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Department of Housing and Urban Development

24 CFR Parts 901, 902, and 907
**Public Housing Evaluation and Oversight:
Changes to the Public Housing
Assessment System (PHAS) and
Determining and Remediating Substantial
Default; Asset Management Transition
Year Information and Uniform Financial
Reporting Standards (UFRS) Information;
Proposed Rule and Notice**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 901, 902 and 907

[Docket No. FR-5094-P-01]

RIN 2577-AC68

**Public Housing Evaluation and
Oversight: Changes to the Public
Housing Assessment System (PHAS)
and Determining and Remedying
Substantial Default**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would make two sets of amendments to improve evaluation and oversight of public housing agencies (PHAs). First, this proposed rule would amend HUD's Public Housing Assessment System (PHAS) regulations for the purposes of: Consolidating the regulations governing assessment of a PHA's program in one part of the Code of Federal Regulations (CFR); revising certain PHAS regulations based on the Department's experience with PHAS since it was established as the new system for evaluating a PHA in 1998; and updating certain PHAS procedures to reflect recent changes in public housing operations from conversion by PHAs to asset management, including updating and revising the PHAS scoring. PHAS is designed to improve the delivery of services in public housing and to enhance trust in the public housing system among PHAs, public housing residents, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of its projects, based on standards that are uniform and verifiable. The changes proposed by this rule are intended to enhance the efficiency and utility of PHAS.

Second, the proposed rule would establish, in a separate part of the CFR, the regulations that would specify the actions or inactions by which a PHA would be determined to be in substantial default, the procedures for a PHA to respond to such a determination or finding, and the sanctions available to HUD to address and remedy substantial default by a PHA. To date, such regulations have been included in the PHAS regulations, but the actions or inactions that constitute substantial default are not limited to failure to comply with PHAS regulations. Accordingly, the proposed regulations applicable to substantial default are

more appropriately codified in a separate CFR part.

This proposed rule is also publishing the scoring processes for each of the PHAS scoring categories as appendices to part 902. Although these scoring processes are proposed as appendices, it is also possible that, at the final rule stage, they will be published as separate notices as has been HUD's practice to this point.

DATES: *Comment Due Date:* October 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public

comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Contact Wanda Funk, Senior Advisor, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410; or the REAC Technical Assistance Center at 888-245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Additional information is available from the REAC Internet site at <http://www.hud.gov/offices/reac/>.

SUPPLEMENTARY INFORMATION:

I. Changes to the PHAS

A. Background on PHAS

PHAS was established by a final rule published on September 1, 1998 (63 FR 46596). Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to four key areas of a PHA's operations: (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, a PHA receives a composite score that represents a single score for a PHA's entire operation and a corresponding performance designation. PHAs that are designated high performers receive public recognition and relief from some HUD requirements. PHAs that are designated standard performers may be required to take corrective action to remedy identified deficiencies. PHAs that are designated substandard performers are required to take corrective action to remedy identified deficiencies. PHAs that are designated troubled performers are subject to remedial action.

By final rule published on January 11, 2000 (65 FR 1712), HUD amended the PHAS regulations to, among other things, elaborate on some PHAS procedures; revise the mechanism for obtaining technical review of physical inspections results and resident survey

results, and for appealing PHAS scores; and implement statutory changes resulting from enactment of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, October 21, 1998).

B. Public Housing Operating Fund Program

The regulations governing the Public Housing Operating Fund program are of key relevance to the proper operation of PHAs and, consequently, to PHAS. Operating funds are made available to a PHA for the operation and management of public housing; therefore, the regulations applicable to a PHA's operation and management of public housing must be considered in any changes proposed to PHAS. The regulations for the Public Housing Operating Fund program are found at 24 CFR part 990; were published on September 19, 2005 (70 FR 54983), which was followed by a correction published on October 24, 2005 (70 FR 61366); and became effective on November 18, 2005.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290), as revised by the September 2005 rule, establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. HUD's Fiscal Year (FY) 2008 appropriations, provided in Title IV of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007), state, in administrative provision section 225, that PHAs that own or operate 400 or fewer public housing units may elect to be exempt from any asset management requirement imposed by HUD in connection with HUD's operating fund rule, with one exception: A PHA seeking discontinuance of a reduction of subsidy under the operating fund formula shall not be exempt from asset management requirements. Since requirements in appropriations acts, unless otherwise indicated, apply only to the fiscal year to which the appropriations act is directed, HUD's proposed rule to revise PHAS does not reflect this one-year provision. PHAs are required to implement project-based management, project-based budgeting, and project-based accounting, which are all defined in the regulations of 24 CFR part 990, subpart H, and are essential components of asset management.

C. Proposed Amendments to PHAS

The proposed amendments to PHAS retain the basic structure of the existing regulations. PHAs will continue to be scored based on evaluation in four indicators: Physical condition, financial condition, management operations, and the PHA's management of its Capital Fund program. PHAS would continue to rely on information that is verifiable by a third party, wherever possible.

Overview of Proposed Changes to PHAS

This proposed rule modifies PHAS primarily to conform to the new regulations on the Public Housing Operating Fund program and the conversion by PHAs to asset management, including project-based budgeting, project-based accounting, and project-based performance evaluation. Highlights of some of the major changes proposed to each of the four current PHAS indicators are as follows:

Physical. The physical inspection indicator would remain largely unchanged. Independent physical inspections would continue to be conducted on each public housing project, although the frequency of inspections would depend on the scores of individual projects, not the score for the entire PHA. For example, if a specific project scored below 80 points, it would be inspected the following year, regardless of whether the overall physical score for the PHA, based on all projects, was 80 points or higher (as is the case in the currently codified PHAS regulations). If a PHA's overall physical score is less than 80 points, and one or more projects score 80 points or above, those projects that score 80 points or above would be inspected every other year.

Financial. The financial assessment system would be modified to include an assessment of the financial condition of each project. A PHA would continue to submit an annual Financial Data Schedule (FDS) to HUD that contains financial information on all major programs and business activities. However, for purposes of PHAS, the PHA would be scored on the financial condition of each project, and these scores would be the basis for a program-wide score.

Subindicators that are currently available through financial reports but are more appropriately measures of management performance (e.g., bad debt, tenant accounts receivables, and occupancy loss) would be removed from this indicator and moved to the management operations indicator. HUD considered the option of allowing these

items to remain as part of the financial condition indicator. HUD now has 10 years of experience with PHAS, and, based on that experience, believes that bad debt, accounts receivables, and occupancy loss are more properly measures of management operations, as is currently the prevailing view in the multifamily industry. Even after these items were moved from their original location as part of the management operations assessment, they were tracked in both the financial condition and management operations indicators. The fact that these items continued to be tracked as management operations-related even after they were moved to the financial condition indicator demonstrates that they are, in fact, closely related to management operations. The U.S. Housing Act of 1937 (1937 Act) itself, in section 6(j), 42 U.S.C. 1437d(6)(j), associates items in these categories with management operations (see 42 U.S.C. 1437d(j)(1)(A)) (vacancy rate, that is, occupancy loss) and (j)(1)(C) (percentage of rents collected, related to tenant accounts receivable and bad debt), both of which are referred to by the statute as examples of "indicators to assess the management performance." For these reasons, HUD has decided to move these factors to management operations, where HUD, based on multifamily industry practice and its own experience, believes they belong.

Management. The current management operations assessment system relies on PHA submission of a range of information that is self-certified. Under the proposed rule, this current system would be replaced with management reviews conducted of each project by HUD staff (or, where applicable, HUD's agents). Preferably, such reviews would be conducted annually, consistent with the standards for HUD's subsidized housing programs. As part of this project management review process, HUD would examine a PHA's performance in the area of resident programs and participation, thereby eliminating a separate resident satisfaction survey.

Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would be evaluated as part of the project management review, thus eliminating the need for a separate indicator on resident satisfaction and, therefore, a separate satisfaction survey. The project management review would include a subindicator that would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and measure the extent to

which residents are provided with opportunities for involvement in the administration of the public housing. This subindicator would include all of the elements regarding economic self-sufficiency and resident participation that are included in section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)). Separately, HUD may perform resident surveys at different frequencies that would be used as diagnostic tools that would assess residents' satisfaction with

their living conditions and not be made part of a PHA's score.

The current survey instrument has been in place since 1999. In evaluating the results of the survey, HUD has found strong indications that the survey is not useful. Even some of the more troubled projects have received high resident satisfaction scores. As the table below shows, the average satisfaction rate is 82.57 percent. For the period from FY 2002 through FY 2006, the satisfaction

rate has varied by no greater than 1.88 percent for the entire 5-year period. The services survey area has consistently been in the 90th percentile, while the lowest-scoring survey area, communication, has an average satisfaction rate of 75.68 percent. Given the actual condition of some of the projects surveyed, it is highly unlikely that these results are accurately reflecting resident satisfaction.

RESIDENT SATISFACTION

Survey area	FY 2002 %	FY 2003 %	FY 2004 %	FY 2005 %	FY 2006 %	Average %
Maintenance & Repair	89.25	89.11	85.16	86.62	88.50	87.73
Communication	76.35	76.31	74.80	75.61	75.35	75.68
Safety	74.40	82.31	80.69	81.24	80.13	79.75
Services	92.32	92.24	91.90	91.78	91.99	92.05
Appearance	77.12	78.63	76.66	78.29	77.39	77.62
Average	81.89	83.72	81.84	82.71	82.67	82.57

The response rate for the survey has also remained relatively static, as the following table shows.

RESIDENT SURVEY RESPONSE RATES

FY 2002 %	FY 2003 %	FY 2004 %	FY 2005 %	FY 2006 %
40.33	37.12	39.15	42.40	39.06

Average Response Rate: 39.61

At some of the smaller PHAs, residents have complained that they are answering the same questions year after year. Industry groups have also indicated that they believe the survey instrument needs to be revised.

As an alternative to the resident survey, the new management review format for public housing projects includes two areas that take into consideration resident participation: Economic self-sufficiency and resident involvement in project administration. These two areas assess the percentage of adults with some form of employment income, the percentage of adults participating in self-sufficiency, the number of self-sufficiency opportunities offered at the project, and the number of resident involvement opportunities offered by a project. In addition, as much as possible, the management operations subindicators focus on residents. For example, the work order subindicator measures tenant-generated work orders rather than emergency and nonemergency work orders. The advantage of these management subindicators is that they measure

objective results rather than subjective satisfaction, and also that they are not dependent on voluntary participation but rather are determined by actual reviews and site visits.

HUD invites comments on whether the survey should be retained in some form, how it might be improved, and whether HUD's proposed solution is sufficient to gather resident feedback on resident satisfaction.

Capital Fund. HUD proposes to establish a new indicator, which previously was part of the management operations indicator, that measures a PHA's performance with respect to the obligation and expenditure of Capital Fund program grants. This Capital Fund program indicator is statutory, required by section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)(1)(B)), and can be measured only at the agency level.

In addition to the changes in the four indicators, discussed above, the rule would modify the score adjustment for physical condition and neighborhood environment. This adjustment would be applied to the management operations indicator on a project-by-project basis

rather than to the physical condition indicator. The statutory language states that HUD should reflect in the weights assigned to the various indicators the differences in the difficulty in managing individual projects that result from their physical condition and neighborhood environment. The application of the adjustment to the management operations indicator would specifically address the difficulty in managing individual projects, and would also result in a true physical condition score without any adjustments outside of the physical condition inspection results.

HUD believes the changes proposed to the PHAS regulations by this rule offer the following advantages:

- HUD and PHAs would be better able to identify and measure the performance of individual projects, which is necessary for asset management.
- The new system conforms to HUD's performance monitoring protocols and regulations in the area of multifamily housing.
- The new system would be much simpler for PHAs and HUD to

administer. PHAs would only be required to submit their FDS schedule and would no longer need to submit a management certification. Moreover, PHAs would have greater flexibility in developing internal monitoring systems.

- The new system would focus more on performance than process. Additional changes to PHAS proposed by this rule include:

- Corrective Action Plans are proposed to replace current Improvement Plans.

- References to the Troubled Agency Recovery Center (TARC), an area center to which troubled PHAs were referred for oversight, monitoring, or other remedial action, have been removed since the TARCs no longer exist. The duties and responsibilities of the TARCs were transferred to and assumed by HUD's field offices.

D. Section-by-Section Overview of PHAS Amendments

The following section-by-section overview does not describe each and every change made to the PHAS regulation, but provides an overview of some of the key changes proposed by this rule.

1. Part 901, Public Housing Management Assessment Program (PHMAP)

This proposed rule would remove part 901, which contains the PHMAP regulations. When HUD issued the final PHAS rule in September 1998, the preamble to the final rule noted that the PHMAP regulations in part 901 would be retained because PHAS would not be implemented until October 1999, one year after the September 1998 rule became effective. The preamble advised PHAs that they would continue to comply with the PHMAP regulations until the implementation of PHAS in October 1999. This proposed rule will consolidate all public housing assessment regulations in the PHAS regulations in part 902, and part 901 will be removed.

2. Part 902, PHAS

Subpart A—General Provisions

Section 902.1 (Purpose, scope, and general matters). Proposed § 902.1 would consolidate the purpose, scope, and applicability sections into a single introductory section to better capture the overall objectives of PHAS in one regulatory location.

Proposed § 902.1(a) is unchanged from the purpose paragraph of the currently codified regulations.

Proposed § 902.1(b) remains similar to currently codified § 902.3.

Proposed § 902.1(c) briefly describes PHAS indicators.

Proposed § 902.1(d) would be revised to include the project assessment approach, which is now the relevant assessment as PHAs convert to asset management. With the proposed removal of the resident survey, to be discussed more fully later in this preamble, a reference to gathering data from residents would be removed. Material concerning HUD data systems would be added.

Currently codified § 902.1(e) pertaining to changes in a PHA's fiscal year end would be moved to a revised § 902.60(a). New proposed § 902.1(e) would provide for a PHA with fewer than 250 units that does not convert to asset management to be considered a single project.

Proposed § 902.1(f) would revise currently codified § 902.1(b) to reflect that REAC is now part of HUD's Office of Public and Indian Housing (PIH).

Section 902.3 (Definitions). Currently codified § 902.3 would be revised to include the definitions of additional important terms used in the regulations. In the currently codified regulations, the definitions are found in both 24 CFR 902.7 and 24 CFR 902.24, where definitions used in the physical condition indicator are presented. HUD proposes to place all definitions in one section for greater convenience.

Currently codified § 902.3 would be revised to remove the following definitions that are no longer applicable or are not referenced in the regulations: average number of days non-emergency work orders were active; improvement plan; occupancy loss; property; reduced actual vacancy rate within the previous 3 years; reduced average time nonemergency work orders were active; tenant receivables outstanding; unit months available; unit months leased; and work orders deferred to the Capital Fund program.

The following definitions would be added to this section: Assistant Secretary; Corrective Action Plan; decent, safe, sanitary and in good repair (DSS/GR); memorandum of agreement (MOA); Alternative Management Entity (AME); Resident Management Corporation (RMC); Direct Funding RMC; and unit-weighted average. In addition, the following definitions from currently codified § 902.24 are proposed to be added to this section: criticality; deficiencies; dictionary of deficiency definitions; inspectable areas; inspectable item; item weights and criticality levels document; normalized weight; score; severity; and subarea.

Section 902.5 (Applicability). To allow sufficient time for PHAs to adjust to PHAS, as proposed to be revised by this rule, proposed § 902.5(b)(1) would

change applicability to commence with PHAs with fiscal years ending on and after June 30, 2009. The information in currently codified § 902.5(b), pertaining to the issuance of PHAS advisory scores, would be removed because it is no longer applicable.

Proposed § 902.5(b)(2) would address transition scores and the fiscal-year-end dates for transition scores.

Section 902.9 (PHAS scoring). This proposed section would address the PHAS scoring system. (Those parts of currently codified § 902.9 that address the frequency of PHAS scoring would be incorporated into proposed § 902.13.)

Proposed § 902.9(a) would briefly describe the PHAS indicators, which would include the new Capital Fund program indicator that replaces the current resident service and satisfaction indicator.

Proposed § 902.9(b) would provide information about the weights of the four indicators.

Proposed § 902.9(c) would provide for PHAS scores to be calculated in accordance with appendices A–D. Accordingly, repetitive information about scoring is removed from the regulations governing individual indicators. No further changes to any of the scoring processes will be implemented until after they are published for public comment in the **Federal Register**. The currently codified PHAS regulations provide for this notice and comment process, and HUD does not propose to change that process by this rule.

The proposed scoring documents that correspond to this proposed rule are published as appendices to this proposed rule.

Section 902.11 (PHAS performance designation). Proposed § 902.11 would address PHAS performance designation information. The performance designations would be high performer, standard performer, substandard performer, and troubled performer (except for the new "substandard" designation, these are the designations provided in currently codified § 902.67).

Proposed §§ 902.11(a) and (b) would amend the performance requirements for PHAS designations that are currently codified in §§ 902.67(a) and (b).

Proposed § 902.11(a) would state that a high performer must achieve an overall PHAS score of 90 percent, in contrast to currently codified § 902.67(a), which requires at least a 60 percent score in each PHAS indicator.

Proposed § 902.11(a)(2) would provide that a PHA would not be designated a high performer if more than 10 percent of the PHA's total units are in projects that fail the physical

condition, financial, or management operations indicators. Proposed § 902.11(c) would explain the new substandard designation. Generally, a PHA's overall PHAS score determines its designation.

The "substandard" designation, however, would be calculated differently. A substandard designation would be based on a PHA achieving a PHAS score of at least 60 percent and a score of less than 60 percent under one or more of the physical condition, financial, or management operations indicators. In the proposed rule, to avoid confusion, "substandard" would not be used to mean a subcategory of troubled performer.

Section 902.13 (Frequency of PHAS assessments). Proposed § 902.13 would be added to address the revised frequency of PHAS assessments, and would incorporate, in § 902.13(a), the information in currently codified § 902.9, with the exception that a small PHA with fewer than 250 units would not be able to elect an annual assessment. As the PHAS regulations are proposed to be revised by this rule, the frequency of physical condition assessments would be based on the size of the PHA and the performance of the PHA under the physical condition indicator.

Proposed § 902.13(b) would provide that a project that scores 80 points or higher for the physical condition indicator would be inspected every other year.

Proposed § 902.13(c) would require a PHA to submit the unaudited and audited financial information to HUD every year, whether or not the PHA receives a PHAS assessment.

Subpart B—Physical Condition Indicator

Section 902.20 (Physical condition assessment). Proposed § 902.20 would address the basic components of the physical condition assessment. Proposed § 902.20(b) would provide for independent physical inspections in accordance with HUD's physical condition standards for decent, safe, and sanitary housing as codified at 24 CFR 5.703–5.705.

Section 902.21 (Physical condition standards for public housing). Proposed § 902.21 would be similar to currently codified § 902.23, and summarizes the standards that the five major inspectable areas are required to meet. The five major inspectable areas are site, building exterior, building systems, dwelling units, and common areas. The main difference between this proposed rule and the currently codified regulations is that where the currently

codified section incorporates provisions directly from HUD's physical conditions standards at 24 CFR 5.703, the proposed section would cross-reference to § 5.703 where necessary, resulting in a more concise and streamlined regulatory provision.

Section 902.22 (Physical inspection of PHA projects). The information in proposed § 902.22(a) would be similar to currently codified § 902.24(a), but it would add a specific reference to HUD's standards for decent, safe, and sanitary housing. Proposed new § 902.22(b)(1) would address how HUD would achieve the objectives of paragraph (a) and provides for an inspection of a "statistically valid" sample of units.

Proposed § 902.22(d) would clarify the differences between health and safety deficiencies and exigent health and safety deficiencies. Proposed § 902.22(d)(1) would contain the information in currently codified § 902.24(a)(2), but would add that the project or PHA should correct exigent health and safety deficiencies within 24 hours, and that the PHA must certify the correction to HUD within 3 business days.

Section 902.23 (Adjustment for physical condition and neighborhood environment). HUD proposes to remove this section because physical condition and neighborhood environment would be assessed under the management operations indicator in the proposed rule. See new proposed § 902.44.

Section 902.24 (Database adjustment). Proposed § 902.24 would contain the information currently codified in § 902.25(c) and would be designated as a separate section for the purpose of greater clarity. The section would be revised to be consistent with project-based assessment.

Section 902.25 (Physical condition scoring and thresholds). Proposed § 902.25(a) revises currently codified § 902.25(a) to reflect the project-based approach to administration of public housing, and to remove material regarding scoring, which would be consolidated in proposed § 902.9(c) rather than being restated as to each indicator.

Proposed new § 902.25(b) provides similar information as found in currently codified § 902.25(d), but with further explanation of how the weighted scores are calculated.

Proposed new § 902.25(c) would include new information regarding the conversion of a project score from a 100-point scale to a 30-point scale for the overall PHAS physical condition indicator, and provide the number of points required for a passing score and

the score at which a PHA would be considered a substandard performer.

Section 902.26 (Physical inspection report). Currently codified §§ 902.26(a) and (a)(3) would be slightly revised by this proposed rule to be consistent with project-based assessment. Sections 902.26(a)(2) and (a)(5) would be revised to make the deadline for a request for reinspection 30 days after a PHA's receipt of the physical inspection report.

Current § 902.27 (Physical condition portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart C—Financial Condition Indicator

Section 902.30 (Financial condition assessment). Proposed § 902.30 is similar to currently codified § 902.30. The section would be revised to reflect individual project assessment.

Section 902.33 (Financial reporting requirements). Proposed § 902.33(b) pertains to unaudited financial information and contains the same information in currently codified § 902.33(b). As proposed to be revised, this section removes a reference to the Uniform Financial Reporting Standards in 24 CFR part 5, subpart H, and removes reference to the information regarding an automatic 1-month extension, which no longer applies.

Proposed § 902.33(b) also includes the same unaudited reporting deadlines included in currently codified § 902.33(c).

Proposed § 902.33(c) contains information related to audited financial statements that is contained in currently codified § 902.33(c).

Section 902.35 (Financial condition scoring and thresholds). Proposed § 902.35(a)(1) would be similar to currently codified § 902.35(a), but would remove the repetitive information about scoring that, in the codified regulations, is provided in each section addressing a PHAS indicator. This section also would provide a reference to individual projects.

Proposed § 902.35(a)(2) contains information regarding the basis for the financial condition score. Currently codified § 902.35(a)(2) would be removed because the information regarding advisory scores and high liquidity would no longer be applicable.

Proposed § 902.35(b) lists the new financial condition subindicators under asset management and replaces the financial management components listed in the current § 902.35(b).

Proposed § 902.35(c) would explain how the overall financial condition score is calculated. This score would be

a unit-weighted average of the individual project scores on this indicator.

Proposed § 902.35(d) would address the maximum points and scoring thresholds, similar in function to currently codified § 902.35(c).

Current § 902.37 (Financial condition portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart D—Management Operations Indicator

Section 902.40 (Management operations assessment). Proposed § 902.40(a) would be revised to more comprehensively address the management operations assessment of projects, given the removal of 24 CFR part 901.

Section 902.43 (Management operations performance standards). Proposed § 902.43(a) would list the statutory subindicators that must be utilized in this assessment. This section, as proposed, would also reference the asset management review form that would be used to assess a PHA's management operations and a PHA's individual project management operations, and the subindicators are included in appendix C. Specifically, new proposed §§ 902.43(a)(1) through (a)(6) would list the statutory subindicators that are not addressed elsewhere in PHAS, and would replace the currently codified §§ 902.43(a)(1) through (a)(6). Paragraphs (a)(7) through (a)(9) of § 902.43 would address the following subindicators, respectively: security, economic self-sufficiency, and resident involvement in project management.

