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January 3, 2025

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street, SW, Room 10276
Washington, DC 20410-0500

Re: Docket No. FR-6356-P-01, Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Performance Deficiencies published on November 4, 2024.

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the Public Housing & RAD Working Group of the National Housing Law Project (NHLP); the National Low Income Housing Coalition (NLIHC); and the Greater Boston Legal Services (GBLS), the oldest and largest legal services program in New England, and a member organization of the Housing Justice Network (HJN), which is comprised of over 1,500 housing advocates and resident leaders committed to preserving affordable housing and the rights of low-income residents. We appreciate this opportunity to comment on Docket No. FR-6536-P-01, the Department of Housing and Urban Development's (HUD) proposed Changes to Public Housing Evaluation and Oversight under the Public Housing Assessment System (PHAS) published on November 4, 2024.

We applaud HUD's efforts to improve the utility of the PHAS and the commitment of many PHAs to improving their management performance and accountability to residents notwithstanding the challenging public housing landscape.¹ Our comments reflect the concerns of many public housing residents, legal and organizing advocates, health and social service providers, state and local government officials, and other community stakeholders who prioritize leveraging the PHAS to strengthen the long-term preservation and sustainability of public housing, to safeguard residents against involuntary displacement and loss of essential services and security of tenure, and to maximize **opportunities for resident participation in the administration of public housing and self-sufficiency activities**. Since 1998, Congress has mandated for HUD to include in its annual assessment of PHAs a measure of this priority (in bold).² Yet, for more than 25 years, this critical measure for public housing residents remains excluded from the PHAS matrix, without explanation and in violation of statutory mandate. Our

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¹The challenges reflect decades of federal funding shortfalls and budget cuts for public housing programs, the aging housing stock, the shift away from a significant and direct federal role in affordable housing production and preservation towards a limited and uneven oversight role, and increasing disposition, demolition, and privatization of public housing property, especially in areas of rising land value and opportunity.

² Section 6(j)(1)(H) of the U.S. Housing Act of 1937 (1937 Act), 42 U.S.C. § 1437d(j)(1)(H),.

comments include a review of the relevant statutory and regulatory history to distinguish this specific statutory indicator from other resident assessments and “satisfaction surveys” with which it should not be conflated and which HUD is not legally obligated to include as part of the PHAS matrix. We also resubmit our detailed recommendations for addressing the shortcomings identified with the (now-discarded) resident survey.

Proposed changes to the PHAS and associated regulations generally present a welcome opportunity to improve the system’s ability to identify and address in a timely manner the performance innovations and challenges PHAs face across many of its areas, and to provide HUD with the flexibility needed to improve the utility and effectiveness of its assessment, evaluation, and oversight, consistent with its statutory authority under Section 6(j) of the U.S. Housing Act of 1937 (1937 Act), as amended and codified at 42 U.S.C. § 1437d(j). However, the current interim rule governing PHAS has not been amended since 2011, and much has changed since that impacts the assessment of the operation of public housing program: from the major HUD data system transition from IMS/PIC to HIP, the initiation of NSPIRE inspections, and the delayed implementation of HOTMA, to the major dominance of complex development and rehabilitation activities across many PHAs’ portfolios, the proliferation of Rental Assistance Demonstration and other mixed-finance developments, and the projects of various MTW agencies operating under non-standard management and regulatory requirements, and significant demographic changes in the aging public housing resident population who otherwise may face homelessness or other worst-case housing scenarios, and their self-sufficiency and other service needs.

With this complex and dynamic background, a 60-day comment period falling during the busy Thanksgiving and winter holiday season and terminating on January 3, 2025 is not sufficient time to serve its public purpose and will generate limited comments. We therefore **request an extension of the comment period** for Docket No. FR-6536-P-01, and urge HUD to **initiate a robust and inclusive consultative process** to supplement its “series of ... listening sessions with [only] PHAs across the country,”³ which will better facilitate a final rule that is informed by thoughtful comments and specific recommendations focused on improving the PHAS to better assess the self-sufficiency and other participation opportunities for residents and the asset and risk management capabilities of PHAs, to strengthen the long-term preservation of our nation’s critical supply of safe, quality, well-managed housing that is deeply affordable for even the lowest income households.⁴

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³ We urge HUD to engage in targeted outreach to all stakeholders in addition to PHAs including, at minimum, the directly impacted public housing residents and resident organizations, state and local government agencies which share responsibility in supporting troubled PHAs pursuant to the terms of their Comprehensive Housing Affordability Strategy (CHAS) in their Consolidated Plans, as well as listening sessions with the National Housing Law Project (NHLP), the National Low Income Housing Coalition (NLIHC), HJN member legal aid organizations, public health advocates, code enforcement agencies, and other parties who share a commitment to the preservation of our nation’s public housing stock and support providing timely technical assistance and other resources necessary to strengthen the capacity of PHAs and other mission-driven affordable housing providers to provide quality management for housing which is critical for low-income households.

⁴ In 1998, over 1.2 million families lived in 20,000 public housing projects operated by about 3,400 PHAs across the U.S. See 63 FR 35672, Docket No. FR-4313-P-01, Public Housing Assessment System. With more than half of public housing constructed before 1970, today, less than 807,000 public housing units remain, with one in five located in rural areas, and many requiring substantial capital improvements and modernization to remain viable

Question 1: PHAS Metrics

1. **Do the proposed metrics accurately assess a PHA’s performance or are there other metrics that would be appropriate for inclusion in PHAS?**

The PHAS Metrics Must Include Assessment of the Extent to Which PHAs Provide Opportunities for Resident Participation in the Administration of Public Housing and Self-Sufficiency Programs or Activities as Required by Statute.

Since 1998, Congress has directed HUD to evaluate: “(H) The extent to which the public housing agency— “(i) coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents; and “(ii) provides public housing residents with opportunities for involvement in the administration of the public housing PHAs’ coordination, promotion, or provision of economic self-sufficiency for residents and their opportunities for involvement in the administration of public housing.”⁵

On August 21, 2008, HUD released proposed changes to the PHAS rules at 73 *Federal Register* 49544 to conform PHAS to asset management with a 60-day public comment period which was reopened on November 17, 2008 to January 8, 2009 “given the public interest in this rule, and the availability of this new [scoring template].” In removing the independent **Resident Service and Satisfaction Indicator** (operationalized through resident surveys), HUD stated as follows:

“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

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long-term for the millions of low-income residents who otherwise would face homelessness or other worst-case housing scenarios. See FY 2025 HUD Congressional Justification at https://www.hud.gov/program_offices/cfo/reports/fy25_CJ (last visited January 2, 2025).

⁵ Section 6(d)(1)(H) of the U.S. Housing Act of 1937, codified at 42 U.S.C. 1437d(j)(1)(H), as amended by the Quality Housing Work and Responsibility Act of 1998 (QHWRA), §§ 564 (Public Housing Management Assessment Program). For the initial seven statutory indicators, see Section 6(j)(1)(A)-(G) of the U.S. Housing Act of 1937 (1937 Act), 42 U.S.C. § 1437d(j)(1)(A)-(G), as amended by Section 502 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA).

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.

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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.

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.**⁶

§ 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.

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⁶ 73 *Federal Register* 49545 (Aug. 21, 2008). Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Substantial Default

(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.

Subindicator 6. Tenant/Management Relations.

6.1 Economic Self-Sufficiency

6/2 Resident Involvement in Project Administration

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.

As shown above, the 2008 proposed rule would have, for the first time, required the evaluation of a PHA's performance in the area of providing resident self-sufficiency and participation opportunities as part of a development's management review. That review would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and would measure the extent to which residents are provided with opportunities for involvement in the administration of public housing.

Indeed, HUD affirms:

“Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would have been 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 have included 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 have included all of the elements regarding economic self-sufficiency and resident participation that are included in the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) at section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)).

HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, participation, and self-sufficiency measures in the final rule that will follow this interim rule. Accordingly, HUD seeks input from the public in the form of comments to this interim rule on establishing more meaningful measures in these areas.”

The 2011 PHAS interim rule, however, notes that it has eliminated the Resident Service and Satisfaction Indicator and the associated resident survey “for the period that the interim rule is in effect,” and that it has not adopted the proposed management elements, including “the components based on unit inspections, **economic self-sufficiency, and resident involvement**”⁷:

“As in the proposed rule, this interim rule contains three items—tenant accounts receivable, occupancy rate, and accounts payable—under the management operations indicator. Because other proposed elements are not adopted by this interim rule, HUD has rebalanced the scoring for the remaining indicators. **The proposed management elements not adopted here** are utility consumption, turnaround time, work orders, security, the components based on unit inspections, **economic self-sufficiency, and resident involvement**. The physical condition indicator has increased from 30 to 40 points; the financial condition indicator has increased from 20 to 25 points; and the management operations indicator has decreased from 40 to 25 points. The overall value of the Capital Fund program indicator (10 points) remains unchanged.

The current codified PHAS regulation scores the physical, financial condition, management operations, and resident service and satisfaction indicators. In this interim rule, HUD removes the resident service and satisfaction indicator, as well as the resident survey, while HUD considers better means of accurately measuring resident satisfaction, tenant participation, and the efficacy of resident self-sufficiency efforts to be included in the final rule. **HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule, which will be promulgated subsequent to and based on HUD's experience with, and the public comments on, this interim rule.** Accordingly, the agency seeks input from the public, including PHA residents and PHAs, as well as other interested members of the public, on establishing more meaningful measures in these areas, including suggestions for what the specific items measured might be and methods of measurement.

