

NATIONAL AFFORDABLE HOUSING ACT of 1990

SECTION 502. REFORM OF PUBLIC HOUSING MANAGEMENT.

(a) PERFORMANCE INDICATORS FOR PUBLIC HOUSING AGENCIES.

-Section 6(j) of the United States Housing Act of 1937 (42 U.S.C. 1437d(j)) is amended to read as follows:

"(j)(1) The Secretary shall develop and publish in the Federal Register indicators to assess the management performance of public housing agencies. The indicators shall be established by rule under section 553 of title 5, United States Code. Such indicators shall enable the Secretary to evaluate the performance of public housing agencies in all major areas of management operations. The Secretary shall, in particular, use the following indicators:

"(A) The number and percentage of vacancies within the agency's inventory, including the progress that an agency has made within the previous 3 years to reduce such vacancies.

"(B) The amount and percentage of funds obligated to the public housing agency under section 14 of this Act which remain unexpended after 3 years.

"(C) The percentage of rents uncollected.

"(D) The energy consumption (with appropriate adjustments to reflect different regions and unit sizes).

"(E) The average period of time that an agency requires to repair and turnaround vacant units.

"(F) 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) 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).

"(H) Any other factors as the Secretary deems appropriate which shall not exceed the seven factors in the statute, plus an additional five.

"(I) The Secretary shall:

"(i) Administer the system of evaluating public housing agencies flexibly to ensure that such agencies are not penalized as a result of circumstances beyond their control;

"(ii) Reflect in the weights assigned to the various indicators the differences in the difficulty of managing individual projects that result from their physical condition and neighborhood environment; and

"(iii) Determine a public housing agency's status as "troubled with respect to the program under section 14" based upon factors solely related to its ability to carry out that program.

"(2)(A)(i) The Secretary shall, under the rulemaking procedures under section 553 of title 5, United States Code, establish procedures for designating troubled public housing agencies, which procedures shall include identification of serious and substantial failure to perform as measured by the performance indicators specified under paragraph (1) and such other factors as the Secretary may deem to be appropriate. The Secretary shall also designate, by rule under section 553 of title 5, United States Code, agencies that are troubled with respect to the program under section 14.

"(ii) The Secretary may also, in consultation with national organizations representing public housing agencies and public officials (as the Secretary determines appropriate), identify and commend public housing agencies that meet the performance standards established under paragraph (1) in an exemplary manner.

"(iii) The Secretary shall establish procedures for public housing agencies to appeal designation as a troubled agency (including designation as a troubled agency for purposes of the program under section 14), to petition for removal of such designation, and to appeal any refusal to remove such designation.

"(B) The Secretary shall seek to enter into an agreement with each troubled housing agency setting forth :

"(i) targets for improving performance as measured by the performance indicators specified under paragraph (1) and other requirements within a specified period of time;

"(ii) strategies for meeting such targets, including a description of the technical assistance that the Secretary will make available to the agency; and

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"(iii) incentives or sanctions for effective implementation of such strategies, which may include any constraints on the use of funds that the Secretary determines are appropriate.

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.

"(3)(A) Notwithstanding any other provision of law or of any contract for contributions, upon the occurrence of events or conditions that constitute a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is subject or an agreement entered into under paragraph (2), the Secretary may :

"(i) solicit competitive proposals from other public housing agencies and private housing management agents in the eventuality that these agents may be needed for managing all, or part, of the housing administered by a public housing agency;

"(ii) petition for the appointment of a receiver (which may be another public housing agency or a private management corporation) of the public housing agency to any district court of the United States or to any court of the State in which the real property of the public housing agency is situated, that is authorized to appoint a receiver for the purposes and having the powers prescribed in this subsection; and

"(iii) require the agency to make other arrangements acceptable to the Secretary and in the best interests of the public housing residents for managing all, or part of, such housing.

"(B) In any proceeding under subparagraph (A)(ii), upon a determination that a substantial default has occurred, and without regard to the availability of alternative remedies, the court shall appoint a receiver to conduct the affairs of the public housing agency in a manner consistent with this Act and in accordance with such further terms and conditions as the court may provide. The court shall have power to grant appropriate temporary or preliminary relief pending final disposition of the petition by the Secretary.

"(C) The appointment of a receiver pursuant to this subsection may be terminated, upon the petition of any party, when the court determines that all defaults have been cured and the housing operated by the public housing agency will thereafter be operated in accordance with the covenants and conditions to which the public housing agency is subject.

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"(4) The Secretary shall submit to the Congress annually, as a part of the report of the Secretary under section 8 of the Department of Housing and Urban Development Act, a report that :

"(A) identifies the public housing agencies that have been designated as troubled under paragraph (2);

"(B) describes the grounds on which such public housing agencies were designated as troubled and continue to be so designated;

"(C) describes the agreements that have been entered into with

such agencies under such paragraph;

"(D) describes the status of progress under such agreements;

"(E) describes any action that has been taken in accordance with paragraph (3); and

"(F) describes the status of any public housing agency designated as troubled with respect to the program under section 14 and specifies the amount of assistance the agency received under section 14 and any credits accumulated by the agency under section 14(k)(5)(D)"

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PART 901 - PUBLIC HOUSING

MANAGEMENT ASSESSMENT PROGRAM

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AUTHORITY: Sec. 6(j), United States Housing Act of 1937 (42 U.S.C. 1437d(j)); sec. 502, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101-625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A - General Provisions

901.01 Purpose.

(a) This part establishes the Public Housing Management Assessment Program (PHMAP) that provides policies and procedures for the Department to identify public housing agency (PHA) 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 PHAs that are troubled with respect to the program under section 14.

(b) PHMAP will allow HUD to make more effective use of available staff for monitoring overall public housing operations. Appropriately, limited monitoring of PHAs with good performance records will enable the Department, particularly at the Field Office level, to focus on those PHAs that have significant operational problems.