Proposed § 902.43(b) would provide that a project management review be used to assess this indicator, supported by other data available to HUD. Currently codified §§ 902.43(b)(1) and (b)(2) would be removed because PHAs would no longer certify to the management operations information and because manual submissions are no longer necessary.

Section 902.44 (Adjustment for physical condition and neighborhood environment). A proposed § 902.44 would be added and the adjustment for physical condition and neighborhood environment would apply to the management operations indicator. Proposed § 902.44(a) would include the new definitions for physical condition and neighborhood environment, and § 902.44(b) would describe the application of the adjustment.

Section 902.45 (Management operations scoring and thresholds).

Proposed § 902.45(a) would be similar to currently codified § 902.45(a), except that projects, as well as PHAs, would receive a management operations score.

Proposed § 902.45(b) would provide information regarding the overall indicator score.

Proposed § 902.45(c) would be similar to currently codified § 902.45(b), and would provide information regarding the maximum points for this indicator and scoring thresholds. The section removes a reference to sanctions under section 6(j)(4) of the 1937 Act (42 U.S.C. 1437d(j)(4)).

Current § 902.47 (Management operations portion of total PHAS points). HUD proposes to remove this section and instead provide for the number of points assigned to each indicator in § 902.9(b).

Subpart E—Capital Fund Program Indicator

Proposed new subpart E addresses the Capital Fund program indicator, and would replace the current subpart E, resident services and satisfaction indicator. HUD is removing the resident services and satisfaction indicator because, after almost 10 years of experience, this indicator has not yielded the degree of feedback that HUD hoped to obtain from this indicator. HUD has determined that PHAs expend considerable effort to obtain resident input on the PHA's performance, but with little change in the response rate over the past 5 years. HUD will examine alternatives to obtain resident feedback, possibly through funding for Resident Opportunities and Supportive Services (ROSS) provided annually through its notice of funding availability (NOFA). HUD specifically welcomes comment on proposals to improve resident feedback on a PHA's performance and to measure resident satisfaction.

Section 902.50 (Capital Fund program assessment). Proposed § 902.50(a) would provide for assessment of a PHA's Capital Funds that remain unexpended after 4 years and unobligated after 2 years.

Proposed § 902.50(b) would provide that this indicator would not apply to PHAs that choose not to participate in the Capital Fund program, and would only be applicable on a PHA-wide basis, rather than a project basis. Section 9(j) of the 1937 Act (42 U.S.C. 1437g(9)(j)(1) and (5)) makes the obligation to expend funds in a timely manner applicable to PHAs.

Proposed § 902.50(c) would provide that information for this indicator would be derived through an analysis of HUD's electronic Line of Credit Control System (e-LOCCS) (or its successor

system). Proposed §§ 902.50(c)(1) and (c)(2) would address a PHA's responsibility to submit Capital Fund program information in a timely manner and appeal restrictions, respectively.

Section 902.53 (Capital Fund program scoring and thresholds). This proposed section would explain the scoring and thresholds for this indicator, overall points, and passing score.

Subpart F—PHAS Scoring

Section 902.60 (Data collection). This proposed section would completely revise currently codified § 902.60. Currently codified § 902.60(a), pertaining to fiscal year reporting periods, would be revised to provide that a PHA would not be permitted to change its fiscal year for the first 3 full fiscal years following June 30, 2009, unless such change is approved by HUD for good cause. The moratorium on changing fiscal years is consistent with the currently codified PHAS regulations, which provide for a halt to fiscal year changes commencing with the year new HUD regulations are to be implemented. Proposed § 902.60(b) would address extensions for submitting unaudited financial information. The information in currently codified § 902.60(c), pertaining to the submissions of financial information, would be revised to include information about weighting and applicability of the Single Audit Act (codified at 31 U.S.C. 7501 *et seq.*) and be moved to proposed §§ 902.9(b) and 902.33.

Proposed § 902.60(c) would address waivers of the due date for submitting audited financial information to HUD.

Proposed § 902.60(d) would address rejection and resubmission of a PHA's unaudited year-end financial information submission. The requirement in currently codified § 902.60(d)(2) pertaining to the retention of documentation would be incorporated in proposed § 902.3(b).

Information in currently codified § 902.60(e)(2) and (f) would be moved to proposed § 902.62, with some revisions. Certifications referenced in currently codified §§ 902.60(e)(2) and (f), and material regarding the performance designation of a PHA as "troubled" in currently codified § 902.60(e)(2) would no longer be included.

Section 902.62 (Failure to submit data). Proposed § 902.62 addresses penalties for failing to submit required information. Much of this material is similar to that in currently codified § 902.60(e).

Section 902.64 (PHAS scoring and audit reviews). Proposed § 902.64(a) would be similar to currently codified § 902.63(b).

Proposed § 902.64(b) would be similar to currently codified § 902.63(c), except that references to certifications would be removed.

Proposed § 902.64(c) would include the material on the review of audits in currently codified § 902.63(d), along with certain revisions. The revised material includes standards and procedures for determining if an audit is deficient.

Section 902.66 (Withholding, denying, and rescinding designation). Proposed § 902.66 would provide that, in limited circumstances, HUD may deny or rescind a high or standard performer designation. Denial or rescission may occur in cases of fraud or misconduct, litigation cases that bear directly on the performance of the PHA, where the PHA is operating under a court order, or where the PHA demonstrates substantial evidence of noncompliance with applicable laws or regulations. HUD action taken in accordance with this section may be appealed under § 902.69(d).

Section 902.68 (Technical review of results of PHAS physical condition indicator). Proposed § 902.68 largely retains the information regarding physical inspection technical reviews as provided in currently codified § 902.68, and removes reference to technical reviews for the resident survey and satisfaction indicator, which will no longer be an indicator. Proposed § 902.68(b)(7) would be included to provide that HUD's decision on a technical review is final agency action.

Section 902.69 (PHA right of petition and appeal). Proposed § 902.69 has been revised to elaborate on the rights of appeal, petition, and the appeal of any refusal of a petition to remove a troubled performer designation. Proposed § 902.69(a) would revise the current section to provide for four categories of appeals and one type of petition.

Currently codified § 902.69(b) would be designated § 902.69(b)(1) in this proposed rule, and revised to take into account the new designation of "substandard performer." Proposed § 902.69(b)(2) would provide that a PHA may not appeal its physical condition score based on the subsequent correction of deficiencies identified as the result of a physical inspection or technical review items for which a decision has been previously rendered through the technical review process. Proposed § 902.69(b)(3) would specify procedures for appealing the score for the Capital Fund program indicator.

Proposed § 902.69(c)(1) would be revised to address only the appeal and petition procedures in currently

codified § 902.69(c)(1). As proposed to be revised, § 902.69(c)(2) would specify the procedures for the appeal of the refusal of a petition to remove troubled performer designation, which is addressed in currently codified § 902.69(c)(1). Proposed § 902.69(c)(3) would provide that an appeal or petition must be submitted in writing to the Real Estate Assessment Center, Attention: Technical Review. The address is: Real Estate Assessment Center, 550 12th Street, SW., Suite 100, Washington, DC 20024–2135. Proposed § 902.69(c)(4) would include information in currently codified §§ 902.69(c)(1) and (c)(2) that requires the inclusion of appropriate supporting information.

Proposed § 902.69(d) would establish an appeal process for cases of denial, withholding, or rescission of a PHAS performance designation. Upon receipt of a request for reinstatement, the evidence submitted by the PHA will be reviewed to determine whether a reinstatement of the designation is warranted.

Proposed § 902.69(e) would establish a process for consideration of an appeal of an overall PHAS score, a troubled performer designation, or a petition to remove a troubled performer designation. HUD would evaluate the appeal and determine whether a reassessment of the PHA is warranted. There would no longer be a Board of Review as in the currently codified regulation.

Proposed § 902.69(e)(2) addresses the appeal of refusal to remove a troubled performer designation and provides that the decision-making officials would be different individuals than those that evaluated the petition to remove a troubled performer designation.

Proposed § 902.69(f) would provide for final appeal decisions similar to the provisions in currently codified § 902.69(e), but with some differences. Proposed § 902.69(f) would specify the remedies available to HUD if HUD grants an appeal, including undertaking a new inspection, arranging for audit services, or other reexamination of the results of assessment of a PHA's financial, management, or Capital Fund program performance, as appropriate. Following such reassessment, HUD will issue a new score and performance designation. The proposed rule would remove the option available to HUD to extend the deadline for HUD's decision to an additional 30 days. Finally, the rule would provide that HUD's decision is final agency action.

Subpart G—PHAS Incentives and Remedies

Section 902.71 (Incentives for high performers). Proposed § 902.71 would be largely the same as currently codified § 902.71. The proposed rule would remove the material in § 902.71(a)(1)(ii) concerning the frequency of physical inspection, because the remainder of the rule provides sufficient flexibility to relieve high-performing PHAS of monitoring requirements.

Section 902.73 (PHAS with deficiencies). The heading of this section would be changed from the section heading for currently codified § 902.73 to more accurately reflect the content in this section. This proposed section would remove the concept of the Improvement Plan and replace it with the concept of the Corrective Action Plan. This concept is consistent with the Corrective Action Plan terminology that is used in other program areas. If the PHA, under a Corrective Action Plan, fails to correct its deficiencies within the time period specified, HUD may take additional action, including, but not limited to, the remedies for substantial default.

Section 902.75 (Troubled performers). The heading of this section would be changed from the section heading for currently codified § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)). Proposed § 902.75(a) removes the references to 24 CFR part 901 and the TARCs, because this proposed rule and accompanying proposed scoring documents will replace part 901, and because the TARCs, as noted previously, no longer exist. Their duties and responsibilities were transferred and assumed by HUD field offices in 2003.

Proposed §§ 902.75(b) and (c) cover the same subjects as currently codified §§ 902.75(b) and (c); that is, remedial measures for troubled performers—albeit with revisions. Proposed § 902.75(b) would specify that a memorandum of agreement (MOA) is required for a troubled performer. Proposed § 902.75(b)(3) would require identification of the party responsible for meeting each target. Proposed § 902.75(b)(7) would: (1) Eliminate a reference to the Departmental Enforcement Center, which is now part of HUD's Office of General Counsel; and (2) add cross-references to HUD's statutory and regulatory remedial authority in place of the current summary.

Proposed §§ 902.75(d)(1) and (d)(2) would clarify the time frames in currently codified §§ 902.75(d)(1) and (d)(2) by providing that the first- and second-year recovery periods are at least

12 months after issuance of the initial notice of troubled performer designation, and at least 24 months after issuance of the initial notice of troubled performer designation, respectively.

Proposed §§ 902.75(e) and (f) would largely be the same as the currently codified §§ 902.75(e) and (f). However, proposed § 902.75(e) would remove the reference in § 902.75(e)(3) to the Director of the area TARC, which would be replaced by reference to the regional or field office Public Housing Director.

Proposed §§ 902.75(g) and (h) would be largely the same as the current §§ 902.75(g) and (h), with the exception of proposed revisions to the example in § 902.75(g)(3), to be consistent with the proposed definitions of the one- and two-year recovery periods in proposed § 902.75(d). Proposed paragraph (i) would remove the reference to the TARCs.

Section 902.79 (Verification and records). Proposed § 902.79 would provide for the document retention and verification requirements applicable to PHAs. The section would provide for penalties for failure to maintain the required documentation for the required time period.

Section 902.81 (Resident petitions for remedial actions). Proposed § 902.81 is based on currently codified § 902.85 and would specify that residents of a PHA designated as troubled may petition HUD in writing for remedial action. The section would retain the requirement that 20 percent of the residents must support the petition, as is required in currently codified § 902.85. The section would retain the reference to HUD's discretion over the determination as to whether a substantial default has occurred, and provide for HUD to respond in writing to a petition. The response would include the planned course of action and, where the action differs from that proposed by the residents, the reasons for the difference.

Section 902.83 (Sanctions for troubled performer PHAs). Proposed § 902.83 would provide for differing sanctions for small and large PHAs. If a PHA that is designated as troubled and has less than 1,250 units fails to make substantial improvement within the recovery periods specified in proposed § 902.75(d), HUD has the option of petitioning for the appointment of a receiver or taking possession of all or a portion of the PHA or a PHA project. In the case of a PHA with 1,250 or more units that similarly fails, HUD shall petition for the appointment of a receiver. If a troubled performer PHA fails to execute the required MOA under § 902.75, or fails to meet the requirements of the MOA, the PHA may

be declared to be in substantial default. In this case, all the remedies under this rule and the 1937 Act are available. Failure to execute the MOA, however, is not the only basis for a finding of substantial default. A violation of the law, regulations, or the annual contributions contract (ACC) can also be a predicate for such a finding, in which case all available remedies would equally be available. The procedures applicable to a finding of substantial default are now provided in new part 907.

Current § 902.85 (Resident petitions for remedial action). This section is redesignated as § 902.81, with only minor wording changes made.

II. New Part 907—Substantial Default by a Public Housing Agency

This proposed rule would establish, in new part 907, the regulations governing the determination of, and remedies for, substantial default. The regulations applicable to substantial default are currently codified in HUD's PHAS regulations. However, a determination of substantial default is not limited to troubled performance or violation of PHAS requirements. Therefore, it is more appropriate for substantial default regulations to be codified in a separate CFR part. The following provides a section-by-section overview of new part 907.

Section 907.1 (Purpose and scope). Proposed § 907.1 would provide that the purpose of this part is to establish the regulations for determination of, and remedies for, substantial default. This section would clarify that nothing in this part limits the discretion of HUD to take any action available under section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)) to remedy a substantial default. HUD has flexible discretion both to determine substantial default and to apply the available remedies in any combination or order.

Section 907.3 (Bases for substantial default). Proposed § 907.3 would describe the violations of laws and agreements, and the failures to act on the part of the PHA that may result in a declaration of substantial default.

Section 907.5 (Procedures for declaring substantial default). Proposed § 907.5(a) would describe the process for notification of substantial default.

Section 907.5(b) would describe the opportunity of a PHA to respond or cure the default, except in cases of fraud, criminality, or an emergency posing an imminent threat to life and health.

Proposed § 907.5(c) would provide for a PHA to waive written notification of substantial default by HUD.

Proposed § 907.5(d) (Emergency situations) would describe the situations in which HUD may proceed to issue a default determination without giving the PHA an opportunity to respond.

Section 907.7 (Remedies for substantial default). Proposed § 907.7 would list the actions that may be taken by HUD against a PHA upon a determination of substantial default.

III. Cost and Benefits of This Proposed Rule

This proposed rule would significantly streamline PHAS by eliminating several PHA submissions, data collection requirements, and related processes. Through such streamlining, this proposed rule would reduce costs incurred by PHAs in compiling and submitting this information to HUD. In addition, the systems put in place to substitute for the data compilation and submissions would improve the assessment process, which would benefit PHAs, public housing residents, and taxpayers overall. The proposed rule would eliminate the requirement for PHAs to submit a management operation certification and to undertake resident satisfaction surveys, including pre- and post-survey administrative requirements. HUD is replacing these submission requirements with a system of on-site management reviews. Rather than requiring a PHA to prepare a detailed submission of various management indicators (inspections, work orders, security, etc.), HUD will assess conditions through an on-site review, consistent with the process utilized by HUD for its multifamily housing programs. Similarly, information obtained from the on-site reviews will better gauge the effectiveness of PHA efforts in the area of resident self-sufficiency and participation. Moreover, the current system of PHA self-certification requires HUD to conduct certification reviews. The proposed rule would eliminate the need for these certification reviews. Additionally, the new system of on-site management reviews are intended to consolidate into one assessment tool what today are multiple reviews. Through these measures, the proposed rule reduces administrative costs associated with PHAS, while improving the accuracy of PHAS assessments.

In seeking comment on this proposed rule, the Department would like to highlight the following:

Vacancy rates. The Department believes that one of the primary responsibilities of a PHA is to provide housing opportunities by maintaining high occupancy levels. As a result, a

high weight is assigned in the management review to a project's non-approved vacancy rate (the lower the rate, the higher the score). The Department seeks comment on the adequacy of the weight assigned to a project's vacancy rate. The Department also seeks comment on whether the measure should be improved or another measure added to encompass all vacancies, both approved and non-approved. Presently, the non-approved vacancies are less than 4 percent, but all vacancies are around 9 percent. A measure of all vacancies could provide a broader focus for efforts to maximize the number of decent, safe, and sanitary units available for tenants. The "approved" vacancies are defined under 24 CFR 900.145.

Resident satisfaction surveys. As indicated, the Department believes that the on-site management review is a better vehicle than the current resident survey to measure both project performance and resident satisfaction, consistent with the norms in HUD's own multifamily housing programs. However, the Department is particularly interested in views on practical methods for providing feedback to the PHA and assessing resident satisfaction, through surveys or other means.

Unrestricted program balances and reserves. Presently, PHAs have on the order of \$2.7 billion in public housing program reserves (also known as "unrestricted current net assets"). The

Department is concerned with high program balances in light of industry concerns over the backlog of capital and maintenance needs. On the other hand, the Department wants adequate cash balances at PHAs to cope with potential unexpected events, such as a downturn in tenant rental payments. The Department has decided to make this trade-off in favor of high cash balances. For example, the Department proposes a very conservative quick ratio standard of \$1 of cash/cash equivalents for \$1 of current liabilities. The Department seeks comment as to whether the PHAS scoring system should encourage the use of these reserves and suggested ways to do that.

Capital Fund Indicator. As previously indicated, the proposed rule only includes scoring on Capital Fund obligations and expenditures. It does not include scoring related to other areas of Capital Fund program management, e.g., quality of contract administration or effective capital planning. The Department believes that such issues are best addressed through on-site program assessments. The Department, however, seeks comment as to whether other items should be added to the Capital Fund indicator.

Verification of Tenant Income. The Department is strongly committed to the proper reporting of tenant income for eligibility and rent determinations and has developed various tools to assist PHAs in this process. The Department

has chosen not to include any scoring related to the income verification process. Although important, income verification would be one of many "compliance" areas to which PHAs are subject. As with other similar areas, the Department has chosen not to score, for PHAS purposes, areas of compliance. Instead, performance is measured on more traditional real estate management indicators. Compliance items are considered separately and could be a source of corrective action; however, they are not scored. The Department seeks comment on this approach, specifically, to income verifications and, more broadly, on matters of compliance.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction 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 currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 902.24 Database adjustment	125	1	5.2	650
24 CFR 902.68 Technical review	167	1	5.2	868
24 CFR 902.69 Appeals	53	1	5.2	276
Totals	345	.....	.....	1,794

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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 rule. Comments must refer to the proposal by name and docket number (FR-5094-P-01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202-395-6947, and
Mary Schulhof, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410-8000.

Regulatory Planning and Review

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). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been 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 is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule revises HUD’s existing PHAS regulations for the assessment of public housing at 24 CFR part 902, to revise the PHAS regulations to elaborate upon certain procedures, to conform the PHAS regulations to current public housing operations, and to conform to certain statutory changes. These

revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s belief 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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

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

List of Subjects

24 CFR Part 901

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

24 CFR Part 902

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

24 CFR Part 907

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

Accordingly, under the authority of 42 U.S.C. 3535d, HUD proposes to remove 24 CFR part 901, revise part 902, and add a new part 907, as follows:

PART 901—[REMOVED]

1. Remove and reserve 24 CFR part 901.
2. Revise 24 CFR part 902 to read as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions Sec.

- 902.1 Purpose, scope, and general matters.
- 902.3 Definitions.
- 902.5 Applicability.
- 902.9 PHAS scoring.
- 902.11 PHAS performance designation.
- 902.13 Frequency of PHAS assessments.

Subpart B—Physical Condition Indicator

- 902.20 Physical condition assessment.
- 902.21 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).
- 902.22 Physical inspection of PHA projects.
- 902.24 Database adjustment.
- 902.25 Physical condition scoring and thresholds.
- 902.26 Physical Inspection Report.

Subpart C—Financial Condition Indicator

- 902.30 Financial condition assessment.
- 902.33 Financial reporting requirements.
- 902.35 Financial condition scoring and thresholds.

Subpart D—Management Operations Indicator

- 902.40 Management operations assessment.
- 902.43 Management operations performance standards.
- 902.44 Adjustment for physical condition and neighborhood environment.
- 902.45 Management operations scoring and thresholds.

Subpart E—Capital Fund Program Indicator

- 902.50 Capital Fund program assessment.
- 902.53 Capital Fund program scoring and thresholds.

Subpart F—PHAS Scoring

- 902.60 Data collection.
- 902.62 Failure to submit data.
- 902.64 PHAS scoring and audit reviews.
- 902.66 Withholding, denying and rescinding designation.
- 902.68 Technical review of results of PHAS physical condition indicator.
- 902.69 PHA right of petition and appeal.

Subpart G—PHAS Incentives and Remedies

- 902.71 Incentives for high performers.
- 902.73 PHAs with deficiencies.
- 902.75 Troubled performers.
- 902.79 Verification and records.
- 902.81 Resident petitions for remedial action.
- 902.83 Sanctions for troubled performer PHAs.

Appendix A to Part 902—Physical Condition Scoring.

Appendix B to Part 902—Financial Condition Scoring.

Appendix C to Part 902—Management Operations Scoring.

Appendix D to Part 902—Capital Fund Scoring.

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

Subpart A—General Provisions

§ 902.1 Purpose, scope, and general matters.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is

to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, and the general public, by providing a management tool for effectively and fairly measuring the performance of a PHA in essential housing operations of projects, on a program-wide basis and individual project basis, and providing rewards for high performers and remedial requirements for poor performers.

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and requirements of other federal programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

(c) *PHAS indicators.* HUD will assess and score the performance of projects and PHAs based on the indicators, which are more fully addressed in § 902.9: Physical condition, financial condition, management operations, and Capital Fund.

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and the financial assessment of projects and PHAs, and will use data from appropriate agency data systems and project management reviews to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (e-LOCCS) (or its successor) system. On the basis of this data, HUD will assess and score the results, advise PHAs of their scores, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate attention and assistance.

(e) *Small PHAs.* A PHA with fewer than 250 units that does not convert to asset management will be considered as one project by HUD.

§ 902.3 Definitions.

As used in this part:

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

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a management 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.

Assessed fiscal year is the PHA fiscal year that has been assessed under PHAS, the most recent assessment of record, or the period of time, as defined in each management operations subindicator or component.

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

Corrective Action Plan means a plan, as provided in § 902.73(a), that is developed by a PHA that specifies the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the PHAS subindicators, and identified as a result of a PHAS assessment, when a memorandum of agreement (MOA) is not required.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very Important	4
Important	3
Contributes	2
Slight Contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Days mean calendar days, unless otherwise specified.

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

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points in any indicator or subindicator. In the context of physical condition and physical inspection in subpart B of this part, "deficiency" means a specific problem, as described in the Dictionary of Deficiency Definitions, such as a hole in a wall or a damaged refrigerator in the kitchen that can be recorded for inspectable items.

Dictionary of Deficiency Definitions means the Dictionary of Deficiency Definitions document that contains specific definitions of each severity level for deficiencies under this subpart. The Dictionary of Deficiency Definitions that is currently in effect can be found at HUD's Web site at http://www.hud.gov/offices/reac/pdf/pass_dict2.3.pdf or a hard copy may be obtained from HUD by calling 888-245-4860 (this is a toll-free number).

