HUD on-site review.

(2) A PHA's certifications, year-end financial information, and all supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437d(j)(6)). Appropriate sanctions for false certification shall be imposed, including civil penalties, limited denial of participation, suspension, or debarment of the signatories, the loss of Grade A PHA designation pursuant to § 902.67, and a lower grade under the PHAS indicators that shall result in a lower overall PHAS grade.

(3) A PHA that cannot provide supporting documentation to HUD, or to the PHA's IPA or CPA for the assessment under any indicator(s), sub-indicator(s), and/or component(s) shall receive a zero and a grade of F for that indicator(s), sub-indicator(s), and/or component(s), and its overall PHAS grade shall be lowered.

(d) *Review of a PHA's audited financial information.* As part of HUD's ongoing quality assurance process, HUD may conduct a quality assurance review of a PHA's IPA or CPA statement and work papers. If a PHA's audit is determined to be deficient as a result of a quality assurance review, HUD may, at its discretion, select the audit firm that will perform a new audit of the PHA and may serve as the audit committee for the audit in question. This quality assurance review is important to determine the accuracy of the grading under Financial Condition Indicator #2.

§ 902.67 Withholding, denying, and rescinding grades.

(a) *Withholding, denying, and rescinding grade/designation.* (1) In exceptional circumstances, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives for Grade A, B, C, or D PHA designations even though a PHA has satisfied all of the PHAS indicators for Grade A, B, C, or D PHA designation. HUD may do so only in the case of a PHA that:

- (i) Is operating under a special agreement with HUD;
- (ii) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;
- (iii) Is operating under a court order;
- (iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications submitted under this part, are not supported by the facts as evidenced by sources such as a HUD monitoring and/or compliance review, routine reports, a HUD (OIG) investigation and/or audit, an IPA's or CPA's audit, or an investigation by any appropriate legal authority; or
- (v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, procurements, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing properties and operate them consistent with Federal laws and regulations.

(2) If a Grade A, B, C, or D PHA designation is denied or rescinded, the PHA shall be a Grade F PHA.

(b) *Effect of denial or rescission.* The denial or rescission of a designation of a Grade A, B, C, or D PHA will result in an overall final PHAS grade of zero.

(c) *Procedures for request for reinstatement of grade/designation.* A PHA that disagrees with the denial or rescission of its grade/designation may request reinstatement of the grade/designation. The request, which must be in writing and include reasons for the reinstatement, must be directed to the Assistant Secretary. Requests must be sent to: Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4100, Washington, DC 20410.

§ 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* A PHA may request a technical review of physical inspection results and resident survey results.

(1) For all technical reviews, the burden of proof is on the PHA to show that an error occurred.

(2) A PHA's request for technical review must be submitted in writing to the Director of PIH-REAC, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024-2135. PIH-REAC must receive the written request no later than 15 days following the issuance of the physical inspection results or the resident survey results to the PHA. The request must include the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) If after review of the results of the physical inspection and grade for a property, the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of that property, the PHA may request a technical review of the inspection results for that property.

(2) The PHA's request must include the PHA's evidence that an objectively verifiable and material error occurred. A PHA must submit documentation such as photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence. The evidence must have a factual basis other than a disagreement with the inspector's observations or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions, other than EHS deficiencies, that were corrected subsequent to the inspection, or based on a challenge to the grading class.

(4) After receipt of a PHA's request for technical review of a property's inspection results, PIH-REAC shall review the PHA's file and any objectively verifiable evidence

submitted by the PHA. If PIH-REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then PIH-REAC may take one or a combination of the following actions:

- (i) Undertake a new inspection;
 - (ii) Correct the physical inspection report;
 - (iii) Issue a corrected physical condition grade; or
 - (iv) Issue a corrected PHAS grade.
- (5) In determining whether a new inspection of the property is warranted, PIH-REAC shall review the PHA's file and evidence submitted. PIH-REAC shall then determine whether the evidence supports that there may have been a significant contractor error in the inspection which, if a new inspection were conducted, would result in a significant change from the property's original physical condition grade, overall PHAS grade, and corresponding PHAS designation (*i.e.*, Grade A PHA, Grade B PHA, Grade C PHA, and Grade D PHA). If the new inspection results in a significant change in the PHA's original physical condition grade, PHAS grade and corresponding designation, PIH-REAC shall issue a new PHAS grade and corresponding designation to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. There are three types of material errors.

(i) Building data error. A building data error occurs if the inspection includes the wrong building, a building that was not owned by the PHA, or a common area or site areas that are not a part of the property. Incorrect building data that does not affect the grade, such as the address, the building name, the year built, etc., are not considered material. However, HUD requests notification of these errors so they may be corrected in the database.