(c) PHMAP provides an objective system for measuring PHA performance using standard criteria for all PHAs that will enable the Department and PHAs to

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compare performance of PHAs. At the same time, PHMAP provides sufficient flexibility in evaluating PHAs to ensure that they are not penalized as a result of circumstances beyond their control.

(d) With PHMAP, the Department will be able to identify deficiencies in a PHA's management areas and take corrective actions, such as providing advice and guidance in specific areas of concern, or entering into a Memorandum of Agreement with a troubled PHA and/or a PHA troubled with respect to the program under section 14, to focus its improvement efforts.

(e) PHMAP will be used by the Department to provide incentives to high-performing PHAs and encourage all PHAs to achieve high performer designation. High-performing PHAs are afforded greater flexibility in the operation of their public housing programs, with increased responsibility and authority for their own management decisions. In addition, high-performing PHAs will receive national recognition by the Department.

(f) PHAs can utilize this assessment to conduct internal audits of their operations and correct identified deficiencies. The results of the assessment can be utilized by a PHA's Board of Commissioners and Executive Director, resident organizations, and the community to understand more comprehensively the PHA's operations.

901.05 Definitions.

(a) Action taken means the issuance of a work order to correct the problem where systems are involved.

(b) Actual vacancy rate means the percent of vacancies after excluding the permitted exemptions.

(c) Adjusted vacancy rate means the percent of vacancies after deducting units included in a funded on-schedule modernization program.

(d) Annual average means an average computation of a PHA's immediate past fiscal year for applicable indicators.

(e) Annual vacancy rate means the percent or number of vacancies, after deducting:

- (1) Vacant units that HUD has approved for demolition or disposition;

(2) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

- (3) Vacant units that have sustained casualty damage and are being

held off the market to allow adjustment of the insurance claim; and,

(4) Units that are occupied by employees of the PHA and non-dwelling units that are utilized for resident services or are under lease to a non-dwelling tenant in the normal course of project operation.

(f) Assistant Secretary means the Assistant Secretary for Public and Indian Housing of the Department.

(g) Confirmatory review means an on-site review for the purposes of Field Office verification of the performance level of a PHA and the accuracy of the data derived from Field Office files.

(h) Correct means to improve performance in an indicator to a level of grade "C" or better.

(i) Current dwelling rent charged refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges, maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

(j) Cyclical work orders refers to work orders that are performed on a seasonal basis, or in accordance with warranty requirements, or as part of a preventive maintenance program.

(k) Deficiency means any grade below "C" in an indicator.

(l) Demonstrates progress means that the time required to complete all work orders has been reduced during the most recent three year period.

(m) Department or HUD means the U.S. Department of Housing and Urban Development.

(n) Emergency means physical work items that pose an immediate threat to the life, health and safety of residents, or that are related to fire safety.

(o) Emergency status abated means the emergency situation was abated within 24 hours, with completion of needed repairs and/or replacements made at a later time.

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(p) Formal up-to-date repayment agreement means a signed agreement between a PHA and a resident stating the terms and amounts that a resident is repaying monies owed to a PHA, and the resident is in compliance and current with the terms of the repayment agreement; i.e., the resident is remitting a specified amount on specific dates with no lapse in remittance.

(q) HQS means Housing Quality Standards as set forth at 24 CFR 882.109 and amended by the Lead Based Paint regulation at 24 CFR 35.

(r) Indicators means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in §901.10.

(s) Monitoring findings mean findings that were determined as a result of an on-site physical inspection and transmitted in writing by HUD to the PHA.

(t) PHA means a public housing agency.

(u) Rents uncollected means unpaid resident dwelling rent for residents in possession.

(v) Significant finding in indicator (12), development, means statutory, regulatory or health/safety violations.

(w) Significant monitoring finding in indicator (2), modernization, component #3, contract administration, means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Sections II, III, and IV which received a "no" answer, excluding the following: Section II, exclude the items related to the use of Form HUD-51915 and changing the current threshold; Section III, exclude item related to changing the current threshold; and Section IV, exclude items related to changing the current threshold, notifying Field Office of scheduled final inspection, and submitting required settlement documents to the Field Office.

(x) Significant monitoring finding in indicator (2), modernization, component #4, quality of physical work, means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Section I which received a "no" answer, excluding the item relating to keeping the premises free from accumulated waste materials caused by the contractor.

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(y) Substantial default means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract or a Memorandum of Agreement.

901.10 Indicators.

(a) Indicators (1) - (7) listed in this section are required by statute to be used to evaluate the management performance of PHAs. Indicators (8) - (12) listed in this section are deemed to be appropriate by the Department to evaluate the management performance of PHAs.

(b) The indicators are as follows:

(1) Indicator 1, Vacancy Number and Percentage. The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous three years to reduce such vacancies. It will be acceptable for the PHA to use the vacancy rate or number of vacant units using data reported on the Form HUD-51234, Report on Occupancy. At its option, a PHA may construct and use an actual average vacancy rate or average number of vacant units using Rent Roll records for the month ending six months before the start of its budget year. This indicator is given a weight of x3. Units in the following categories shall not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(v) Grade A: An actual vacancy percentage of 1% or less.

(vi) Grade B: A vacancy percentage of greater than 1% and less than or equal to 2%, or the PHA has an equivalent of three or fewer vacant units.

(vii) Grade C: The PHA is in one of the following categories:

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(A) A vacancy percentage of greater than 2% and less than or equal to 3%, or the PHA has an equivalent of four or five vacant units; or

(B) An adjusted vacancy percentage of 3% or less after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years by at least 30%.

(viii) Grade D: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 3% and less than or equal to 6%; or

(B) An adjusted vacancy percentage of greater than 3% and less than or equal to 5% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years

by at least 10%.

(ix) Grade E: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 6% and less than or equal to 8%; or

(B) An adjusted vacancy percentage of less than or equal to 7% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years.