Direct Funded RMC means a Resident Management Corporation to which HUD directly provides operating and capital assistance under the provisions of 24 CFR 964.225(h).

Inspectable areas (or area) mean any of the five major components of public housing that are inspected, which 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 area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels document means the Item Weights and Criticality Levels document that contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. The Item Weights and Criticality Levels document that is currently in effect can be found at HUD's Web site at <http://www.hud.gov/offices/reac/library/documents/fr-notice20011126.pdf> or a hard copy may be obtained from HUD by calling 888-245-4860 (this is a toll-free number).

Memorandum of Agreement (MOA) is defined in § 902.75(b) of this part.

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Resident Management Corporation (RMC) is defined in 24 CFR 964.7.

Score for a project means a number on a scale of 0 to 100 that reflects the physical condition of a project, inspectable area, or subarea. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the project score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the project score. Although inoperable or missing smoke detectors do not reduce the score, they are fire safety hazards and are

included in the Notification of Exigent and Fire Safety Hazards Observed Deficiency list that the inspector gives the PHA's project representative.

Severity means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. Specific definitions of each severity level are found in the Dictionary of Deficiency Definitions.

Subarea means an inspectable area for one building. For example, if a project has more than one building, each inspectable area for each building in the project is treated as a subarea.

Unit-weighted average means the average of the PHA's individual indicator scores, weighted by the number of units in each project, divided by the total number of units in all of the projects of the PHA. In order to compute a unit-weighted average, an individual project score for a particular indicator is multiplied by the number of units in each project to determine a "weighted value." For example, for a PHA with two projects, one with 200 units and a score of 90, and the other with 100 units and a score of 60, the unit-weighted average score for the indicator would be $(200 \times 90 + 100 \times 60) / 300 = 80$.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs), and AMEs. This part is also applicable to RMCs that receive direct funding (DF-RMCs) from HUD in accordance with section 20 of the Act.

(1) *Scoring of RMCs and AMEs.* (i) RMCs and DF-RMCs will be assessed and issued their own numeric scores under PHAS based on the public housing or portions of public housing that they manage and the responsibilities they assume that can be scored under PHAS. References in this part to PHAs include RMCs, unless stated otherwise. References in this part to RMCs include DF-RMCs, unless stated otherwise.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the project(s)/PHA(s) for which they assumed management responsibilities.

(2) *ACC.* The ACC makes a PHA legally responsible for all public housing operations, except where DF-RMC assumes management operations.

(i) Because the PHA and not the RMC or AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the projects covered by the ACC, including those with management operations assumed by an RMC or AME (including a court-ordered or administrative receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on projects managed by a DF-RMC.

(3) This rule does not apply to Moving-to-Work (MTW) agencies that are specifically exempted in their grant agreement.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after June 30, 2009.

§ 902.9 PHAS scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, based on the four indicators: physical condition, financial condition, management operations, and Capital Fund program. Each of these indicators contains subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. The Capital Fund program indicator score is entity-wide.

(b) *Overall PHAS score and indicators.* The overall PHAS score is derived from a weighted average of score values for the four indicators, as follows:

(1) The physical condition indicator is weighted 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator is weighted 20 percent (20 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator is weighted 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is weighted 10 percent (10 points) of the overall PHAS score for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. The score for this indicator is obtained as indicated in subpart E of this part.

(c) *Scoring procedures.* (1) The scores for each PHAS indicator will be calculated in accordance with the

scoring procedures described in appendices A–D.

(2) HUD will publish for public comment any significant proposed amendments to these scoring procedures. After comments have been considered, HUD will publish final documents.

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation. The performance designation is based on the overall PHAS score and the four indicator scores, as set forth below.

(a) *High performer.* (1) A PHA that achieves an overall PHAS score of 90 percent or greater shall be designated a high performer, except that such a PHA shall not be designated a high performer if more than 10 percent of its total units are in projects that fail the physical, financial, or management operations indicator.

(2) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71 of this part.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if the PHA achieves an overall PHAS score of at least 60 percent and at least 60 percent under each of the four PHAS indicators.

(2) At HUD's discretion, a standard performer may be required by the regional/field office to submit and operate under a Corrective Action Plan.

(c) *Substandard performer.* A PHA will be designated a substandard performer if a PHA achieves a total PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical condition, financial condition, or management operations indicators. The PHA will be designated as substandard physical, substandard financial, or substandard management, respectively. The HUD office with jurisdiction over the PHA may require a Corrective Action Plan if the deficiencies have not already been addressed in a current Corrective Action Plan.

(d) *Troubled performer.* (1) A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer.

(2) In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives less than 60 percent under the Capital Fund program indicator under subpart E of this part will be designated as a troubled performer and subject to the sanctions provided in section 6(j)(4) of the Act (42 U.S.C. 1437(d)(j)(4)).

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessments is determined by the size of the PHA's Low-Rent program and its PHAS designation.

(a) *Small PHAs.* HUD will assess and score the performance of a PHA with fewer than 250 public housing units every other PHA fiscal year, unless the PHA is designated as troubled, in accordance with § 902.75 of this part.

(b) *Frequency of scoring for PHAs with 250 units or more.*

(1) All PHAs, other than stated in paragraph (a) of this section, may be assessed on an annual basis.

(2) The physical condition score for each project will determine the frequency of inspections of each project. For projects with a physical condition score of 80 points or higher, physical inspections will be conducted every 2 years at the project. The physical condition score of 80 points or higher will be carried over to the next assessment year and averaged with the other project physical condition score(s) for the next assessment year for an overall PHAS physical condition indicator score. For projects whose physical condition score for a project is less than 80 points, physical inspections will be conducted annually at the project.

(c) *Financial submissions.* HUD shall not issue a PHAS score for the unaudited and audited financial information in the years that a PHA is not being assessed under PHAS. Although HUD shall not issue a PHAS score under such circumstances, a PHA shall comply with the requirements for submission of annual unaudited and audited financial statements in accordance with subpart C of this part and 24 CFR 5.801.

Subpart B—Physical Condition Indicator**§ 902.20 Physical condition assessment.**

(a) *Objective.* The objective of the physical condition indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary housing in good repair (DSS/GR), as this standard is defined in 24 CFR 5.703.

(b) *Method of assessment.* The physical condition assessment is based on an independent physical inspection of a PHA's projects provided by HUD and performed by contract inspectors, and conducted using HUD's Uniform Physical Condition Standards (UPCS) under 24 CFR part 5, subpart G.

(c) *Method of transmission.* After the inspection is completed, the inspector transmits the results to HUD, where the results are verified for accuracy and

then scored in accordance with the procedures in this subpart B.

(d) *PHA physical inspection requirements.* The physical inspections conducted under 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)).

(e) *Compliance with state and local codes.* The physical condition standards in this part 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 projects.* All PHAs are required by the ACC to provide HUD or its representative with full and free access to all facilities in its projects. All PHAs are required to provide HUD or its representative with access to its projects and to all units and appurtenances in order to permit physical inspections, monitoring 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 physical condition score of zero for the project or projects involved. This score of zero shall be used to calculate the physical condition indicator score and the overall PHAS score.

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

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered DSS/GR (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: Site, building exterior, building systems, dwelling units, and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, décor, or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* (1) *Site.* The site includes the components and must meet the requirements of 24 CFR 5.703(a).

(2) *Building exterior.* The building exterior includes the components and must meet the standards stated in 24 CFR 5.703(b).

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning (HVAC), and sanitary system. Each building's systems must meet the standards of 24 CFR 5.703(c).

(4) *Dwelling units.* Each dwelling unit within a building must meet the standards of 24 CFR 5.703(d).

(5) *Common areas.* Each common area must meet the standards of 24 CFR 5.703(e).

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards, as provided in 24 CFR 5.703(f).

§ 902.22 Physical inspection of PHA projects.

(a) *The inspection, generally.* The PHA's score for the physical condition indicator is based on an independent physical inspection of a PHA's project(s) provided by HUD and using HUD's UPCS inspection protocols to ensure projects meet DSS/GR standards that constitute acceptable basic housing conditions.

(b) *Physical inspection under the PHAS physical condition indicator.* (1) To achieve the objective of paragraph (a) of this section, HUD will provide for an independent physical inspection of a PHA's project(s) that includes, at a minimum, a statistically valid sample of the units in the PHA's projects to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for nondwelling purposes, e.g., daycare or meeting rooms, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected, but vacant units are assessed under the management operations indicator. The categories of vacant units not under lease that are exempted from physical inspection 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 has vacated a unit and a new lease takes effect;

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

(iii) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal

period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan.

(c) *Observed deficiencies.* During the physical inspection of a project, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a project are a randomly selected, statistically valid sample of the units in the project, excluding vacant units not under lease at the time of the physical inspection, as provided in paragraph (b)(2) of this section.

(d) *Exigent health and safety (EHS) deficiencies and health and safety (H&S) deficiencies—(1) EHS deficiencies.* To ensure prompt correction of EHS deficiencies, before leaving the site the inspector gives the project representative a Notification of Exigent and Fire Safety Hazards Observed Deficiency form that calls for immediate attention or remedy. The project representative acknowledges receipt of the deficiency report by signature. The project or PHA shall correct or remedy all EHS deficiencies cited in the deficiency report within 24 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form. In addition, the project or PHA must certify to HUD within 3 business days of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form, that all EHS deficiencies were corrected or remedied within 24 contiguous hours.

(2) *H&S deficiencies.* The project or the PHA, or both, as appropriate, is required to correct all H&S deficiencies within 72 contiguous hours of the project representative's receipt of the Notification of Exigent and Fire Safety Hazards Observed Deficiency form.

(e) *Compliance with civil rights/nondiscrimination requirements.* Elements related to accessibility will be reviewed 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). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

§ 902.24 Database adjustment.

(a) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under

circumstances described in this section, HUD may determine it is appropriate to review the results of a project's physical inspection that are unusual or incorrect due to facts and circumstances affecting the PHA's project that are not reflected in the inspection or that are reflected inappropriately in the inspection.

(1) The circumstances described in this section are not the circumstances that may be addressed by the technical review process described in § 902.68 of this part. The circumstances addressed in this paragraph (a)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the project or PHA having been scored for elements (e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining. To qualify for an adjustment on this basis, the project or PHA must have notified the proper authorities regarding the deficient element.

(2) An adjustment due to these circumstances may be initiated by a project or PHA's notification to the applicable HUD regional or field office, and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. Projects and PHAs 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 must be made within 30 days of issuance of the project's or PHA's physical condition score. Based on the recommendation of the applicable HUD office following its review of the project evidence or documentation submitted by the project or PHA, HUD may determine that a reinspection and rescoring of the project or PHA is necessary.

(b) *Adjustments for adverse conditions beyond the control of the PHA.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(1) The circumstances addressed by this paragraph (b)(1) 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 project that results in damage to the project) or natural disasters. (The circumstances addressed in paragraph (b)(1) are not those addressed by the technical review process in § 902.68.)

(2) To adjust a physical condition score based on circumstances addressed in this paragraph, the PHA must submit a request to the applicable HUD regional/field office requesting a reinspection of the PHA's project(s). The request must be submitted within 30 days of the issuance of the physical condition score to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD office following its review of the project's or PHA's evidence or documentation, HUD may determine that a reinspection and rescoring of the PHA's project(s) is necessary.

(c) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA's project, subject to physical inspection under this subpart, and are undergoing modernization work, requires an adjustment to the physical condition score.

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

(2) An adjustment due to modernization work in progress may be initiated by a project's or PHA's notification to the applicable HUD office, and the notification shall include supporting documentation of the modernization work under way at the time of the physical inspection. A project or 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 must be made within 30 days of issuance of the

physical condition score. Based on the recommendation of the applicable HUD office, HUD may determine that a reinspection and rescoring of the PHA's project(s) are necessary.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under the physical condition indicator, a score will be calculated for the overall condition of a PHA's public housing portfolio, as well as for individual projects, following the procedures described in the separate scoring document.

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score.

(c) *Thresholds.* (1) The project(s) 100-point physical condition score is converted to a 30-point basis for the overall physical condition indicator score. The project scores on the 100-point basis are multiplied by 30 in order to derive a 30-point equivalent score to compute the overall physical condition score and overall PHAS score.

(2) In order to receive a passing score under the physical condition indicator, the PHA must achieve a score of at least 18 points, or 60 percent.

(3) A PHA that receives fewer than 18 points will be categorized as a substandard physical condition agency.

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection of each project and the computation of the score(s) under this subpart, the PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the H&S and EHS deficiencies.

(1) If EHS items are identified in the report and were not corrected under the provisions of § 902.22(d), the PHA shall correct all EHS deficiencies within 24 contiguous hours and may request a reinspection.

(2) The request for reinspection must be made within 30 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the EHS deficiencies that have been corrected, and by the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of

the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(4) If any of the previously identified EHS deficiencies that the PHA certified were corrected are found during the reinspection not to have been corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 30 days after the date that the PHA receives the Physical Inspection Report, the Physical Inspection Report issued to the PHA will be the final Physical Inspection Report.

(b) A Physical Inspection Report includes the following items:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S (nonlife threatening) and EHS (life threatening) deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S and EHS problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall project score.

Subpart C—Financial Condition Indicator

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the financial condition indicator is to measure the financial condition of each public housing project within a PHA's public housing portfolio for the purpose of evaluating whether there are sufficient financial resources to support the provision of housing that is DSS/GR. Individual project scores for financial condition, as well as overall financial condition scores, will be issued.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the combined performance of all public housing projects in each of the subindicators listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and

audited financial data to HUD on an annual basis. The financial information must be:

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

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual unaudited financial information report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section must be submitted to HUD annually, no later than 2 months after the PHA's fiscal year end, with no penalty applying until the 16th day of the 3rd month after the PHA's fiscal year end, in accordance with § 902.62.

(c) *Annual audited financial information compliance dates.* Audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (see 24 CFR 85.26).

(d) *Year-end audited financial information.* All PHAs that meet the federal assistance threshold stated in the Single Audit Act and OMB Circular A-133 must also submit year-end audited financial information.

(e) *Submission of information.* In addition to the submission of information required by paragraph (a) of this section, a PHA shall provide one copy of the completed audit report package and the Management Letter issued by the Independent Auditor to the local HUD regional/field office having jurisdiction over the PHA.

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* (1) Under the financial condition indicator, a score will be calculated for each project based on the values of financial condition subindicators and an overall financial condition score, as well as audit and internal control flags. Each financial condition subindicator has several levels of performance, with different point values for each level.

(2) The financial condition score for projects and PHAs will be based on the Low-Rent and Capital Fund program information, consistent with § 990.280(a) of the Public Housing Operating Fund program regulation.

(3) Under the financial condition indicator, a score will be calculated following the procedures described in appendix B.

(b) *Subindicators of the financial condition indicator.* The subindicators of financial condition indicator are:

(1) *Quick Ratio (QR)*. The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory. Current liabilities are those liabilities that are due within the next 12 months. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Expendable Net Assets Ratio (MENAR)*. The MENAR measures a project's ability to operate using its net available, unrestricted resources without relying on additional funding. In particular, this ratio compares the net available unrestricted resources to the average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

(3) *Debt Service Coverage Ratio (DSCR)*. The DSCR is a measure of net operating income available to make debt payments to the amount of the debt payments. This subindicator is used if the PHA has taken on long-term obligations. A DSCR of less than one would indicate that the project would have difficulty generating sufficient cash flow to cover both its expenses and its debt obligations.

(c) *Overall PHA financial condition indicator score*. The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score.

(d) *Thresholds*. (1) The PHA's financial condition score is based on a maximum of 20 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 12 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 12 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

§ 902.40 Management operations assessment.

(a) *Objective*. The objective of the management operations indicator is to measure the PHA's performance of management operations through the management performance of each project.

(b) *Management assessment*. The management operations indicator incorporates the majority of the

statutory indicators of section 6(j) of the Act (42 U.S.C. 1437d(j)). (The remaining statutory indicators are addressed under the other PHAS indicators.)

§ 902.43 Management operations performance standards.

(a) *Management operations component*. The following statutory subindicators listed in this section, as well as the project management review, will be used to assess the management operations of projects and PHAs, consistent with section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)). Individual project scores for management operations, as well as overall PHA management operations scores, will be issued. The components and scoring for each subindicator and the project management review are in appendix C.

(1) *Vacancy rate and percentage*. This component measures the adjusted vacancy rate and the progress that a project has made within the previous 3 fiscal years to reduce such vacancies. Implicit in this component is that the project has an adequate system for tracking vacancy days.

(2) *Rent collection*. This component measures the percentage of rent collected by a project against the rent charged.

Implicit in this component is that a project has an adequate system to track and document total rents charged and total rents collected.

(3) *Utility consumption*. This component examines a project's energy conservation/utility consumption.

(4) *Turnaround time*. This component examines the amount of time it takes a project to turn around the units that were released within the assessment period. Implicit in this component is that the project has an adequate system for tracking vacant unit turnaround time.

(5) *Work orders*. This component measures the average number of days that tenant-generated work orders are outstanding, and any progress a project has made during the preceding 3 fiscal years to reduce the period of time tenant-generated work orders are outstanding. Implicit in this component is the adequacy of the project's system for tracking work orders and ensuring the thoroughness and quality of the project's needed repairs.

(6) *Unit inspection*. This component measures the percentage of units that a project inspected during the assessment period. Projects are required to inspect their property in accordance with the HUD-prescribed physical inspection procedures as set forth in 24 CFR part 5, subpart G.

(i) *Adequacy of inspection program*. This component requires that projects adequately track inspections, ensuring the thoroughness and quality of the project's inspections.

(ii) *Units to be inspected*. All occupied units and units available for occupancy are required to be inspected annually, consistent with section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)). This includes units used for nondwelling purposes, those occupied by an employee, and those used for resident services.

(7) *Security*. This component evaluates a project's performance in tracking crime-related problems in the project; the adoption and implementation of applicant screening and resident eviction policies and procedures, and other anticrime strategies; and coordination with local government officials and residents in the project and PHA on implementation of such strategies.

(8) *Economic self-sufficiency*. This component evaluates the self-sufficiency opportunities provided for adult residents.

(9) *Resident involvement in project administration*. This component evaluates the opportunities for resident involvement in project administration.

(b) *Assessment under the management operations indicator*. Projects will be assessed under this indicator through management operations information that is electronically submitted to HUD, such management data as is available through the FDS, project management reviews conducted by HUD, and other HUD data systems, such as the Subsidy and Grant Information System.

§ 902.44 Adjustment for physical condition and neighborhood environment.

(a) *General*. In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing such projects, through appropriate application of the adjustment.

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

(1) Physical condition adjustment applies to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) Neighborhood environment adjustment applies to projects located in census tracts where at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is located in more than one census tract, the census data for the census tract where the majority of the project's units are located shall be used.

(c) *Adjustment for physical condition and neighborhood environment.* HUD will adjust the management operations score of a project subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the overall management operations score for each project so as to reflect the difficulty in managing the projects. In each instance where the actual management operations score is rated below the maximum score of 40 points, one point each will be added for physical condition and neighborhood environment, but not to exceed the maximum number of 40 points available for the management operations indicator.

(d) *Application of adjustment.* The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects.

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* Under the management operations indicator, a score will be calculated for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators. Under the management operations indicator, HUD will calculate a score following the procedures described in the separate PHAS Management Operations Scoring document.

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 40 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 24 points or 60 percent.

(3) A PHA that receives fewer than 24 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds and expend funds in relation to statutory deadlines for obligation and expenditure for all Capital Fund program grants for which fund balances remain during the assessed fiscal year. Funds from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) do not include HOPE VI program funds.

(b) *Applicability.* This indicator is applicable on a PHA-wide basis, and not to individual projects. This indicator is not applicable to PHAs that choose not to participate in the Capital Fund program under section 9(d) of the Act.

(c) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated and expended amounts in HUD's e-LOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year. This indicator measures the statutory requirements for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to e-LOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date.

§ 902.53 Capital Fund program scoring and thresholds.

(a) *Scoring.* The Capital Fund program indicator score provides an assessment of a PHA's ability to obligate and expend Capital Fund program grants in a timely manner. Under the Capital Fund program indicator, a score will be calculated following the procedures described in the separate PHAS Capital Fund program Scoring document.

(b) *Thresholds.* (1) The PHA's Capital Fund program score is based on a maximum of 10 points.

(2) In order to receive a passing score under the Capital Fund program indicator, a PHA must achieve a score of at least 6 points, or 60 percent.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year for the first 3 full fiscal years following June 30, 2009, unless such change is approved by HUD for good cause.

(b) *Request for extension of time to submit unaudited financial information.* In the event of extenuating circumstances, a PHA may request extensions of time to submit its unaudited financial information. To receive an extension, a PHA must ensure that HUD receives the extension request electronically 15 days before the submission due date. The PHA's electronic extension request must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. PHAs shall submit their requests for extensions of time for the submission of unaudited financial information through the FASS Secure Systems Web site. HUD shall forward its determination electronically to the requesting PHA.

(c) *Request for waiver of due date for PHA submission of audited financial information.* (1) HUD, for good cause, may grant PHAs a waiver of the due date of the submission of audited financial information to HUD. HUD shall consider written requests from PHAs for a waiver of the report submission due date (established by OMB as no later than 9 months after the end of the fiscal year). The PHA's written request for a waiver of the due date of the submission of audited financial information must include an objectively verifiable justification as to why the PHA cannot submit the information by the submission due date. A PHA shall submit its written request for such a waiver, 30 days prior to the submission due date, to the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-2135. HUD shall forward its written determination of the waiver request to the PHA and, if appropriate, establish a new submission due date for the audited financial information.

(2) A waiver of the due date for the submission of audited financial information to HUD does not relieve a PHA of its responsibility to submit its audited information to the Federal Audit Clearinghouse, as established by

OMB no later than 9 months after the end of its fiscal year.

(d) *Rejected unaudited financial submissions.* When HUD rejects a PHA's year-end unaudited financial information 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, in accordance with § 902.62.

§ 902.62 Failure to submit data.

(a) *Failure to submit data by due date.*

(1) If a PHA without a finding of good cause by HUD does not submit its year-end financial information, required by this part, or submits its unaudited year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of one point in the total PHAS score for each 15-day period past the due date.

(2) If the unaudited year-end financial information is not received within 3 months past the due date, or extended due date, the PHA will receive a presumptive rating of failure for its unaudited information and shall receive zero points for its unaudited financial information and the final financial condition indicator score. The subsequent timely submission of audited information does not negate the score of zero received for the unaudited year-end financial information submission.

(3) The PHA's audited financial statement must be received no later than 9 months after the PHA's fiscal year-end, in accordance with OMB Circular A-133 (see § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the financial condition indicator.

(b) *Verification of information submitted.* (1) A PHA's year-end financial information and any supporting documentation are subject to review by an independent auditor, as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under the financial condition indicator, and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to HUD for the assessment under any indicator(s), subindicator(s), or component(s) shall receive a score of zero for the relevant indicator(s), subindicator(s), or component(s), and its overall PHAS score shall be lowered accordingly.

§ 902.64 PHAS scoring and audit reviews.

(a) *Adjustments to PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be adjusted (e.g., reduced in points) in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators, subindicators, or components, or its overall PHAS score, may be changed by HUD in accordance with data included in the audit report, or obtained through such sources as HUD project management and other reviews, investigations by HUD's Office of Fair Housing and Equal Opportunity, investigations or audits by HUD's Office of Inspector General, or reinspection by HUD, as applicable.