Comment: Several commenters stated that economic self-sufficiency should not be scored, because it is outside a PHA's control, there is no funding or staffing allocated to self-sufficiency, it is not a program requirement, it is a social service function not appropriate for PHAs, and including the standard may cause PHAs to favor higher-income tenants or impose work requirements. Some commenters suggested for changes to the self-sufficiency component, including aligning the standard with the Section 8

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⁷ The PHAS was most recently updated in 2011 pursuant to the interim rule published at 76 *Federal Register* 10136 on February 23, 2011.. PHAS currently assesses indicators for (1) physical condition of a specific project or AMP, (2) the financial condition of the PHA, (3) the management performance of the PHA, and (4) spending of capital funding.

Management Assessment Program (SEMAP) and using the component only for bonus points.

Removal of the Resident Satisfaction Survey

Comment: The vast majority of commenters supported HUD's removal of the Resident Satisfaction Survey, stating that it does not have statistical validity or is otherwise inaccurate and unhelpful. One commenter, while not supporting the removal of the survey entirely, supported exploring alternatives, and made a number of suggestions, including utilizing Resident Advisory Boards (RABs) to obtain feedback, and sending to RABs and residents councils the results of the management review; having PHAs explain what uses are being made of resident participation funding provided by HUD; having HUD hold meetings with residents and staff; and allowing for a public comment period at PHA board meetings. Also, HUD could make the current survey available in PHA common areas, develop complaint forms, and create an ombudsman position to assist residents and resident councils. One commenter stated that it would be more realistic for an onsite management review team to ask residents the survey questions directly.

Response: HUD's experience is that the Resident Satisfaction Survey does not have a sufficient completion rate overall to be useful. HUD agrees that resident input into the assessment process is important. **Notwithstanding the removal of the resident satisfaction component for the period during which this interim rule will be in effect, HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule. Accordingly, HUD seeks comments from the public on better methods of measuring resident satisfaction, self-sufficiency, and participation.**

Resident Involvement: Active resident participation in the operation of HUD-subsidized properties is essential to the success of assisted properties.⁸ Effective resident involvement can take many forms. A resident may ask some pertinent questions at a meeting with PHA staff or may give insightful comment on proposed lease or policy changes which modify final action.⁹ Residents may choose to run for election to resident council boards or serve on committees examining priorities for Capital Fund expenditures or anti-crime strategies.¹⁰ In some communities, there may be city-wide resident organizations. Whether or not there is a jurisdiction-wide or recognized resident council, public housing residents have a

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⁸ 42 C.F.R. § 964.11 (2019) (promoting active resident participation in all aspects of the operation of Public Housing); 24 C.F.R. § 245.5 (2019) (recognizing the importance and benefit of residents participation in the creation and operation of suitable living environment, including the good physical condition of and proper maintenance of the property); HUD, Notice H 2012-21 (A) (Oct. 17, 2012) (stating “tenant participation is an important element to maintaining sustainable [properties] and communities”).

⁹ See 24 C.F.R. §§ 966.3 (30 day notice and comment opportunity by affected residents on lease changes), 966.5 (same for policy changes), and 966.52(c) (same for changes in grievance procedure).

¹⁰ See 24 C.F.R. 964, Subpart B.

critical role in reviewing and commenting on PHA Plans as part of RABs.¹¹ A resident may be on the PHA's Board of Commissioners.¹² Some developments may be managed by Resident Management Corporations (RMCs) and they may even be recognized by HUD as a PHA.¹³ A mixed-finance development may include resident organizations as co-partners in ownership. Tenant participation funding is provided by HUD as a set-aside in the Operations Fund, and PHAs are to negotiate and enter into memoranda of agreement with resident councils regarding the use of those funds.¹⁴

PHAs should report on any policies that they have developed regarding resident participation and any memoranda of agreement that they have entered into for the expenditure of tenant participation funds. Where funds have not been distributed to resident councils, PHAs should include in the report on how they have expended these funds, and should provide residents, affected resident councils, and RABs with an opportunity to review and comment on such expenditures. PHAs should report on which developments have recognized resident councils and, where there are no resident councils, what the reason for this is and whether the PHA is engaged in any strategies to encourage development of councils at those sites. The PHA should provide information on how RAB members have been selected, what meetings have been held with the RABs during the course of a year, and what specific resources it provides to help support the RAB. Where there are no recognized resident councils, the PHA should describe the efforts that it takes to engage with residents at such site(s). Where there are resident commissioners, RMCs, or resident organizations that have an ownership interest in mixed finance sites, this information should be included in the management review. Moreover, the RAB and affected resident councils should be notified that there is a management review and what mechanisms they can utilize to give HUD input during the course of such review.

Self-Sufficiency: Self-sufficiency can in part be evaluated by looking at the PHA's Section 3 implementation. Self-sufficiency, however, is not limited to Section 3. In elderly/disabled developments, for example, there may be relatively fewer residents who can take advantage of such programs. Nonetheless, there may be a number of other programs that will enhance the quality of residents' lives and their greater ability to live independently and to foster strong communities. □ PHAs also have a great challenge in forging communities among

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¹¹ See 42 U.S.C. § 1437c-1(e); 24 C.F.R. § 903.13.

¹² See 42 U.S.C. § 1437(b); 24 C.F.R. Part 964, Subpart E. Even if a PHA is exempt from the requirement of having resident commissioners, state or local law may provide for some role by residents in the oversight or administration of public housing. See, for example, Chapter 88 of Mass. Acts of 1989 (post-receivership Boston Housing Authority does not have a Board of Commissioners, in order to ensure accountability of the Mayor of the City of Boston for PHA operations, but does have a tenant-majority Monitoring Committee with certain oversight functions).

¹³ See 24 C.F.R. § 964.120; see also 24 C.F.R. Part 990, Subpart I.

¹⁴ See 24 C.F.R. § 990.190 and PIH Notice 2001-3. HUD indicated, in the 2001 notice, that its terms would remain in effect until HUD revised 24 C.F.R. Part 964; this has not yet occurred.

□ At 24 C.F.R. § 990.190(a), HUD lists, under the "self-sufficiency" add-on for the Operating Fund, the reasonable costs of program coordinators. While HUD may have intended to limit this to 24 CFR Part 984 programs, there are certainly resident service coordinators in elderly/disabled developments who carry out a similar role to those

what may be a very diverse population with multiple languages, nationalities, and physical/mental challenges. They cannot be expected to do so alone, but the more partnerships and resources that can be drawn in from a variety of sources, the greater the likelihood is that the quality of life for all can be improved. Partnerships that may have been established in a community to help eliminate homelessness may also serve a role with stabilization and appropriate intervention to obtain needed services and assistance. While this is to a certain extent “subjective”, it is a key piece in evaluating how a PHA’s public housing programs are integrated into the community and avoiding isolation.

Commenting on the PHAS offers an important opportunity to enhance the effectiveness of PHAs and improve the quality of life for residents. We urge HUD to continue engaging with all stakeholders, including residents, and resident associations, and local governments, as well as PHA staff, throughout the PHAS review process. Please do not hesitate to contact us with any questions regarding these comments.

Sincerely,

/s/

Lauren D. Song | Public Housing & RAD Working Group, National Housing Law Project
Ed Gramlich, | National Low Income Housing Coalition
Jacquelynn Bowman | Greater Boston Legal Services, Housing Justice Network

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performing similar functions in multifamily housing designated for the elderly/disabled. HUD should consider a cross-program evaluation of what elements (besides adequate funding) are necessary to implement effective resident services coordination in both types of housing.

II. Statutory and Regulatory History on the PHAS and Resident Self-Sufficiency and Participation Indicator

A. Public Housing Management Assessment Program (PHMAP): 1990-1999

Section 6(j) of the U.S. Housing Act of 1937 (1937 Act), as amended and codified at 42 U.S.C. §, 1437d(j), provides the legal authority for HUD’s assessment, evaluation, and oversight of PHAs, and specifies the statutory indicators which must be used by HUD, and the permissible incentives for performance and required remedies in case of substantial default. Section 6(j) of the 1937 Act was first amended almost 35 years ago by Section 502 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) (1) to require HUD to establish, through public notice and comment rulemaking, a uniform set of management performance indicators to be used in a nation-wide assessment of all PHAs (and Resident Management Corporations), and (2) to establish procedures for the designation as “troubled” those PHAs with substantial deficiencies in their management capabilities as measured by the indicators mandated for use by the statute (statutory indicators), as well as procedures for the appeal of a “troubled” designation, petition for the removal of a “troubled” designation, and appeal of any refusal to remove a “troubled” designation.¹⁶ The NAHA expressly required for “troubled” or “mod[ernization]-troubled” PHAs to enter into a memorandum of agreement (MOA) with HUD to implement specific targeted strategies for improvement of their management performance, with specified incentives and sanctions based on outcomes. The NAHA also authorized specific remedies against PHAs in “substantial default” of the MOA or with other agreements to which it was subject (e.g., the Annual Contribution Contract), including removal as management agent and petition to appoint a receiver, and the requirement that the defaulting PHA must make acceptable arrangements to ensure that residents continue to be provided all services that are in the best interests of the residents.

The seven (7) mandatory statutory indicators required to be used in PHA assessments under the 1990 NAHA amendments were:¹⁷

- (A) (VACANCIES) The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous 3 years to reduce such vacancies.
- (B) (CAPITAL FUND) The amount and percentage of funds provided to the public housing agency from the Capital Fund section 1437g(d) of [42 U.S.C.] which remain unobligated by the public housing agency after 3 years.
- (C) (RENT COLLECTION) The percentage of rents uncollected.
- (D) (UTILITY CONSUMPTION) The energy consumption (with appropriate adjustments to reflect different regions and unit sizes).
- (E) (UNIT TURNAROUND) The average period of time that an agency requires to repair and turn-around vacant units.