(x) Grade F: The PHA is in one of the following categories:

(A) An actual vacancy percentage of greater than 8%; or

(B) An adjusted vacancy percentage of greater than 7% after permitted adjusting for funded on-schedule modernization and the PHA has not reduced actual vacancies over the past three years.

(2) Indicator 2, Modernization. The amount and percentage of funds obligated to public housing agencies under section 14 which remain unexpended after three years; and the management of the program under section 14 for the modernization and rehabilitation of public housing units and developments. This indicator has a weight of x2.

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(i) Component #1 - Unexpended Funds Over Three Years Old. This component has a weight of x2.

(A) Grade A: The PHA has no unexpended funds over three years old or if the PHA has unexpended funds over three years old, the PHA can demonstrate that the approved original or revised project implementation schedule(s) gives the PHA longer than three years, or there are valid reasons outside of the PHA's control for the unexpended funds, such as litigation, HUD or other institutional delay, extended labor strikes, or extended material shortages.

(B) Grade F: The PHA has unexpended funds over three years old, but cannot demonstrate that the approved original or revised project implementation schedule(s) gives the PHA longer than three years or that there are valid reasons outside of the PHAs control for the unexpended funds.

(ii) Component #2 - Timeliness of Fund Obligation. This component has a weight of x1.

(A) Grade A: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated 100% of its funds by the obligation dates in its approved original project implementation schedules or approved revised schedule(s) where time extensions were granted for valid reasons outside of the PHA's control, such as litigation,

HUD or other institutional delay, extended labor strikes, extended material shortages, or need to use leftover funds.

(B) Grade F: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated less than 100% of its approved funds by the obligation dates in its approved project implementation schedules or approved revised schedules, or received approval for time extensions due to reasons within the PHA's control, or has continued to obligate funds after the latest approved obligation deadline date.

(iii) Component #3 - Contract Administration. This component has a weight of x1.

(A) Grade A: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no significant monitoring findings related to contract administration.

(B) Grade B: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed

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within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than two significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade C: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than four significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(D) Grade D: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than six significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(E) Grade E: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are more than six significant monitoring findings related to contract administration and the PHA has

corrected or in the process of correcting those significant monitoring findings related to contract administration.

(F) Grade F: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, any actions to correct significant monitoring findings related to contract administration have not resulted in progress toward correction.

(iv) Component #4 - Quality of Physical Work. This component has a weight of x3.

(A) Grade A: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no significant monitoring findings related to the quality of physical work or inspections.

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(B) Grade B: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than two significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(C) Grade C: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than four significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(D) Grade D: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than six significant monitoring findings related to the

quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(E) Grade E: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are more than six significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(F) Grade F: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical

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inspection, the PHA is not carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, or any actions to correct significant monitoring findings related to the quality of physical work or inspections have not resulted in progress toward correction.

(v) Component #5 - Budget Controls. This component has a weight of x1.

(A) Grade A: The PHA has expended modernization funds only on work items in the latest HUD-approved budgets or within the limits of the HUD-established threshold for budget revision, or where the PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets or above the limits of the HUD-established threshold for budget revision, the PHA obtained prior HUD approval.

(B) Grade F: The PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets, or above the limits of the HUD-established threshold for budget revision, or without getting prior HUD approval.

(3) Indicator 3, Rents Uncollected. The balance of rents uncollected as a percentage of total rents to be collected. This indicator has a weight of x3.

(i) Grade A: The balance of rents uncollected in the immediate past fiscal year is less than or equal to 2% of total rents to be collected.

(ii) Grade B: The balance of rents uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of the total rents to be collected.

(iii) Grade C: The balance of rents uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of the total rents to be collected.

(iv) Grade D: The balance of rents uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of the total rents to be collected.

(v) Grade E: The balance of rents uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of the total rents to be collected.

(vi) Grade F: The balance of rents uncollected in the immediate past fiscal year is greater than 10% of the total rents to be collected.

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(4) Indicator 4, Energy Consumption. The annual energy consumption. This indicator has a weight of x1.

(i) Grade A: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has not increased.

(ii) Grade B: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has not increased by more than 3%.

(iii) Grade C: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 3% and less than or equal to 5%.

(iv) Grade D: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 5% and less than or equal to 7%.

(v) Grade E: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 7% and less than or equal to 9%.

(vi) Grade F: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has increased by more than 9%.

(5) Indicator 5, Unit Turnaround. The average period of time that an agency requires to repair and turnaround vacant units. This indicator has a weight of x2. Vacant units in the following categories should not be included in this calculation:

- (i) Units in on-schedule CIAP (only) programs;
- (ii) Units that HUD has approved for demolition or disposition;
- (iii) Units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; and
- (iv) Units that have sustained casualty damage, but only until the insurance claim is adjusted.

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(v) Grade A: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is less than or equal to 20 calendar days.

(vi) Grade B: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(vii) Grade C: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(viii) Grade D: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(ix) Grade E: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(x) Grade F: The PHA has not established a system to track the duration of vacancies; or the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is more than 50 calendar days.

(6) Indicator 6, Outstanding Work Orders. 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. This indicator has a weight of x1.

(i) Grade A: At least 99% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year does not exceed 4% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders.

(ii) Grade B: At least 97% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders

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outstanding at the end of the PHA's immediate past fiscal year is greater than 4% and less than or equal to 6% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders.

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

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 6% and less than or equal to 8% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA demonstrates progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

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

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA demonstrates progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(v) Grade E: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

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(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA has demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(vi) Grade F: Less than 95% of emergency items were corrected within 24 hours or emergency status was not abated, or the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, or the PHA has not demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(7) Indicator 7, Annual Inspection and Condition of Units and Systems. The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Department deems appropriate and the percentage of systems, for the purposes of preventive maintenance, that an agency fails to inspect on an annual basis. This indicator has a weight of x3. Units in funded on-schedule section 14 modernization programs and units that HUD has approved for demolition or disposition are not included in this calculation.