(b) *Issuance of a score by HUD.* An overall PHAS score will be issued for each PHA after the later of one month after the submission due date for financial data or one month after submission by the PHA of its financial data. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(c) *Review of audit—(1) Quality control review.* HUD may undertake a quality control review of the audit work papers or as part of the Department's ongoing quality assurance process.

(2) *Determination of deficiency.* If HUD determines that the PHA's financial statements, electronic financial submission, or audit are deficient, it shall notify the PHA of such determination in writing. The PHA will have 30 days in which to respond to the notice of deficiency and to establish that the determination is erroneous. Following consideration of any PHA response, HUD will issue a final determination in writing to the PHA.

(i) *Deficient financial statements.* Deficient financial statements are statements that are not presented, in some material respect, in accordance with accounting principles generally accepted in the United States, as set forth by the Government Accounting Standards Board, or if applicable, the Financial Accounting Standards Board.

(ii) *Deficient electronic submission.* A deficient electronic financial submission is a filing that was not

made, in some material respect, in accordance with HUD requirements or attested to in accordance with the Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants or Generally Accepted Government Auditing Standards.

(iii) *Deficient audit.* A deficient audit is one that was not performed, in some material respect, in compliance with Generally Accepted Government Auditing Standards; Generally Accepted Auditing Standards; OMB Circular A-133, when applicable; or HUD requirements.

(3) *HUD actions.* If HUD determines that the financial statements, electronic financial submission, or audit are deficient, HUD may adjust the financial indicator score to zero and/or reduce the overall PHAS score in accordance with the provisions of this section. Additionally, if HUD determines that the audit is deficient, HUD may, at its discretion, elect to serve as the audit committee for the PHA for the next fiscal year and select the audit firm that will perform the audit in question.

§ 902.66 Withholding, denying, and rescinding designation.

(a) *Withholding designation.* In exceptional circumstances, even though a PHA has satisfied all of the PHAS indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(1) Is operating under a special agreement with HUD (e.g., a civil rights compliance agreement);

(2) Is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, 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 projects and operate them consistent with federal laws and regulations.

(b) *High performer designation.* If a high performer designation is denied or rescinded, the PHA shall be designated either a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA shall be designated as a substandard performer or troubled performer.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(4) of this section.

§ 902.68 Technical review of PHAS physical condition indicator.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results.

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

(2) A request for technical review must be submitted in writing to the Real Estate Assessment Center, Attention: Technical Review, and must be received by HUD no later than 30 days following the issuance of the applicable results to the PHA.

(b) *Technical review of results of physical inspection results.* (1) For each project inspected, the results of the physical inspection and a score for that project will be provided to the PHA. If the PHA believes that an objectively verifiable and material error(s) occurred in the inspection of an individual project, the PHA may request a technical review of the inspection results for that project. Material errors are the only grounds for technical review of physical inspection results.

(2) A PHA's request for a technical review must be accompanied by the PHA's evidence that an objectively verifiable and material error(s) has occurred. The documentation submitted by the PHA may be photographic evidence; written material from an objective source, such as a local fire marshal or building code official; or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a project's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will a request for a technical review be considered if the request is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.*, minor, major, or severe).

(4) Upon receipt of a PHA's request for technical review of a project's inspection results, the PHA's file will be reviewed, including any objectively verifiable evidence produced by the PHA. If HUD's review determines that an objectively verifiable and material error(s) has been documented, then one or a combination of the following actions may be taken by HUD:

- (i) Undertake a new inspection;
 - (ii) Correct the physical inspection report;
 - (iii) Issue a corrected physical condition score; and
 - (iv) Issue a corrected PHAS score.
- (5) In determining whether a new inspection of the project is warranted and a new PHAS score must be issued, the PHA's file will be reviewed, including any evidence submitted, to determine whether the evidence supports that there may have been a material contractor error in the inspection that results in a significant change from the project's original physical condition score and the PHAS designation assigned to the PHA (*i.e.*, high performer, standard performer, substandard performer, or troubled performer). If HUD determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and from the PHA's PHAS score and PHAS designation, the PHA shall be issued a new PHAS score.

(6) Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the project. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but will nonetheless be corrected upon notice to HUD.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, HUD will examine instances where the participant

can provide evidence that the total units used is incorrect.

(iii) *Nonexistent deficiency error.* A nonexistent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) HUD's decision on a request for technical review is final and may not be further appealed under the administrative process in § 902.69.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

- (1) Appeal its troubled performer designation (including Capital Fund program troubled performer designation);
- (2) Appeal its final overall PHAS score;
- (3) Petition for removal of troubled performer designation;
- (4) Appeal any refusal of a petition to remove troubled performer designation; and
- (5) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) exists in any of the scores for its PHAS indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled performer, substandard performer, standard performer, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d), and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (*i.e.*, from troubled performer to substandard performer or standard performer, or from standard performer to high performer).

(2) A PHA may not appeal its PHAS score, physical condition score, or both, based on the subsequent correction of deficiencies identified as a result of a project's physical inspection or the denial of a technical review request.

(3) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date.

(c) *Appeal and petition procedures.*

(1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to

the PHA. To petition the removal of a troubled performer designation, a PHA must submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(2) To appeal the denial of a petition to remove a troubled performer designation, a PHA must submit a written request to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days after HUD's decision to refuse to remove the PHA's troubled performer designation.

(3) To appeal the petition for the removal of a troubled performer designation, or appeal the denial of a petition to remove a troubled performer designation, a PHA shall submit its request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center.

(4) An appeal of a troubled performer designation, the petition for removal of a troubled performer designation, or the appeal of a refusal of a petition to remove a troubled performer designation must include the PHA's supporting documentation and reasons for the appeal or petition. An appeal of a PHAS score must be accompanied by the PHA's evidence that a material error occurred. An appeal or petition submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of petitions and appeals.* (1) Consideration of a petition or the appeal of a final overall PHAS score, of a troubled performer designation, or of a petition to remove troubled performer designation. Upon receipt of such an appeal or a petition from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(2) Consideration of an appeal of refusal to remove a troubled performer designation. Upon receipt of an appeal of refusal to remove a troubled performer designation, HUD will evaluate the appeal and its merits for the purposes of determining whether a reassessment of the PHA is warranted. The officials evaluating an appeal of

refusal to remove a troubled performer designation will not be the same officials who evaluated the PHA's petition to remove the troubled performer designation.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of a PHAS score, issuance of a troubled performer designation, or refusal to remove a troubled performer designation will be final agency action. No reconsideration will be given by HUD of such decisions.

(2) HUD will issue a written decision on all appeals and petitions made under this section.

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations.

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

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90 percent, and no more than 10 percent of the total units are in projects that fail any physical, financial, or management indicator, will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the regional/field office.

(3) *Bonus points in funding competitions.* A high performer PHA may be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program and are provided in the relevant notice of funding availability.

(b) *Compliance with applicable federal laws and regulations.* Relief from

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

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

(1) Regular independent auditor audits;

(2) Office of Inspector General audits or investigations as circumstances may warrant; and

(3) Reviews identified by the regional or field office in its current Risk Assessment of PHAs and projects.

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be referred to the regional/field office for appropriate oversight and action.

(1) A standard performer that receives a total score of at least 60 percent shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(c). If the PHA fails to correct the deficiencies, HUD may either require the PHA to enter into a Corrective Action Plan, or HUD may take other action, as appropriate.

(2) A substandard performer, i.e., a PHA that achieves a score of less than 60 percent of the total points available under one or more of the physical condition, management, or financial condition PHAS indicators, shall be required to correct the deficiencies in performance within the time period for correction. If the PHA fails to correct the deficiencies, HUD may require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(3) A PHA with a project(s) that receives less than 60 percent of the points available for any indicator or subindicator shall be required to correct the deficiencies in performance within the time period for correction, as stated in § 902.73(b). If the PHA fails to correct the deficiencies within the time period allowed, HUD may either require the PHA to enter into a Corrective Action Plan, or take other action, as appropriate.

(b) *Correction of deficiencies—(1) Time period for correction.* After a

PHA's (or DF-RMC's) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), or, in the case of an RMC, after notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD-executed Corrective Action Plan, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office of its action to correct a deficiency. A PHA shall also forward to the regional or field office an RMC's report of its action to correct a deficiency. A DF-RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF-RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan, or within such extensions as may be granted by HUD, the regional/field office will notify the PHA of its noncompliance.

(2) The PHA (or DF-RMC or RMC) will provide the regional/field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan, within 30 days of the PHA's receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress.

(3) If HUD finds the PHA's (or DF-RMC or RMC) reasons for lack of progress unacceptable, HUD will notify the PHA (or DF-RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the 1937 Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

§ 902.75 Troubled performers.

(a) *General.* Upon a PHA's designation as a troubled performer, 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 must notify the PHA and shall refer each troubled performer PHA to the PHA's regional/field office, or other designated office(s) at HUD, for remedial action, oversight, and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other

actions as may be determined appropriate by HUD.

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer, HUD will initiate activities to negotiate and develop an MOA. An MOA is required for a troubled performer. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

(1) Baseline data, which should be data without adjustments or weighting but may be the PHA's score in each of the PHAS indicators, subindicators, components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (e.g., annual, semiannual, quarterly, monthly), which may be the attainment of a higher score within an indicator, subindicator, or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA, including the identification of the party responsible for the completion of each task and for reporting progress;

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

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

(6) Incentives for meeting such targets, such as the removal of a troubled performer designation or troubled with respect to the program for assistance from the Capital Fund program under section 9(d) of the Act (42 U.S.C. 1437g(d)) and HUD recognition for the most-improved PHAs;

(7) The consequences of failing to meet the targets, which include, but are not limited to, the interventions stated in 24 CFR part 907 and in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)); and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise

with regard to the PHA's specific problem areas, and authority to make preliminary commitments of support, financial or otherwise.

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

(d) *Maximum recovery period—(1) Expiration of the first-year improvement period.* Upon the expiration of the one-year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA's designation as a troubled performer.

(2) *Expiration of 2-year recovery period.* Upon the expiration of the 2-year period that started on the date on which the PHA received the initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

(e) *Parties to the MOA.* An MOA shall 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) or other AME acting in lieu of the PHA Board;

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

(3) The regional or field office Public Housing Director; and

(4) The appointing authorities of the Board of Commissioners, if required by the regional/field office Public Housing Director.

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

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

(1) If a troubled performer PHA fails or

refuses to execute an MOA within the period provided in paragraph (c) of this section, or a troubled performer PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by HUD, the regional/field office Public Housing Director shall refer the PHA to the Assistant Secretary to determine such remedial actions, consistent with the provisions of the ACC and other HUD regulations, including, but not limited to, remedies available for substantial default.

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each year of this 2-year period.

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

Example: A PHA receives a score of 50 points; 60 points is a passing score. Upon the expiration of the one-year period that started on the date on which the PHA received the initial notification of the troubled performer designation, the PHA must achieve at least 55 points (50 percent of the 10 points necessary to achieve a passing score of 60 points) to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If, in the first year that started on the date on which the PHA received the initial notification of the troubled designation, the PHA fails to achieve the 5-point increase, or if the PHA achieves the 5-point increase within the first year that started on the date on which the PHA received the initial notification of the troubled designation, but fails to achieve the minimum passing score of 60 points after the second year after the initial notification, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

(h) *Audit review.* For a PHA designated as a troubled performer, HUD may perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA; and HUD may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is in a troubled performer status, all services to residents will continue uninterrupted.

§ 902.79 Verification and records.

All project and PHA certifications, year-end financial information, and supporting documentation are subject to HUD verification at any time, including review by an independent auditor. All PHAs must retain supporting documents for any certifications and for asset management reviews for at least 3 years. Failure to maintain and provide supporting documentation for a period of 3 years for any indicator(s), subindicator(s), or other methods used to assess performance shall result in a score of zero for the indicator(s) or subindicator(s), and a lower overall PHAS score for the applicable assessment period.

§ 902.81 Resident petitions for remedial action.

Residents of a PHA designated as troubled pursuant to section 6(j)(2)(A) of the Act (42 U.S.C. 1437d(j)(2)(A)), may petition HUD in writing to take one or more of the actions referred to in section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)). HUD will consider any petition from a group of residents totaling at least 20 percent of the PHA's residents, or from an organization or organizations of residents whose membership equals at least 20 percent of the PHA's residents. HUD shall respond to such petitions in a timely manner with a written description of the actions, if any, HUD plans to take and, where applicable, the reasons why such actions differ from the course proposed by the residents. Nothing in this section shall limit HUD's discretion to determine whether a substantial default has occurred or to select the appropriate intervention upon such determination.

§ 902.83 Sanctions for troubled performer PHAs.

(a) If a troubled performer PHA fails to make substantial improvement, as set forth in § 902.75(d), HUD shall:

(1) In the case of a troubled performer PHA with 1,250 or more units, declare substantial default in accordance with § 907.3(b)(3) and petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) In the case of a troubled performer PHA with fewer than 1,250 units, declare substantial default in accordance with § 907.3(b)(3) and either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a

competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(3) In the case of substantial default by a troubled performer PHA, nothing in this section shall be construed to limit the courses of action available to HUD under this part, 24 CFR part 907, or section 6(j)(3)(A) of the Act (42 U.S.C. 1437d(j)(3)(A)) for any other substantial default by a PHA.

(b) If a troubled performer PHA fails to execute or meet the requirements of an MOA in accordance with § 902.75, other than as specified in paragraph (a) of this section, the PHA may be deemed to be in substantial default by HUD and any remedy available therefore may be invoked in the discretion of HUD.

Appendix A to Part 902—Physical Condition Scoring

I. Purpose of This Appendix

This appendix describes the physical condition scoring process under the proposed revisions to the PHAS regulation and prescribes the frequency of individual project inspections.

II. Purpose of the PHAS Physical Condition Assessment

The purpose of the PHAS physical condition assessment is to ensure that public housing units are decent, safe, sanitary and in good repair, as determined by an inspection conducted in accordance with HUD's Uniform Physical Condition Standards (UPCS) codified at 24 CFR part 5, subpart G. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with uniform standards and is an important indicator of performance for a project and a PHA. All projects will be assessed under the Physical Condition Indicator, even if a PHA has not converted to asset management.

The Physical Condition Indicator score is based on a maximum of 30 points. In order to receive a passing score under this indicator, a project must achieve at least 18 points or 60 percent of the points available under this indicator. Under the PHAS Physical Condition Indicator, REAC will calculate a score for each project, as well as for the overall physical condition of a PHA. The physical condition score, based on a 30-point scale, is included in each PHA's aggregate PHAS score.

III. Transition to Asset Management and Frequency of Inspections

The number of units in a PHA's Low-Rent program and the PHAS designation for small PHAs will determine the frequency of physical inspections during and after the transition to asset management. Deregulation of small PHAs provides that PHAs with less than 250 public housing units are assessed and scored every other year, unless

designated a PHAS troubled performer. PHAS with less than 250 units that are designed troubled will be assessed every year. The score of a project in a PHA with less than 250 units will not affect the frequency of inspections for either that project or the associated PHA, unless the PHA has a single project resulting in the project score equating to the overall physical inspection indicator score. The frequency of physical inspections for small PHAs will be determined based upon the PHAS designation.

For PHAs with 250 or more units of any PHAS designation, the inspection score of each project (not the overall physical indicator score) will determine the frequency of inspections for that project. Projects that score 80 points or higher based on a possible 100-point project score will be inspected every other year. Projects that score less than 80 points based on the possible 100-point project score will be inspected annually. The performance incentive, to be inspected every other year, will change from PHA-based to project-based. A troubled physical PHAS designation will not affect the frequency of project inspections for such PHAs. Project inspections for PHAs with 250 or more units will be based on the project's prior year inspection score.

Projects of overall troubled PHAs with 250 or more units that score 80 points or higher based on a possible 100-point project score will be inspected every other year. Projects that score less than 80 points based on the possible 100-point project score will then be inspected annually. PHAs with 249 or less units, inspected and designated as troubled, will be inspected again the next year. PHAs of 250 units or more with unit-weighted project scores from 2 different years will have all their prior year scores of 80 and above (and current year scores for each project that was inspected), multiplied by 30 percent, totaled together, and rounded to produce an overall physical indicator score.

IV. Item Weights and Criticality Levels and Dictionary of Deficiency Definitions

The Item Weights and Criticality Levels tables and the Dictionary of Deficiency Definitions currently in use are available in HUD's REAC Physical Inspection Library Internet site at: http://www.hud.gov/offices/reac/library/lib_phyi.cfm#FEDERAL.

V. Validity and Reliability of the Physical Inspection Protocols

The Conference Report (H.R. Conf. Rep. 106-988; October 18, 2000) accompanying HUD's FY 2001 Appropriations Act (Pub. L. 106-377, approved October 27, 2000) directed HUD to continue to assess the accuracy and effectiveness of the PHAS system, in particular the physical condition inspection protocol. HUD was also directed to perform a statistically valid test of PHAS, conduct a thorough analysis of the results, and have the methodology and results reviewed by an independent expert before taking any adverse action against a PHA based solely on its PHAS score. HUD retained the Louis Berger Group (the contractor) to conduct the review of the methodology and results of the statistically valid test.

The findings of the contractor's study concluded that the physical condition inspection protocol is repeatable and reliable. A report addressing the issues raised in the Conference Report, entitled the Review and Assessment of the REAC Study of the Physical Assessment Sub-System (PASS) Process, was provided to the House and Senate Committees on Appropriations on March 1, 2001.

VI. The Physical Inspection Scoring Process

The PHAS physical inspection generates comprehensive results, including physical inspection scores reported at the project level, area level scores for each of the five physical inspection areas, as applicable, and observations of deficiencies recorded electronically by the inspector at the time of the inspection.

1. Definitions

The following are the definitions of the terms used in the physical condition scoring process:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 lists all deficiencies with their designated criticality levels, which vary from 1 to 5, with 5 being the most critical. Based on the criticality level, each deficiency has an assigned value that is used in scoring. Those values are as follows:

Criticality	Level	Value
Critical	5	5.00
Very Important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight Contribution	1	0.50

Based on the importance of the deficiency as reflected by its criticality value, points are deducted from the project score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a counter top. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Deficiencies refer to specific problems that are recorded for inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Inspectable area means any of the five major components of the project: Site, building exteriors, building systems, common areas, and dwelling units.

Inspectable items refer to walls, kitchens, bathrooms, and other features that are inspected in an inspectable area. The number of inspectable items varies for each inspectable area from 8 to 17. Weights are assigned to each item to reflect their relative importance and are shown in the Item Weights and Criticality Levels tables. The tables refer to the weight of each item as the nominal item weight, which is also known as the amenity weight.

Normalized area weight represents weights used with area scores to calculate project-level scores. The weights are adjusted to reflect the inspectable items actually present at the time of the inspection. These weights are proportional, as follows:

- For dwelling units, the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present for inspection in each unit, which is referred to as the amenity weight.

- For common areas, the area score is the weighted average of sub-area common area scores weighted by the total weights for items available for inspection (or amenity weight) in each residential building common area or common building. Common buildings refer to any inspectable building that contains no dwelling units. All common buildings are inspected.

- For building exteriors or building systems, the area scores are weighted averages of sub-area scores.

- For sites, the area score is calculated as follows: (1) The amenity weights found on a site, (2) minus deductions for deficiencies, and (3) normalized to a 100-point scale.

Normalized sub-area weight means the weight used with sub-area scores to compute an inspectable area score. These weights are proportional:

- For dwelling units, the item weight of amenities available in the unit at the time of inspection is the amenity weight.

- For common areas, the common area amenity weight is divided by a building's probability of being selected for inspection. All residential buildings with common areas may not be selected for inspection; however, all buildings with common areas are selected to determine the amenity weight.

- For building exterior and building systems, the building exterior or building system amenity weight is multiplied by the building's size (number of units) and then divided by its probability of being selected for inspection.

- For the site, there is no sub-area score. For each project, there is a single site.

Note that dividing by a building's probability of being selected for inspection is the same as multiplying by the probability weight, since the probability weight is 1 divided by the probability of being selected for inspection.

Project is used synonymously with the term "property."

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity level	Value
3	1.00
2	0.50
1	0.25

The Item Weights and Criticality Levels tables show the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated by multiplying the item weight by the values for criticality and severity, as described below. For specific definitions of each severity level, see the Dictionary of Deficiency Definitions, which is available from REAC's Physical Inspection Library Internet site at: http://www.hud.gov/offices/reac/library/lib_phyi.cfm#FEDERAL.

Score means a number between 0 and one hundred (100) that reflects the physical

condition of a project, inspectable area, dwelling area, or sub-area. A property score includes both an alphabetical and a numerical component. The number

represents an overall score for the basic physical condition of a property, including points deducted for health and safety deficiencies other than those associated with

smoke detectors. The letter code specifically indicates whether health and safety deficiencies were detected, as shown in the chart below:

Physical inspection score alphanumeric codes	No health and safety deficiencies	Health and safety deficiencies			
		Non-life threatening (NLT)	Life threatening (LT)/exigent health and safety (EHS)	Fire safety	
				No smoke detector problems	Smoke detector problems
a	X	.....	.....	X	.....
a*	X	.....	.....	.....	X
b .....	.....	X	.....	X	.....
b* .....	.....	X	.....	.....	X
c .....	.....	.....	X	X	.....
c* .....	.....	.....	X	.....	X

To record a health or safety problem, a letter is added to the project score (a, b, or c); and to note that one or more smoke detectors are inoperable or missing, an asterisk (*) is added to the project score.

Sub-area means an area that will be inspected for all inspectable areas except the site. For example, the building exterior for building "2" is a sub-area of the building exterior area. Likewise, unit "5" would be a sub-area of the dwelling units area. Each inspectable area for each building in a property is treated as a sub-area.

2. Scoring Protocol

To generate accurate scores, the inspection protocol includes a determination of the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. For example, in the building exterior area, a blocked or damaged fire escape is more important than a cracked window, which is more important than a broken light fixture. The Item Weights and Criticality Levels tables provide the nominal weight of observable deficiencies by inspectable item for each area/sub-area. The Dictionary of Deficiency Definitions provides a definition for the severity of each deficiency in each area/sub-area.

3. Equity Principles

In addition to determining the appropriate relative weights, consideration is also given to several issues concerning equity between properties so that scores fairly assess all types of properties:

Proportionality. The scoring methodology includes an important control that does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score would be negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of project. The scoring methodology takes into account different numbers of units in buildings. To fairly score projects with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number

of units in each building and on the building's probability of being selected for inspection. In addition, the calculation for common areas includes the amenities existing in the residential common areas and common buildings at the time of inspection.

Differences between projects. The scoring methodology also takes into account that projects have different features and amenities. To ensure that the overall score reflects only items that are present to be inspected, weights to calculate area and project scores are adjusted depending on how many items are actually there to be inspected.

4. Deficiency Definitions

During a physical inspection of a project, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (the inspectable item) of a dwelling unit (the inspectable area). Based on the observed condition, the Dictionary of Deficiency Definitions defines up to the three levels of severity for each deficiency: Level 1 (minor), Level 2 (major), and Level 3 (severe). The associated values were shown earlier in the first chart of Section VI. A specific criticality level, with associated values as shown in that chart, is also assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all other possible observable deficiencies for the inspectable area.