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¹⁶ 42 U.S.C. §, 1437d(j) (1990), as amended by the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), Pub. L. 101-625, title V, §§, 502(a), 502(c)(1)-(2), 104 Stat. 4182 (Nov. 28, 1990).

¹⁷ 42 U.S.C. §, 1437d(j)(1)(A)-(G).

- (F) (OUTSTANDING WORK ORDER) The proportion of maintenance work orders outstanding, including any progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders.
- (G) (INSPECTION) The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Secretary deems appropriate (with appropriate adjustments, if any, for large and small agencies).

To implement the NAHA amendments, HUD created the Public Housing Management Assessment Program (PHMAP), a grading and scoring system to rate the management performance of PHAs based on the seven statutory indicators specified for use in Section 6(j)(1) (and other uniform and objective criteria). A proposed rule to implement PHMAP at 24 C.F.R. part 901 was published at 56 *Federal Register* 15712 on April 17, 1991, resulting in **114 comments** during its **60-day comment period**. The stated purpose of PHMAP was to identify “management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve the management practices of troubled PHAs and mod-troubled PHAs”.in order to assist HUD State/Area Offices in their accountability monitoring and risk management. PHMAP’s scope was expressly limited to statutory criteria and did not extend to overall PHA operations or other criteria, such as the quality of a PHA’s housing stock, compliance issues, Fair Housing and Equal Opportunity issues, PHA board knowledge and oversight of PHA operations, and other factors relevant to determining the adequacy of a PHA’s overall operations.

On October 28, 1991, Congress further amended Section 6(j) of the 1937 Act to provide (i) that the number of factors that must be used to assess the management performance of PHAs is limited to the seven (7) indicators listed in the NAHA plus up to an additional five (5) indicators, for a total not to exceed twelve (12), which HUD was authorized to develop as it deemed appropriate, through notice and comment rulemaking; (ii) that the management assessment must be administered flexibly to ensure that PHAs are not penalized for circumstances beyond their control, (iii) the weights assigned to indicators must reflect an adjustment for differences in management difficulty resulting from the physical condition of the properties (years since construction) and neighborhood environments (poverty); and (iv) the determination of a PHA’s status as “troubled with respect to the program under section 14 [Modernization]” must be based solely upon factors related to its ability to carry out that program—i.e., capacity to accomplish the physical work with decent quality; in a timely manner; under competent contract administration; and with adequate budget controls.¹⁸

To implement the 1991 amendments, HUD published an interim PHMAP rule at 57 *Federal Register* 2160 on January 17, 1992, with a **comment period of 120 days**. The final set of maximum 12 indicators (7 statutory and 5 optional) retained for the interim PHMAP rule were:

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¹⁸ 42 U.S.C. § 1437d(j)(1)(I)(1)-(2), as amended by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992, Pub. L. 102-139 (October 28, 1991). and the Housing and Community Development Act of 1992 (HCDA 1992), Pub. L. 102-550 (October 28, 1992). For the neighborhood environment adjustment, see 24 C.F.R. § 901.25(b)(2)(ii) (PHMAS) and § 902.25(b)(2)(ii) (PHAS).

- (1) Vacancies;
- (2) Modernization;
- (3) Rents Uncollected;
- (4) Energy Consumption;
- (5) Unit Turnaround;
- (6) Outstanding Work Orders;
- (7) Annual Inspection and Condition of Units and Systems;
- (8) Tenants Accounts Receivable;
- (9) Operating Reserves;
- (10) Routine Operating Expenses;
- (11) **Resident Initiatives**; and
- (12) Development. ¹⁹

Assisted by a robust consultative process required under Executive Order 12866,²⁰ the PHMAP rule was amended several times after 1992 through the public rulemaking process as required by Section 6(j) of the 1937. In 1996, HUD published proposed rules at 61 *Federal Register* 20358 to revise the entire PHMAP, and an interim rule at 61 *Federal Register* 68894 on December 30, 1996 to implement the proposed revisions, which applied to both PHAs and Resident Management Corporations (RMCs), and included a revision of the **Resident Services and Community Building Indicator** to assess PHAs for the functions they perform in operating resident services programs and for resident management.²¹ Importantly, **under PHMAP each adopted resident centered indicator (in bold) was not mandated by statute but one of the five optional indicators left to HUD’s discretion.**

B. HUD 2020 Management Reform Plan: 1997-1999/ EARLY PHAS

On June 26, 1997, HUD released its “HUD 2020 Management Reform Plan” ²² which, *inter alia*, established three centers--a Real Estate Assessment Center (REAC), a Troubled

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¹⁹ Based on comments submitted by members of Congress and PHA industry organizations, such as the National Association of Housing and Redevelopment Officials (NAHRO), Council of Large Public Housing Authorities (CLPHA), and Public Housing Authorities Directors Association (PHADA), HUD consolidated the following indicators/standards originally in the proposed rule: indicator (2), unexpended modernization funds, has been consolidated with standards (a)-(d) within indicator (15), modernization; indicator (7), annual inspection and condition of units, has been consolidated with standard (9)(a), annual inspection of systems; the four standards within indicator (14), residents’ quality of life, have been consolidated into one indicator; and the three remaining standards within indicator (16), development, have been consolidated into one indicator. Other compliance-based indicators and standards included in the proposed rule but removed in the interim rule were as follows: indicator (8)(a)-(e), general management; indicator (10)(a)-(b), procurement; indicator (11), utilities; indicator (12)(b), Comprehensive Occupancy Plan, and the reporting requirements in indicators (12)(a), occupancy; (13)(e), financial management; (15)(e), modernization; and (16)(d), development. Two performance standards removed as a result of comments received: standard (9)(b), work order response time; and standard (15)(e), timeliness of management improvements.

²⁰ President Clinton’s Executive Order on Regulatory Planning and Review (E.O. 12866), issued September 30, 1993.

²¹ 24 C.F.R. part 901, subpart B; 61 FR 68933 (Dec. 30, 1996, unless otherwise noted).

²² 62 FR 43204 (Aug. 12, 1997).

Agency Recovery Center (TARC), and a HUD Enforcement Center—to operate independently from traditional HUD program areas and functions, to monitor and support the fair and standardized evaluation of PHAs’ management performance across the country (including resident feedback), and the enforcement of PHAs’ timely compliance with the performance strategies incorporated into corrective agreements, especially in the areas of physical and financial conditions.²³

On June 30, 1998, HUD published at 63 *Federal Register* 35672 a proposed rule to replace PHMAP with a new Public Housing Assessment System (PHAS),²⁴ which received **776 comments** by its **extended deadline** of August 13, 1998, On September 1, 1998, HUD published the final rule for the PHAS at 63 *Federal Register* 46596,²⁵ which is codified at 24 C.F.R. part 902. Prior to 1998, a PHA was evaluated by HUD with respect only to its management operations. PHAS expanded assessment of a PHA to the following four key areas of a PHA's operations:

1. Physical Condition (30 points)
2. Financial Condition (30 points)
3. Management Operations (30 points)
4. **Resident Service and Satisfaction (through a resident survey)**²⁶ (10 points)

Based on 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.

Importantly, the final 1998 PHAS rule was developed through extensive consultation with a broad array of stakeholders not limited to PHA officials and representatives of PHA organizations, but also representatives of public housing resident groups, housing advocacy groups, local government representatives, and experts in the fields of finance and audit, and was informed by the physical inspection of properties from October 1997 through April 1998 as well as the 776 comments received for the proposed rule.²⁷

The PHAS management indicator incorporates the majority of the statutory management assessment indicators under PHMAP with the remaining statutory indicators

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²³ 63 FR 35673 (June 30, 1998).

²⁴ 63 FR 35672 (June 30, 1998), deadline for public comment extended to August 13, 1998, pursuant to notice published at 63 FR 40682 (July 30, 1998).

²⁵ 63 FR 46596, Docket No. FR-4313-F-03, Public Housing Assessment System (Sept. 1, 1998).

²⁶ *Id.* See resident service and satisfaction indicator codified at 24 C.F.R. 902.50(b) *et seq.* (PHAS in effect September 1, 1998); 24 C.F.R. 901.50(b) *et seq.* (PHMAS in effect until September 30, 1998).

²⁷ 63 FR 46596, Docket No. FR-4313-F-03, Public Housing Assessment System (Sept. 1, 1998).

becoming part of the other PHAS indicators. The physical and financial indicators were to be used by the Assessment Center using a comprehensive and standardized protocols to conduct physical inspections of public housing properties and to assess the financial condition of PHAs. For the Management Operations Indicator and the Resident Service and Satisfaction Indicator, the Assessment Center was to gather and analyze data and information provided by the PHA.

In order to determine a composite score for each PHA, the four indicators of the PHAS were to be individually scored and then combined to present a composite score that reflects the overall performance of PHAs for a total of 100 possible points distributed as provided above. To get a passing score under the physical conditions the PHA must achieve a score of at least 24 points or 60%. PHAs with scores below 60 percent are designated as a troubled PHAs and subject to sanctions.

The 1998 PHAS rule also incorporated HUD's 2020 Management Reform Plan to establish the TARC, to which PHAs would be referred to improve poor performance, and the HUD Enforcement Center, to which PHAs which fail to improve performance within a year would be referred automatically for judicial receivership to remove the failed PHA management.

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The PHAS regulations codified in 24 CFR part 902 were 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.

