

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR-4497-C-06]

RIN 2577-AC08

Public Housing Assessment System (PHAS): Technical Correction

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

ACTION: Technical correction.

SUMMARY: On January 11, 2000, HUD published a final rule that made certain amendments to the Public Housing Assessment System regulations, issued as final regulations by HUD on September 1, 1998. This document makes certain technical and editorial corrections to the January 11, 2000, final rule. Elsewhere in this edition of the *Federal Register*, HUD is publishing a notice concerning additional PHAS transition assistance for certain PHAs.

DATES: Effective Date: February 10, 2000.

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

SUPPLEMENTARY INFORMATION:

I. Background

On January 11, 2000 (65 FR 1712), HUD issued a final rule that made certain amendments to the Public Housing Assessment System (PHAS) regulations. The PHAS was implemented by final regulations published on September 1, 1998. The amendments published to the PHAS regulations on January 11, 2000, followed a proposed rule published on June 22, 1999, and the amendments were prompted by both statutory and administrative changes to the PHAS. The Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105-276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") made certain amendments

to section 6(j) of the U.S. Housing Act of 1937, which necessitated changes to the PHAS regulations. Additionally, HUD determined that certain changes were needed to the regulations as a result of the transition period to the new PHAS that HUD provided following issuance of the September 1, 1998, final rule. The September 1, 1998 final rule did not provide for immediate implementation of PHAS, but rather provided for a year's transition period in which HUD tested its PHAS systems, provided advisory scores, and continued discussions and meetings with public housing agencies (PHAs) and residents, and their respective representatives about the PHAS. As a result of this transition period, extended by HUD at the request of PHAs, and discussions and meetings which continued well into the fall and winter of 1999, HUD determined certain changes were needed. The changes, both statutory and regulatory were discussed in the preambles to the June 22, 1999, proposed rule, and the January 11, 2000, final rule.

II. Technical Corrections

This document corrects certain errors that appeared in the January 11, 2000 final rule. Three primary corrections are made by this document:

- First, in § 902.43, HUD reinstates "vacant unit turnaround time" as a Management Operations sub-indicator.

In the preamble to the January 11, 2000, final rule, HUD advised that it was persuaded by public comment on the proposed rule and discussions with PHAs that assessing vacancy rate under the Management Operations Indicator was duplicative of assessing "occupancy loss" and "tenant receivable outstanding" under the Financial Condition Indicator. HUD therefore agreed that the vacancy rate sub-indicator under the Management Operations Indicator would be removed. (See discussion at 65 FR 1716). In removing "vacancy rate" from § 902.43, HUD inadvertently also removed "vacant unit turnaround time." These two components were combined together as one sub-indicator under PHAS (just as they had been under the predecessor system—the Public Housing Management Assessment Program (PHMAP)). Vacant unit turnaround time is a statutorily required indicator and is not covered by any other sub-indicator in either the Financial Condition Indicator or the Management Operations Indicator, and the removal of this sub-indicator was not part of the discussions between HUD and the PHAs, nor was vacant unit turnaround time raised by public commenters on the June 22,

1999, proposed rule as an assessment component found under more than one PHAS Indicator (again, as was the case with vacancy rate).

HUD is therefore reinstating this sub-indicator through this correction document. In revised § 902.43, HUD makes the vacant unit turnaround time the first sub-indicator, and the remaining sub-indicators are redesignated accordingly. For the convenience of the reader, the entire section is republished, as corrected.

- Second, the Board of Review process provided in § 902.69 is applicable to appeal of PHAS scores, and not just to appeal of troubled designation or petition for removal of troubled designation. This was made clear in the preamble discussion at page 1728, third column, continuing on page 1729, first column. In this discussion, in response to a comment from the public that the appeal process did not allow for reviewing of the scoring process itself, and the process was too abbreviated, HUD responded by referring to the process in § 902.69, and noted that this appeal process provides for referral to the Board of Review.

HUD, therefore, revises the language in § 902.69 to clarify that this process is applicable to appeal of PHAS scores, consistent with the discussion in the preamble.

- Third, with the extension of advisory scores to PHAs with fiscal years ending March 31, 2000, HUD has corrected this section to reflect implementation of PHAS begins with PHAs with fiscal years ending on and after June 30, 2000, and to allow for flexibility if further changes are considered necessary that will not require another correction or amendment to the rule.

