

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4509-N-03]

Public Housing Assessment System (PHAS); Technical Review of Physical Inspection Results and Appeals of PHAS Scores

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by HUD's Real Estate Assessment Center (REAC); and (2) appeals of PHAS scores. This notice does not apply to PHAS advisory scores.

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Customer Service Center at 1-888-245-4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1-800 877-8339. Additional information is available from the REAC Internet Site at <http://www.hud.gov/reac>.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

The purpose of this notice is to provide additional information about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by the REAC; and (2) appeals of PHAS scores. There are specific circumstances when the REAC will consider conducting a technical review of an individual property's inspections results, and when an appeal of a PHAS score may be granted. This notice describes those circumstances and provides examples under the discussion of "Material Errors".

Basis for Technical Review of Physical Inspection Results

For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, then the PHA may request a technical

review of the inspection results for that property.

A request for technical review of a property's physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the physical inspection results to the PHA. The request must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error has occurred. A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

The burden of proof rests with the PHA to provide evidence to the REAC that an objectively verifiable and material error has occurred to support its request for technical review of a property's physical inspection results. 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.

Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions: (1) undertake a new inspection; (2) correct the physical inspection report; (3) issue a corrected physical condition score; and (4) issue a corrected PHAS score.

In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). For a PHA to understand how the REAC may conclude that a significant change may result from a new inspection, the PHA may use

REAC's document titled "Item Weights and Criticality Levels" to determine whether a significant change in the score may result from a new inspection. This document is included as Appendix 1 in the Notice of Physical Inspection Scoring, published elsewhere in today's **Federal Register**. The different severity levels of deficiencies (severe, major and minor) are defined in the REAC's "Dictionary of Deficiencies Definitions," which is included as Appendix 2 in the Notice of Physical Inspection Scoring. These two documents are also available on the REAC Internet Site at <http://www.hud.gov/reac>. If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

Material Errors

Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are described below.

1. Building Data Error

A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

2. Unit Count Error

A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

3. Non-Existent Deficiency Error

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

A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

Basis for Appeal of PHAS Score

If a PHA believes that an objectively verifiable and material error (or errors) 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, standard, or high performer), the PHA may appeal its PHAS score. 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 standard performer, or from standard performer to high performer).

To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate

Assessment Center and must be received by the REAC no later than 30 days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, or a

reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes that an error occurred in the scoring and the type of evidence submitted by the PHA to support its position that an error occurred.

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

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