Because the PHAS final regulations issued on September 1, 1998 at 63 *Federal Register* 46596 did not provide for immediate implementation of PHAS but provided for a year's transition period during which HUD tested its PHAS systems, provided advisory scores, and continued discussions and meetings with PHAs, residents, and their respective representatives. As a result of this transition period, extended by HUD at the request of PHAs, discussions and meetings about the PHAS continued well into the fall and winter of 1999.

C. Public Housing Assessment System (PHAS): 1999- 2010

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²⁸ 63 FR 46596, Docket No. FR-4313-F-03, Public Housing Assessment System (Sept. 1, 1998). Of the 776 comments on the proposed rule, 670 were letters from residents of PHAs which addressed the issue of the resident survey proposed for the 4th indicator in the PHAS rule.

In 1998, the Quality Housing Work and Responsibility Act (QHWRA) extensively amended the 1937 Act which included, *inter alia*, expansion of the statutory performance indicators specified by Section 6(j)(1) from seven (7) to the following current ten (10), exclusive of up to an additional five (5) factors HUD may also propose and establish through the statutory public rulemaking process:²⁹ (A) vacancy rates, (B) rent collection, (C) capital fund obligation rates, (D) utility consumption, (E) vacant unit turn-around, (F) outstanding maintenance orders, (G) unit inspections, (H) resident involvement and self sufficiency, (I) effective screening and eviction policies in coordination with anticrime strategies, and (J) the physical condition of the housing. Specifically, Section 564 of the QHWRA created the following three (3) new statutory indicators which HUD is required to incorporate in its assessment of all PHAs effective October 1, 1999:

“(H) The extent to which the public housing agency— “(i) coordinates, promotes, or provides effective programs and activities to promote the economic self-sufficiency of public housing residents; and “(ii) provides public housing residents with opportunities for involvement in the administration of the public housing. **[RESIDENT SELF-SUFFICIENCY AND INVOLVEMENT IN PUBLIC HOUSING ADMINISTRATION]**

“(I) The extent to which the public housing agency— “(i) implements effective screening and eviction policies and other anticrime strategies; and “(ii) coordinates with local government officials and residents in the project and implementation of such strategies. **[SCREENING, EVICTION AND ANTI-CRIME POLICIES & LOCAL GOVERNMENT AND RESIDENT COORDINATION]**

“(J) The extent to which the public housing agency is providing acceptable basic housing conditions.” **[PHYSICAL CONDITIONS]** ³⁰

QHWRA also directed HUD to enter into a contract to study alternative methods for evaluating PHAs (and other providers of federally assisted housing), which includes review and monitoring by residents and state and local governments and agencies, as well as by private contractors. ³¹

Additionally, as amended, in the absence of “comparable and recent review,” Section 6(j)(2)(B)(ii)(1) of the 1937 Act, also obligates HUD to undertake an independent, on-site

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²⁹ 42 U.S.C. § 1437d(j)(1)(A)-(K), as amended by QHWRA, §§ 564 (Public Housing Management Assessment Program), 565 (Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default), 566 (Audits), 568 (Troubled PHAs and Consolidated Plans). Revises HUD powers concerning troubled PHAs to permit the Secretary to: (1) take possession of a troubled PHA, including any of its projects or functions, or provide for alternative management, including section 8 housing; and (2) grant such PHA a two- part probationary period to demonstrate satisfactory improvement, and , upon inability to make such improvement, either take over the PHA or appoint a receiver to do so. *See also*, 24 C.F.R. part 907 (Substantial Default), part 964 (Tenant Participation and Tenant Opportunities in Public Housing)

³⁰ Section 564 of the QHWRA inserted new subsections (H), (I), and (J) to Section 6(j)(1) of the 1937 Act:

³¹ QHWRA, § 563 (Performance Evaluation Study).

assessment of the statutory indicators for all troubled PHAs with more than 250 units where, as deemed appropriate, the HUD assessment team:

“(2)(B)(ii)(1)... shall also consider issues relating to the agency’s resident population and physical inventory, including the extent to which (I) the agency’s comprehensive plan prepared pursuant to section 1437l 5 of this title adequately and appropriately addresses the rehabilitation needs of the agency’s inventory, (II) **residents of the agency are involved in and informed of significant management decisions**, and (III) any projects in the agency’s inventory are severely distressed and eligible for assistance pursuant to section 1437v of this title....

(iii) **shall consult with the residents** and with public and private entities in the jurisdiction in which the public housing is located.

(C) (1)), such [corrective] agreement shall also set forth a **plan for enhancing resident involvement in the management of the public housing agency**. The Secretary and the public housing agency shall, to the maximum extent practicable, seek the assistance of local public and private entities in carrying out the agreement.”³²

To implement the QHWRA amendments, HUD published an Initial Implementation Guidance Update Notice at 64 *Federal Register* 2334 on April 30, 1999, followed by a proposed rule at 64 *Federal Register* 33347 on June 22, 1999, and further details and subsequent notices. On January 11, 2000, HUD published a final rule at 64 *Federal Register* 1712 that made certain amendments to the PHAS final regulations issued on September 1, 1998. 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. Technical corrections published at 65 *Federal Register* 36042 on June 6, 2000 makes certain technical and editorial corrections to the January 11, 2000, final rule. The first iteration of PHAS from 1998 to 2008 consisted of an entity-wide assessment of PHA’s financial and management operations and resident satisfaction, while individual properties were given physical condition assessments.

1. Removal of Statutory Self-Sufficiency and Participation Indicator (8/21/2008)

Since PHAS was established by a final rule published on September 1, 1998 at 63 *Federal Register* 46596, and at 24 C.F.R. 902, public housing operations underwent substantial changes related to the implementation of asset management and the use of property-based management. As such, on August 21, 2008, HUD released proposed changes to the PHAS rules at 73 *Federal Register* 49544 to conform PHAS to asset management with a 60-day public comment period which was reopened on November 17, 2008 to January 8, 2009 “given the public interest in this rule, and the availability of this new [scoring template].” The proposed rule also removed part 901 of 24 C.F.R. which contained the PHMAP regulations.

Another key change proposed in 2008 was the removal of the independent **Resident Service and Satisfaction Indicator** (operationalized through resident surveys) and its

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³² 42 U.S.C. §§ 1437d(j)(2)(B)(ii)(1)-(iii) and (C)(1). ,

subsumption and replacement under the Management Operations indicator:

“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.

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.

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.**³³

§ 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.

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³³ 73 *Federal Register* 49545 (Aug. 21, 2008). Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Substantial Default

(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.

Subindicator 6. Tenant/Management Relations.

6.1 Economic Self-Sufficiency

6/2 Resident Involvement in Project Administration

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.

According to HUD:

“IV. Public Comments Received on August 21, 2008, Proposed Rule

The proposed rule published on August 21, 2008, provided for the public comment period to end on October 20, 2008. During that comment period, HUD made available to the public on its Web site a scoring template. In order to ensure that all commenters had an equal opportunity to address this new information, HUD reopened the comment period on November 24, 2008, and **solicited comments through January 8, 2009.**

HUD received approximately **138 comments** during the first comment period and an **additional 25 comments** during the reopened comment period. Comments were from public housing-related trade associations, housing authorities, advocacy organizations, and individuals. This section of the preamble, which addresses the public comments, organizes the comments by subject category, with a brief description of the comment and HUD's response to the comment.

Several commenters expressed their support of the rule rather than raising issues to be addressed, including support for focusing on the performance of projects, the removal of the “troubled” designation for substandard agencies, and the elimination of both entity-wide scoring and self-certifications for management operations.”

D. Current Interim PHAS Rule (effective 2011)

On February 23, 2011, HUD published new interim regulations governing PHAS at 76 *Federal Register* 10136, “Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Substantial Default; Interim Rule,” Similar to the August 2008 proposed rule, this 2011 interim rule seeks to conform PHAS to asset management. It also excluded the management certification included in the proposed rule and allows properties that score highly in the physical inspection assessment to be scored every two or three years. The 2011 interim rule also **eliminated the resident service and satisfaction indicator and the associated resident survey for the period that the interim rule is in effect**, and provided the following four general areas of PHA assessment: (1) physical

condition of properties, (2) financial condition, (3) management operations, and (4) capital fund program. Per HUD:

“Resident Satisfaction Surveys. A PHA's performance in the area of resident programs and participation would have been 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 have included 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 have included all of the elements regarding economic self-sufficiency and resident participation that are included in the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) at section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)).

HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, participation, and self-sufficiency measures in the final rule that will follow this interim rule. Accordingly, HUD seeks input from the public in the form of comments to this interim rule on establishing more meaningful measures in these areas.”

As in the proposed rule, this interim rule contains three items—tenant accounts receivable, occupancy rate, and accounts payable—under the management operations indicator. Because other proposed elements are not adopted by this interim rule, HUD has rebalanced the scoring for the remaining indicators. **The proposed management elements not adopted here** are utility consumption, turnaround time, work orders, security, the components based on unit inspections, **economic self-sufficiency, and resident involvement**. The physical condition indicator has increased from 30 to 40 points; the financial condition indicator has increased from 20 to 25 points; and the management operations indicator has decreased from 40 to 25 points. The overall value of the Capital Fund program indicator (10 points) remains unchanged.