Other corrections made by this document are as follows:

- In § 902.20, HUD removes in paragraph (b)(2) the reference to the assessment of vacant units under the Management Operations Indicator. (See 65 FR 1741, first column.) In the January 11, 2000, final rule, HUD determined that unit vacancy only would be assessed by the occupancy loss sub-indicator under the Financial Condition Indicator. Therefore this reference is incorrect.

- In § 902.20, the regulatory reference in paragraph (c) should be § 902.43(a), not § 902.43(a)(5). (See 65 FR 1741, first column.) HUD corrects this cross-reference.

- In § 902.25, HUD replaces the word "latest" in paragraph (b)(2)(ii) which appears before the term "census data" with the word "most recent." (See 65 FR 1743, first column.) HUD believes that

the phrase "most recent" is a more clear description of the type of census data needed.

- In § 902.25, HUD clarifies in paragraph (c)(3) that adjustments for modernization work-in-progress are not limited to units but encompass modernization work-in-progress being undertaken in other areas in a PHA's development, which areas are subject to physical inspection by HUD. (See 65 FR 1744, first column.)

- In § 902.35, HUD corrects the definition of "Tenant Receivable Outstanding" to further clarify its meaning.

- In § 902.43, the use of the term "unobligated" in the first sentence of paragraph (a)(1) is incorrect. (See 65 FR 1745, third column.) The correct term should be "unexpended." HUD makes this correction.

- In § 902.43, the regulatory reference in paragraph (b)(1) should be to § 902.60(d), not 902.69(d). (See 65 FR 1746, middle column.) HUD corrects this cross-reference.

- In § 902.45, HUD clarifies that a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under PHAS Indicator #3 (Management Operations) is troubled with respect to program assistance under the Capital Fund. (See 65 FR 1746, end of middle column, top of third column.) This is clearly stated in § 902.67(c)(2)(ii), but should also be stated in § 902.45.

- In § 902.60, paragraph (e)(2) is amended to clarify that a PHA's failure to submit a certification required under the PHAS regulations or to submit year-end financial information will result in a score of zero only for the PHAS Indicator for which the certification or financial information is required and not received. Without this correction, the rule indicates that the PHA would receive a score of zero for all of the PHAS Indicators which require certifications, even if certifications are received for some of them. (See 65 FR 1748, first column.)

This section is also amended to clarify that HUD may not extend the reporting deadline for audited financial statements. OMB Circular A-133 provides that an audited financial statement must be submitted within nine months after an entity's fiscal year-end. This deadline may not be extended by HUD, and the revised language clarifies this.

- In § 902.67, the regulatory reference in paragraph (c)(2)(ii) should be to § 902.43(a), not § 902.43(a)(2). (See 65 FR 1749, first column.) HUD corrects this cross-reference.

- In § 902.69, HUD replaces the term "final PHAS score" in the first sentence of paragraph (c)(1) with the term "overall PHAS score." (See 65 FR 1750, middle column.) As stated in § 902.63(c), a PHA's overall PHAS score becomes its final PHAS score after any adjustments are made in accordance with the regulatory provisions and following the appeals process provided in § 902.69.

- In § 902.77, the regulatory reference in the second sentence of paragraph (a)(1) should be § 902.79, not § 902.69. (See 65 FR 1753, first column.) HUD corrects this cross-reference.

In § 902.79, the reference in paragraph (b)(1)(iv) to "paragraph (a) of this section" is incorrect. (See 65 FR 1753, third column.) The reference should be to "paragraph (b)(4) of this section." HUD corrects this reference.

III. Responses to Post-Final Rule Questions

In addition to the regulatory changes described above, other issues or concerns were raised to HUD after publication of the January 11, 2000, final rule, as follows.

HUD was asked to correct the January 11, 2000, final rule to include a definite period of time in which HUD must respond to a request for an appeal. HUD points out that § 902.69(e) provides that HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. No correction is needed since the rule does address this issue.