(i) Component #1 - System to track inspection and repair of units and systems. This component has a weight of x1.

(A) Grade A: The PHA has established a system to track inspection and repair of units and systems.

(B) Grade F: The PHA has not established a system to track inspection and repair of units and systems,

(ii) Component #2 - Annual inspection of units. This component has a weight of x1.

(A) Grade A: The PHA inspected 100% of units in the immediate past fiscal year, using standards that were at least equivalent to the Housing

Quality Standards (HQS).

(B) Grade B: The PHA inspected at least 97% and less than 100% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

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(C) Grade C: The PHA inspected at least 95% and less than 97% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(D) Grade D: The PHA inspected at least 93% and less than 95% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(E) Grade E: The PHA inspected at least 90% and less than 93% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(F) Grade F: The PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iii) Component #3 - Correction of unit deficiencies. This component has a weight of x3.

(A) Grade A: All units met the HQS standards at the time of inspection, or of those units not meeting HQS or its equivalent at the time of inspection, at least 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of, at most, 25 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(B) Grade B: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 97% and less than 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 25 calendar days and less than or equal to 30 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(C) Grade C: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 30 calendar days and less than or equal to 40 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(D) Grade D: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 40 calendar days and less than or

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equal to 50 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(E) Grade E: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all maintenance deficiencies were corrected within an average of greater than 50 calendar days and less than or equal to 60 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit deficiencies.

(F) Grade F: Of those units not meeting HQS or its equivalent at the time of inspection, fewer than 95% of emergency items were corrected within 24 hours, or emergency status was not abated, or all maintenance deficiencies were corrected within an average of greater than 60 calendar days to meet inspection standards that were at least equivalent to HQS, or the PHA is not on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit defects, or the PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iv) Component #4 - Inspection and repair of systems. This component has a weight of x3.

(A) Grade A: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of less than or equal to 25 calendar days and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(B) Grade B: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 25 calendar days and less than or equal to 30 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(C) Grade C: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 30 calendar days and less than or equal to 40 calendar days, and the PHA is on schedule at the end of the

immediate past fiscal year, according to its maintenance plan, to correct systems defects.

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(D) Grade D: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 40 calendar days and less than or equal to 50 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(E) Grade E: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 50 calendar days and less than or equal to 60 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(F) Grade F: The PHA did not annually inspect major systems, or system defects were corrected within an average of greater than 60 calendar days, or the PHA is not on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(8) Indicator 8, Tenants Accounts Receivable. The percentage of monies owed to a PHA by residents in possession. This indicator has a weight of x1.

(i) Grade A: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is 5% or less of total tenant charges for the reporting period.

(ii) Grade C: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 5% and less than or equal to 10% of total tenant charges for the reporting period.

(iii) Grade F: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 10% of total tenant charges for the reporting period.

(9) Indicator 9, Operating Reserves. The percentage of operating reserves maintained by any PHA. This indicator has a weight of x1.

(i) Grade A: Operating reserves, excluding TARs and modified for year-end adjustments, are 40% or greater of maximum operating reserves.

(ii) Grade C: Operating reserves, excluding TARs and modified for year-end adjustments, are less than 40% and greater than or equal to 20% of maximum operating reserves.

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(iii) Grade F: Operating reserves, excluding TARs and modified for year-end adjustments, are less than 20% of maximum operating reserves.

(10) Indicator 10, Routine Operating Expenses. An agency's level of operating expenses as compared to operating income and subsidy. This indicator has a weight of x1.

(i) Grade A: Over the most recent three year period total routine operating expenses are less than or equal to operating income and subsidy.

(ii) Grade C: For two out of the past three years, total routine operating expenses are less than, or equal to, operating income and subsidy.

(iii) Grade F: For two out of the past three years, total routine operating expenses exceed operating income and subsidy.

(11) Indicator 11, Resident Initiatives. A partnership between residents and PHAs to develop and implement a resident initiatives agenda to create self-sufficiency opportunities and maintain viable, safe, and drug-free public housing developments. This indicator has a weight of x3.

(i) Grade A: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in three areas at one or more developments (e.g., reduced drug-related crime, established newly organized resident groups/increased resident participation on the PHA Board; provided technical assistance/training to resident groups; assisted first-time resident homebuyers; provided supportive services to enhance self-sufficiency for families; has contracted in the past year with a resident-owned business or utilized Comprehensive Grant Program/CIAP activities to promote resident job creation pursuant to section 3) during a PHA's immediate past fiscal year.

(ii) Grade B: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in two areas at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iii) Grade C: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities;

and economic development/self-sufficiency. There is evidence of significant activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iv) Grade D: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of minimal activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(v) Grade E: The PHA Board has adopted policies in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is no evidence of activity in any area (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(vi) Grade F: The PHA Board has not adopted policies and implemented procedures, or has not initiated any activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency during a PHA's immediate past fiscal year.

(12) Indicator 12, Development. An agency's ability to develop additional units for occupancy by public housing residents. This indicator applies for projects that have started construction or have an ACC for acquisition projects. This indicator has a weight of x1.

(i) Component #1 - Quality of contract administration. This component has a weight of x1.

(A) Grade A: Based on HUD's in-office reviews of the PHA's submissions, development contracting for design and/or inspecting architects, engineering services, site options and purchase agreements, general contractors or turnkey developers, etc., conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there are no significant findings (e.g., statutory, regulatory or health/safety violations) regarding a PHA's contracting and contracting administration.

(B) Grade C: Based on HUD's in-office reviews of the PHA's submissions, development contracting and contract administration do not always conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there were no more than four significant findings relating to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade F: Based on HUD's follow-up monitoring of a PHA's development contracting and contract administration, the PHA's development contracting requirements do not conform to HUD requirements, or there were more than four significant findings relating to contract administration, or the PHA either did not correct its inappropriate practices or it is continuing to engage in improper contracting practices.