III. Key Differences Between This Interim Rule and Currently Codified PHAS Regulation^{12]}

- The current codified PHAS regulation scores the physical, financial condition, management operations, and resident service and satisfaction indicators. In this interim rule, HUD removes the resident service and satisfaction indicator, as well as the resident survey, while HUD considers better means of accurately measuring resident satisfaction, tenant participation, and the efficacy of resident self-sufficiency efforts to be included in the final rule. HUD agrees that resident input into the assessment process is important. HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule, which will be promulgated subsequent to and based on HUD's experience with, and the public comments on, this interim rule. Accordingly, the agency

seeks input from the public, including PHA residents and PHAs, as well as other interested members of the public, on establishing more meaningful measures in these areas, including suggestions for what the specific items measured might be and methods of measurement.

Comment: Several commenters stated that economic self-sufficiency should not be scored, because it is outside a PHA's control, there is no funding or staffing allocated to self-sufficiency, it is not a program requirement, it is a social service function not appropriate for PHAs, and including the standard may cause PHAs to favor higher-income tenants or impose work requirements. Some commenters suggested for changes to the self-sufficiency component, including aligning the standard with the Section 8 Management Assessment Program (SEMAP) and using the component only for bonus points.

Removal of the Resident Satisfaction Survey

Comment: The vast majority of commenters supported HUD's removal of the Resident Satisfaction Survey, stating that it does not have statistical validity or is otherwise inaccurate and unhelpful. One commenter, while not supporting the removal of the survey entirely, supported exploring alternatives, and made a number of suggestions, including utilizing Resident Advisory Boards (RABs) to obtain feedback, and sending to RABs and residents councils the results of the management review; having PHAs explain what uses are being made of resident participation funding provided by HUD; having HUD hold meetings with residents and staff; and allowing for a public comment period at PHA board meetings. Also, HUD could make the current survey available in PHA common areas, develop complaint forms, and create an ombudsman position to assist residents and resident councils. One commenter stated that it would be more realistic for an onsite management review team to ask residents the survey questions directly.

Response: HUD's experience is that the Resident Satisfaction Survey does not have a sufficient completion rate overall to be useful. HUD agrees that resident input into the assessment process is important. **Notwithstanding the removal of the resident satisfaction component for the period during which this interim rule will be in effect, HUD is committed to exploring resident satisfaction, self-sufficiency, and participation measures in the final rule. Accordingly, HUD seeks comments from the public on better methods of measuring resident satisfaction, self-sufficiency, and participation.**

PART 902 – PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

§ 902.1 Purpose, scope, and general matters

- § 902.1(b): Although PHAS is not intended to capture all aspects of public housing agency (PHA) compliance, HUD should not be foreclosed from taking appropriate action where compliance issues that would normally be flagged through other mechanisms are identified through PHAS. We would therefore recommend striking the period at the end of this subsection, and substituting the following: “; provided, however, nothing shall bar HUD from taking action under PHAS because there may be aspects that involve such other federal requirements..”
- § 902.1(d): In advising PHAs of their scores and identifying low- and poor- performing developments and PHAs so that they will receive appropriate attention and assistance, HUD should ensure that this information is also shared with affected resident councils, resident advisory boards (RABs), and local and state appointing officials to promote accountability. Moreover, the information should be sufficiently transparent so that members of the public will understand why a particular site or PHA received the score and what action is required to improve performance. In addition to addressing under-performance issues in whatever manner may be required by HUD, the PHA should also address this in an update to its PHA Plan which is shared with the affected resident councils, the RAB, and local officials, and corrective action plans and sanctions taken (for substandard and troubled performers) should also be shared with these parties.
- § 902.1(f): In addition to published scoring procedures from time to time in the Federal Register for public comment, HUD should maintain information on its web-site regarding how developments and PHAs are scored, as well as the most recent scores for each PHA and any currently active corrective action plans or sanctions in effect for those PHAs that are substandard or troubled performers.

§ 902.5 Applicability

While mixed-finance developments are excluded from financial condition and management operations indicators (see 24 C.F.R. §§ 902.30(c) and 902.40(b)), there is no reference to their special treatment in Subpart A, and there should be. In a number of mixed finance developments, there will be a mix of public housing and other affordable housing units, and it may often be difficult to determine which units are subject to PHAS and which are not. Moreover, mixed finance sites should remain subject to PHAS scrutiny regarding their financial condition and management. There is nothing in the authorizing legislation (42 U.S.C. § 1437d(j)(1)) which authorizes exemption of such units from evaluation under the statutory categories. While the way in which information is reported on “mixed finance” sites may hamper effective monitoring/enforcement (see discussion at 76 FR 10141), this is not a reason to

dispense with it; rather, it may mean that HUD needs to change data collection requirements so that there is a way to effectively monitor these sites.

§ 902.11 PHAS performance designation

- At § 902.11(c), HUD indicates that a Corrective Action Plan shall be required for a substandard performed “if the deficiencies have not already been addressed in a current Corrective Action Plan.” This provision does not make sense, since by definition a PHA will have been found not to have addressed deficiencies in order to get a substandard score. It would probably be better to provide that if the PHA already has a Corrective Action Plan, the PHA and HUD will determine what modifications may be necessary to the existing plan.
- At § 902.11(d)(2), HUD says that troubled performers will be subject to the sanctions provided in Section 6(j)(4) of the United States Housing Act of 1937.³⁴ In the interest of transparency for those who do not have a United States Code handy, HUD should spell out what the sanctions are, i.e., termination, withholding, reduction, or limitation of Capital Fund or Operating Fund assistance, or withholding of Section 8 assistance. It is also not clear why this provision solely refers to these sanctions, as opposed to the other actions detailed in Section 6(j)(3) and in Part 907, such as the appointment of other management entities or use of court receivership. Tenants of a PHA that has mismanaged Capital Fund performance should not immediately be faced with reduction or loss of funding; other remedies, such as suspension of payments or the withholding of administrative fees or other management incentives, or injunctive or declaratory relief in court, may be the more appropriate remedy.

902.13 Frequency of PHAS assessments

- While it’s understandable that, due to unforeseen circumstances, the time for performing PHAS assessments may be extended, this must not be abused. For example, it would not be acceptable for HUD, simply for budgetary reasons, or because of waiting for some software refinement, not to perform PHAS assessments for years on end. There should be some outside limit on the extensions, rather than giving HUD carte blanche. Moreover, if a PHA is adversely affected by the lack of a timely assessment—for example, a PHA is claiming that it believes it qualifies for high performer status, but cannot show that because of HUD delay—it should have the opportunity to request expedited action by HUD.
- At § 902.13(c), there’s a discussion that PHAs will not receive a PHAS score for financial submissions in the years other than the general PHAS assessment, but the PHA must still submit annual unaudited and audited financial statements. HUD should make clear that if the submitted financial information is cause for concern, however, HUD is

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³⁴ There is a typographical error in the text: “42 U.S.C.1437(d)(j)(4)” should be “42 U.S.C. 1437d(j)(4).”

not foreclosed from taking appropriate action just because it is not a PHAS assessment year.

Subpart B—Physical Condition Indicator

The PHAS authorizing statute, 42 U.S.C. § 1437d(j)(1)(J) refers to the extent to which a PHA is providing acceptable basic housing conditions. There are two ways to measure this—through physical inspections which are conducted in accordance with this subpart, and through getting feedback from residents regarding their satisfaction with the manner in which PHAs address housing conditions. HUD has proposed dropping the resident satisfaction surveys, and for the reasons identified in the separate comments of the National Low Income Housing Coalition, we support the retention of some instrument to gather information on resident satisfaction on a range of topics, including but not limited to physical conditions.³⁵

§ 902.20 *Physical condition assessment*

- At § 902.20(d), HUD states that the physical inspections do not relieve the PHA of its responsibility to inspect public housing units, as provided in Section 6(f)(3) of the U.S. Housing Act of 1937 (42 U.S.C. § 1437d(f)(3)). Here again, HUD should detail what that requires, rather than leaving parties having to reference the U.S. Code—i.e., that annual inspections be performed by the PHA.
- At 902.20(f), reference is made to providing HUD access to all units whether or not the resident is at home or has installed additional locks. It must be recognized, however, that the PHA must comply with 24 C.F.R. § 966.4(j)(1) regarding giving at least two days' advance written notice for such inspections, and any additional requirements that may be established by state/local law or the parties' lease. HUD or its representative must therefore ensure that adequate advance notice is given to the PHA so that the PHA does not run afoul of such requirements, and a PHA should not be subject to adverse sanction for lack of access where HUD and its representative have not provided such notice themselves. Additionally, no resident should be subject to any adverse action (see 76 FR 10142 center column, and top of right column) nor should entry be obtained by force or without resident's consent if the PHA cannot demonstrate to the inspector that proper and timely written notice was given to the resident.

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

An additional subsection should be added, providing that the complex meets accessibility requirements established by HUD, as well as such state/local additional requirements on accessibility as may exist. See 24 C.F.R. § 8.32. HUD should provide information to its representatives as to what should be expected to evaluate compliance. See also § 902.22(g).

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³⁵ The statute provides for a role of resident councils to partner with PHAs on maintenance oversight. See 42 U.S.C. § 1437d(c)(5)(C) (PHA is to establish an effective tenant-management relationship designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the PHA, together with tenant councils where they exist, enforces those standards fully and effectively).