(ii) Unit count error. A unit count error occurs if the total number of public housing units used in the grading is incorrect. Because the grading uses total public housing units, PIH-REAC shall review instances when the participant can provide evidence that the total units used is incorrect.

(iii) Non-existent deficiency error. A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(c) *Technical review of resident survey results.* If after review of the results of the resident service and satisfaction survey, the PHA believes that the contracted third party administrator can be shown to be in error, the PHA may request a technical review of a PHA's resident survey results.

(1) The PHA's request must include objectively verifiable evidence that a technical error occurred. Examples of technical errors include, but are not limited to, incorrect material being mailed to residents, or incorrect PHA unit addresses due to the third party administrator's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list pursuant to § 902.51 may not request a technical review based on incorrect addresses.

(2) After receipt of a PHA's request for technical review of resident survey results, PIH-REAC shall review the PHA's file and any evidence submitted by the PHA. If PIH-REAC's review determines that an error has been documented, then PIH-REAC may take one or a combination of the following actions:

- (i) Undertake a new survey;
 - (ii) Correct the resident survey results report;
 - (iii) Issue a corrected resident services and satisfaction grade; or
 - (iv) Issue a corrected PHAS grade.
- (d) *Review of technical review decisions.* The Assistant Secretary will review all technical reviews that are denied by PIH-REAC.

§ 902.69 PHA right of petition and appeal.

(a) *Appeals and petitions.* A PHA may:

- (1) Appeal its Grade F PHA designation (including Grade F PHA and Capital Fund Grade F PHA as provided in § 902.10(c));
- (2) Appeal its final overall PHAS grade;
- (3) Petition for removal of Grade F PHA designation; and
- (4) Appeal any refusal of a petition to remove its Grade F PHA designation.

(b) *Appeal of final overall PHAS grade.* (1) If a PHA believes that an objectively verifiable and material error (or errors) exists in any of its final PHAS indicator grades, which, if corrected, will result in a significant change in the PHA's final overall PHAS grade and its designation, the PHA may appeal its final overall PHAS grade in accordance with the procedures of this section. A significant change in a final overall PHAS grade is a change that would cause the PHA's final overall PHAS grade to increase, resulting in a higher PHAS designation for the PHA (*i.e.*, from Grade F PHA to Grade D PHA, Grade D PHA to Grade C PHA, Grade C PHA to Grade B PHA, Grade B PHA to Grade A PHA).

(2) A PHA that is under the jurisdiction of the appropriate HUD office having jurisdiction over Grade F PHAs may appeal its overall final PHAS

grade after one year even if granting the appeal does not change its grade of F. This right to appeal provides the PHA with the opportunity to meet the requirements to substantially improve its performance under PHAS pursuant to § 902.75(f).

(c) *Appeal and petition procedures.* (1) To appeal its Grade F PHA designation or its final overall PHAS grade, a PHA shall submit a request in writing to the Director of PIH-REAC at 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024. PIH-REAC must receive the written request no later than 30 days following the issuance of the designation and the final overall PHAS grade to the PHA.

(2) To petition removal of Grade F PHA designation, a PHA shall submit its request in writing to the Director of PIH-REAC at 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024.

(3) An appeal of a Grade F designation or petition for removal of Grade F designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a final overall PHAS grade must include the PHA's reasonable evidence that an objectively verifiable and material error occurred. Any appeal or petition submitted to PIH-REAC without appropriate documentation shall not be considered and shall be returned to the PHA.

(d) *Consideration of petitions and appeals.* (1) *Consideration of appeal of final overall PHAS grade.* After receipt of an appeal of a final overall PHAS grade from a PHA, PIH-REAC shall review the PHA's file and the evidence submitted by the PHA supporting that an objectively verifiable and material error occurred. If PIH-REAC determines that the PHA has documented an objectively verifiable and material error, PIH-REAC shall convene a Board of Review (the Board), in accordance with the procedures of this section, to evaluate the appeal and its merits. If the Board determines that an objectively verifiable and material error existed for any of the PHAS indicators based on the evidence, the Board may determine either that a reassessment of the PHA is warranted or that the PHA's PHAS indicator grade(s) and final overall PHAS grade are changed, resulting in a change of designation. If the Board determines that a reassessment of the PHA is warranted, PIH-REAC shall schedule a reinspection or undertake a new assessment of the financial condition, management operations, or resident service and satisfaction, or any combination thereof. If the Board determines that a grade should be

changed, that change shall be made by PIH-REAC.