(ii) Component #2 - Timeliness of development, which shall not include valid delays resulting from legal action affecting a development, or resulting from HUD actions or inaction. This component has a weight of x2.

(A) Grade A: Construction/rehabilitation started (or Date of Full Availability DOFA achieved for acquisition) in no more than 21 months from the date of fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/ rehabilitation was completed in accordance with the contract time.

(B) Grade C: Construction/rehabilitation started (or DOFA achieved for acquisition) in more than 21 months, but less than or equal to 30 months from fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/ rehabilitation was completed in no more than 30 days past the date specified in the contract and for which liquidated damages were assessed (e.g., the delay was not the responsibility of the PHA).

(C) Grade F: Construction/rehabilitation started (or DOFA achieved for acquisition) more than 30 months from fund reservation, excluding valid delays as described in section (ii), above, or contract for construction/rehabilitation was completed in excess of 30 days past the date specified in the contract or liquidated damages were not assessed.

(iii) Component #3 - Quality of physical work. This component has a weight of x3.

(A) Grade A: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and specifications; the work is being inspected by the PHA in accordance with requirements and there are no significant monitoring findings (e.g., statutory, regulatory, or health/ safety violation) relating to the quality of physical work or inspections, including items of delayed completion; and all design/ construction deficiencies were corrected within two years of DOFA, or are in the process of being corrected if DOFA was less than two years ago.

(B) Grade C: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and

specifications; the work is being inspected by the PHA in accordance with requirements; there are no more than four significant monitoring findings;

the PHA has or is in the process of correcting those significant findings; and all design/construction deficiencies corrected within three years of DOFA, or are in the process of being corrected if DOFA was less than three years ago.

(C) Grade F: Based on HUD's on-site inspections, the physical work is not being carried out in accordance with the HUD-approved budget, plans and specifications; the work is not inspected by the PHA in accordance with HUD requirements; there are more than four significant monitoring findings; the PHA has not resolved the significant monitoring findings related to the quality of physical work or inspections; or design/construction deficiencies were not identified within three years of DOFA.

(iv) Component #4 - Budget controls. This component has a weight of x1.

(A) Grade A: Costs do not exceed approved budgets; shifts of funds between major accounts are fully justified and submitted in a timely fashion; financial records are properly maintained in a condition able to be audited; the Actual Development Cost Certificate (ADCC) was submitted within 24 months of DOFA unless prior written approval was granted by HUD for an extension; excess funds were remitted within 30 days of ADCC approval, if applicable.

(B) Grade C: Cost do not exceed the total development cost approved by HUD; overruns in major accounts are in the process of being justified and a revised budget is being submitted; errors in financial record keeping associated with the development brought to the PHA's attention during processing are being corrected by the PHA; the ADCC was submitted for approval more than 24 months after DOFA without prior written approval from HUD for an extension; excess funds were remitted in more than 30 days but less than or equal to 90 days of ADCC approval, if applicable.

(C) Grade F: Costs have exceeded the total development cost approved by HUD; or overruns in major accounts were not properly justified; or the PHA failed to maintain project financial records in a condition able to be audited; or the ADCC was not submitted for approval, if applicable; or excess funds were not returned to HUD as required, if applicable.

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Subpart B - Program Operation

901.100 Data collection.

(a) Information on some of the indicators will be derived by the Field Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to (a), above, by submitting a certified questionnaire within 90 calendar days after the beginning of its fiscal year, except that, in the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, PHAs shall

submit their certification in accordance with the following schedule, where FYB means "Fiscal Year Begins" and FO means "Field Office":

PHA Size	PHA FYB	Submission	Data Source	FO Assess.
500+ units	01-01-92	03-02-92	12-31-91	04-16-92
500+ units	04-01-92	03-02-92	03-31-91	04-16-92
500+ units	07-01-92	03-02-92	06-30-91	04-16-92
500+ units	10-01-92	03-02-92	09-30-91	04-16-92
1-499 units	01-01-92	04-01-92	12-31-91	07-01-92
250-499	04-01-92	06-01-92	03-31-91	07-15-92
250-499	07-01-92	06-01-92	06-30-91	07-15-92
250-499	10-01-92	06-01-92	09-30-91	07-15-93
1-249 units and 500+ units	04-01-92	07-01-92	03-31-92	10-01-92
1-249 units, 250-499 units, and 500+ units	07-01-92	10-01-92	06-30-92	01-01-93
1-249 units, 250-499 units, and 500+ units	10-01-92	12-31-92	09-30-92	04-01-93

(1) The certification shall be approved by PHA Board resolution, signed by the Chairman of the Board and attested to by the Executive Director.

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(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(c) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

(d) A PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

- (1) Grade A = 10.0 points;
- (2) Grade B = 8.5 points;
- (3) Grade C = 7.0 points;
- (4) Grade D = 5.0 points;
- (5) Grade E = 3.0 point; and
- (6) Grade F = 0.0 points.

(b) Where indicators or components are designated as having additional weight (x2 or x3), the points in each grade shall be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to one decimal place. The total number of component weights for this purpose is to include a one for components that are unweighted (i.e., they are weighted x1, rather than x2 or x3).

901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicators or components in its management assessment, thereby excluding or

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modifying the impact of those indicators' or components' grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the Field Office along with supporting documentary justification, rather than during the appeal process, unless highly unusual circumstances are discovered after a PHA submits its certification.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of no less than 90% on

an applicable indicators may be designated high performers. High performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in 901.135.

(b) PHAs that achieve a total weighted score of less than 90% but not less than 60% on all applicable indicators may be designated standard and be subject to standard review and monitoring requirements.

(c) PHAs that achieve a total weighted score of less than 60% on all applicable indicators may be designated as troubled.