5. Health and Safety Deficiencies

The UPCS physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial impact on the well-being of residents. A subset of H&S deficiencies is exigent health and safety (EHS) deficiencies. These are life threatening (LT) and require immediate action or remedy. EHS deficiencies can substantially reduce the overall project score. As noted in the definition for the word "score" in the Definitions section, all H&S deficiencies are highlighted by the addition of a letter to the numeric score. The Item Weights and Criticality Levels tables list all H&S deficiencies with an LT designation for those that are EHS deficiencies and an NLT designation for those that are non-life threatening. The LT and NLT designations apply only to severity level 3 deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the project representative a deficiency report identifying every observed EHS deficiency before the inspector leaves the site. The project representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD no later than the morning of the first business day after completing the inspection. HUD makes available to all PHAs an inspection report that includes information about all of the H&S deficiencies recorded by the inspector. The report shows:

- The number of H&S deficiencies (EHS and NLT) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

Problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating that the project has at least one smoke detector deficiency, that part of the score may be identified as "risk;" for example, "93a, risk" for 93a*, and "71c, risk" for 71c*. There are six distinct letter grade combinations based on the H&S deficiencies and smoke detector deficiencies observed: a, a*, b, b*, c, and c*.

- A score of 90c* means that the project contains at least one EHS deficiency to be corrected, including at least one smoke detector deficiency, but is otherwise in excellent condition.
- A score of 40b* means the project is in poor condition, has at least one non-life threatening deficiency, and has at least one missing or inoperable smoke detector.
- A score of 55a means that the project is in poor condition, even though there are no H&S deficiencies.
- A project in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within each project: (1) Five inspectable areas (site, exterior, systems, common areas, and dwelling units); (2) inspectable items in each inspectable area; and (3) observed deficiencies. In broad

terms, the score for a property is the weighted average of the five inspectable area scores, where area weights are adjusted to account for all of the inspectable items that are actually present to be inspected. In turn, area scores are calculated by using weighted averages of sub-area scores (e.g., building area scores for a single building or unit scores for a single unit) for all sub-areas within an area.

7. Scoring Using Weighted Averages

For all areas except the site, normalized sub-area weights are determined using the size of sub-areas, the items available for inspection, and the sub-area's probability of selection for inspection. Sub-area scores are determined by deducting points for deficiencies based on the importance (weight) of the item, the criticality of the deficiency, and the severity of the deficiency. The maximum deduction for a single deficiency will not calculate a score of less than zero. Points will be deducted only for one deficiency of the same kind within a sub-area. For example, if multiple deficiencies for broken windows are recorded, only the most severe deficiency observed (or one of the most severe, if there are multiple deficiencies with the same level of severity) will result in a point deduction.

8. Essential Weights and Levels

The process of scoring a project's physical condition depends on the weights, levels, and associated values of the following quantities:

- Weights for the 5 inspectable areas (site, building exteriors, building systems, common areas, and dwelling units).
- Weights for inspectable items within inspectable areas (8 to 17 per area).
- Criticality levels (critical, very important, important, contributes, and slight contribution) plus their associated values for deficiencies within areas inspected.
- Severity levels (3, 2, and 1) and their associated values for deficiencies.
- Health and safety deductions (exigent/ fire safety and non-life threatening for all inspectable areas).

9. Area Weights

Area weights are used to obtain a weighted average of area scores. A project's overall physical condition score is a weighted average of all inspectable area scores. The approximate relative weights are:

Inspectable area	Weight (percent)
Site	15
Building Exterior	15
Building Systems	20
Common Areas	15
Dwelling Units	35

These weights are assigned for all inspections when all inspectable items are present for each area and for each building and unit. All of the inspectable items may not be present in every inspectable area. When items are missing in an area, the area weights are modified to reflect the missing items so that within that area they will add up to 100 percent. Area weights are recalculated when some inspectable items are missing in one or more area(s).

Although rare, it is possible that an inspectable area could have no inspectable items available; for example, there could be no common areas in the inspected residential buildings and no common buildings. In this case, the weight of the "common areas" would be 0 percent and its original 15 percent weight would be equitably redistributed to the other inspectable areas, as shown in the example below:

Inspectable area	Normal weight (percent)	Missing common areas (percent)	Adjustment	Adjusted weight (percent)
Site	15	15	.15/.85 =	18
Building Exterior	15	15	.15/.85 =	18
Building Systems	20	20	.20/.85 =	23
Common Areas	15	0	.....	0
Dwelling Units	35	35	.35/.85 =	41
Total	100	85	.....	100

The original 15 percent weight for the common areas is redistributed by totaling the weights of other inspectable areas (100 percent minus 15 percent = 85 percent) and dividing the weights of each other area by that amount (0.85). The modified weights would then be 18 percent for site, 18 percent for building exterior, 23 percent for building systems, 0 percent for common areas, 41 percent for dwelling units, and again be equal to (be normalized to) 100 percent.

10. Area and Sub-Area Scores

For inspectable areas with sub-areas (all areas except sites), the inspectable area score is a weighted average of the sub-area scores within that area. The scoring protocol determines the amenity weight for the site and each sub-area as noted in Section VI.1 under the definition for normalized sub-area weight. For example, a property with no fencing or gates in the inspectable area of the site would have an amenity weight of 90 percent or 0.9 (100 percent minus 10 percent for lack of fencing and gates), and a single dwelling unit with all items available for inspection except a call-for-aid would have an amenity weight of 0.98 or 98 percent (100 percent minus 2 percent for lack of call-for-aid).

The amenity weight excludes all health and safety items. Each deficiency as weighted and normalized are subtracted from the sub-area or site-weighted amenity score. Sub-area and site area scores are further reduced for any observed health and safety deficiencies. These deductions are taken at the site, building, or unit level. At this point, a control is applied to prevent a negative site, building, or unit score. The control ensures that no single building or unit can affect an area score more than its weighted share.

11. Overall Project Score

The overall project score is the weighted average of the five inspectable area scores, with the five areas weighted by their normalized weights. Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, the number of possible points is the normalized area weight adjusted by multiplying by 100 so that the possible points for the five areas add up to 100. In the Physical Inspection Report for each project that is sent to the PHA, the following items are listed:

- Normalized weights as the "possible points" by area;

- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for each inspectable area; and
- The overall project score.

The Physical Inspection Report allows the PHA and the project manager to see the magnitude of the points lost by inspectable area and the impact on the score of the H&S deficiencies.

12. Examples of Physical Condition Score Calculations

The physical inspection scoring is deficiency based. All projects start with 100 points. Each deficiency observed reduces the score by an amount dependent on the importance and severity of the deficiency, the number of buildings and units inspected, the inspectable items actually present to be inspected, and the relative weights between inspectable items and inspectable areas.

The calculation of a physical condition score is illustrated in the examples below. The examples go through a number of interim stages in calculating the score, illustrating how sub-area scores are calculated for a single project, how the sub-area scores are rolled up into area scores, and how area scores are combined to calculate the overall project score. One particular

deficiency is carried through the examples showing the end result.

As will be seen, the deduction starts out as a percent of the sub-area. Then the area score is considerably decreased in the final overall project score because the deduction is averaged across other sub-areas and then averaged across the five inspectable areas. Although interim results in the examples are rounded, only the final results are rounded for actual calculations.

To illustrate how physical condition scores are calculated, three examples are provided

below. Following this section, another example is given specifically for public housing projects to show how project scores are rolled up into the PHAS physical indicator score for the PHA as a whole.

Example #1 illustrates how the score for a sub-area of building systems is calculated. Consider a 10-unit residential building in which the five inspectable areas are present. During the inspection, damaged vents in the roof are observed. This deficiency reflected a severity level of 1, which has a severity weight of 0.25; a criticality level of 4, which

has a criticality weight of 3; and an item weight of 16.0. The amount of the points deducted is the item weight, multiplied by the criticality weight multiplied by the severity value. This is illustrated in the table below.

Area: Building Exterior.

Item: Roof.

Deficiency: Damaged Vents.

Criticality Level: 4, Severity Level: 1.

Element	Associated value
Item Weight	16
Criticality Weight	3.0
Severity Weight	0.25
Calculation of Points Deducted for Deficiency	$16 \times 3 \times 0.25 = 12$

If this building exterior has all inspectable items except for a fire escape, the amenity weight for the first building exterior adds up to 84 percent (100 percent starting point minus 16 percent for the lack of a fire escape, excluding H&S items). If the damaged roof

vents were the only deficiency observed, then the initial proportionate score for this sub-area (Building Exterior #1) would be the amenity score minus the deficiency points and then normalized to a 100-point basis, as shown below. Additional deficiencies or H&S

deficiencies (calculated in the same manner) would further decrease the sub-area score, and if the score dropped below zero, it would be set to zero.

Element	Associated value
Amenity Score	84
Deficiency Points	12
Calculation for the Initial Proportionate Score	$84 - 12 = 72$
Normalizing Factor	100
Calculation for the Initial Sub-Area Score	$(72/84) \times 100 = 85.7$
Building Exterior #1	

Example #2 illustrates how the area score is calculated. Consider a property with two buildings with the following characteristics:

- Building #1 (from Example #1, above):
 - 10 units
 - 84 percent amenity weight for items that are present to be inspected in the building exterior

- Building exterior score is 85.7 points
 - Building #2:
 - 20 units
 - 100 percent amenity weight for items that are present to be inspected in the building exterior
 - Building exterior score is 69.1 points

The building exterior score for the building exterior area is the weighted average of the individual scores for each building exterior. Each building exterior score is weighted by the number of units and the percent of the weight for items present to be inspected in the building exterior.

Building	Number of units	×	Amenity weight	=	Unit weighted average	/	Sum of the building weights	×	Initial proportionate score	=	Building exterior area score
#1	10		0.84		08.4		28.4		85.7		25.3
#2	20		1.00		20.0		28.4		69.1		48.7
Total	30		.....	.....	28.4	.....	.....	.....	.....	.....	74.0

Example #3 illustrates how the overall weighted average for the building exterior area amenity weight is calculated. The separate amenity weights for buildings #1 and #2, above, are used in conjunction with

the total units to calculate the building exterior area amenity weight. Each building amenity weight is multiplied by the number of units in that building and then divided by the total number of units for all buildings, as

shown below. For purposes of the next example, the Overall Building Exterior Area Amenity Weight of 94.7 was rounded to 95.

Building exterior	Number of units	×	Amenity weight	=	Unit weighted average	/	Total units	×	Normalized to a 100 point basis	=	Overall building exterior area weighted average amenity weight
#1	10		0.84		08.4		30		100		28.0
#2	20		1.00		20.0		30		100		66.7

Building exterior	Number of units	×	Amenity weight	=	Unit weighted average	/	Total units	×	Normalized to a 100 point basis	=	Overall building exterior area weighted average amenity weight
Total	30		.....		28.4		.....		.....		94.7

Example #4 illustrates how the score for a property is calculated. Consider a property with the following characteristics:

- Site:
 - Score: 90 points
 - 100 percent amenity weight
 - Nominal weight: 15 percent
- Building Exteriors (from example #2 and #3, above):
 - Score: 74 points
 - 95 percent weighted average amenity weight
 - Nominal weight: 15 percent

- Building Systems:
 - Score: 70 points
 - 80 percent weighted average amenity weight
 - Nominal weight: 20 percent
- Common Areas:
 - Score: 60 points
 - 30 percent weighted average amenity weight
 - Nominal weight: 15 percent
- Dwelling Units:
 - Score: 80 points

—90 percent weighted average amenity weight
 —Nominal weight: 35 percent
 To continue the scoring protocol, the adjusted area weights for all five inspectable areas are determined. For purposes of this example, the adjusted weights and maximum possible points for each of the five inspectable areas are shown in the table below. All of the values in this table, except for the values for building exteriors, are presumed. The values for building exteriors were calculated as part of this ongoing example.

Inspectable area	Area weight	×	Amenity weight	=	Amenity weighted average	/	Total adjusted weight	×	Normalized to 100 point scale	=	Maximum possible points
Site	15		1.00		15.0		81.2		100		18.5
Building Exterior	15		0.95		14.2		81.2		100		17.5
Building Systems	20		0.80		16.0		81.2		100		19.7
Common Areas	15		0.30		04.5		81.2		100		05.5
Dwelling Units	35		0.90		31.5		81.2		100		38.8
Total					81.2		.....		.....		100.0

The nominal possible points for each inspectable area is multiplied by the amenity weight, divided by the total adjusted amenity weight, and normalized to a 100-point basis

to produce the possible points for the inspectable area. The property score is the sum of all weighted area scores for that property. The sample shown below reflects

how the deficiency from example #1 in the building exterior area impacts the overall property score. The property score of 77.8 is rounded to 78 for the final example.

Inspectable area	Area points	×	Area score	/	Normalized to a 100 point scale	=	Project #1 weighted area scores
Site	18.5		90		100		16.7
Building Exterior	17.5		74		100		13.0
Building Systems	19.7		70		100		13.8
Common Areas	05.5		60		100		03.3
Dwelling Units	38.8		80		100		31.0
Total	100.0		.....		.....		77.8

13. Computing the PHAS Physical Inspection Score

The overall physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical

inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA. For example, the project described in Example #1 from above has a score of 78 with 30 units. Using another project with a

score of 92 and 650 units with project from Example #1 would calculate to an overall physical inspection score of 91. Note the impact on the overall physical inspection of a single property with a large number of units.

Project	Weighted average property score	×	Rescaling to the 30-point basis	=	×	Number of units in the property	/	Total PHA units	=	Project weighted area score	
#1	78		.3		23.4		30		680		1.0
#2	92		.3		27.6		650		680		26.4
Total	100		.....		.....		.....		.....		27.4

The physical subsystem indicator score for this PHA provided to HUD's centralized scoring system would be 27.4, rounded to a score of 27. Weighted-average property scores are scaled to a 30-point basis by multiplying by 0.3. The total is then multiplied by the number of units within the property and divided by the total number of PHA units, to produce a unit-weighted average. All of the project's weighted area scores are totaled and rounded using a rounding policy of rounding up to the nearest whole number a score ending in 0.5 and above, and rounding down a score ending in 0.4 and below.

14. *Examples of Sampling Weights for Buildings*

As shown above, buildings with the most dwelling units have the greatest impact on the project's overall physical score. Buildings with the most dwelling units also have the greatest likelihood of being selected for inspection. The determination of which buildings will be inspected is a two-phase process. In Phase 1 of the process, all buildings that contain dwelling units are sorted by size and then the units are randomly sorted within each building. A computer program selects a random sample of units to be inspected.

All buildings in a project may not be selected in the building sample during Phase 1 sampling, because a building may have so few units such as a sole scattered-site single family unit. A Phase 2 sampling is used to increase the size of the number of buildings selected. In Phase 2, the additional buildings

that are included in the sample are selected with equal probability so that the residential building sample size is the lesser of either the dwelling unit sample size or the number of all residential buildings. All common buildings are selected for inspection. To illustrate the process for sampling buildings, two examples are provided below:

Example #1. This first example uses a project with two buildings where both buildings are selected for inspection. Building A has 10 dwelling units and building B has 20 dwelling units, for a total of 30 dwelling units. The target dwelling unit sample size for a project with 30 dwelling units is 15 units. The sampling ratio for this project is two and is calculated by dividing the 15 target units by the total number of units (30/15=2). In this illustration, every second dwelling unit will be selected from the random sort of the units within each building. Since both buildings have at least 2 dwelling units, both buildings are certain to be selected for inspection in Phase 1. Since all buildings were selected in Phase 1 of sampling, Phase 2 is not required. Both buildings in this example have a selection probability of 1.00 and a sampling weight of 1.00.

Example #2. This example uses a project where only some of the buildings within the project are selected for inspection in Phase 1, so a Phase 2 sampling is required. For this example, a project is comprised of 22 residential buildings. Two buildings each have 10 dwelling units and 20 buildings are scattered-site single family dwelling units.

The project has 40 total dwelling units (two buildings with 10 units each added to 20 single units (20+20)). The target sample size for a project with 40 dwelling units is 16 units, and the sampling ratio would be 2.5 (40 total dwelling units divided by 16 target dwelling units). Since the target sample size is the lesser of either the dwelling unit sample size (16) or the number of all residential buildings (22), 16 residential buildings would be inspected for this project.

In Phase 1 of sampling, the 2 buildings with 10 dwelling units are selected with certainty since they both have more than 2.5 dwelling units. Each of the scattered-site single family buildings then have a 40 percent probability of selection (100 percent or 1 divided by the 2.5 sampling ratio equals 0.40). Assume that both large buildings and 8 of the single family buildings (10 buildings in all) were selected in Phase 1. This leaves 12 single family buildings available for selection during Phase 2. Since 16 residential buildings need to be inspected, the sample of 10 buildings selected in Phase 1 falls 6 buildings short of a full sample. Therefore, the system will select 6 of the 12 previously unselected buildings during Phase 2 sampling. The chance of any single building, of the 12 remaining buildings, being selected during Phase 2 is 0.50 or 50 percent (6 target buildings divided by 12 previously unselected buildings). The overall probability of any one of the 20 single family units being selected during either Phase 1 or Phase 2 is calculated as follows:

Element	Protocol	Calculation
Phase 1 Single Family Unit Building Selection	8 of 20 buildings	8/20 = .40
Phase 2 Single Family Unit Building Selection	6 of 12 buildings	6/12 = .50
Overall Possibility of Single Family Unit Building Selection During Phase 2.	100% minus the 40% already selected during Phase 1 and multiplied by the 50% chance of being selected during Phase 2.	(1.00 - .40) x .50 = .30s
Overall Probability of a Single Family Unit Building Selection.	Probability from Phase 1 added to probability from Phase 2.	.40 + .30 = .70
Verification—Overall Single Family Unit Building Selection.	14 of 20 buildings	14/20 = .70
Probability Weight* of Selection for Single Family Unit Building Selection.	1 divided by the overall probability of Single Family Unit Building Selection.	1.00/.70 = 1.43

*See the note in Section VI.1 under the definition for normalized sub-area weight.

15. **Accessibility Questions**

HUD reviews particular elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–3619) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). More specifically, during the physical inspection, the inspector will record if: (1) There is a wheelchair-accessible route to and from the main ground floor entrance of the buildings inspected; (2) the main entrance for every building inspected is at least 32 inches wide, measured between the door and the opposite door jamb; (3) there is an accessible route to all exterior common areas; and (4) for multi-story buildings that are inspected, the interior hallways to all inspected units and common areas are at least 36 inches wide. These items are recorded, but do not affect the score.

Appendix B to Part 902—Financial Condition Scoring

I. Purpose of This Appendix

This appendix provides information about the scoring process for PHAS Indicator #2, Financial Condition. The purpose of the Financial Condition Indicator is limited to measuring the financial condition of the Low-Rent and Capital Fund programs of the project(s) and PHA.

II. Background

A. Financial Condition Indicator Regulatory Background

To reflect a shift from a PHA-wide based assessment to one that is property based, HUD is revising the Financial Assessment Sub-System for public housing (FASS-PH) Financial Data Schedule (FDS) and financial condition scoring process. Project-based

management is defined in 24 CFR 990.115 as “the provision of property management services that is tailored to the unique needs of each property.” PHAs must also implement project-based budgeting and project-based accounting, which are essential components of asset management. Project-based accounting is critical to a property-based assessment of financial condition, because it mandates the submission of property-level financial data. Accordingly, PHAs will now be scored at a property level, using the already designated projects as the basis for assessment.

The condition of the Low-Rent program and Capital Fund program will be evaluated at the project level, producing individual project scores within the PHA. Project performance will be scored and averaged across the PHA, weighted according to unit count. The projects within a PHA will be

evaluated and scored based on the project's performance relative to industry standards.

B. Comparable Scoring Systems

The financial condition subindicators are not unique to public housing. The subindicators included in the Financial Condition Indicator scoring process are common measurements used throughout the multifamily industry to rank properties and identify the properties that require further attention.

III. Subindicators

A. Subindicators of the Financial Condition Indicator

There are three subindicators that examine the financial condition of each project. The values of the three subindicators, calculated from the project level data, comprise the overall financial assessment of a project. The three subindicators of the Financial Condition Indicator are:

- Quick Ratio (QR);
- Months Expendable Net Assets Ratio (MENAR); and
- Debt Service Coverage Ratio (DSCR).

B. Description of the Financial Condition Subindicators

The subindicators are described as follows:

Subindicator #1, QR. This subindicator is a liquidity measure of the project's ability to cover current liabilities. It is measured by dividing adjusted unrestricted current assets by current liabilities. The purpose of this

ratio is to indicate whether a project could meet all current liabilities if they became immediately due and payable. A project should have available current resources equal to or greater than its current liabilities in order to be considered financially liquid. The QR is a commonly used liquidity measure across the industry. Maintaining sufficient liquidity is essential for the financial health of an individual project.

Subindicator #2, MENAR. This subindicator measures a project's ability to operate using net available, unrestricted resources without relying on additional funding. In particular, it is computed as the ratio of net available unrestricted resources to average monthly operating expenses. The result of this calculation shows how many months of operating expenses can be covered with currently available, unrestricted resources.

Subindicator #3, DSCR. This subindicator is a measure of a project's ability to meet regular debt obligations. This subindicator is calculated by dividing adjusted operating income by a project's annual debt service. It indicates whether the project has generated enough income from operations to meet annual interest and principal payment on long-term debt service obligations.

IV. GAAP-Based Scoring Process and Elements of Scoring

A. Points and Threshold

The Financial Condition Indicator is based on a maximum of 20 points. In order to

receive a passing score under this indicator, a project must achieve at least 12 points, or 60 percent of the available points under this indicator.

B. Scoring Elements

The Financial Condition Indicator score provides an assessment of a project's financial condition. Under the PHAS Financial Condition Indicator, HUD will calculate a score for each project, as well as for the PHA overall financial condition, that reflects weights based on the relative importance of the individual financial subindicators. The overall Financial Condition Indicator score for a PHA is a unit-weighted average of the PHA's individual project financial condition scores. In order to compute an overall financial condition score, an individual project financial condition score is multiplied by the number of units in each project to determine a "weighted value." The sum of the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS Financial Condition Indicator score. The three subindicator scores are produced using GAAP-based financial data contained in the FDS. The minimum number of points (zero) and the maximum number of points (twenty) can be achieved over a range of values.

Subindicators	Measurement of	Points
QR	Liquidity	9.0
MENAR	Adequacy of reserves	9.0
DSCR	Capacity to cover debt	2.0
Total		20.0

QR

A project will receive zero points when its QR is less than 1.0. If its QR equals 1.0, it will receive 5.4 points. If its QR is between 1.0 and 2.0, it will receive a score of between 5.4 and 9.0 points, on a proportional basis. A project will receive the maximum of 9.0

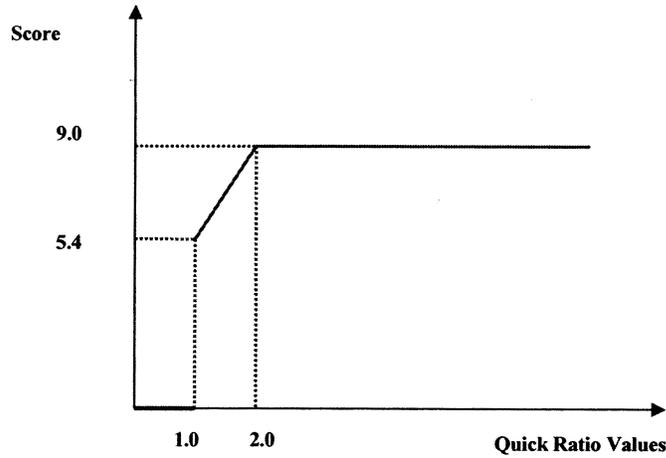
points when its QR is equal to or greater than 2.0.