§ 902.22 Physical inspection of PHA project

- At § 902.22(d)(2), HUD states that: “*Vacant units that are not under lease at the time of the physical inspection will not be inspected. The categories of vacant units not under lease that are exempted from physical inspection are as follows:*”, first seeming to exempt all vacant units and then restricting the exemption to particular categories of units. Perhaps it would remove the ambiguity to simply state: “Vacant units, in the below described categories, that are not under lease at the time of the physical inspection, are exempted from physical inspection.” This wording has the added benefit of exposing unjustified vacancies to potential random inspection. This information, however--the number of units, and perhaps the specific unit numbers of all vacant units that do not fit one of the § 902.22(d)(2) categories -- may be collected, and counted against the PHA, under the “occupancy” sub-indicators in §§ 902.43(a) (1) (Management operations performance standards) and 902.50(c)(2) (Capital Fund program assessment). HUD may also wish to add to the exempt category so called “hotel” units, which are used for short-term occupancy during capital work at a site, with households being returned to their original units after the short-term placement.
- At § 902.22(f), HUD has added the option, where Exigent Health and Safety (EHS) and Health & Safety (H&S) deficiencies have been identified, to “correct, remedy, or act to abate” all such deficiencies. While the regulation is not completely clear on the distinctions among these terms, HUD indicates that it revised the language to permit a PHA to “abate the effect of the violation without necessarily correcting or remedying the condition. For example, a PHA may move a family into a different unit until fire damage is repaired.” 76 FR 10138. Given the rapid response required for EHS deficiencies, this flexibility makes sense. However, HUD should require PHAs to ensure that the underlying repair/correction is ultimately completed within a reasonable time frame, consistent with sound management. Moreover, HUD may want to distinguish between the flexibility given for “abatement” for EHS and for other H&S deficiencies, since for the latter, no action is required until after the PHA has received the Physical Inspection Report, and the PHA then has 45 days to address the deficiency. See 24 C.F.R. § 902.26(a). While “abatement” might still be necessary for some H&S deficiencies given the scope of work required, or planned future capital work, this should be the exception, rather than the rule.
- At § 902.22(g), HUD should evaluate compliance with accessibility elements in the PHAS score. If HUD believes that it cannot adequately train/supervise those conducting the PHAS inspections to identify full accessibility complex, given the range of factors that must be considered (including what modernization improvements have been made), it should at least include any deficiencies identified as part of the report.³⁶ These should

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³⁶ We are concerned that if persons conducting the physical conditions inspections for HUD cannot adequately assess accessibility compliance, and there is a passing score in this area, PHAs may then use that to say there has been a HUD endorsement for their noncompliance, and this is obviously not acceptable. On the other hand, we recognize that FHEO may not have the resources to adequately police this area on its own, and fostering compliance through the PHAS process will affirmatively further fair housing enforcement.

be made available to the public, affected resident councils, RAB, and state/local appointing officials in addition to HUD's Office of Fair Housing and Equal Opportunity (FHEO), so that they are aware of such issues. Moreover, remedial action regarding accessibility deficiencies should be included in an update to the PHA Plan and shared with such parties.

§ 902.26 Physical Inspection Report

- At § 902.26(a), as with § 902.22(f), PHAs may correct, remedy, or act to abate deficiencies in the Physical Inspection Report. As noted above, while abatement may be the appropriate remedy in some cases, it should not be the rule, particularly where there is some time to address H & S deficiencies, and a PHA should also ensure that the underlying condition will ultimately be remedied.

Subpart C—Financial Condition Indicator

§ 902.30 Financial condition assessment

- At § 902.30(c), it is stated that mixed-finance developments are excluded from the financial condition indicator. The same is also true for the management operations indicator (see § 902.40(b), below). As noted in our comments under § 902.5 above, we believe mixed-finance developments should remain subject to PHAS review and there is no basis for exemption from evaluation under the statutory criteria.

§ 902.35 Financial condition scoring and thresholds

- As noted at 76 FR 10140, comment suggested that the proposed rule should provide a mechanism for adjusting scores (both overall and for particular components) as a result of funding shortfalls, noting that operating subsidy proration levels were between 84 percent and 90 percent from 2006 to 2009. HUD responded that when Congress adopted 42 U.S.C. § 1437d(j), it made no mention of funding allowances. **Nonetheless, the interest of full transparency and public understanding is best promoted by at least providing that if a PHA's inability to perform at full capacity was impaired by inadequate funding, or by unanticipated recapture or reduction of funding in the middle of a fiscal cycle, the PHA should have an opportunity to state/explain that, and that should be factored in to determining the appropriate action to be taken by HUD. For example, if HUD were to recapture PHA reserves in order to help weather a program-wide shortfall, and because of that, the PHA's financial condition indicators were not at desired levels, the PHA should not be unfairly or unjustly penalized for this, causing a further eroding of public confidence in the program.**
- While the Quick Ratio (QR), Months Expendable Net Assets Ratio (MENAR), and Debt Service Coverage Ratio (DSCR) may all provide useful information, HUD must ensure that the information collected either under this or other indicators is all of what is required by Congress—i.e., number and percentage of vacancies (and progress with

vacancy reduction), amount and percentage of unobligated Capital Funds, percentage of rent collected, utility consumption, the average period of time required to repair and turn-around vacant units, the proportion of maintenance work orders outstanding (and progress in reducing turnaround time), and the percentage of units that an agency fails to inspect to ascertain modernization or modernization needs. See 42 U.S.C. § 1437d(j)(1) A-G.³⁷

Subpart D—Management Operations Indicator

1/ In General: Management Reviews: HUD had proposed, in the August 21, 2008 rule, to replace the system of self-certifications for the management operations indicator with onsite management reviews, consistent with monitoring practices in HUD’s multifamily program. HUD has now scrapped this proposal, and has said that the management review “will be used as a diagnostic and feedback tool”. See 76 FR 10138. HUD is reducing what will be reviewed to three components which can be obtained directly from PHAs’ financial reports—tenant accounts receivable, occupancy rate, and accounts payable. HUD indicates that reliance on this data will permit it to get PHAS scores out in a timely manner, and if there are low scores, “the management review can aid in diagnosing the nature of the problem and determining appropriate corrective actions”. Id.

On-site management reviews have been critical to the success of the multifamily program, and they are key to public housing success. Mere reliance on three financial data elements will not permit HUD to know whether there are deep-seated management problems which require action. We understand that HUD is going through a time of straitened resources, and there may be questions about how best to measure management performance. **We are concerned that HUD will simply not do management reviews at all, and that problems requiring attention will not be identified until they are much further advanced and intractable.**

A key element in effective management review, as well, is ensuring that information is provided to residents, resident councils, and RABs regarding management assessments, and that PHAs and HUD solicit feedback from such individuals and organizations in advance of such assessments and include them as partners in helping to identify solutions for the PHA.

2/ In General: Fair Housing (see also our comments above regarding: (i) incorporating accessibility assessments into physical conditions evaluations as a means to affirmatively further fair housing and; (ii) Section 3 compliance as part of resident self-sufficiency evaluation): HUD has noted that during its prior rulemaking, a number of comments supported inclusion of fair housing evaluation into management assessment. HUD responded that fair housing was within

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³⁷ The statute refers to HUD’s evaluation being done under “Any other factors as the Secretary deems appropriate, which shall not exceed the seven factors in the statute, plus an additional five”. 42 U.S.C. § 1437d(j)(1)(K). However, there are actually ten factors set forth in the statute at 42 U.S.C. § 1437d(j)(1). In addition to the ones outlined above, (H) refers to coordination, promotion, or provision of economic self-sufficiency for residents and their opportunities for involvement in the administration of public housing; (I) refers to “the extent to which the [PHA] (i) implements effective screening and eviction policies and other anticrime strategies and (ii) coordinates with local government officials and residents in the project and implementation of such strategies”; and (J) refers to the extent to which a PHA is providing acceptable basic housing conditions.

the purview of FHEO, but asked what data elements, if any, could be obtained by PIH staff during onsite reviews, and through other means, that can assist FHEO in its monitoring functions and to affirmatively further fair housing. See 76 FR 10141.

Management reviews should include determining whether PHAs have established and implemented reasonable accommodation (RA) policies, limited English proficiency (LEP) policies and language access plans (LAPs), and have implemented the provisions of the Violence Against Women Act (VAWA). This would include being sure that notices to applicants and residents include information about RA, LEP, and VAWA rights, particularly where there may be adverse action taken against an applicant or resident that could be mitigated. PHAs should provide copies of standard notices that are used. Moreover, PHAs should advise HUD as to what documents have been translated into other languages (and which languages), as well as any plans over the following year to conduct/complete further translation. PHAs should also have a tracking system for how they have handled/resolved matters where RA, LEP, or VAWA issues were raised so that performance in these areas can be measured. For larger PHAs, the PHA should identify which staff members have responsibility for oversight and implementation of RA, LEP, and VAWA policies and that the information provided to applicants/residents informs them of how to pursue complaints within the PHA.

In addition, where audits or reviews on occupancy or fair housing issues have raised past concerns, or where HUD and a PHA have entered into Voluntary Compliance Agreements (VCAs) or are in litigation on fair housing issues, the management review should include an assessment of the PHA's progress in following through on the recommendations of the audit/review, the terms of the VCA, or in meeting the terms of any decree. It may be appropriate, in such cases, to include FHEO staff as part of the management review team. Any information about audits or reviews, VCAs, or court decrees and PHA follow-up should be part of the PHA's Annual and Five-Year PHA Plan, and should be shared with residents, affected resident councils, RABs, and appointing authorities.

3/ In General: Security: HUD has noted that under the interim rule, the security subindicator is no longer scored. A review of security, including denials of admission based upon screening for criminal history, will still be included in protocols for onsite management reviews. HUD further indicated that it wishes to create strong and appropriate policies to measure efforts to ensure a safe environment for public housing residents, and it is soliciting public comments on the security component. 76 FR 10146. PHAs should have measures of what incidents have been reported within its developments month by month, and what the response has been, so that trends in crime and the effectiveness of crime prevention strategies can be tracked. PHAs should also report regarding what meetings that they have had with residents and resident councils to discuss crime in developments and anti-crime strategies.³⁸ At times, this may go hand in hand with efforts to affirmatively further fair housing—if crime of one sort or another appears to be disproportionately targeted toward particular groups, particularly if there are accompanying demographic trends, the PHA, the community, and HUD may need to take concerted efforts to vigorously address this.