(2) *Consideration of appeal of Grade F PHA designation or petition to remove Grade F PHA designation.* After receipt of an appeal of a Grade F PHA designation or petition to remove a Grade F PHA designation, PIH-REAC shall convene a Board to evaluate the appeal or petition and its merits. The Board may determine that a reassessment is necessary or may determine that other actions such as changing the PHA's designation, or removing the PHA's Grade F PHA designation are appropriate. If the Board determines that a reassessment is warranted, PIH-REAC shall schedule a reinspection or undertake a new assessment of the financial condition, management operations or resident service and satisfaction, or any combination thereof. If the Board determines that the designation should be changed, that change shall be made by PIH-REAC.

(3) *Board Membership.* The Board membership shall be comprised of a representative from PIH-REAC, from the Office of Public and Indian Housing, and from such other office or other representatives as the Secretary may designate.

(e) *Appeal and petition decisions.* HUD shall make final decisions of appeals and petitions under this section, within 30 days of receipt of the appeal or petition, and may extend this period for an additional 30 days if necessary. A PHA's failure to submit supporting documentation with its request for appeal or petition, or within any additional period granted by HUD is grounds for denial of the appeal or petition. The Assistant Secretary shall report all final appeal decisions to PHAs.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for Grade A PHAs.

(a) *Incentives for Grade A PHAs.* A PHA that is a Grade A PHA shall be eligible for the following incentives, and any other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

(1) Relief from specific HUD requirements. (i) A Grade A PHA shall be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of Grade A PHA designation.

(ii) As provided in §§ 902.13 and 902.30, a PHA that is a Grade A PHA shall be next assessed under PHAS in three years. Notwithstanding the PHA's

PHAS assessment schedule, a Grade A PHA is required to submit annual unaudited and audited financial information. However, HUD shall not issue a grade for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS.

(2) Public recognition. Grade A PHAs will receive a Certificate of Commendation from HUD. These PHAs also will receive special public recognition from the Hub Office/Program Centers.

(3) Bonus points in funding competitions. A Grade A PHA shall be eligible for bonus points in HUD's funding competitions, and formula-based programs when bonus points are not restricted by statute or regulation governing the funding program. Eligibility for Grade A PHAs to receive these bonus points will be stated in HUD's notices of funding availability or other funding documents.

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

(c) *Audits and reviews not relieved by designation.* A Grade A PHA or a Grade B, C or D PHA remains subject to:

(1) Regular IPA or CPA audits.

(2) OIG audits or investigations, which shall continue to be conducted as circumstances may warrant.

§ 902.73 Referral of Grade B, C, and D PHAs.

(a) *General.* (1) Referral. Grade B, C, and D PHAs shall be referred to the Hub Office/Program Center for appropriate action.

(2) Improvement Plan. (i) A PHA that is designated a Grade D PHA shall be required to submit an Improvement Plan to address deficiencies in the PHA's performance.

(ii) A PHA that is designated a Grade B or C PHA may be required, at the discretion of the appropriate area Hub Office/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* A PHA is required to submit its Improvement Plan to the Hub Office/Program Center for approval within 30 days after the PHA's final overall PHAS grade is issued. All Improvement Plans must meet the requirements of paragraphs (d), (e) and (f) of this section.

(c) *Correction of deficiencies.* (1) Time period for correction. After a PHA receives its overall PHAS grade and designation of Grade B, C, or D PHA, the PHA must correct any deficiency indicated in the assessment within 90 days, or, if an Improvement Plan is required, within such period as provided in the Improvement Plan.

(2) Notification and report to Hub Office/Program Center. A PHA shall notify the Hub Office/Program Center of its action to correct each deficiency.

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

(1) List each PHAS indicator, sub-indicator and/or component, together with the grade, that was identified as a deficiency and identify other baseline data, including all relevant raw data;

(2) Describe any other problems with performance and/or compliance that were identified during an on-site review of the PHA's operations;

(3) Describe the procedures that shall be followed to correct each deficiency;

(4) Provide a timetable for the correction of each deficiency; and

(5) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The Hub Office/Program Center shall approve or deny an Improvement Plan and notify the PHA of its decision.

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

(f) *Submission of revised Improvement Plan.* The PHA shall submit a revised Improvement Plan within 30 days of its receipt of the Hub Office/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan or correct deficiencies.* (1) The Hub Office/Program Center shall notify a PHA if a PHA fails to submit an acceptable Improvement Plan or fails to correct deficiencies within the time specified in an Improvement Plan or such extensions that may be granted by HUD.

(2) The PHA shall respond to the Hub Office/Program Center's notification within 30 days and provide the Hub Office/Program Center with the reasons for its lack of progress in submitting or carrying out the Improvement Plan.