(d) PHAs that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(e) Even though a PHA has satisfied all of the indicators for high performer designation, the Regional Administrator may reinstate any review as necessary to address the particular deficiencies, deny incentives or deny high performer status, as described in paragraph (a) of this section in the case of a PHA that:

- (1) Is operating under a special agreement with HUD;
- (2) Is involved in litigation that bears directly upon the management of a PHA;
- (3) Is operating under a court order;
- (4) Demonstrates substantial evidence of fraud or misconduct resulting from such sources as an Office of Inspector General investigation/audit, or an investigation by any appropriate legal authority; or

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(5) Demonstrates substantial noncompliance in one or more areas.

(f) When a Regional Administrator acts for any of the reasons stated in paragraph (e) of this section, the Regional Administrator shall explain, in writing, the reasons for the action to the PHA.

(g) A PHA may appeal denial of high performer status in accordance with 910.130.

901.120 Field Office functions.

(a) The Field Office will assess each PHA within 180 days after the beginning of a PHA's fiscal year, except that, in the initial PHMAP implementation year and for the purpose of the public housing Comprehensive Grant Program under section 14, it will assess PHAs in accordance with the schedule at 901.100(b) of this subpart.

(1) The Field Office will make determinations for high-performing,

standard, troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score.

(2) The Field Office will also make determinations for exclusion and modification requests.

(b) Each Field Office will notify, within 180 days after the beginning of a PHA's fiscal year, each PHA of the PHA's grade in each indicator, its management assessment total weighted score and status, any determination concerning exclusion and modification requests, and any deadline date by which appeals must be received.

(1) PHA notification could include, at a minimum, offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status.

(2) In the initial year of PHMAP implementation and for purposes of the public housing Comprehensive Grant Program under section 14, each Field Office shall notify each PHA by the Field Office (FO) assessment date listed in the schedule at 901.100(b) of this subpart of the PHA's grade in each indicator and standard, and its management total weighted score and status.

(c) An on-site confirmatory review may be conducted of a PHA by the Field Office. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the Field Office pertaining to the remaining indicators.

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(d) Recommendations on appeals and on petitions to remove troubled or mod-troubled status will be made by the Field Office to the Regional Administrator.

(e) Determinations of intentional false certifications will be made by the Field Office.

(f) The Field Office shall maintain PHMAP files for public inspection in accordance with 901.155 of this subpart.

901.125 Regional Administrator functions.

(a) The Regional Administrator may review a PHA's score and modification and exclusion requests prior to the transmission of the notification letter to the PHA, except as specified in paragraph (b) of this section. In the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, these reviews, if undertaken, will be done in sufficient time to permit Field Office notifications to be made in accordance with 901.120(b)(2) of this subpart.

(b) The Regional Administrator shall review all cases in which a PHA's score falls within ten points below the point value required for designations in accordance with 901.115(a), (c) and (d). In these cases, the Regional Administrator shall take into consideration the differences in the difficulty of managing projects that result from their physical condition and/or neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties result from physical condition and/or neighborhood environment rather than from poor management practices, the Regional Administrator shall withhold troubled or mod-troubled designation or award high performer designation, except as specified in paragraph (c) of this section.

(c) The Regional Administrator may deny or rescind a PHA's status as a high performer, based on substantial noncompliance by a PHA in one or more areas, so that it will not be entitled to any of the areas of relief and incentives. Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR Part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, Part II, Section 201, Use of Projects). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(d) If high performer designation is rescinded, the Regional Administrator will send written notification to the PHA, within 15 days of the decision, with a specific

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explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(e) The Regional Administrator will decide the initial appeals of PHAs and rulings on petitions to remove troubled or mod-troubled status, and may review Field Office determinations of intentional false certifications.

(f) If the Regional Administrator reverses or rejects a determination or recommendation made by the Field Office, the reason for the reversal or rejection shall be included in the notification to the PHA and shall be a part of the PHMAP public record.

901.130 PHA right of appeal.

(a) A PHA has the right to appeal a troubled designation or designation as troubled with respect to the program under section 14. A PHA may appeal its management assessment rating on the basis of data errors, or highly unusual circumstances that occurred after a PHA submitted its certification and request for modifications and exclusions, or the Regional Administrator's failure to consider physical condition and neighborhood environment in the designation of the PHA's score, or the denial of exclusion or modification requests when their denial affects a

PHA's total weighted score.

(1) A PHA may appeal its management assessment rating only for the reasons stated in paragraph (a) of this section and only if the PHA can produce new documentation not previously submitted at the time it submitted its certification and request for modifications and exclusions.

(2) Where applicable, a PHA must demonstrate that a successful appeal will have a significant impact on its score (e.g., at least five percentage points increase), or its performance standing (e.g., remove a PHA from troubled designation, or move a PHA into high-performing status).

(3) The appeal shall be submitted to the Field Office and shall include supporting documentary justification of the reasons for the appeal.

(4) The Field Office will review the issues presented in an appeal and forward its recommendation for their resolution to the Regional Administrator. The Regional Administrator will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

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(5) The Regional Administrator will make determinations of all initial appeals, including those based on a failure to consider physical condition and neighborhood environment in the designation of the PHA's status.

(6) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary.

(7) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(b) A PHA may appeal a determination of intentional false certification.

(c) A PHA may appeal the denial of an initial appeal by the Regional Administrator, which includes initial appeals denying high performer designation, its designation as troubled or designation as troubled with respect to the program under section 14, and the denial of an appeal of a determination of intentional false certification. A PHA may also appeal a rescission of high performer designation,

(1) The appeal of a Regional Administrator's denial of an initial appeal and appeals of rescission of high performer designation shall be submitted to the Assistant Secretary for Public and Indian Housing with new supporting documentary justification not previously submitted to the Field Office of the PHA's reason(s) for appeal.