QR value	Points
<1.0	0.0.
1.0	5.4.

QR value	Points
≥1.0 but <2.0	>5.4 to <9.0.
≥2.0	9.0.

The following graph depicts the relationship between the QR and scores.

Graph 1: Financial Condition Subindicator #1: Quick Ratio (QR)



MENAR

A project will receive zero points when its MENAR is less than 1.0. If its MENAR equals 1.0, it will receive 5.4 points. If its MENAR is between 1.0 and 4.0, it will receive a score of between 5.4 and 9.0 points, on a proportional basis. A project will receive the

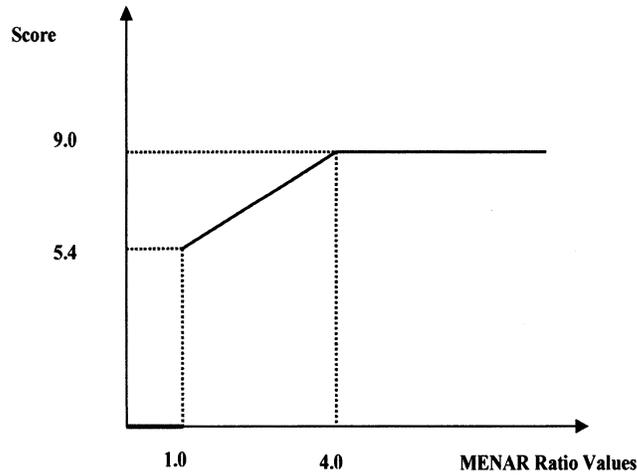
maximum of 9 points when its MENAR is equal to or greater than 4.0.

MENAR value	Points
<1.0	0.0
1.0	5.4

MENAR value	Points
≥1.0 but <4.0	>5.4 to <9.0
≥4.0	9.0

The following graph depicts the relationship between the MENAR and scores.

Graph 2: Financial Condition Subindicator #2: MENAR



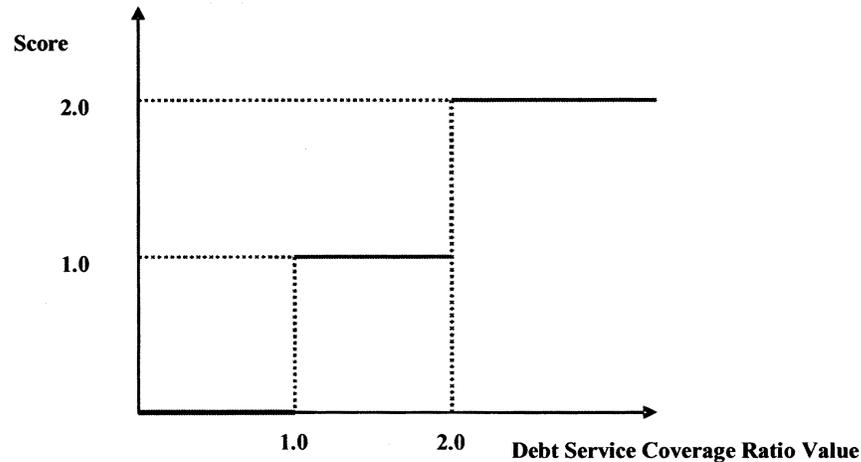
DSCR

A project will receive zero points when its DSCR ratio is less than 1.0. If its DSCR equals at least 1.0 but less than 2.0, it will receive 1 point. A project will receive the maximum of 2.0 points if its DSCR is equal to or greater than 2.0 or if it has no debt at all.

DSCR value	Points
<1.0	0.0
≥1.0 but <2.0	1.0
≥2.0	2.0
No Debt Service	2.0

The following graph depicts the relationship between the DSCR and scores.

Graph 3: Financial Condition Subindicator #3: DSCR



V. Audit Adjustment

Pursuant to 24 CFR 902.30, HUD calculates a revised financial condition score after it receives audited financial information. The revised financial condition score, which is based on the audited information, can increase or decrease the initial PHA-wide score that was based on the unaudited financial information. The audited score reflects two types of adjustments. The first type is based on audit flags and reports that result from the audit itself. Significant deficiencies and material weaknesses are considered to be audit flags, alerting the REAC to an internal control deficiency or an instance of noncompliance with laws and regulations. The second adjustment type addresses significant differences between the unaudited and audited financial information reported to HUD pursuant to § 902.30.

Audit Opinion and Flags

As part of the analysis of the financial health of a PHA, including assessment of the potential or actual waste, fraud, or abuse at a PHA, HUD will look to the Audit Report to provide an additional basis for accepting or adjusting the financial component scores. The information collected from the annual Audit Report pertains to the type of audit opinion; details of the audit opinion; and the presence of significant deficiencies, material weaknesses, and noncompliance.

If the auditor's opinions on the financial statements and major federal programs are anything other than unqualified, points could be deducted from the PHA's audited financial score. The REAC will review audit flags to determine their significance as it directly pertains to the assessment of the PHA's financial condition. If the flags have no effect on the financial components or the overall financial condition of the PHA as it relates to the PHAS assessment, the audited

score will not be adjusted. However, if the flags have an impact on the PHA's financial condition, the PHA's audited score will be adjusted according to the seriousness of the reported finding.

These flags are collected on the Data Collection Form (OMB approval number 2535-0107). The PHA completes this form for audited submissions. If the Data Collection Form indicates that the auditor's opinion will be anything other than unqualified, points can be deducted from the financial condition score. The point deductions have been established using a three-tier system. The tiers give consideration to the seriousness of the audit qualification and limit the deducted points to a reasonable portion of the PHA's total score.

Audit Flag Tiers

Audit flags are assigned tiers, as stated in the following chart.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit flags	Tier classification	Comments
Financial Statement Audit Opinion(s): 1. Unqualified opinion(s) 2. Qualified opinion(s). • Departures from GAAP not significant enough to cause an adverse opinion(s). • Limitations on the scope of the audit (regardless of cause) not significant enough to cause a disclaimer of opinion.. 3. Adverse opinion(s) regardless of reason(s) 4. Disclaimer of opinion(s) regardless of reason(s)	None. Tier 2 Tier 1. Tier 1.	Deduction only if the departure includes the Low Rent or Capital Fund programs.
Opinion(s) on Supplemental Information (Statement of Auditing Standard (SAS) 29 "in relation to" type of opinion): 1. Fairly stated 2. Fairly stated except for: 3. No opinion 4. Incomplete or missing	None Tier 2. Tier 1. Tier 1.	Applies to the FDS.
Report on Internal Control and Compliance and Other Matters Noted in an Audit of the Financial Statement performed in accordance with Government Auditing Standards (GAS) (Yellow Book): 1. Control deficiencies • Significant deficiencies; • Material weakness;	Tier 3.	

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit flags	Tier classification	Comments
2. Material noncompliance	Tier 3	Deduction applies only if the internal control deficiency and/or noncompliance relates to the Low Rent or Capital Fund programs.
3. Fraud	Tier 3.	
4. Illegal acts	Tier 3.	
5. Abuse	Tier 3.	
Report on Compliance with Requirements Applicable to Major Federal Programs and Internal Control over Compliance with OMB Circular A-133—		
Opinion on compliance with each major federal program requirements:		
1. Unqualified opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements.	None.	
2. Qualified opinion(s) on compliance with Low Rent Program program and Capital Fund program major federal requirements (regardless of cause).	Tier 2.	
3. Adverse opinion(s) on compliance with Low Rent program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
4. Disclaimer of opinion(s) on compliance with Low Rent Program and Capital Fund program major federal requirements (regardless of cause).	Tier 1.	
Internal Controls and Compliance:		
1. Control Deficiencies:	Tier 3.	
• Significant deficiencies in internal controls over compliance with Low Rent program and Capital Fund program requirements.		
• Material weakness in internal controls over compliance with Low Rent program and Capital Fund program requirements.		
2. Material noncompliance with Low Rent program and Capital Fund program requirements.	Tier 3.	
Other Consideration:		
1. Significant change penalty deduction applies only if the significant change(s) relate to the Low Rent or Capital Fund programs.	Tier 2.	
2. Ongoing concerns	Tier 1.	
3. Management Discussion and Analysis and other supplemental information omitted.	Tier 2.	
4. Financial statements using basis other than GAAP	Tier 1.	

Each tier assesses point deductions of varying severity. The following chart illustrates the point schedule:

Tier	PHAS points deducted
Tier 1	Any Tier 1 finding assesses a 100 percent deduction of the PHA's financial condition indicator score.
Tier 2	Any Tier 2 finding assesses a point deduction equal to 10 percent of the unadjusted financial condition indicator score.
Tier 3	Each Tier 3 finding assesses a 0.5 point deduction per occurrence, to a maximum of 4 points of the financial condition indicator score.

Review of Audited Versus Unaudited Submission

The purposes of comparing the ratios and scores from the unaudited FDS submission to the ratios and scores from the audited submission are to:

- Identify significant changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;
- Identify PHAs that consistently provide significantly different data from their unaudited submission in their audited submission; and
- Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time frame.

This review process will be performed only for the audited submissions.

Significant Change Penalty

HUD views the transmission of significantly inaccurate unaudited financial data as a serious condition. Therefore, projects are encouraged to assure that

financial data is as reliable as possible for their unaudited submissions.

A significant change penalty will be assessed for significant differences between the unaudited and audited submissions. A significant difference is considered to be an overall financial condition score decrease of three or more points from the unaudited to the audited submission. A significant change penalty is considered a tier 2 flag and will result in a reduction of 10 percent of the total audited financial condition score.

For example: A PHA scores 30 points on its unaudited submission. The audited submission score is 26 points. Because the 10 percent reduction is 2.6 points, 2.6 is rounded to the next whole number, 3.0 points. Therefore, the PHA audited score is 23 points (26 points minus 3 points equals 23 points).

The PHAS system automatically deducts the significant change penalty from the audited score, and this reduction triggers the REAC analyst's review. REAC may waive the significant change penalty if the project

provides reasonable documentation of the significant difference in its submission.

Appendix C to Part 902—Management Operations Scoring

I. Purpose of This Appendix

This appendix provides additional information about the scoring process for the PHAS Management Operations Indicator. The purpose of the management operations assessment is to assess the project's and PHA's management operations capabilities. All projects will be assessed under the Management Operations Indicator, even if a PHA has not converted to asset management.

This PHAS Management Operations Scoring document has been revised to reflect research HUD conducted through informal meetings with representatives of PHAs, residents, projects, and public housing industry groups, and to provide the basis for scoring projects on the management operations. This management operations scoring document is applicable to PHAs with fiscal years ending on and after June 30, 2009.

II. Definitions

As used in this appendix:

Adjusted vacancy rate is a project's vacancy rate excluding all exemptions. If a project qualifies for this adjustment, it shall retain justifying documentation for HUD review.

Assessment period is the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins, or the period of time as defined in each component.

Average number of days tenant-generated work orders were open during the assessment period is the total number of days tenant-generated work orders were open divided by the total number of tenant-generated work orders.

Changing market conditions are when projects are in communities that are undergoing dramatic population loss or economic dislocations. Projects should maintain documentation of the specific condition, *i.e.*, population loss, business relocations, etc., along with evidence of the marketing and outreach approaches utilized by projects. Projects must demonstrate:

- (1) Exhaustive marketing efforts;
- (2) Efforts to modernize the units to make the units more closely match market demand in terms of size, type, or amenities; and
- (3) Consideration given to deprogramming if the market does not respond to marketing or modernization efforts.

Invoices in dispute are invoices challenged by the project and the project has sent documentation to the vendor that explains why the invoices are challenged.

Management Review Form (Review Form), form HUD-5834, Management Review for Public Housing Projects, is the review form used by HUD when conducting a management review of public housing projects.

Preventive maintenance plan is a planned course of action for scheduled maintenance procedures that are systematically performed

at regular intervals to prevent premature deterioration of buildings and systems. A preventive maintenance plan should include:

- (1) The identification of:
 - (a) Critical systems, such as heating, ventilation and air conditioning (HVAC), and fire safety;
 - (b) Building elements, such as roofs and exterior walls; and
 - (c) Grounds care, such as parking lots and fencing.
- (2) Appropriate strategies and protocols for performing preventive maintenance on each system and building element, and for grounds care; and
- (3) A schedule for conducting preventive maintenance appropriate to each system and building element, and for grounds care.

Reduced average number of days tenant-generated work orders were open during the previous 3 years is a comparison of the average time tenant-generated work orders were open in the current assessment period to the average number of days tenant-generated work orders were open in the single calendar month that is 3 years prior to the current assessment period. It is calculated by subtracting the average number of days tenant work orders were open in the current assessment period from the average number of days tenant-generated work orders were open in the earlier assessment period. In order to receive credit for a reduction in the average time tenant-generated work orders were active during the previous 3 years, the project shall retain justifying documentation for HUD review.

Reduced vacancy rate during the previous 3 years is a comparison of the adjusted vacancy rate in the current assessment period to the adjusted vacancy rate in the single calendar month that is 3 years prior to the current assessment period. It is calculated by subtracting the adjusted vacancy rate in the current assessment period from the adjusted vacancy rate in the earlier assessment period.

Vacancy days associated with a vacant unit receiving section 9(d) funds in

accordance with 24 CFR 990.145. Neither vacancy days associated with a vacant unit prior to that unit meeting the condition of being a unit receiving section 9(d) fund nor vacancy days associated with a vacant unit after construction work has been completed or after the time frame for placing the vacant unit under construction has expired shall be exempted. The following apply when computing time frames for a vacant unit receiving section 9(d) funds:

(1) The calculation of turnaround time for newly modernized units starts when the unit is turned over to the PHA from the contractor and ends when the lease goes into effect for the new or returning resident. The total vacancy time would be the sum of the pre-modernization vacancy time (vacancy days that had accumulated prior to the unit being included in the section 9(d) budget), and the post-modernization vacancy time (from the time the unit is turned over to the PHA from the contractor).

(2) Unit-by-unit documentation, showing the date a vacant unit was included in a HUD-approved section 9(d) budget, the date it was released to the PHA by the contractor, and the date a new lease is effective for the new or returning resident, or the date the time period for placing the vacant unit under construction expired.

III. Subindicators

A. Subindicators of Management Assessment Indicator

The criteria (subindicators and components) of the management review of projects are included in form HUD-5834, Management Review for Public Housing Projects. The Management Operations Indicator consists of 5 management subindicators and 12 components that are scored. The remaining 2 subindicators and 9 components are compliance areas and are not scored. Table 1 lists the subindicators and components.

TABLE 1—MANAGEMENT OPERATIONS INDICATOR

Subindicator	Component
1. General Appearance and Security	1.1 Appearance and Market Appeal. 1.2 Security.
2. Follow-Up and Monitoring of Project Inspections (Not Scored)	2.1 Exigent Health and Safety (EHS) Deficiencies (Not Scored). 2.2 Lead-Based Paint (LBP) Inspection Deficiencies (Not Scored).
3. Maintenance and Modernization	3.1 Unit Inspections. 3.2 Work Orders. 3.3 Preventive Maintenance. 3.4 Energy Conservation/Utility Consumption. 3.5 Modernization (Not Scored).
4. Financial Management	4.1 Percentage of Accounts Payable. 4.2 Rent Collection. 4.3 Budget Management (Not Scored). 4.4 Procurement (Not Scored).
5. Leasing and Occupancy	5.1 Vacancy Rate. 5.2 Turnaround Time. 5.3 Occupancy Review (Not Scored).
6. Tenant/Management Relations	6.1 Economic Self-Sufficiency. 6.2 Resident Involvement in Project Administration.
7. General Management Practices (Not Scored)	7.1 Management Review Findings (Not Scored). 7.2 Other Prior Review Findings (Not Scored). 7.3 Insurance (Not Scored).

The areas that are not scored are included in the management review of public housing projects, because the information they provide is integral to supporting good management operations.

B. Grades for Management Assessment Subindicators and Components

Subindicator #1, General Appearance and Security. This subindicator evaluates the appearance of a project, and the level of security, including level of crime, screening of applicants, eviction of residents for crime and crime-related activities, and coordination with local officials and residents to implement anti-crime strategies.

Component #1.1, Appearance and Market Appeal. This component evaluates, at the time of the review, the appearance of a project's exterior and common areas, including the degree to which the project is attractive, appealing, and clean, and that it demonstrates market appeal. The project's evaluation will be based on either "Superior," "Satisfactory," or "Unsatisfactory" ratings in 12 areas. If any area does not apply to the project, the area's points will not be included in the total points for this component, to avoid penalizing a project. The 12 areas are as follows:

Superior Performance:

- (1) Attractive project entrance with appropriate signage and plantings.
- (2) Attractive, well-maintained landscaping—trees, shrubs, grass not overgrown.
- (3) Building exteriors including paint, siding, and masonry are in good repair.
- (4) No graffiti.
- (5) Paved surfaces—parking lots, streets, and walks are in good repair.
- (6) Public spaces and amenities are well maintained.
- (7) Fencing, railing, porches, overhangs, and ramps are in good condition and enhance project appearance.
- (8) Windows have no torn or damaged window treatments, and blankets, bed sheets, or other materials not designed to be window treatments are not used for window coverings.
- (9) Overall project appearance is not institutional (*i.e.*, building looks like an institution, dull, uniform, unimaginative) and exceeds the standards in the surrounding neighborhood.

(10) Project is clean and free of debris, trash, clutter, and/or abandoned vehicles.

(11) Dumpsters and trash cans are clean and properly enclosed.

(12) No evidence of damaged and/or boarded-up units.

Satisfactory Performance:

- (1) Moderately attractive project entrance with signage and plantings.
- (2) Landscaping is average—trees, shrubs, grass not overgrown.
- (3) Building exteriors including paint, siding, and masonry are at least in fair repair.
- (4) Limited graffiti in no more than 5 places.
- (5) Paved surfaces—parking lots, streets, and walks are at least in moderate repair.
- (6) Public spaces and amenities are at least moderately maintained.

(7) Fencing, railing, porches, overhangs, and ramps are at least in moderate condition and do not detract from project appearance.

(8) Windows have no more than 5 torn or damaged window treatments and blankets, bed sheets, or other materials not designed to be window treatments are not used for window coverings.

(9) Overall project appearance is somewhat institutional and is at least equivalent to surrounding neighborhood.

(10) Project is at least moderately clean, with minimal debris, trash, clutter, and/or abandoned vehicles.

(11) Dumpsters and trash cans are at least moderately clean and usually enclosed.

(12) No more than 5 damaged and/or boarded-up units.

Unsatisfactory Performance:

(1) Project entrance is not attractive, with no signage and limited plantings.

(2) Landscaping is below average—trees, shrubs and/or grass are overgrown.

(3) Building exteriors including paint, siding, and masonry are in poor repair.

(4) Excessive graffiti in 6 or more places.

(5) Paved surfaces—parking lots, streets, and walks are in poor repair.

(6) Public spaces and amenities are not maintained.

(7) Fencing, railing, porches, overhangs, and ramps are in poor condition and detract from project appearance.

(8) Windows have 6 or more torn or damaged window treatments and blankets, bed sheets, or other materials not designed to be window treatments are used for curtains.

(9) Overall project appearance is institutional and is worse than the surrounding neighborhood.

(10) Project is not clean because of significant debris, trash, clutter and/or abandoned vehicles.

(11) Dumpsters and/or trash cans are not clean and generally unenclosed.

(12) Six or more damaged and/or boarded-up units.

Grade A: The project:

(1) Achieves 80 percent or greater of the points possible for all of the criteria for which the project is assessed; and

(2) Has zero unsatisfactory ratings.

Grade C: The project achieves less than 80 percent but greater than or equal to 50 percent of the points possible for all of the criteria for which the project is assessed.

Grade F: The project achieves less than 50 percent of the points possible for all of the criteria for which the project is assessed.

Component #1.2, Security. This component evaluates, at the time of the review, a project's performance in tracking crime-related problems on project property, the adoption and implementation, consistent with section 9 of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 1437d(r)) and the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, October 21, 1998), of applicant screening and resident eviction policies and procedures, and the coordination with local officials and residents to implement anti-crime strategies.

Grade A: The project can meet the criteria for the three following items:

- (1) There is no evidence of a crime problem at the project or the crime rate at the project

is equal to or less than the crime rate for the surrounding neighborhood;

(2) The project has formally adopted effective applicant screening policies and procedures that deny admissions to applicants on the basis of the following, as stated in 24 CFR 960.204:

- The applicant was evicted because of drug-related activity from assisted housing within the last 3 years, unless the applicant has successfully completed a rehabilitation program approved by the project;

- The project has reason to believe the applicant is illegally using a controlled substance, or engages in any drug-related activity on or off the project;

- The project has reason to believe the applicant is abusing alcohol, which interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;

- The applicant or any household member of the applicant has been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing; or

- The applicant or any member of the applicant's household is subject to a lifetime registration requirement under a state sex offender registration program.

(3) The project has formally adopted effective policies and procedures to evict residents who the project has reasonable cause to believe, as follows:

- Engage in criminal activity that threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or project personnel;

- Engage in any drug-related criminal activity on or off the project premises; or

- Abuse alcohol in a way that interferes with the health, safety, and peaceful enjoyment of the premises by other residents or project personnel.

Grade C: The project:

(1) Can meet the criteria for items (2) and (3) in grade A of this component; and

(2) Cannot meet the criteria in item (1) in grade A of this component; and

(3) Has formally adopted an effective security plan developed in coordination with local police officials and residents to implement anti-crime strategies.

Grade F: The project:

(1) Cannot meet the criteria for items (2) and (3) in grade A, above; or

(2) Cannot meet the criteria in item (1) in grade A of this component; and

(3) Has not formally adopted an effective security plan developed in coordination with local police officials and residents to implement anti-crime strategies.

Subindicator #2, Follow-Up and Monitoring of Project Inspections. This subindicator examines a project's performance, at the time of the review, in correcting or abating exigent health and safety (EHS) deficiencies and lead-based paint (LBP) abatement. This subindicator is not scored.

Component #2.1, Exigent Health and Safety (EHS) Deficiencies. This component examines a project's performance, at the time of the review, in correcting or abating EHS deficiencies identified during its most recent HUD physical condition inspection. This component is not scored.

Component #2.2, Lead-Based Paint (LBP) Inspection Deficiencies. This component examines a project's performance, at the time of the review, in maintaining current LBP certifications for projects built before 1978, and performing risk assessments and hazard reduction, if necessary, for reported elevated intervention blood lead levels (EIBLLs). This component is not scored.

Subindicator #3, Maintenance and Modernization. This subindicator measures a project's performance in conducting unit inspections, responding to tenant-generated work orders, performing preventive maintenance, managing utility consumption/energy conservation, and managing modernization activities.

Component #3.1, Unit Inspections. This component measures the percentage of units that a project inspected for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins in order to determine short-term maintenance needs and long-term modernization needs. The project is required to conduct unit inspections using the HUD inspection protocol that is based on the Uniform Physical Condition Standards (UPCS) set forth in 24 CFR part 5, subpart G. HUD will consider the following:

- Adequacy of the inspection program. The project must have an adequate inspection program in terms of tracking inspections, and in ensuring the thoroughness and quality of the project's inspections.

- 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 employees, and those used for resident services.

- Units exempted. Units in the following categories are exempted and not included in the calculation of the total number of units, and the percentage of units inspected for the assessed period.