HUD was asked how a PHA designated as troubled under PHMAP and in receivership can obtain an acceptable PHMAP rating to get out of receivership since there are no more PHMAP ratings. As noted in the preamble to the first PHAS rule issued in 1998, and discussed in other PHAS notices and the 1999 rule, PHAS Indicator #3 (Management Operations) covers the majority of areas covered by PHMAP. As noted in the PHAS Transition Notice, published on October 21, 1999 (64 FR 56676), PHAs with fiscal years ending September 30, 1999, or December 31, 1999, will receive an assessment score solely on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D of the PHAS regulations (PHAS Indicator #3, Management Operations). (See 64 FR 56677, middle column.) As the October 21, 1999, notice provided, PHAs with fiscal years ending on or after March 31, 2000, will receive a PHAS score; and therefore, either an assessment score under PHAS Indicator #3, for PHAs

with fiscal years ending September 30, 1999, or December 31, 1999, or a PHAS score for PHAs with fiscal years ending on or after March 31, 2000, take the place of the PHMAP score. (As noted earlier, and as discussed further below, PHAS advisory scores are extended to PHAs with fiscal years ending on March 31, 2000, and the October 21, 1999, and December 16, 1999, PHAS Transition Assistance Notices are revised by this document.) HUD also was asked about a statement in the preamble concerning HUD's discussions with GAO concerning the GAO report on its analysis of the PHAS. (See 65 FR 1713, first column.) HUD acknowledges that this preamble language requires clarification. At the time the Conference Report to the FY 2000 HUD Appropriations Act was issued (October 13, 1999), GAO's planned review of the physical inspection process focused only on HUD's multifamily housing, not public housing. Although, GAO subsequently expanded the scope of its review to include public housing, GAO acknowledged that its analysis of implementation of PHAS in public housing and compilation of a report would take several months. Postponing implementation of PHAS until the GAO report was completed would have caused a significant delay. HUD advised both GAO and Congressional staff before publication of the January 11, 2000, final rule that HUD would proceed with its PHAS implementation plans. When the GAO report is complete, HUD will examine the GAO findings and make any changes to the PHAS physical inspection process that will refine and improve this system.

IV. Related Document—Notice on Additional Transition Assistance

HUD also was asked to provide further transition assistance to certain PHAs. Please see HUD's notice published elsewhere in this edition of the **Federal Register** that addresses PHAS transition assistance for certain PHAs.

List of Subjects in 24 CFR Part 902

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

Accordingly, 24 CFR part 902 is corrected by making the following correcting amendments:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

1. The authority citation for 24 CFR part 902 continues to read as follows:

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

2. Revise § 902.5 to read as follows.

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) *Scoring of RMCs and AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs), as described in this section. As described in this section, this part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF-RMCs).

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

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

(2) *PHA ultimate responsible entity under ACC, except where DF-RMC assumes management operations.* (i) Because the PHA and not the RMC/AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

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

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after June 30, 2000, unless HUD, through **Federal Register**, notice revises the implementation date to later date.

(1) *For PHAs that are not issued PHAS scores.* Under certain circumstances, PHAs may not be issued PHAS scores. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(i) *PHAS Advisory Score.* A PHA will be issued a PHAS advisory score for all PHAS indicators—Indicators #1 (Physical), #2 (Financial), #3 (Management Operations), and #4 (Resident Service and Satisfaction). The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections required to be conducted by

PHAs under the Management Operations Indicator will be conducted using HUD uniform physical inspection protocol, unless HUD provides, through **Federal Register** notice, that PHAs may use HUD's Housing Quality Standards.

(ii) *Management Assessment Score.* A PHA will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of this part.

3. In § 902.20, revise paragraphs (b)(2) introductory text and (c) to read as follows:

§ 902.20 Physical condition assessment.

* * * * *

(b) * * *

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for non-dwelling purposes, e.g., daycare or meetings, 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 Financial Condition Indicator #2 (§ 902.35(b)(4)). The categories of vacant units not under lease that are exempted from physical inspection are as follows:

* * * * *

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)), and § 902.43(a).

* * * * *

4. In § 902.25, revise paragraphs (b)(2)(ii), (c)(3) introductory text, and (c)(3)(i) to read as follows:

§ 902.25 Physical condition scoring and thresholds.

* * * * *

(b) * * *

(2) * * *

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the most recent census data.

* * * * *

(c) * * *

(3) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA development, subject to physical inspection under this subpart,

which are undergoing modernization work in progress require an adjustment to the physical condition score.

(i) An occupied dwelling unit or other areas of a PHA development undergoing modernization are subject to physical inspection; the unit and other areas of the PHA development are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA development 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 development that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

* * * * *

5. In § 902.35, revise paragraph (b)(3) to read as follows:

§ 902.35 Financial condition scoring and thresholds.