(2) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(d) A PHA has the right to appeal any refusal of a petition in accordance with 901.142 of this subpart to remove designation of troubled or troubled with respect to the program under section 14 to the Assistant Secretary for Public and Indian Housing.

(e) The date and place by which any appeal must be submitted will be specified in the letter from the Field Office notifying the PHA of any determination or action. For example, the Field Office management assessment score notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

(f) Appeals will be determined by the Department within 30 days.

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901.135 Incentives.

(a) A PHA that is designated a high performer will be afforded incentives in several program areas as well as be relieved of specific HUD requirements, effective upon notification of high performer designation.

(b) PHAs must have completed (all funds expended) a modernization program within the last two fiscal years and achieve a total weighted score of no less than 90% on indicator (2), modernization, in order to qualify for incentives in the program area of modernization.

(c) PHAs must achieve a total weighted score of no less than 90% on indicator (12), development, and have a project under development which has not reached Date of Full Availability (DOFA), or projects which reached DOFA within the last five years, in order to qualify for incentives in the program area of development.

(d) Incentives for high-performing PHAs are as follows:

(1) General.

(i) The Department shall annually publish a listing of public housing agencies that have been designated as high-performing.

(ii) High-performing PHAs will receive a Certificate of Commendation from the Department as well as special public recognition.

(iii) Requisitions for leased housing annual contributions (Form HUD-52977, Request for Partial Payment of Fixed Annual Contribution, Leased Projects) will be submitted annually rather than quarterly (as presently provided by the Low-Income Leased Housing Handbook 7430.1, as revised) by high-performing PHAs.

(iv) High-performing PHAs will be deemed to be a lower risk and, therefore, will be monitored less frequently.

(v) Representatives of high-performing PHAs will be requested to serve on Departmental Working Groups that will advise the Department in such areas as troubled PHAs, performance standards for all PHAs, incentives for high-performing PHAs, etc.

(2) Financial Management.

(i) High-performing PHAs will submit Form HUD-52599, Statement of Operating Receipts and Expenditures, annually instead of semiannually.

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(ii) High-performing PHAs will be allowed to make line item (not bottom line) changes to routine expenditures as long as the total level of routine expenses is not changed.

(iii) High-performing PHAs will submit Form HUD-52295, Report of Tenants Accounts Receivable, annually instead of semiannually. The end of the PHA's fiscal year is the annual reporting date, as required in the Financial Management Handbook 7475.1, as revised.

(3) Occupancy.

(i) High-performing PHAs will not be required to receive prior HUD approval for occupancy of dwelling units by PHA employees, provided the PHA charges market rents for such units. (This eliminates the requirement for HUD approval under both the Public Housing Occupancy Handbook 7465.1, as revised, and the conversion provisions of the Demolition, Disposition and Conversion Handbook 7486.1, as revised.) The requirement for prior HUD approval will, however, continue to apply if the employee-occupant is charged less than market rent. PHAs should not automatically use Section 8 Fair Market Rents (FMR) as a basis for "market rents." Market rents are rents for comparable standard non-luxury, rental units in the neighborhood or community. Often the market rent and the Section 8 FMR will be the same or nearly the same, but specific characteristics of the project, such as location, may dictate a lower or higher rent. Such units, however, shall be removed from the Unit Month Available (UMA) count in the Performance Funding System calculations.

(ii) An internal occupancy audit may be conducted by a high-performing PHA in place of an audit by the Field Office, at the option of the PHA, when the previous audit was conducted by the Field Office, provided that the PHA meets all of the following conditions:

(A) The PHA has no open occupancy audit findings;

(B) The PHA has sufficient knowledgeable staff to allow the internal audit to be conducted by staff other than those responsible for day-to-day determinations of resident eligibility and resident payments. A small PHA can contract with a high-performing PHA or agency to perform an internal

occupancy audit, since PHAs can contract for administrative functions generally. Also, a PHA can trade this function with another PHA at no cost, if it so chooses;

(C) The PHA is not in priority category one or two as defined in the Occupancy Audit Handbook 7465.2, as revised, and

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(D) The internal audit shall be conducted in accordance with Handbook 7465.2, as revised,.

(4) Comprehensive Improvement Assistance Program (CIAP).

(i) High-performing PHAs are relieved of the need for prior HUD review of architects'/engineers' contracts.

(ii) High-performing PHAs are relieved of the need for HUD review for construction and bid documents.

(iii) High-performing PHAs are relieved of the need for HUD review of contract modifications (including change orders).

(iv) High-performing PHAs are relieved of the need for HUD review of Request for Proposals (RFPs) and contract modifications for management improvement contracts.

(v) High-performing PHAs are relieved of the need for HUD review of budget revisions that delete or substantially revise approved work items, add new work items or incur costs in excess of the approved budget amount for any work item, but not budget revisions that incur costs in excess of the approved budget amount for any project or change the method of accomplishment from contract to force account labor.

(5) Development.

(i) High-performing PHAs may submit applications in response to a Notice of Fund Availability (NOFA) with no further evidence of their capability to develop additional public housing units; full points in the rating criteria for development experience will be awarded, if experience is a NOFA criterion.

(ii) High-performing PHAs may approve construction modifications (change orders) that do not increase the contract amount and which are consistent with the original approved plans.

(iii) High-performing PHAs will not be required to obtain prior HUD approval under the Development Handbook for contracts for professional and technical services.

(iv) High-performing PHAs are relieved of the need for prior HUD approval of contracts for legal, architectural, engineering, or inspection services in connection with development, including the PHA's methodology

for selection.

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

(1) PHAs will still be subject to regular Independent Auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(f) The Regional Administrator will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief. The discretion may be exercised in cases where there is evidence indicating seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in a manner consistent with Federal law and regulations. Examples of this evidence include, but are not limited to, substantial allegations or findings of fraud, abuse, or mismanagement; noncompliance with law, such as Fair Housing and Equal Opportunity (FHEO) statutes, based on such sources as FHEO compliance investigations or reviews, OIG audits or investigations, IA audits, and routine reports and reviews; or evidence that the PHA's certification of indicators is not supported by the facts.

