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April 25, 2011 — per e-mail submission

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

Re: Docket No. FR-5094-I-02, "Public Housing Evaluation and Oversight:
Changes to the Public Housing Assessment System (PHAS) and Determining
and Remediating Substantial Default" — Comments on Interim Rule published at
76 FR 10136 (2/23/11)

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted to you on behalf of the Housing Justice Network (HJN) regarding the interim rule published on February 23, 2011 regarding public housing evaluation and oversight, and changes to the Public Housing Assessment System (PHAS). These comments are also endorsed by the National Low Income Housing Coalition (NLIHC).

In addition to these comments, we wish to endorse the comments you have received from the National Low Income Housing Coalition's Resident Issues Policy Committee. These comments oppose the elimination of the resident satisfaction survey and make suggestions as to how HUD can better solicit feedback from public housing residents and assess PHA resident relations. In addition to the comments submitted there, we have some specific additional suggestions as to how HUD should go about fulfilling its duties, under the authorizing statute, to assess whether PHAs are maximizing opportunities for resident involvement in the administration of public housing and for resident self-sufficiency.

If there are questions regarding these comments, feel free to contact either Mac McCreight at Greater Boston Legal Services, (617) 603-1652; e-mail:

mmccreight@gbls.org, or David Rammler at the National Housing Law Project, (202) 347-8775; e-mail: drammler@nhlp.org.

PART 902 – PUBLIC HOUSING ASSESSMENT SYSTEM

Subpart A—General Provisions

§ 902.1 *Purpose, scope, and general matters*

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

§ 902.5 *Applicability*

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

§ 902.11 PHAS performance designation

- At § 902.11(c), HUD indicates that a Corrective Action Plan shall be required for a substandard performed “if the deficiencies have not already been addressed in a current Corrective Action Plan.” This provision does not make sense, since by definition a PHA will have been found not to have addressed deficiencies in order to get a substandard score. It would probably be better to provide that if the PHA already has a Corrective Action Plan, the PHA and HUD will determine what modifications may be necessary to the existing plan.
- At § 902.11(d)(2), HUD says that troubled performers will be subject to the sanctions provided in Section 6(j)(4) of the United States Housing Act of 1937.¹ In the interest of transparency for those who do not have a United States Code handy, HUD should spell out what the sanctions are, i.e., termination, withholding, reduction, or limitation of Capital Fund or Operating Fund assistance, or withholding of Section 8 assistance. It is also not clear why this provision solely refers to these sanctions, as opposed to the other actions detailed in Section 6(j)(3) and in Part 907, such as the appointment of other management entities or use of court receivership. Tenants of a PHA that has mismanaged Capital Fund performance should not immediately be faced with reduction or loss of funding; other remedies, such as suspension of payments or the withholding of administrative fees or other management incentives, or injunctive or declaratory relief in court, may be the more appropriate remedy.

¹ There is a typographical error in the text: “42 U.S.C.1437(d)(j)(4)” should be “42 U.S.C. 1437d(j)(4).”

902.13 Frequency of PHAS assessments

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

Subpart B—Physical Condition Indicator

The PHAS authorizing statute, 42 U.S.C. § 1437d(j)(1)(J) refers to the extent to which a PHA is providing acceptable basic housing conditions. There are two ways to measure this—through physical inspections which are conducted in accordance with this subpart, and through getting feedback from residents regarding their satisfaction with the manner in which PHAs address housing conditions. HUD has proposed dropping the resident satisfaction surveys, and for the reasons identified in the separate comments of the National Low Income Housing Coalition, we support the retention of some instrument to gather information on resident satisfaction on a range of topics, including but not limited to physical conditions.²

§ 902.20 Physical condition assessment

² The statute provides for a role of resident councils to partner with PHAs on maintenance oversight. See 42 U.S.C. § 1437d(c)(5)(C) (PHA is to establish an effective tenant-management relationship designed to assure that satisfactory standards of tenant security and project maintenance are formulated and that the PHA, together with tenant councils where they exist, enforces those standards fully and effectively).

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

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

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

§ 902.22 Physical inspection of PHA project

- At § 902.22(d)(2), HUD states that: “*Vacant units that are not under lease at the time of the physical inspection will not be inspected. The categories of vacant units not under lease that are exempted from physical inspection are as follows:*”, first seeming to exempt all vacant units and then restricting the exemption to particular categories of units. Perhaps it would remove the ambiguity to simply state: “Vacant units, in the below described categories, that are not under lease at the time of the physical inspection, are exempted from physical inspection.” This wording has the added benefit of exposing unjustified vacancies to potential random inspection. This information, however--the number of units, and perhaps the specific unit numbers of all vacant units that do not fit one of the § 902.22(d)(2) categories -- may be collected, and counted against the PHA, under the “occupancy” sub-indicators in §§ 902.43(a) (1) (Management operations

performance standards) and 902.50(c)(2) (Capital Fund program assessment). HUD may also wish to add to the exempt category so called “hotel” units, which are used for short-term occupancy during capital work at a site, with households being returned to their original units after the short-term placement.