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³⁸ As noted above, 42 U.S.C. § 1437d(c)(5)(C) provides that PHAs are to partner with resident councils on implementation and enforcement of security strategies.

Security cannot be considered in isolation from other components of a PHA's operation. Thus, for example, survivors of domestic violence or stalking, harassment, or hate crime, or persons who are victims/witnesses to violent or drug-related criminal activity, may need to be quickly transferred to other developments or issued tenant-based rental assistance so they can relocate to a safe location. Onsite reviews may want to ask to what extent transfers are required for safety reasons and what assistance/resources the PHA has devoted to this.

4/ In General: Appearance and Market Appeal: HUD noted that a number of commenters in the prior rulemaking objected to the "appearance and market appeal" subindicator, and noted that criteria related to signage, graffiti, boarded up windows, window treatments, landscaping, paved surfaces, dumpsters and trash cans, or whether a property looked "institutional", were difficult to enforce, unfair in application, and overly subjective. We agree that the push to simply beautify appearances for "market appeal" is the wrong approach; the PHA's focus first and foremost should be on providing decent, safe, and sanitary housing for its residents. It does not serve the public for a building to look good in a windshield survey, but to be falling apart for its residents. We are concerned that the "market appeal" factor pushes the PHA away from its basic mission of providing habitable housing. This is not to say that some of the factors mentioned here are not of importance to residents: no one wants to live in a development where trash is not picked up, or where graffiti spreads messages of intolerance or fear. Market appeal, however, is not one of the statutory criteria, and HUD should focus on ensuring that it can track and evaluate the criteria that have been mandated by Congress.

§ 902.40 Management operations assessment

- At § 902.40(b), mixed-finance developments are excluded from the management operations indicator. As noted in our comments on § 902.5 above, we believe that mixed-finance developments should remain subject to PHAS review.

§ 902.43 Management operations performance standards

- At § 902.43(a), HUD tracks certain of the statutory performance criteria—occupancy, tenant accounts receivable, and accounts payable. However, the statute requires far more of HUD. Vacancy information is to include the number and percentage within an agency's inventory "including the progress that an agency has made within the previous 3 years to reduce such vacancies". See 42 U.S.C. § 1437d(j)(1)(A). Information on accounts payable may not provide the detailed information on utility consumption (with appropriate adjustments to reflect different regions and unit sizes) that is required by 42 U.S.C. § 1437d(j)(1)(D). None of the information regarding average periods of time to repair and turn-around vacant units (42 U.S.C. § 1437d(j)(1)(E)), the proportion of outstanding maintenance work orders and any progress during the prior 3 years to reduce the period of time to complete maintenance work orders (42 U.S.C. § 1437d(j)(1)(F)), nor the percentage of units that a PHA has failed to inspect (42 U.S.C. § 1437d(j)(1)(G)) is included in the management operations indicator. All of this information is required by Congress. These criteria are not subjective and they should be ascertainable.

Subpart E—Capital Fund Program Indicator

902.50 Capital Fund program assessment

- At § 902.50(a), we agree with HUD’s addition of vacancy reduction as an element of the Capital Fund indicator, in addition to timely obligation of the Capital Fund. This is consistent with the Congressional mandate at 42 U.S.C. § 1437d(j)(1)(A-B).
- At § 902.50(b), while a PHA that chooses not to participate in the Capital Fund may be exempt from the provision regarding timely obligation of Capital Funds, it should nonetheless remain accountable for such reporting on obligation of funds obtained prior to deciding not to participate. Moreover, the PHA should be required to report on the number and percentage of vacancies within its inventory and the progress that it has made in the past three years to reduce such vacancies, since this statutory requirement does not hinge on whether or not the PHA receives Capital Funds.
- At § 902.50(c)(2), the PHA’s submission on vacancies should be consistent with what is required by statute, i.e., the number and percentage of vacancies within an agency’s inventory, including the progress that the agency has made within the previous three years to reduce such vacancies. See 42 U.S.C. § 1437d(j)(1)(A). As mentioned above, HUD could fine-tune the differences in the approach to different kinds of vacancies—see proposed § 902.22(d)(2) and comments above.

§ 902.53 Capital Fund program scoring and thresholds

- At § 902.53(a), the description of scoring here seems limited to obligation of Capital Funds, and does not mention vacancies and vacancy reduction. This should be revised.
- At § 902.53(b), there is no discussion of the thresholds for the separate subindicators under § 902.50(c), and there should be.

PART 907 – SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

§ 907.1 Purpose and scope

While the PHAS regulations are limited to the federal public housing program, a PHA’s substantial default may involve its Section 8 program. There should be some explicit recognition of this in the regulation to avoid any misunderstanding. When the Section 8 Management Assessment Program (SEMAP) regulations at 24 C.F.R. Part 985 are revised, they should also cross-reference 24 C.F.R. Part 907.

§ 907.5 Procedures for declaring substantial default

- At § 907.5(a), notification of a finding of substantial default should also be transmitted in a timely manner to the Resident Advisory Board (RAB) and any affected resident

councils or resident organizations (including, as applicable, Section 8 resident organizations) and to the resident commissioner(s) if any of the Authority (this may be unnecessary in cases where the residents are considered to be the ‘appointing authority’ of the resident commissioner under § 907.5(a)).

- At § 907.5(b), a PHA’s response to the notice of substantial default should also be transmitted in a timely manner to the RAB and any affected resident councils or organizations, as well as the appointing authority(ies) of the PHA’s Board of Commissioners and to the resident commissioner(s) if any of the Authority.

§ 907.7 Remedies for substantial default

- At § 907.7(a)(1), in the interest of transparency for those who do not have the federal statute available, the regulation should describe what actions may be taken by HUD under 42 U.S.C. § 1437d(j)(3). As mentioned above, corrective remedies other than reduction or termination of funding should be explored, such as appointment of alternative management, reduction of administrative fees or incentives, or suspension (but not permanent loss) of payments, as well as court action and receivership if other steps fail to change PHA performance.
- Notice of the exercise of any of these remedies should be provided by HUD to the RAB and any affected resident councils or organizations and describe the specific actions that HUD is taking. Moreover, HUD should offer to consult with affected residents and/or resident organizations to discuss the default and its proposed actions.

A. ELEMENTS OF RESIDENT SATISFACTION TO BE MEASURED

The annual resident satisfaction survey must be restored to the public housing assessment PHAS system.

In the preamble to the interim rule (Federal Register, 10147) HUD states that it proposed removing the Resident Satisfaction Survey in the August 21, 2008 proposed rule because the survey did not have a sufficient completion rate overall to be useful. Part B of this comment letter contains recommendations offered by public housing resident leaders that should result in far greater response rates.

Assuming the reinstatement of an annual resident satisfaction survey, this comment letter offers suggestions for improving the survey instrument used in the past.

1. Question #1 should be moved to be the final, multiple-choice question.
2. Eliminate current Question #8.
3. Create a new Question #8.

“Management provides information about:”

Grievance process and hearing rights

Changes in rules, policies, and management

Your rent and how it is calculated

What to do and where to go if a problem is not resolved

Where to find program rules, regulations, and law

How money has been spent and will be spent for improvements at my development.

4. Create a new Question #9 (still within “Communications”).

The housing authority notifies residents and encourages them to comment whenever there is a change to leases, grievance procedures, or policies.

5. Create a new Question #10 (still within “Communications”).

The housing authority meets with residents to discuss issues when residents request such meetings.

6. Create a new Question #11 (still within “Communications”).

All notices to residents inform them in the appropriate languages that they can request translated documents and interpreters for meetings.

7. Create a new Question #12 (still within “Communications”).

All notices to residents inform them that they can request reasonable accommodations if they, or a member of their household, have a disability.

8. Create a new section entitled “***Resident Organizations***”.

9. Under “Resident Organizations” add a new Question #13:

Is there an active resident organization for your development or for the housing authority as a whole? If your answer is “no”, go to Question # 15.

10. Create a new set of Questions #14 (still within “Resident Organizations”)

“Management works well with resident organizations”

(Each of the following questions should be followed by strongly agree, agree, disagree, strongly agree.)

- a. My development has a very active resident/tenant organization.
- b. Our housing authority staff and development management works closely with our resident organization to make our community a good place for residents to live.
- c. Our housing authority and development management communicate important information effectively to our resident organization.
- d. I regularly participate with the resident organization at my development.
- e. The resident organization in my development is effective in advocating for the needs of residents.
- f. The resident organization and housing authority hold meetings in wheelchair accessible locations.

11. Create a new Question #15 (still within “Resident Organizations”).

If you answered “no” on Question #13 please answer Question #15; if you answered “yes” to Question #13, skip Question #15.

“There is not an active resident organization for my development or for the PHA as a whole, but”:

- a. There are adequate opportunities for resident participation.
- b. The housing authority has tried to help residents form a resident organization or to improve a resident organization that was ineffective.

12. Insert an entirely new section after “Resident Organizations” and title it “Resident Participation”.

The preamble to the interim regulations consistently uses in one phrase: resident satisfaction, economic self-sufficiency, and resident participation. Therefore, resident participation should be a key section of the survey.