(1) Occupied units for which a project has documented two attempts to inspect the unit during the assessment period, but only if the project can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)) has been taken under the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant during the assessment period for the following reasons:

- (a) Vacant units that are receiving section 9(d) Capital Funds; or
- (b) Vacant units that are documented to be uninhabitable for reasons beyond a project's control due to:
 - (i) High/unsafe levels of hazardous/toxic materials;
 - (ii) An order of the local health department or state agency or a directive of the Environmental Protection Agency;
 - (iii) Natural disasters; or
 - (iv) Units that are kept vacant because they are structurally unsound.

- Supporting documentation for vacant units that are uninhabitable for reasons beyond project's control. A project shall maintain information to support its determination of vacant units that are uninhabitable due to circumstances and

actions beyond the project's control. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The project shall, at a minimum, maintain:

- (1) The date on which the unit met the conditions of being a vacant unit that is uninhabitable due to circumstances and actions beyond a project's control;
- (2) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond a project's control;
- (3) A description or list of the actions taken by a project to eliminate or mitigate these conditions; and
- (4) The date on which the unit ceased to meet such conditions and became an available unit.

Grade A: The project:

- (1) Scores 90 percent or more on a 100-point scale on HUD's physical condition inspection; or
- (2) Inspects 99 percent or more of the units; and
- (3) Has an adequate system for tracking unit inspections.

Grade C: The project:

- (1) Inspects at least 95 percent but less than 99 percent of the units; and
- (2) Has an adequate system for tracking dwelling unit inspections.

Grade F: The project:

- (1) Inspects less than 95 percent of the units; or
- (2) Does not have an adequate system for tracking dwelling unit inspections.

Component #3.2, Work Orders. This component measures the average number of days that tenant-generated maintenance work orders are outstanding. A project may choose either to be assessed: (1) for the most recent one-month period where the required information is available; or (2) for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins. For grade C(3), the assessment comparison is the completion performance in the single calendar month that is 3 years prior to the single calendar month being used in the assessment. The assessment of this component includes only those work orders that were closed during the period of time being assessed, even if the work order was opened prior to the period of time being assessed. It does not assess those work orders that were not closed during the period of time being assessed.

- Adequacy of the system to track work orders. It is implicit in this component that the project has an adequate system for tracking work orders, and ensuring the thoroughness and quality of the project's needed repairs.

Grade A: The project has:

- (1) Scored 90 percent or more on a 100-point scale on HUD's physical condition inspection; or
- (2) Completed tenant-generated work orders in less than an average of 3 days; and
- (3) An adequate system for tracking work orders.

Grade C: The project has:

- (1) Completed tenant-generated work orders in an average of at least 3 days but less than 10 days; and

(2) An adequate system for tracking work orders; or

- (3) Completed tenant-generated work orders within an average of between 10 and 20 days; and

- (a) Reduced the average time it takes to complete tenant-generated work orders by at least 10 days during the past 3 years; and
- (b) An adequate system for tracking work orders.

Grade F: The project:

- (1) Completed all tenant-generated work orders in an average of 10 or more days; or
- (2) Does not have an adequate system for tracking work orders.

Component #3.3, Preventive Maintenance. This component evaluates a project's implementation of a written preventive maintenance plan, including but not limited to the identification of critical systems, building elements, grounds care and equipment, appropriate strategies and protocols for performing preventive maintenance on all plan items, and a schedule for conducting preventive maintenance for each item in the plan.

Grade A: The project:

- (1) Conducts annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; and
- (2) Has a sufficient preventive maintenance plan; and

(3) All of the elements in the project's preventive maintenance plan have been implemented.

Grade C: The project:

- (1) Conducts annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; and
- (2) Has a sufficient preventive maintenance plan; and

(3) At least 70 percent of the elements in the project's preventive maintenance plan have been implemented.

Grade F: The project:

- (1) Does not conduct annual inspections of buildings, grounds, common areas, non-dwelling space, and major systems; or
- (2) Does not have a sufficient preventive maintenance plan; or
- (3) Less than 70 percent of the elements in the project's preventive maintenance plan have not been implemented.

Component #3.4, Energy Conservation/Utility Consumption. This component examines a project's energy conservation/utility consumption measures for projects that have had an energy audit within the past 5 years.

Grade A: The project:

- (1) Has completed or updated its energy audit within the past 5 years and the project has implemented all of the recommendations that were cost-effective; or
- (2) Is doing the maximum feasible to reduce energy consumption such that no energy audit conducted within the past 5 years has made cost-effective recommendations.

Grade C: The project:

- (1) Has completed or updated its energy audit within the past 5 years and the energy audit is less than one-year old; or
- (2) Has completed or updated its energy audit within the past 5 years, the energy audit is at least one-year old, and the project

has developed an implementation plan for all cost-effective recommendations and is on schedule with the implementation plan, based on available funds. The implementation plan identifies, at a minimum, the cost-effective items from the audit, the estimated cost, the planned funding source, and the anticipated date of completion for each item.

Grade F: The project did not complete or update its energy audit within the past 5 years, or the project has not developed an implementation plan for all cost-effective recommendations, or is not on schedule with its implementation plan based on available funds, or has not implemented all of the recommendations that were cost-effective.

Component #3.5, Modernization. This component examines the project's management of modernization and non-routine maintenance through the physical needs assessment, and examines project plans and budgets for modernization activities. This component is not scored.

Subindicator #4, Financial Management. This subindicator examines a project's timeliness in paying invoices that are not in dispute, the percentage of rents collected, the adequacy of a project's budget management, and the project's ability to plan and implement procurement actions.

Component #4.1, Percentage of Accounts Payable. This component examines, at the end of the most recent one-month period where the required information is available, a project's timeliness in paying invoices that are not in dispute.

- Adequacy of the system to track accounts payable. It is implicit in this component that the project has an adequate system for tracking accounts payable.

Grade A:

(1) All of the invoices that are not in dispute are 30 days or less outstanding; and
(2) The project has an adequate system for tracking accounts payable.

Grade C:

(1) One or more of the invoices that are not in dispute are greater than 30 days but no more than 60 days outstanding; and
(2) The project has an adequate system for tracking accounts payable.

Grade F:

(1) One or more of the invoices that are not in dispute are greater than 60 days outstanding; or

(2) The project does not have an adequate system for tracking accounts payable.

Component #4.2, Rent Collection. This component measures the percentage of rents collected, which is determined by dividing the total rents collected by the total rents charged to tenants. A project may choose to be assessed for either: (1) the most recent one-month period for which the required information is available, or (2) the 12-calendar-month period as of the end of the most recent calendar month where the required information is available. Rents include rental charges only and would not include other charges to tenants, such as court costs, maintenance costs, etc.

- Adequacy of the system to track rents collected. Implicit in this component is that the project has an adequate system to track and document total rents charged and total rents collected.

Grade A:

(1) The percentage of rents collected is at least 97 percent of the total rent to be collected; and

(2) The project has an adequate system to track and document total rents charged and total rents collected.

Grade C:

(1) The percentage of rents collected is at least 93 percent but less than 97 percent of the total rent to be collected; and

(2) The project has an adequate system to track and document total rents charged and total rents collected.

Grade F:

(1) The percentage of rents collected is less than 93 percent of the total rent to be collected; or

(2) The project does not have an adequate system to track and document total rents charged and total rents collected.

Component #4.3, Budget Management. This component examines the project's budgeting revenue and expenditure performance, as well as actual year-to-date revenue and expenditure performance, for the current fiscal year (or the prior fiscal year if the management review of public housing projects is conducted within the first quarter of the project's current fiscal year). This component is not scored.

Component #4.4, Procurement. This component examines a project's ability to plan for and implement procurement actions for the project in accordance with 24 CFR 85.36 and all other applicable laws and regulations. This component is not scored.

Subindicator #5, Leasing and Occupancy. This subindicator measures the average adjusted vacancy rate and unit turnaround time. The following categories of units that are not considered available for occupancy are exempted from the computation of adjusted vacancy rate and unit turnaround time.

(1) Units approved for special use. Units approved for special use that are exempt during the assessment period are HUD-approved units used to promote self-sufficiency and anti-drug and anti-crime activities, or for non-dwelling purposes, including but not limited to resident services, resident organization offices, police substations, day care centers, public safety activities, or resident job training.

(2) Employee occupied units. Employee occupied units that are exempt during the assessment period are units occupied by employees whose occupancy is contingent upon their continued employment by a project. However, units that are occupied by residents who meet the project's eligibility criteria and are also employed by the project shall not be exempted from the computation of adjusted vacancy rate and unit turnaround time.

(3) Vacant units approved for deprogramming. Vacant units approved for deprogramming that are exempt during the assessment period are HUD-approved units for demolition and/or disposition, vacant units that have been approved for conversion/reprogramming, or units vacated for vacancy consolidation.

(4) Vacancy days associated with vacant units receiving section 9(d) Capital Funds

during the assessment period. Vacancies resulting from project modernization or unit modernization, provided that one of the following conditions are met:

(a) The unit is undergoing modernization (*i.e.*, the modernization contract has been awarded or force account work has started) and must be vacant to perform the work, and the construction is on schedule according to a HUD-approved PHA Annual Plan; or

(b) The unit must be vacated to perform the work and the treatment of the vacant unit is included in a HUD-approved PHA Annual Plan, but the time period for placing the vacant unit under construction has not yet expired. The PHA shall place the vacant unit under construction within 2 federal fiscal years (FFYs) after the FFY in which the capital funds are approved.

(c) 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 from the computation of adjusted vacancy rate and unit turnaround time.

(5) Vacancy days associated with units vacant during the assessment period due to circumstances and actions beyond a project's control. Circumstances and actions beyond a project's control may include, but are not limited to:

(a) Litigation. Units that are vacant due to litigation, such as a court order or settlement agreement that is legally enforceable; units that are vacant in order to meet regulatory and statutory requirements to avoid potential litigation (as covered in a HUD-approved PHA Annual Plan); and units under voluntary compliance agreements with HUD or other voluntary agreements acceptable to HUD (*e.g.*, units that are being held vacant as part of a court-order, HUD-approved desegregation plan, or as part of a voluntary compliance agreement requiring modifications to the units to make them accessible pursuant to 24 CFR part 8);

(b) Changing market conditions;

(c) Disasters. Units that are vacant due to a federally declared, state-declared, or other declared disaster; or

(d) Casualty losses. Damaged units that have sustained casualty damage and remain vacant due to delays in settling insurance claims, but only until the insurance claims are settled.

- Supporting documentation for section 9 Capital Fund program units. A project 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 (4) of this section. The project shall, at a minimum, 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.

- Supporting documents for vacancies beyond a project's control. A project shall

maintain information to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the project's control. This supporting information is subject to review and may be requested for verification purposes at any time by HUD. The project 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 project's control;

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

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

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

Component #5.1, Vacancy Rate. This component measures the average adjusted vacancy rate for the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins (except as noted in grades C(3) and D(3)), and the project's progress in reducing vacancies.

- Adequacy of the system to track vacancy rate. It is implicit in this component that the project has an adequate system for tracking vacancy rate.

Grade A: The project has:

(1) An adjusted vacancy rate of 2 percent or less; or

(2) For a project with fewer than 100 units, not more than the number of unit days for 2 units vacant for the entire year; and

(3) An adequate system for tracking vacancy days.

Grade B: The project has:

(1) An adjusted vacancy rate of greater than 2 percent and less than or equal to 4 percent; and

(2) An adequate system for tracking vacancy days.

Grade C: The project:

(1) Has an adjusted vacancy rate of greater than 4 percent and less than or equal to 6 percent; and

(2) Has an adequate system for tracking vacancy days; or

(3) Has:

(A) An adjusted vacancy rate of greater than 6 percent and less than or equal to 10 percent; and

(B) For the same calendar month 3 years prior, the adjusted vacancy rate was 16 percent or greater; and

(C) An adequate system for tracking vacancy days.

Grade D: The project:

(1) Has an adjusted vacancy rate of greater than 6 percent and less than or equal to 10 percent; and

(2) Has an adequate system for tracking vacancy days; or

(3) Has:

(A) An adjusted vacancy rate of greater than 10 percent and less than or equal to 14 percent;

(B) An adjusted vacancy rate of 20 percent or greater for the same calendar month 3 years prior; and

(C) An adequate system for tracking vacancy days.

Grade F: The project:

(1) Has an adjusted vacancy rate greater than 10 percent; or

(2) Does not have an adequate system for tracking vacancy days.

Component #5.2, Turnaround Time. This component examines the amount of time it takes a project to turn around units that were leased within the 12-calendar-month period as of the end of the calendar month before the management review of public housing projects begins.

- Adequacy of the system to track vacant unit turnaround time. It is implicit in this component that the project has an adequate system for tracking vacant unit turnaround time.

Grade A: The project has:

(1) Achieved a grade of A under component 5.1, vacancy rate; or

(2) Turned around vacant units in an average of less than 15 calendar days; and

(3) An adequate system for tracking vacant unit turnaround days.

Grade B: The project has:

(1) Turned around vacant units in an average of at least 15 calendar days but less than 20 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade C: The project has:

(1) Turned around vacant units in an average of at least 20 calendar days but less than 25 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade D: The project has:

(1) Turned around vacant units in an average of at least 25 calendar days but less than 30 calendar days; and

(2) An adequate system for tracking vacant unit turnaround days.

Grade F: The project:

(1) Has turned around vacant units in an average of 30 calendar days or more; or

(2) Does not have an adequate system for tracking vacant unit turnaround days.

Component #5.3, Occupancy Review. This component addresses all of the activities and procedures necessary to house and retain occupancy eligible low-income families, including accepting and processing applications, selecting families for assistance, minimizing vacancies and unit turnaround time in public housing, ensuring that public housing families comply with program requirements, and properly computing income and rent. This component is not scored.

Subindicator #6, Tenant/Management Relations. This subindicator evaluates the economic self-sufficiency opportunities provided for residents and the degree of resident involvement in the project's administration.

Component #6.1, Economic Self-Sufficiency. This component evaluates—for the calendar month ending before the management review of public housing projects begins—employment, self-sufficiency participation, and self-sufficiency opportunities provided for adult residents.

This component excludes any adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), or

(ii) Is a primary caretaker of such an individual;

(3) Meets the requirements for being exempted from having to engage in a work activity under the state program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the state in which the PHA is located, including a state-administered welfare-to-work program; or

(4) Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the state in which the PHA is located, including a state administered welfare-to-work program, and has not been found by the state or other administering entity to be in noncompliance with such a program.

Grade A: The project has: (1) At least 85 percent of its households with a head, spouse, or sole member that is an elderly person or a disabled person; or

(2) At least 50 percent of its adult residents employed either full or part-time; or

(3) At least 10 percent of its adult residents participating in a self-sufficiency program.

Grade C: The project offers or coordinates with an outside agency to make available at least one economic self-sufficiency activity.

Grade F: The project does not offer or coordinate with an outside agency to make available at least one economic self-sufficiency activity.

Component #6.2, Resident Involvement in Project Administration. This component evaluates, for the calendar month ending before the management review of public housing projects begins, the opportunities for resident involvement in project administration.

Grade A: The project offers at least one opportunity for tenants to be involved in the administration of the project.

Grade F: The project does not offer at least one opportunity for tenants to be involved in the administration of the project.

Subindicator #7, General Management Practices. This subindicator tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any review of public housing projects. This subindicator is not scored.

An asterisk (*) will be used to indicate that a project has an outstanding finding(s) from a prior management review or from the current management review. An asterisk (*) will also be used to indicate that a PHA has an outstanding finding(s) under the Management Operations Indicator from any prior review or from the current management review.

Component #7.1, Management Review Findings. This component tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any prior HUD management review of public housing projects, by the due dates, and any finding(s) resulting from the current management review. For prior HUD management reviews, this component applies to reports with findings issued more than 75

days prior to the management review of public housing projects. This component is not scored.

Component #7.2, Other Prior Review Findings. This component tracks a project's ability to take appropriate actions to provide the information needed to close all findings resulting from any review, including, but not limited to independent public accountant audits; Government Accountability Office reviews; HUD Inspector General reviews; and reviews based on the Guidance for the On-Site Limited Monitoring Review of Civil Rights Related Program Requirements (CRRPR) for Low-Rent Public Housing (LR) Program and Housing Choice Voucher (HCV) Program and based on the On-Site Limited Monitoring Review—Section 504 (OMB approval number 2577-0251, expires May 31, 2010), by the due dates for closing the findings. This information will be used for civil rights and fair housing purposes to determine compliance with 24 CFR 5.105(a) and 24 CFR 903.7(p). This component applies to reports with findings issued more than 75 days prior to the management review of public housing projects. This component is not scored.

Component #7.3, Insurance. This component assesses whether a project has

sufficient insurance coverage as applicable to the project. This component is not scored.

Elements of Scoring

A. Points and Threshold

The Management Operations Indicator score is based on a maximum of 40 points. In order to receive a passing score under this indicator, a project must achieve at least 24 points or 60 percent of the available points available under this indicator.

B. Scoring Elements

The Management Operations Indicator score provides an assessment of a project's management effectiveness. Under the PHAS Management Operations Indicator, HUD will calculate a score for each project, as well as for the overall management operations of a PHA, that reflects weights based on the relative importance of the individual management subindicators and components. The overall Management Operations Indicator score for a PHA is a unit-weighted average of the PHA's individual project management operations scores. In order to compute the score, an individual project management operations score is multiplied by the number of units in each project to determine a "weighted value." The sum of

the weighted values is then divided by the total number of units in a PHA's portfolio to derive the overall PHAS Management Operations Indicator score.

The computation of the score under this PHAS indicator utilizes data obtained through a management review of public housing projects by HUD and requires four main calculations for the subindicators and components, which are:

- Scores are first calculated for each component, where applicable.
- Scores are then calculated for each subindicator, where applicable.
- A score is calculated for form HUD-5834, Management Review for Public Housing Projects, which is the project score.
- A score is calculated for the overall indicator score, which is a unit-weighted average of the individual project management operations scores.

The calculations are performed on the basis of the following:

- The point value and/or grades of the subindicators and components that are listed in Table 2; and
- The point equivalent to the grades assigned for each component that are listed in Table 3.

TABLE 2—MANAGEMENT OPERATIONS INDICATOR

Subindicator/component	Grades	Points
#1, General Appearance and Security		6.0
1.1 Appearance and Market Appeal	A, C, F	5.0
1.2 Security	A, C, F	1.0
#2, Follow-Up and Monitoring of Project Inspections	Not Scored	
2.1 Exigent Health and Safety (EHS) Deficiencies	Not Scored	N/S
2.2 Lead-Based Paint (LBP) Inspection Deficiencies	Not Scored	N/S
#3, Maintenance and Modernization		6.0
3.1 Unit Inspections	A, C, F	1.0
3.2 Work Orders	A, C, F	3.0
3.3 Preventive Maintenance	A, C, F	1.0
3.4 Energy Conservation/Utility Consumption	A, C, F	1.0
3.5 Modernization	Not Scored	N/S
#4, Financial Management		8.0
4.1 Percentage of Accounts Payable	A, C, F	4.0
4.2 Rent Collection	A, C, F	4.0
4.3 Budget Management	Not Scored	N/S
4.4 Procurement	Not Scored	N/S
#5, Leasing and Occupancy		18.0
5.1 Vacancy Rate	A, B, C, D, F	16.0
5.2 Turnaround Time	A, B, C, D, F	2.0
5.3 Occupancy Review	Not Scored	N/S
#6, Tenant/Management Relations		2.0
6.1 Economic Self-Sufficiency	A, C, F	1.0
6.2 Resident Involvement in Project Administration	A, F	1.0
#7, General Management Practices		N/S
7.1 Management Review Findings	Not Scored	N/S
7.2 Other Prior Review Findings	Not Scored	N/S
7.3 Insurance	Not Scored	N/S
Total		40.0

The grades for each component are assigned values to indicate the percentage of the component points that will be awarded in the calculation. The assigned values for the grades, which are listed in Table 3, are the same for each component. For example, a project with a grade of C for vacancy rate will receive 70 percent of the component

points of 16, for a score of 11.20 for the component.

TABLE 3—POSSIBLE GRADES

Grade	Points
A	1.00

TABLE 3—POSSIBLE GRADES—Continued

Grade	Points
B	0.85
C	0.70
D	0.50

TABLE 3—POSSIBLE GRADES—
Continued

Grade	Points
F	0.00

C. Scoring of Component #1.1, Appearance and Market Appeal

The scoring for component #1.1 has a base calculation different from the other components. The project is assessed in the following 12 categories:

- (1) Project entrance;
- (2) Landscaping;
- (3) Building exterior;
- (4) Graffiti;
- (5) Paved surfaces;
- (6) Public spaces and amenities;
- (7) Fencing, railing, porches, overhangs, and ramps;
- (8) Windows;
- (9) Overall project appearance;
- (10) Debris;
- (11) Trash receptacles; and
- (12) Units.

A Superior Performance in a category is valued at two points; a Satisfactory Performance in a category is valued at one point; and an Unsatisfactory Performance in a category is valued at zero points.

A project's score in appearance and market appeal may be a single project-wide assessment, or may be a compilation of multiple assessments of one or more of the individual sites that comprise the project.

Project-wide assessment: For a project-wide assessment, the project as a whole receives a single assessment in each of the 12 categories listed above. For any given

assessment, one or more of these categories may be excluded if they do not apply to a particular project. The total points earned for all of the categories for which a PHA is assessed is divided by the maximum points possible to determine the grade equivalent for this component. The maximum points possible are determined by identifying the total number of criteria that were not excluded and multiplying that number by two points.

Example 1: A project is assessed in all 12 categories for a maximum of 24 possible points. If the project achieves a total of 22 points, the 22 points are divided by 24 points, which equals 91.67 percent, or a grade of A.

Example 2: A project is not assessed under public spaces and amenities for a total of 11 categories and a maximum of 22 possible points. If the project achieves a total of 15 points, the 15 points are divided by 22 points, which equals 68.18 percent, or a grade of C.

Multiple site assessment: A project may be comprised of two or more discreet, individual sites. HUD may elect to assess one or more of these sites individually. If so, each site assessed will be assessed in each of the 12 categories listed above. For any given reason, one or more of these categories may be excluded if they do not apply to a particular site. The total points earned for all of the categories for which a site is assessed is divided by the maximum points possible to determine the overall score for each site. The maximum points possible are determined by identifying the total number of criteria that were not excluded and by multiplying the number by two points, as described above.

All individual site assessments will be combined to produce a single project-wide assessment score in each of the 12 categories, as follows:

(1) The site-specific scores for each category will be averaged to determine a unit-weighted average project-wide score for each category. Any category that is excluded from the assessment at all sites will also be excluded from the project-wide assessment.

(2) All average project-wide scores in all categories will be summed to determine the unit-weighted overall project-wide total points. These points will be divided by the maximum points possible to determine the grade equivalent for this component. The maximum points possible are determined by identifying the total number of non-excluded criteria from all site assessments and by multiplying that number by 2 points.

D. Scoring of Component #5.3, Occupancy Review

The questions listed under this component on form HUD-5834, Management Review for Public Housing Projects, cannot be completed unless form HUD-5834-A, Tenant File Review, and form HUD-5834-B, Upfront Income Verification Review, have been completed. This component is not scored, and forms HUD-5834-A and HUD-5834-B are not scored.

E. Example of Score Computations

The indicator score equals the sum of the subindicator scores, as shown in Table 4. The indicator score for a project is rounded to two decimal places. The indicator score for a PHA is rounded to the nearest whole number. The subindicator scores equal the sum of the component scores.