- At § 902.22(f), HUD has added the option, where Exigent Health and Safety (EHS) and Health & Safety (H&S) deficiencies have been identified, to “correct, remedy, or act to abate” all such deficiencies. While the regulation is not completely clear on the distinctions among these terms, HUD indicates that it revised the language to permit a PHA to “abate the effect of the violation without necessarily correcting or remediating the condition. For example, a PHA may move a family into a different unit until fire damage is repaired.” 76 FR 10138. Given the rapid response required for EHS deficiencies, this flexibility makes sense. However, HUD should require PHAs to ensure that the underlying repair/correction is ultimately completed within a reasonable time frame, consistent with sound management. Moreover, HUD may want to distinguish between the flexibility given for “abatement” for EHS and for other H&S deficiencies, since for the latter, no action is required until after the PHA has received the Physical Inspection Report, and the PHA then has 45 days to address the deficiency. See 24 C.F.R. § 902.26(a). While “abatement” might still be necessary for some H&S deficiencies given the scope of work required, or planned future capital work, this should be the exception, rather than the rule.
- At § 902.22(g), HUD should evaluate compliance with accessibility elements in the PHAS score. If HUD believes that it cannot adequately train/supervise those conducting the PHAS inspections to identify full accessibility complex, given the range of factors that must be considered (including what modernization improvements have been made), it should at least include any deficiencies identified as part of the report.³ These should be made available to the public, affected resident councils, RAB, and state/local appointing officials in addition to HUD’s Office of Fair Housing and Equal Opportunity (FHEO), so that they are aware of such issues. Moreover, remedial action regarding accessibility deficiencies should be included in an update to the PHA Plan and shared with such parties.

³ We are concerned that if persons conducting the physical conditions inspections for HUD cannot adequately assess accessibility compliance, and there is a passing score in this area, PHAs may then use that to say there has been a HUD endorsement for their noncompliance, and this is obviously not acceptable. On the other hand, we recognize that FHEO may not have the resources to adequately police this area on its own, and fostering compliance through the PHAS process will affirmatively further fair housing enforcement.

§ 902.26 *Physical Inspection Report*

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

Subpart C—Financial Condition Indicator

§ 902.30 *Financial condition assessment*

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

§ 902.35 *Financial condition scoring and thresholds*

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

indicators is all of what is required by Congress—i.e., number and percentage of vacancies (and progress with vacancy reduction), amount and percentage of unobligated Capital Funds, percentage of rent collected, utility consumption, the average period of time required to repair and turn-around vacant units, the proportion of maintenance work orders outstanding (and progress in reducing turnaround time), and the percentage of units that an agency fails to inspect to ascertain modernization or modernization needs. See 42 U.S.C. § 1437d(j)(1) A-G.⁴

Subpart D—Management Operations Indicator

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

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

⁴ The statute refers to HUD’s evaluation being done under “Any other factors as the Secretary deems appropriate, which shall not exceed the seven factors in the statute, plus an additional five”. 42 U.S.C. § 1437d(j)(1)(K). However, there are actually ten factors set forth in the statute at 42 U.S.C. § 1437d(j)(1). In addition to the ones outlined above, (H) refers to coordination, promotion, or provision of economic self-sufficiency for residents and their opportunities for involvement in the administration of public housing; (I) refers to “the extent to which the [PHA] (i) implements effective screening and eviction policies and other anticrime strategies and (ii) coordinates with local government officials and residents in the project and implementation of such strategies”; and (J) refers to the extent to which a PHA is providing acceptable basic housing conditions.

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

2/ In General: Opportunities for Resident Involvement in the Administration of Public Housing and Opportunities for Resident Self-Sufficiency: As noted at 76 FR 10137, the proposed rule would have evaluated a PHA's performance in the area of resident programs and participation as part of the development management review. That review would measure efforts to coordinate, promote, or provide effective programs and activities to promote economic self-sufficiency of residents, and would measure the extent to which residents are provided with opportunities for involvement in the administration of public housing. The interim rule, however, is silent on any such evaluation of management. HUD has stated, "[R]esident input into the assessment process is important. HUD is committed to exploring resident satisfaction, participation, and self-sufficiency measures in the final rule." The Supplementary Information indicates that HUD is specifically seeking input through this rulemaking on establishing more meaningful measures in these areas. *Id.*, see also 76 FR 10139.