(3) The Hub Office/Program Center shall advise the PHA whether its reasons for lack of progress are acceptable. If the Hub Office/Program Center determines that the PHA's reasons for lack of progress are unacceptable, HUD shall notify the PHA that it shall be referred to the HUD office with jurisdiction over Grade B, C, or D PHAs for remedial actions, or such actions as that office may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default.

(4) If the HUD office with jurisdiction over Grade B, C, or D PHAs determines that a PHA failed to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, HUD may take further action to sanction the PHA, but only after the PHA has had one year since the PHA was notified it was a Grade B, C, or D PHA to correct its deficiencies.

§ 902.75 Referral of Grade F PHAs.

(a) *General.* After a PHA has received notification it is a Grade F PHA (*i.e.*, Grade F PHA or Capital Fund Grade F PHA), in accordance with the requirements of section 6(j)(2)(B) of the Act (42 U.S.C. 1437d(j)(2)(B)) and in accordance with this part, HUD shall refer the PHA to the appropriate HUD office for remedial action. The remedial actions taken by HUD and the PHA will include actions statutorily required, and such other actions that HUD determines to be appropriate.

(b) *Memorandum of Agreement (MOA).* HUD shall initiate the development of an MOA, within 30 days of notifying a PHA that it is a Grade F PHA. The PHA must execute the MOA as drafted by HUD within 10 days after issuance. The final MOA is a binding contractual agreement between HUD and a PHA.

(c) *Scope of the MOA.* The scope of the MOA may vary depending upon the extent of the deficiencies identified in the PHAS assessment. All MOAs will include:

(1) Each PHAS indicator, sub-indicator or component, together with the grade, that was identified as a deficiency and other baseline data, including all relevant raw data;

(2) Performance targets for the periods specified by HUD;

(3) Strategies for the PHA to use to achieve the performance targets within the time period of the MOA;

(4) Technical assistance that will be provided to the PHA or facilitated by HUD;

(5) Incentives for meeting the targets, such as the removal of Grade F PHA designation;

(6) The consequences for failing to meet the targets including, but not limited to, the sanctions that may be imposed. Sanctions include the imposition of budget and management controls by HUD, declaration of substantial default, and subsequent actions. Subsequent actions include judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions HUD deems appropriate; and

(7) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the MOA and rectifying the PHA's deficiencies.

(d) *Parties to the MOA.* An MOA will be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution) or a receiver (pursuant to a court ordered receivership agreement, if applicable);

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

(3) The Director of the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA.

(e) *Failure to execute MOA or improve performance under MOA.* HUD will take further action if the PHA fails or refuses to execute an MOA within the period provided in paragraph (b) of this section, or the PHA operating under an executed MOA does not improve its performance as provided in paragraph (f) of this section. HUD shall take the actions required by § 902.77(a).

(f) *Recovery.* (1) Two year maximum recovery period. After referral to the appropriate HUD office for remedial action, the PHA has two years to improve its performance as measured by the PHAS indicators. The PHA must improve its performance in each year of the two-year period as required by the Act or HUD will take further action as set forth in § 902.77.

(2) *Benchmarks.* (i) By the end of the first year, the PHA must make the following improvements. For a Grade F PHA, for each indicator with a grade of F, the PHA must improve that indicator's grade value by at least 50 percent of the difference between its value and the minimum grade value for a grade of D. For a Capital Fund Grade F PHA, the PHA must obligate 50

percent of the unobligated funds and/or expend 50 percent of the unexpended funds.

(ii) By the end of the second year, the PHA must make the following improvements. For a Grade F PHA, the PHA must achieve an overall PHAS grade of D and a grade of D for each of the four indicators. For a Capital Fund Grade F PHA, the PHA must obligate 100 percent of the unobligated funds and/or expend 100 percent of the unexpended funds.

(iii) The end of the first year is one year from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation. The end of the second year is two years from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation.

(g) *Audit review.* HUD shall perform an audit review and may, at its discretion, select the audit firm to perform the audit of the PHA that is a Grade F PHA. Further, HUD may, at its discretion, serve as the audit committee for the audit in question.

(h) *Continuation of services to residents.* To the extent feasible, all services to residents will continue uninterrupted during the time a PHA is a Grade F PHA and under jurisdiction of the appropriate HUD office.

§ 902.77 Actions and sanctions.

(a) *Actions against Grade F PHAs.* (1) Failure to execute or meet the MOA requirements. The failure of a Grade F PHA to execute or meet the requirements of an MOA in accordance with § 902.75 constitutes a substantial default under § 902.79. The HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA will recommend to the Assistant Secretary that the PHA be declared in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within a period not to exceed 30 days unless the Assistant Secretary determines that a longer period is appropriate, HUD shall take further action.