901.140 Memorandum of Agreement.

(a) A Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and troubled with respect to the program under section 14. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which may be the PHA's score in each of the indicators identified as a problem;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

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

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

(6) Incentives for meeting such targets, such as the removal of troubled designation or the designation as troubled with respect to the program under section 14, fewer conditions placed on grants, and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent action under 901.200, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

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

(b) A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) A MOA shall be executed by:

- (1) The PHA Board Chairperson and accompanied by a Board resolution;
- (2) The PHA Executive Director;
- (3) The Regional Administrator and/or Field Office manager; and
- (4) The appointing authorities of the Board of Commissioners, unless exempted by the Regional Administrator.

(d) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

(e) A PHA will be removed from troubled status upon a determination by the Regional Administrator that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status,

or troubled with respect to the program under section 14, i.e., a total weighted management assessment score of 60% or more. The Regional Administrator may redelegate to the Field Office Manager the authority to remove PHAs under 1250 units from troubled status or troubled with respect to the program under section 14.

901.142 Removal from Troubled Status and Troubled with Respect to the Program Under Section 14 Status.

(a) A PHA has the right to petition the Field Office Manager for the removal of a designation as troubled or troubled with respect to the program under section 14. The Regional Administrator shall review a Field Office's decision regarding a PHA's petition for the removal of a designation as troubled or troubled with respect to the program under section 14, except where authority has been redelegated to the Field Office.

(b) A PHA may appeal any refusal to remove troubled and troubled with respect to the program under section 14 designation to the Assistant Secretary for Public and Indian Housing in accordance with 901.130.

901.145 Improvement Plan.

(a) After receipt of the Field Office notification letter in accordance with 901.120(b) or receipt of a final resolution of an appeal in accordance with 901.130, a PHA shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the Field Office of its action to correct a deficiency.

(c) If the Field Office determines that a PHA has not corrected a deficiency as required, the Field Office may require a PHA to prepare and submit to the Field Office an Improvement Plan after receipt of the Field Office notification letter in accordance with or receipt of a final resolution of an appeal.

(1) The Field Office shall require a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "F".

(2) The Field Office may require, on a risk management basis, a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "D" or "E".

(d) An Improvement Plan shall:

(1) Identify each uncorrected deficiency indicated in a PHA's management assessment;

(2) Describe the procedures that will be followed to correct each

deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The Field Office will approve or deny an Improvement Plan, and notify the PHA of its decision within 30 calendar days of receipt of the Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the Field Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the Field Office recommendations.

(g) If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the Field Office will notify the PHA of its noncompliance. The PHA will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the Annual Contributions Contract and HUD regulations.

901.150 PHAs troubled with respect to the program under section 14.

(a) PHAs that achieve a total weighted score of 59% or less on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(b) PHAs designated troubled with respect to the program under section 14 may be subject, under the CGP to a reduction of its formula allocation or other sanctions (24 CFR Part 968, Subpart C) or under the CIAP to disapproval of new funding or other sanctions (24 CFR Part 968, Subpart B).

901.155 PHMAP public record.

The Field Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available

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for public inspection for three years in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

Subpart C - Substantial Default

901.200 Substantial Default by a PHA.

Notwithstanding any other provision of law or any contract for annual contributions, upon the occurrence of events or conditions that constitute a substantial default by a PHA with respect to the covenants or conditions to which the PHA is subject or an agreement entered into in accordance with 901.140 or 901.145 of this Part, HUD may:

(a) Solicit competitive proposals from other PHAs and/or private housing management agents in the eventuality that these agents may be needed for managing all or part of the housing administered by the PHA; and/or

(b) Petition for the appointment of a receiver (which may be another PHA or a private management corporation) of the PHA to any District Court of the United States or to any Court of the State in which the real property of the PHA is situated, that is authorized to appoint a receiver for the purposes and having the powers to administer the housing of the defaulting PHA; and/or

(c) Require the PHA to make any other or additional arrangements acceptable to the Department and in the best interests of the public housing residents for managing all or part of the PHA's housing.

901.205 Events or Conditions that Constitute Substantial Default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default where a PHA is determined to be in violation of Federal statutes, including but not limited to, the U.S. Housing Act of 1937, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant Annual Contributions Contract (ACC).

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with 901.140 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

901-210 Notice and Response.

(a) If information from an annual assessment, as described in 901.100 of this part, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in

cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs" pursuant to 901.115, or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in non-compliance;

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

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to (a), above;

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

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HUD review a plan to remedy the events, occurrences, or conditions that constitute the non-compliance; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (c)(4) of this section, the Department will take appropriate action, using any or all of the interventions specified in 901.210, and determined to be appropriate to remedy the noncompliance, citing 901.210, and the authority for such action.

(d) Upon receipt of the notification described in paragraph (c), of this section, the burden of proof falls on the PHA to demonstrate factual error in the Department's description of events, occurrences, or conditions, or to show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is subject cited in the notification.

901.215 Interventions.

(a) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s). Interventions under this subpart (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an alternate entity to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, of operational areas and developments not so designated,

(b) Upon determining that a substantial default exists under 901.200, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

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

(2) Selecting or participating in the selection of an alternate entity to provide technical assistance or other services up to and including contract management of an or for any part of the public housing developments administered by a PHA, or

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

(c) HUD may take the actions described in 901.200(a) through (c), above, sequentially or simultaneously in any combination.

901.220 Contracting and Funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter, into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR Part 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a non-competitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

901.225 Receivership.

(a) In any proceeding pursuant to 901.200(b), above, upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be terminated upon the petition of the PHA, the receiver, or the Department, or upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will thereafter be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.