As noted above, 42 U.S.C. 1437d(j)(1)(H) directs HUD to evaluate PHAs' coordination, promotion, or provision of economic self-sufficiency for residents and their opportunities for involvement in the administration of public housing.⁵ Each of these are addressed in turn.

- ***Resident Involvement:*** Effective resident involvement can take many forms. A resident may ask some pertinent questions at a meeting with PHA staff or may give insightful comment on proposed lease or policy changes which modify final action.⁶ Residents may choose to run for election to resident council boards or

⁵ These are not the sole statutory references to residents in the PHAS evaluation. As is noted in the comments on physical conditions, above, 42 U.S.C. § 1437d(j)(1)(J) refers to the extent to which a PHA is providing acceptable basic housing conditions, which should include a resident satisfaction component. As is noted in the comments on public safety below, 42 U.S.C. § 1437d(j)(1)(I)(ii) refers to the extent a PHA involves residents in the development and implementation of anticrime strategies.

⁶ See 24 C.F.R. §§ 966.3 (30 day notice and comment opportunity by affected residents on lease changes), 966.5 (same for policy changes), and 966.52(c) (same for changes in grievance procedure).

serve on committees examining priorities for Capital Fund expenditures or anti-crime strategies.⁷ In some communities, there may be city-wide resident organizations. Whether or not there is a jurisdiction-wide or recognized resident council, public housing residents have a critical role in reviewing and commenting on PHA Plans as part of RABs.⁸ A resident may be on the PHA's Board of Commissioners.⁹ Some developments may be managed by Resident Management Corporations (RMCs) and they may even be recognized by HUD as a PHA.¹⁰ A mixed-finance development may include resident organizations as co-partners in ownership. Tenant participation funding is provided by HUD as a set-aside in the Operations Fund, and PHAs are to negotiate and enter into memoranda of agreement with resident councils regarding the use of those funds.¹¹

PHAs should report on any policies that they have developed regarding resident participation and any memoranda of agreement that they have entered into for the expenditure of tenant participation funds. Where funds have not been distributed to resident councils, PHAs should include in the report on how they have expended these funds, and should provide residents, affected resident councils, and RABs with an opportunity to review and comment on such expenditures. PHAs should report on which developments have recognized resident councils and, where there are no resident councils, what the reason for this is and whether the PHA is engaged in any strategies to encourage development of councils at those sites. The PHA should provide information on how RAB members have been selected, what meetings have been held with the RABs during the course of a year, and what specific resources it provides to help

⁷ See 24 C.F.R. 964, Subpart B.

⁸ See 42 U.S.C. § 1437c-1(e); 24 C.F.R. § 903.13.

⁹ See 42 U.S.C. § 1437(b); 24 C.F.R. Part 964, Subpart E. Even if a PHA is exempt from the requirement of having resident commissioners, state or local law may provide for some role by residents in the oversight or administration of public housing. See, for example, Chapter 88 of Mass. Acts of 1989 (post-receivership Boston Housing Authority does not have a Board of Commissioners, in order to ensure accountability of the Mayor of the City of Boston for PHA operations, but does have a tenant-majority Monitoring Committee with certain oversight functions).

¹⁰ See 24 C.F.R. § 964.120; see also 24 C.F.R. Part 990, Subpart I.

¹¹ See 24 C.F.R. § 990.190 and PIH Notice 2001-3. HUD indicated, in the 2001 notice, that its terms would remain in effect until HUD revised 24 C.F.R. Part 964; this has not yet occurred.

support the RAB. Where there are no recognized resident councils, the PHA should describe the efforts that it takes to engage with residents at such site(s). Where there are resident commissioners, RMCs, or resident organizations that have an ownership interest in mixed finance sites, this information should be included in the management review. Moreover, the RAB and affected resident councils should be notified that there is a management review and what mechanisms they can utilize to give HUD input during the course of such review.

- **Self-Sufficiency:** Self-sufficiency can in part be evaluated by looking at the PHA's Section 3 implementation. *We would recommend that HUD evaluate, as part of PHAS, whether a PHA is fully compliant with Section 8 implementation, and if it is not, this should be reflected in the score.*

Self-sufficiency, however, is not limited to Section 3. In elderly/disabled developments, for example, there may be relatively fewer residents who can take advantage of such programs. Nonetheless, there may be a number of other programs that will enhance the quality of residents' lives and their greater ability to live independently and to foster strong communities.¹² PHAs also have a great challenge in forging communities among what may be a very diverse population with multiple languages, nationalities, and physical/mental challenges. They cannot be expected to do so alone, but the more partnerships and resources that can be drawn in from a variety of sources, the greater the likelihood is that the quality of life for all can be improved. Partnerships that may have been established in a community to help eliminate homelessness may also serve a role with stabilization and appropriate intervention to obtain needed services and assistance. While this is to a certain extent "subjective", it is a key piece in evaluating how a PHA's public housing programs are integrated into the community and avoiding isolation.