(2) *Actions.* (i) For PHAs with fewer than 1250 units, HUD shall initiate either the judicial appointment of a receiver or an administrative receivership.

(ii) For PHAs with 1250 or more units, HUD shall initiate the judicial appointment of a receiver or an administrative receivership, but may only initiate an administrative receivership while HUD's petition for judicial receivership is pending.

(iii) For all PHAs, following the recommendation of the Assistant Secretary, HUD shall initiate the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Actions against other PHAs in substantial default.* A PHA that is not a Grade F PHA, but that has been found to be in substantial default under the provisions of § 902.79 also is subject to further action. The Assistant Secretary makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period of time, HUD shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83, as recommended by the Assistant Secretary. HUD also may initiate such other available sanctions, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)).

(2) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(3) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(4) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (c)(3) of this section, in accordance with section 6(j)(3)(D) of the Act.

(d) *Continuation of services to residents.* To the extent feasible, all services to residents shall continue uninterrupted, during the time a PHA is under referral to HUD.

§ 902.79 Substantial default.

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

following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of federal statutes, including but not limited to the Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the PHA's ACC.

(2) HUD may determine that a PHA's failure to execute an MOA or satisfy the terms of an MOA entered into pursuant to § 902.75, or to make reasonable progress to execute or meet requirements included in an MOA, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a Grade F PHA that does not show substantial improvement, as described in § 902.75(f), is in substantial default.

(4) HUD may determine that a substantial breach or default in the terms and conditions of the PHA's ACC constitutes a substantial default.

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

(c) *Notification of substantial default and response.* In the event of substantial default described in paragraph (a) of this section or if information from an annual assessment, audit, or any other credible source (including, but not limited to, the Office of Fair Housing Enforcement, the OIG, a court order, or a referral from a mayor or other official) indicates that events or conditions may exist that constitute a substantial default or breach, HUD shall perform an independent investigation. Upon a determination or finding, HUD shall advise a PHA of such substantial default or of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases.

(1) *Form of notification.* Except in the case of apparent fraud or criminality, and/or in the case of an emergency condition that poses an imminent threat to the life, health, or safety of residents, the Assistant Secretary shall provide written notification to the PHA of the determination or finding that events have occurred or that conditions exist that constitute substantial default. Before taking further action, HUD shall provide the PHA an opportunity to take corrective action, including the remedies and procedures available to

PHAs designated Grade F. The written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board. The written notification shall include, but is not limited to:

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

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

(iii) Identification of the information, referrals, and opportunities to initiate corrective action;

(iv) Identification of a specific time period of not less than 10 days (except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions) nor more than 30 days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) A statement indicating that, absent a satisfactory response in accordance with paragraph (c)(2) of this section, HUD will take action, using any or all of the interventions specified in § 902.83 and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority.

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

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of written notice from HUD of a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA shall concur on the existence of substantial default conditions that can be remedied by technical assistance, and the PHA shall provide HUD with written assurance that the PHA shall address all deficiencies. HUD shall then immediately proceed with interventions as provided in § 902.83.

(d) *Emergency situations.* In any situation determined to be an emergency, or in any case when the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by

causing the proposed interventions to be implemented without appeals or delays.

§ 902.83 Interventions.

(a) If HUD determines that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain dwellings that are decent, safe, sanitary and in good repair for the residents. Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single public housing property or a group of properties. Under this limited intervention procedure, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific property, a group of properties in a geographical area, or a specific operational area. During the limited intervention procedure, the PHA retains responsibility for all programs, operational areas, and properties not subject to the intervention.

(b) Interventions may include:

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

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

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

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

(5) Providing intervention and assistance necessary to remedy emergency conditions;

(6) Selecting an administrative receiver to manage and operate all or part of the PHA's housing after soliciting competitive proposals; and

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

(c) The receiver is to conduct the affairs of the PHA:

(1) In a manner consistent with statutory, regulatory, and contractual obligations of the PHA;

(2) In accordance with additional terms and conditions that the court may provide; and

(3) In accordance with section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(d) Any party may petition for termination of a receiver appointed pursuant to this section. The receiver may be terminated when the court determines that all defaults have been

cured or the PHA is capable again of discharging its duties.

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

§ 902.85 Resident petitions for remedial action.

Residents may petition HUD to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(i) through (iv)) if:

(a) the resident petitioners equal at least 20 percent of the PHA's residents; or

(b) the petitioning organization or organizations' membership equals at least 20 percent of the PHA's residents.

Dated: January 9, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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