* * * * *

(b) * * *

(3) *Tenant Receivable Outstanding* is the average number of days tenant receivables are outstanding and it is calculated by dividing tenant accounts receivable by Daily Tenant Revenue (rental revenue/365).

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6. Revise § 902.43 to read as follows:

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #1—Vacant Unit Turnaround Time.* This sub-indicator measures the PHA's efforts to reduce unit turnaround time and assesses the adequacy of the PHA's system to track unit down time, make ready time and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the Act, which remain unexpended by the PHA after three years, the timeliness of fund obligation,

the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have section 9(d) capital funding.

(3) *Management sub-indicator #3—Work Orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(4) *Management sub-indicator #4—PHA Annual Inspection of Units and Systems.* This management sub-indicator examines the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(5) *Management sub-indicator #5—Security.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 6(j)(1)(I) (42 U.S.C. 1437d(j)(1)(I)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the development on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted. For Component #1, Tracking and Reporting Crime Related Problems, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted

policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(6) *Management sub-indicator #6—Economic Self-Sufficiency.* The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will receive credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.*

(1) A PHA is required to submit electronically a certification of its performance under each of the management operations sub-indicators in accordance with § 902.60(d).

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that REAC receives a request for manual submission in writing two months prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. REAC will respond to such a request and will manually forward its determination in writing to the PHA.

7. In § 902.45, paragraph (b) is revised to read as follows:

§ 902.45 Management operations scoring and thresholds.

* * * * *

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA must achieve a score of at least 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

(2) A PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under Management Operations Indicator, shall be subject to the sanctions provided in section 6(j)(4) of the Act (see § 902.67(c)(2)(ii).)

8. In § 902.60, paragraph (e)(2) is revised to read as follows:

§ 902.60 Data collection.

* * * * *

(e) * * *

(2) If any certification or year-end financial information, with the exception of the PHA's audited financial statement, is not received within three months after the due date, the PHA will receive a presumptive rating of failure for each PHAS Indicator for which the certification or year-end financial information is not received. 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 PHAS Financial Indicator. If the PHA receives a presumptive rating failure for any PHAS Indicator due to failure to submit a certification or year-end financial information by the due date, including any extension of the due date, as provided in this paragraph (except for the audited financial statement for which the due date is established by OMB Circular A-133), the PHA shall be designated as troubled or identified as troubled with respect to the program for assistance from the Capital Fund under section 9(d) of the Act.

9. In § 902.67, revise paragraph (c)(2)(ii) to read as follows:

§ 902.67 Score and designation status.

* * * * *

(c) * * *

(2) * * *

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund sub-indicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see § 902.43(a)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

* * * * *

10. Revise § 902.69 to read as follows:

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal troubled designation.* A PHA may:

(1) Appeal its troubled designation (including designation as troubled with

respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *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 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 standard performer, or from standard performer to high performer).

(c) *Appeal and petition procedures.*

(1) To appeal troubled designation or a PHAS score, a PHA must submit a request in writing to the Director of the Real Estate Assessment Center that must be received by REAC no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition removal of troubled designation, a PHA also must submit its request in writing to the Director of the Real Estate Assessment Center. The written request must be received by REAC no later than 30 days after HUD's decision to refuse to remove the PHA's troubled designation.

(2) An appeal of troubled designation or petition for removal of troubled designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. An appeal submitted to REAC without appropriate documentation will not be considered and will be returned to the PHA.

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an

objectively verifiable and material error has been documented by the PHA, REAC will convene a Board of Review, in accordance with the procedures of paragraphs (d) and (e) of this section, to evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. For appeal of PHAS scores, the Board of Review may determine that REAC should undertake a new inspection of the property, and/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 was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

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

(e) *Final appeal decisions.* HUD will make final decisions of appeals, made under this section, within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. Failure by a PHA to submit supporting documentation with its request for appeal, or within any additional period granted by HUD is grounds for denial of an appeal. Final appeal decisions will be reported to the PHA by the Assistant

Secretary for Public and Indian Housing.

11. In § 902.77, revise paragraph (a)(1) to read as follows:

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with §§ 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

* * * * *

12. In § 902.79, revise paragraph (b)(1)(iv) to read as follows:

§ 902.79 Substantial default.

* * * * *

(b) * * *

(1) * * *

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (b)(4) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

* * * * *

Dated: May 26, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Director, Real Estate Assessment Center.

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