Each of the following questions should be followed by (strongly agree, agree, disagree, strongly disagree).

Resident Participation

16. The housing authority provides adequate advance notice to residents about housing authority board/commission meetings, PHA Plan hearings, or other important housing authority meetings.
17. The housing authority provides adequate information so that residents can effectively participate in housing authority board/commission meetings, PHA Plan hearings, or other important housing authority meetings.
18. The housing authority provides information far enough in advance of the hearing or meeting so that residents can effectively participate.
19. The housing authority provides for a reasonable number of meetings for residents to interact with staff.
20. Development management provides for a reasonable number of meetings for residents to interact with development staff.
21. Development management informs residents about the development’s budget and holds meetings with residents to discuss its budget and other development-related concerns.
22. Housing authority staff is respectful of residents at meetings and hearings.
23. Development staff is respectful of residents at meetings and hearings.
24. Housing authority staff considers resident comments at public meetings and hearings.
25. Development staff considers resident comments at public meetings and hearings.
26. Housing authority staff provides reasonable responses to resident comments at public meetings and hearings.
27. Development staff provides reasonable responses to resident comments at public meetings and hearings.
28. The housing authority and development staff communicate effectively with and provide accessible materials to residents with hearing and visual disabilities.

13. Under the “Safety” section, add to current #10,

“The following contribute to crime in my property”

Loitering and trespassing

Gang activity on the property

Drug activity on the property

Insecure windows and doors

Lack of activities for youth

Lack of jobs

14. In the “Services” section of the survey, there should be questions asking about: insects and vermin; mold and mildew; and, adequate space and play structures for children.

15. In the “Conclusion” section (which is misnamed), existing Question #18 should be broken down in to two parts, one addressing “permanent” disability and another addressing “short-term” disability.

16. Also in the “Conclusion” section, create a new question.

“Management is:”

Knowledgeable and well-trained

Available for questions

Respectful and sensitive to residents with disabilities

Respectful and sensitive to residents with limited English skills

17. In the “General Information” section, add two questions:

What is your primary language?

Was the resident satisfaction survey originally provided to you in your primary language?

18. An open-ended question should be added at the very end of the survey, for example, *“Please write more about any of the items on this survey, or about any concerns or suggestions you have not raised by the survey.”*

There should be plenty of space for responses so that residents can elaborate on any problems, provide suggestions, and note particularly good features.

This narrative would not be scored, but all narrative responses should be summarized and included in the final report available to residents.

B. METHODS OF MEASURING RESIDENT SATISFACTION

1. Promoting the Resident Satisfaction Survey

Background

As previously mentioned, HUD states in the preamble to the interim rule (Federal Register, 10147) that the resident satisfaction survey did not have a sufficient completion rate overall to make it useful. Many resident leaders agree that few surveys are returned because: the PHA did not adequately promote the survey, leading to surveys being discarded; people were afraid of retaliation; or, people thought the PHA would ignore responses and not make any improvements. Others noted that while they observed good response rates, the outcome was questionable because the PHA warned residents that a poor response rate and/or a poor performance indicator would result in the PHA receiving less money from HUD.

Recommendations

Resident leaders from Resident Advisory Boards (RABs) and duly recognized resident organizations, as well as other organizations that work extensively with residents and that are trusted (herein referred to as “trusted entities”) should be given the responsibility of promoting the resident satisfaction survey, getting information about the survey out to residents, vouch for the validity of the survey, and ensure respondents’ confidentiality.

In order to better achieve success, HUD must provide technical assistance to the “trusted entities”, give an adequately trained person from a “trusted entity” a certification, and ensure that there will not be PHA retaliation on the “trusted entity” or a resident who completes the survey.

2. Conducting the Resident Satisfaction Survey

Background

Resident leaders think that the use of an impersonal third party contractor to conduct the survey has contributed to a low response rate. Many residents discard the survey sent in the mail by the third party contractor. Resident leaders observe that a greater survey response rate is likely when a resident from the development being surveyed, who will probably be known as a neighbor, follows up after a survey is mailed. Public housing advocates in New York City successfully obtained more than 3,000 responses to a survey about PHA services and management conducted door-to-door by resident leaders and representatives of trusted advocacy groups.

Recommendations

- a. A random sample of residents from each development must be surveyed, following Limited English Proficiency (LEP) guidance. The surveys should enable residents to indicate levels of satisfaction with the management and the physical conditions of their development, as well as satisfaction with the PHA central office (COCC) as appropriate.

- b. Trusted entities should, to the greatest extent feasible, be used to conduct the resident satisfaction survey. Whenever possible, surveys should be administered in person by a resident or someone else appointed by a trusted entity who is trained and certified by HUD and who is provided a modest stipend.

(How it might work: After receiving an annual address update from the PHA, an independent third party contractor would randomly sample residents of each development to survey using LEP guidance. The third party contractor would mail the survey to the household in the primary language of the head of household [see below]. The third party contractor would also notify the trusted entity with the name and address of residents sent a survey. Residents or staff from the trusted entity would contact surveyed households to encourage them to complete the survey and to assist with completing the survey if requested. If thought best by resident organizations, the survey could be directly administered by residents or staff of a trusted entity, dispensing with mailing surveys.)

3. Distributing Survey Results and the Follow-up Plan

- a. The overall results of the resident satisfaction survey for each development, and for the PHA in general, as well as the scores for each question on the survey for each development and for the PHA in general, must be available to residents.
- b. The survey results should show residents how many surveys were sent and how many were returned for their development and all other developments.
- c. The PHA's plan to address issues raised by the survey (e.g., the "Follow-up Plan" utilized in 2000) should be available to residents.
- d. The survey results and the PHA Follow-up Plan must be made available to residents by:
 - Distributing them to the RAB, resident organizations, and other entities requesting them;
 - Displays at multiple common areas and other areas frequented by residents at each development (such as laundry rooms, community rooms, recreation rooms, etc.), as well as at the PHA central office;
 - Presenting them as agenda items for PHA board/commission meetings, and for the annual PHA Plan hearing;
 - Attaching them as components of the annual PHA Plan for "unqualified" PHAs and the 5-Year Plan for small, "qualified" PHAs.

In addition, the final rule should encourage PHAs to also make the survey results and Follow-up Plan available to residents by other means such as articles in resident newsletters and posting to the PHA website and/or city or county website.

4. Scoring the Resident Satisfaction Survey

Background

Concerns Raised by the August 21, 2008 Proposed Rule

The August 21, 2008 proposed PHAS rule eliminated the RASS indicator, claiming that resident concerns would be reflected in a “management” subindicator that would give a PHA 1 point out of 40 for activities promoting economic self-sufficiency, and 1 point out of 40 for resident participation (which would only require one resident “opportunity” to get a grade of “A”.)

In 2008 HUD proposed counting toward “resident satisfaction” a couple of the factors in the “management operations” indicator such as “response to repair requests”.

Instead of having a standalone resident satisfaction indicator, the 2008 proposed rule would compensate by merely performing resident surveys at different frequencies (not annually). The outcome of such a survey would not have affected a PHA’s PHAS score.

Additional Concerns Raised By Resident Leaders

Resident satisfaction can be overshadowed by other indicators. For example, a PHA could be counted as a “high performer” but still not be responsive to residents (getting many points for, say, the “financial” indicator).

PHAs often have many residents whose primary language is not English; however, the resident satisfaction survey (and promotion of it) is often not provided in the necessary languages.

Recommendations

HUD must make it clear to PHAs that it is serious about measuring resident satisfaction and resident participation.

- a. Resident satisfaction and participation must remain a separate, independent indicator. Resident satisfaction and participation should not be a mere “subindicator” of the “management operations” indicator; rather, it should be a standalone indicator that forms part of a composite PHA PHAS score.
 - i. While resident self-sufficiency is important, it is not a genuine indicator of “resident satisfaction”. Any future design by HUD to award points for a PHA’s efforts to coordinate, promote, or provide programs and activities to promote economic self-sufficiency should apply to “management operations” as it did in the 2000 rule.
 - ii. Factors such as “response to repair requests” should only be viewed as pertaining to “management operations”; resident satisfaction must be an independent and significant PHAS indicator.

- b. The resident satisfaction survey must be conducted annually, and it must carry significant weight in a PHA's overall performance assessment.
- c. A full 20 points (out of a total of 100 for all of PHAS) must measure resident satisfaction and resident participation. Raising the resident satisfaction score will provide PHAs with the incentive needed to provide better customer service.
 - i. All 20 points should measure how satisfied residents are with their development and the extent to which resident participation is facilitated. A composite of all development scores would comprise a PHA's overall resident satisfaction and participation score. None of the 20 points should go for Survey Implementation or devising a Follow up Plan (as was done prior to the interim rule).
 - ii. As in 2000, in order for a PHA to be designated as a "standard" performer, it must receive 60% of the 20 points available for resident satisfaction and participation.
 - iii. In order for a PHA to be deemed a "high performer" it must receive 80% of the 20 points available for resident satisfaction and participation.
- d. When PHAs do their required unit address update, or at the annual rent recertification, they should ask what the head of household's primary language is and note that language. Then, when the survey's random sample is designed, it should be weighted to recognize the various languages. Surveys should be distributed to each development in accordance with Limited English Proficiency (LEP) guidance. Resident survey administrators should be provided with backup surveys in all necessary languages.
 - i. The resident satisfaction and participation scoring system should provide an extra point for going beyond minimum language requirements.
 - ii. The resident satisfaction and participation scoring system should cause a PHA to lose two points for failing to meet minimum language requirements.

If there are questions regarding these comments, please contact:

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