TABLE 4—EXAMPLE ASSESSMENT OF THE MANAGEMENT OPERATIONS INDICATOR

Subindicator/Component	Points	Grade	Value	Calculations	Score
#1, General Appearance and Security	6.0				4.50
1.1 Appearance and Market Appeal	5.0	C	.70	(5.0) × (.70) = 3.50	3.50
1.2 Security	1.0	A	1.00	(1.0) × (1.0) = 1.00	1.00
#2, Follow-Up and Monitoring of Project Inspections	0.0			Not Scored	N/S
2.1 Exigent Health and Safety (EHS) Deficiencies	0.0			Not Scored	N/S
2.2 Lead-Based Paint (LBP) Inspection Deficiencies	0.0			Not Scored	N/S
#3, Maintenance and Modernization	6.0				5.10
3.1 Unit Inspections	1.0	C	.70	(1.0) × (.70) = .70 .....	.70
3.2 Work Orders	3.0	A	1.00	(3.0) × (1.0) = 3.00	3.00
3.3 Preventive Maintenance	1.0	C	.70	(1.0) × (.70) = .70 .....	.70
3.4 Energy Conservation/Utility Consumption	1.0	C	.70	(1.0) × (.70) = .70 .....	.70
3.5 Modernization	0.0			Not Scored	N/S
#4, Financial Management	8.0				5.60
4.1 Percentage of Accounts Payable	4.0	C	.70	(4.0) × (.70) = 2.80	2.80
4.2 Rent Collection	4.0	C	.70	(4.0) × (.70) = 2.80	2.80

TABLE 4—EXAMPLE ASSESSMENT OF THE MANAGEMENT OPERATIONS INDICATOR—Continued

Subindicator/Component	Points	Grade	Value	Calculations	Score
4.3 Budget Management	0.0	Not Scored			N/S
4.4 Procurement	0.0	Not Scored			N/S
#5, Leasing and Occupancy	18.0				9.40
5.1 Vacancy Rate	16.0	D	.50	$(16.0) \times (.50) = 8.00$	8.00
5.2 Turnaround Time	2.0	C	.70	$(2.0) \times (.70) = 1.40$	1.40
5.3 Occupancy Review	0.0	Not Scored			NS
#6, Tenant/Management Relations	2.0				1.70
6.1 Economic Self-Sufficiency	1.0	C	.70	$(1.0) \times (.70) = .70$ .....	.70
6.2 Resident Involvement in Project Administration	1.0	A	1.00	$(1.0) \times (1.0) = 1.00$	1.00
#7, General Management Practices	0.0	Not Scored			N/S
7.1 Finding Correction: Management Review Findings	0.0	Not Scored			N/S
7.2 Finding Correction: Other Prior Review Findings	0.0	Not Scored			N/S
7.3 Insurance	0.0	Not Scored			N/S
Total Points					26.30

F. Scoring Projects During the First Year and Subsequent Years of Implementation Under the New PHAS

During the first year of implementation under the new PHAS, a PHA's Management

Operations Indicator score of record will be converted to the 40-point value if a project does not have a management review during the first year. Table 5 shows the conversion from a 30-point value to a 40-point value.

TABLE 5—CONVERSION FROM 30-POINT VALUE TO 40-POINT VALUE

30-Pt. Value	30	29	28	27	26	25	24	23	22	21	20	19	18	17	16
40-Pt. Value	40.0	38.7	37.3	36.0	34.7	33.3	32.0	30.7	29.3	28.0	26.7	25.3	24.0	22.7	21.3
30-Pt. Value	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
40-Pt. Value	20.0	18.7	17.3	16.0	14.7	13.3	12.0	10.7	9.3	8.0	6.7	5.3	4.0	2.7	1.3

The score that will be used is the PHA's most recent score of record. Table 6 includes

an example of how scoring will be computed during the first year of implementation of the

new PHAS, with each project having 100 units.

TABLE 6—FIRST YEAR OF IMPLEMENTATION SCORING

Project	Management review score	PHA's 30-point value score of record	Conversion to 40-point value	First year of implementation scoring
1	0.0	24.0	32.0	32.0
2	27.0	0.0	0.0	27.0
3	36.0	0.0	0.0	36.0
Overall Total: First Year of Implementation PHAS Scoring				31.7

During the second year of implementation under the new PHAS, a PHA's score of record will be converted to the 40-point value if a project does not have a management review

during the first or second years. The score that will be used is the PHA's most recent score of record. Table 7 includes an example of how scoring will be computed during the

second year of implementation of the new PHAS, with each project having 100 units. In this example, every project has received a management review.

TABLE 7—SECOND YEAR OF IMPLEMENTATION SCORING

Project	Management review score	PHA's 30-point value score of record	Conversion to 40-point value	Second year of implementation score
1	36.0	0.0	0.0	36.0
2	32.0	0.0	0.0	32.0
3	37.0	0.0	0.0	37.0
Overall Total: Second Year of Implementation PHAS Scoring				35.0

For subsequent years, the most recent management review score for a project will be used for a project's management operations score, or the most recent score of record will be used. The most recent management operations scores for all projects will be used to calculate a PHA's overall management operations score.

G. Examples of Score Computations for the Redistribution of Points

- An example of computing a subindicator score with a non-assessed component. When a non-assessed component exists, the value of the component shall be redistributed proportionally across the components that

have been assessed within the same subindicator in order to maintain the same scoring ratios. To redistribute the points for a non-assessed component, each assessed component shall be multiplied by the total possible points for the subindicator and divided by the total points of the assessed components, as shown in Table 8.

TABLE 8—EXAMPLE OF A REDISTRIBUTION OF POINTS WITHIN THE MAINTENANCE AND MODERNIZATION SUBINDICATOR

Component	Total possible points	Assessed comp. points	Redistribution calculation	Redis. points	Grade	Grade value	Score calculation	Comp. score
3.1 Unit Inspections.	1.0	1.0	(1.0 × 6.0)/5.0	1.20	F	0.0	1.20 × 0.0	0.00
3.2 Work Orders	3.0	3.0	(3.0 × 6.0)/5.0	3.60	A	1.0	3.60 × 1.0	3.60
3.3 Prev. Maint. ...	1.0	1.0	(1.0 × 6.0)/5.0	1.20	C	0.7	1.20 × 0.7	0.84
3.4 Energy/Utility	1.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3.5 Mod.	0.0	N/S	N/S	N/S	N/S	N/S	N/S	N/S
Total Points	6.0	5.0	.....	6.0	.....	.....	.....	4.44

In the example in Table 8, the energy/utility component under maintenance is not assessed. To redistribute the energy/utility points, each assessed component must be multiplied by the total possible points for the subindicator (6), and divided by the total possible points of the assessed components (5). The redistributed value of the total possible points for the preventive maintenance component is calculated to be 1.20 points. In the example, the project has received a grade of C for preventive maintenance and the project then receives 70 percent of the redistributed point value for

preventive maintenance. As shown in Table 8, 70 percent of 1.20 equals 0.84 points. The maintenance subindicator score is then computed by summing the redistributed components, thus making the final score for the maintenance subindicator 4.44 points.

- An example of computing the Management Operations Indicator score for a project excluding the tenant/management relations subindicator. Table 9 provides an example for the calculation of the Management Operations Indicator score when the tenant/management relations subindicator has not been assessed. When a

non-assessed subindicator exists, the value of the non-assessed subindicator shall be redistributed proportionally across the subindicators that have been assessed. To redistribute the tenant/management relations subindicator points, each assessed subindicator shall be multiplied by the total possible points for the Management Operations Indicator (40), and divided by the total possible points of the assessed subindicators (38). The final Management Operations Indicator score is derived by summing the redistributed subindicator points.

TABLE 9—EXAMPLE OF THE EXCLUSION OF A SUBINDICATOR

Subindicator	Total possible points	Total possible assessed points	Actual subindicator score	Redistributed calculation	Redistributed subindicator points
General Appearance and Security ...	6.0	6.0	3.00	(3.00 × 40)/38	3.16
Maintenance and Modernization	6.0	6.0	4.44	(4.44 × 40)/38	4.67
Financial Management	8.0	8.0	8.00	(8.00 × 40)/38	8.42
Leasing and Occupancy	18.0	18.0	18.00	(18.0 × 40)/38	18.95
Tenant/Management Relations	2.0	N/A	N/A	N/A	N/A
Total Points	40.0	38.0	.....	.....	35.20

- An example of rescaling components so that the sum of components equals a redistributed subindicator. In the previous example, the subindicator points were redistributed because the tenant/management relations subindicator was not assessed. After

the subindicator points were redistributed, the component points comprising the subindicator no longer added up to the redistributed value of the subindicator. Therefore, a calculation must be performed to rescale the components of subindicators that

were assessed so that those components add up to the redistributed subindicators. Table 10 contains an example of rescaling the maintenance subindicator components so that they add up to the redistributed maintenance subindicator. In Table 10, each

component is rescaled by multiplying by a factor of 40 (total possible points), divided by 38 (total assessed points). The rescaled component values add up to 4.67 points, which are the redistributed subindicator points for the maintenance subindicator.

TABLE 10—EXAMPLE OF RESCALING OF COMPONENTS

Component	Component value	Component rescaling calculation	Component values after rescaling
Unit Inspections	0.00	$0.00 \times (40/38)$	0.00
Work Orders	3.60	$3.60 \times (40/38)$	3.79
Preventive Maint	0.84	$0.84 \times (40/38)$ .....	.88
Energy/Utility	N/A	N/A	N/A
Modernization	N/S	N/S	N/S
Total Points	4.44	.....	4.67

H. Physical Condition and/or Neighborhood Environment

The overall management operations score for a project will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the project. These situations are related to the poor physical condition of the project or the overall depressed condition of the major census tract in which a project is located. The intent of this adjustment is to avoid penalizing projects through appropriate application of the adjustment. In addition, the overall PHA Management Operations Indicator score will be adjusted upward to reflect the individual project adjustments.

Definitions and application of physical condition and neighborhood environment factors are:

(1) A physical condition adjustment applicable to projects at least 28 years old, based on the unit-weighted average Date of Full Availability (DOFA) date.

(2) A neighborhood environment adjustment applicable to projects in census tracts in which at least 40 percent of the families have an income below the poverty rate, as documented by the most recent census data. If a project is in more than one census tract, the census data for the census tract where the majority of units are located shall be used. If there is no census tract data available for a project, the census data for that project will be based on the county's census data, and if county data is not available, then the state census data will be used.

- Adjustment for physical condition and neighborhood environment. HUD will adjust the overall management operations score of a project subject to one or both of the physical condition and neighborhood environment conditions. The adjustments will be made to the individual project scores, and then to the overall management operations score, so as to reflect the difficulty in managing the projects.

The adjustment for physical condition and neighborhood environment will be calculated by HUD and applied to all eligible projects. The data to determine if a project is eligible for either adjustment will be derived from the Public and Indian Housing Information Center databases.

In each instance where the actual management operations score for a project is rated below the maximum score of 40 points, one unit-weighted point each will be added for physical condition and/or neighborhood environment, but not to exceed the maximum number of 40 points available for the Management Operations Indicator for a project. Table 11 shows an example of the calculation of physical condition and/or neighborhood environment points for a hypothetical PHA with four projects. The adjustment for physical condition and/or neighborhood environment is a unit-weighted average of a PHA's individual project physical condition and/or neighborhood environment adjustments.

TABLE 11—CALCULATION OF PHYSICAL CONDITION AND/OR NEIGHBORHOOD ENVIRONMENT (PCNE) POINTS

Line	Project	Proj. #1	Proj. #2	Proj. #3	Proj. #4	Total PHA
1	Units	133	65	89	25	12
2	Weight	42.6%	20.8%	28.5%	8.0%	100.0%
3	Physical Condition Points	1	1	1	0	.....
4	Neighborhood Environment Points	1	1	0	0	.....
5	Total PCNE Points at Project Level	2	2	1	0	.....
6	Weighted Physical Condition Points	0.43	0.21	0.29	0.00	0.92
7	Weighted Neighborhood Environment Points	0.43	0.21	0.00	0.00	0.63
8	Weighted PCNE Points	0.85	0.42	0.29	0.00	1.55

This PHA has 312 total units in four projects (see line 1). The weight of each project is based on units and is calculated by dividing the project units into the total PHA units (see line 2). Project #1 and project #2 qualify for both points; project #3 qualifies for only physical condition; and project #4 does not qualify for any points (see lines 3 through 5). Each project contributes its physical condition and/or neighborhood environment points to the overall PHA

Management Operations Indicator score based on its weight. For example, in project #1, the weighted physical condition and neighborhood environment point is 0.85 and is calculated by multiplying the project weight of 42.6 percent (line 2) by the physical condition and neighborhood environment point of 2 (see line 5). The overall physical condition and neighborhood environment adjustment at the PHA level is calculated at 1.55 points by adding the

individual project weighted scores (see line 8 under the Total PHA column).

Appendix D to Part 902—Capital Fund Scoring

I. Purpose of This Appendix

This appendix provides information about the scoring process for PHAS Indicator #4, Capital Fund program. The purpose of the Capital Fund program assessment is to

examine the period of time it takes a PHA to obligate and expend the funds provided to a PHA from the Capital Fund program under section 9(j) of the Act (42 U.S.C. 1437g(9)(j)). Funds from the Capital Fund program under section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)(2)) do not include HOPE VI program funds.

This indicator is not applicable for PHAs that choose not to participate in the Capital Fund program under section 9(d) of the 1937 Act. This indicator is applicable on a PHA-wide basis, and not to individual projects.

The assessment required under the PHAS Capital Fund program indicator will be performed through analysis of obligated and expended amounts in HUD's electronic Line of Credit Control System (e-LOCCS) (or its successor) for all Capital Fund program grants that were open during a PHA's assessed fiscal year. Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Capital Fund program indicator. Scoring for this indicator will be dependent on the amount of time it takes a PHA to obligate and expend its capital funds. If a PHA has no obligation end dates or no expenditure end dates in the assessed fiscal year, and does not have any § 9(j) of the 1937 Act sanctions against it, the points for that subindicator will be redistributed to the remaining subindicator.

II. Subindicators

A. Subindicators of Capital Fund Program Indicator. The two subindicators of the Capital Fund program indicator are:

- Timeliness of fund obligation; and
- Timeliness of fund expenditure.

B. Grades for Capital Fund Program Indicator. This indicator measures the statutory requirements for the Capital Fund program.

Subindicator #1, Timeliness of Fund Obligation. This subindicator examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the 1937 Act (42 U.S.C. 1437g(9)(j)). HUD may extend the period of time for the obligation of funds in accordance with 24 CFR 905.120 and section 9(j)(2) of the 1937 Act.

Grade A: The PHA has obligated 90 percent or more of the grant amount for all of its grants on its obligation end date for all open

Capital Fund program grants that have obligation end dates during the assessed fiscal year and does not have any grants that have been sanctioned pursuant to § 9(j) of the 1937 Act during the assessed fiscal year.

Grade F: The PHA has obligated less than 90 percent of the grant amount for any of its open grants on the obligation end date during the assessed fiscal year or is undergoing sanctions as per Section III of this appendix D.

Subindicator #2, Timeliness of Fund Expenditure. This subindicator examines the period of time it takes for a PHA to expend funds from the Capital Fund program under section 9(j)(5) of the 1937 Act.

Grade A: The PHA has:

- (1) Expended 100 percent of the grant amount for all of its grants on the expenditure end date for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year; or
- (2) A remaining balance of one percent or less of the grant amount or \$1,000 or less of the grant amount (whichever is smaller) for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year.

Grade F: The PHA has a remaining balance of greater than one percent of the grant amount or more than \$1,000 of the grant amount (whichever is smaller) for all Capital Fund program grants that have an expenditure end date within a PHA's assessed fiscal year.

III. Sanctions

Sanctions for the obligation and expenditure of funds, and HUD's right to recapture funds are in accordance with 24 CFR 905.120. If a PHA has been sanctioned during the assessment period, the PHA will receive an automatic grade of "F" for the timeliness of fund obligation, the timeliness of fund expenditure, or both, as appropriate.

IV. Elements of Scoring

A. Points and Threshold. The Capital Fund program indicator is based on a maximum of 10 points. In order to receive a passing score under this indicator, a PHA must achieve at least 6 points or 60 percent of the available points under this indicator.

B. Scoring Elements. The Capital Fund program indicator score provides an

assessment of a PHA's ability to obligate and expend Capital Fund program funds in a timely manner. The computation of the score under this PHAS indicator utilizes data obtained through analysis of obligated and expended amounts in HUD's e-LOCCS (or its successor) for all Capital Fund program grants that were open during the assessed fiscal year and requires two main calculations, which are:

- Scores are first calculated for each subindicator.
- From the two subindicator scores, an indicator score is then calculated.

The two calculations are performed based on:

- The point value of the two subindicators, which are listed in Table 1; and
- The point equivalent to the grades assigned for each subindicator, which are listed in Table 2.

TABLE 1—CAPITAL FUND PROGRAM SUBINDICATOR AND POINTS

Subindicator	Points
Timeliness of Fund Obligation	5
Timeliness of Fund Expenditure ...	5

The grades for each subindicator are assigned point equivalent values to indicate the percentage of the subindicator points that will be awarded in the calculation. The assigned point equivalent values for the grades, which are listed in Table 2, are the same for each subindicator. For example, a PHA with a grade of A for timeliness of fund obligation will receive all of the subindicator points of 5, for a score of 5.0 for the subindicator.

TABLE 2—POSSIBLE GRADES

Grade	Point value
A	1.00
F	0.00

C. Example of Score Computations. The indicator score equals the sum of the subindicator scores, as shown in Table 3.

TABLE 3—EXAMPLE ASSESSMENT OF THE CAPITAL FUND PROGRAM INDICATOR

Subindicator	Points	Grade	Point value	Calculations	Score
Timeliness of Fund Obligation	5	A	1.00	(5.0) × (1.0) = 5.0	5.0
Timeliness of Fund Expenditure	5	A	1.00	(5.0) × (1.0) = 5.0	5.0
Total Points					10.0

D. PHA Responsibility. PHAs are responsible for ensuring that their Capital Fund program information is submitted to e-LOCCS by the submission due date. A PHA may not appeal its PHAS and/or Capital Fund program score based on the fact that it did not submit its Capital Fund program information to e-LOCCS by the submission due date. PHAs shall retain supporting

documentation for the Capital Fund program for at least 3 years.

3. Part 907 is added to read as follows:

PART 907—SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

Sec.

907.1 Purpose and scope.

- 907.3 Bases for substantial default.
- 907.5 Procedures for declaring substantial default.
- 907.7 Remedies for substantial default.

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

§ 907.1 Purpose and scope.

This part provides the criteria and procedures for determining and declaring substantial default by a public housing agency (PHA) and the actions available to HUD to address and remedy substantial default by a PHA. Nothing in this part shall limit the discretion of HUD to take any action available under the provisions of section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), any applicable annual contributions contract (ACC), or any other law or regulation that may authorize HUD to take actions against a PHA that is in substantial default.

§ 907.3 Bases for substantial default.

(a) *Violations of laws and agreements.* A PHA may be declared in substantial default when the PHA:

- (1) Violates a federal statute;
- (2) Violates a federal regulation; or
- (3) Violates one or more terms of an ACC, or other covenants or conditions to which the PHA is subject.

(b) *Failure to act.* In addition to the violations listed in paragraph (a) of this section, in the case where a PHA is designated as a troubled performer under PHAS, the PHA shall be in substantial default if the PHA:

- (1) Fails to execute an MOA;
- (2) Fails to comply with the terms of an MOA; or
- (3) Fails to show substantial improvement, as provided in § 902.75(d).

§ 907.5 Procedures for declaring substantial default.

(a) *Notification of finding of substantial default.* If the PHA is found in substantial default, the PHA shall be notified of such determination in writing. Except in situations as described in paragraph (d) of this section, the PHA shall have an opportunity to respond to the written determination, and an opportunity to cure the default, if a cure of the default is determined appropriate by HUD. The determination of substantial default shall be transmitted to the Executive Director of the PHA, the Chairperson of the Board of the PHA, and the appointing authority(ies) of the PHA's Board of Commissioners, and shall:

- (1) Identify the specific statute, regulation, covenants, conditions, or agreements of which the PHA is determined to be in violation;
- (2) Identify the specific events, occurrences, or conditions that constitute the violation;

(3) Specify the time period, which shall be a period of 10 but not more than 30 days, during which the PHA shall have an opportunity to demonstrate that the determination or finding is not substantively accurate, if required;

(4) If determined by HUD to be appropriate, provide for an opportunity to cure and specify the time period for the cure; and

(5) Notify the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, action shall be taken as determined by HUD to be appropriate.

(b) *Receipt of notification and response.* Upon receipt of the notification described in paragraph (a) of this section, the PHA may submit a response, in writing and within the specified time period, demonstrating:

(1) The description of events, occurrences, or conditions described in the written determination of substantial default is in error, or establish that the events, occurrences, or conditions described in the written determination of substantial default do not constitute noncompliance with the statute, regulation, covenants, conditions, or agreements that are cited in the notification under paragraph (a) of this section; or

(2) If any opportunity to cure is provided, that the violations have been cured or will be cured in the time period specified by HUD.

(c) *Waiver of notification and the opportunity to respond.* A PHA may waive, in writing, receipt of written notification from HUD of a finding of substantial default and the opportunity to respond to such finding. HUD may then immediately proceed with the remedies as provided in § 907.7.

(d) *Emergency situations.* A PHA shall not be afforded the opportunity to respond to a written determination or to cure a substantial default in any case where:

(1) HUD determines that conditions exist that pose an imminent threat to the life, health, or safety of public housing residents or residents of the surrounding neighborhood; or

(2) The events or conditions precipitating the default are determined to be the result of criminal or fraudulent activity.

§ 907.7 Remedies for substantial default.

(a) Except as provided in § 907.7(c), upon determining that events have occurred or conditions exist that constitute a substantial default, HUD may:

(1) Take any action provided for in section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3));

(2) Provide technical assistance for existing PHA management staff; or

(3) Provide assistance deemed necessary, in the discretion of HUD, to remedy emergency conditions.

(b) HUD may take any of the actions described in paragraph (a) of this section sequentially or simultaneously in any combination.

(c) In the case of a substantial default by a troubled PHA pursuant to § 902.83(b):

(1) For a PHA with 1,250 or more units, HUD shall petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(ii)); or

(2) For a PHA with fewer than 1,250 units, HUD shall either petition for the appointment of a receiver pursuant to section 6(j)(3)(A)(ii) of the Act (42 U.S.C. 1437d(j)(3)(A)(ii)), or take possession of the PHA (including all or part of any project or program of the PHA) pursuant to section 6(j)(3)(A)(iv) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)(iv)), and appoint, on a competitive or noncompetitive basis, an individual or entity as an administrative receiver to assume the responsibilities of HUD for the administration of all or part of the PHA (including all or part of any project or program of the PHA).

(d) To the extent feasible, while a PHA is operating under any of the actions that may have been taken by HUD, all services to residents will continue uninterrupted.

(e) HUD may limit remedies under this part to one or more of a PHA's specific operational areas (e.g., maintenance, capital improvement, occupancy, or financial management), to a single program or group of programs, or to a single project or a group of projects. For example, HUD may select, or participate in the selection of, an AME to assume management responsibility for a specific project, a group of projects in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and projects not so designated.

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Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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