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

¹² At 24 C.F.R. § 990.190(a), HUD lists, under the "self-sufficiency" add-on for the Operating Fund, the reasonable costs of program coordinators. While HUD may have intended to limit this to 24 CFR Part 984 programs, there are certainly resident service coordinators in elderly/disabled developments who carry out a similar role to those performing similar functions in multifamily housing designated for the elderly/disabled. HUD should consider a cross-program evaluation of what elements (besides adequate funding) are necessary to implement effective resident services coordination in both types of housing.

comments supported inclusion of fair housing evaluation into management assessment. HUD responded that fair housing was within the purview of FHEO, but asked what data elements, if any, could be obtained by PIH staff during onsite reviews, and through other means, that can assist FHEO in its monitoring functions and to affirmatively further fair housing. See 76 FR 10141.

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

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

4/ In General: Security: HUD has noted that under the interim rule, the security subindicator is no longer scored. A review of security, including denials of admission based upon screening for criminal history, will still be included in protocols for onsite management reviews. HUD further indicated that it wishes to create strong and appropriate policies to measure efforts to ensure a safe environment for public housing residents, and it is soliciting public comments on the security component. 76 FR 10146. PHAs should have measures of what incidents have been reported within its developments month by month, and what the response has been, so that trends in crime

and the effectiveness of crime prevention strategies can be tracked. PHAs should also report regarding what meetings that they have had with residents and resident councils to discuss crime in developments and anti-crime strategies.¹³ At times, this may go hand in hand with efforts to affirmatively further fair housing—if crime of one sort or another appears to be disproportionately targeted toward particular groups, particularly if there are accompanying demographic trends, the PHA, the community, and HUD may need to take concerted efforts to vigorously address this.

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

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

§ 902.40 Management operations assessment

¹³ As noted above, 42 U.S.C. § 1437d(c)(5)(C) provides that PHAs are to partner with resident councils on implementation and enforcement of security strategies.

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

§ 902.43 *Management operations performance standards*

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

Subpart E—Capital Fund Program Indicator

902.50 *Capital Fund program assessment*

- At § 902.50(a), we agree with HUD’s addition of vacancy reduction as an element of the Capital Fund indicator, in addition to timely obligation of the Capital Fund. This is consistent with the Congressional mandate at 42 U.S.C. § 1437d(j)(1)(A-B).
- At § 902.50(b), while a PHA that chooses not to participate in the Capital Fund may be exempt from the provision regarding timely obligation of Capital Funds, it should nonetheless remain accountable for such reporting on obligation of funds obtained prior to deciding not to participate. Moreover, the PHA should be required to report on the number and percentage of vacancies within its inventory and the progress that it has made in the past three years to reduce such vacancies, since this statutory requirement does not hinge on whether or not the PHA receives Capital Funds.

- At § 902.50(c)(2), the PHA's submission on vacancies should be consistent with what is required by statute, i.e., the number and percentage of vacancies within an agency's inventory, including the progress that the agency has made within the previous three years to reduce such vacancies. See 42 U.S.C. § 1437d(j)(1)(A). As mentioned above, HUD could fine-tune the differences in the approach to different kinds of vacancies—see proposed § 902.22(d)(2) and comments above.

§ 902.53 Capital Fund program scoring and thresholds

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

PART 907 – SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY

§ 907.1 Purpose and scope

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

§ 907.5 Procedures for declaring substantial default

- At § 907.5(a), notification of a finding of substantial default should also be transmitted in a timely manner to the Resident Advisory Board (RAB) and any affected resident councils or resident organizations (including, as applicable, Section 8 resident organizations) and to the resident commissioner(s) if any of the Authority (this may be unnecessary in cases where the residents are considered to be the 'appointing authority' of the resident commissioner under § 907.5(a)).
- At § 907.5(b), a PHA's response to the notice of substantial default should also be transmitted in a timely manner to the RAB and any affected resident councils or

organizations, as well as the appointing authority(ies) of the PHA's Board of Commissioners and to the resident commissioner(s) if any of the Authority.

§ 907.7 Remedies for substantial default

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

CONCLUSION

Thank you again for the opportunity to submit these comments, and please feel free to contact us if you have any questions.

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