

sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although inoperable or missing smoke detectors do not reduce the score, they are included in the health and safety deficiencies list that the inspector gives the PHA's property representative. The PHA is expected to promptly address all health and safety deficiencies.

Severity means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see REAC's "Dictionary of Deficiency Definitions".

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with civil rights/non-discrimination requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601-19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible non-compliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD access to PHA properties.* PHAs are required by the ACC to provide the Government with full and free access to all facilities contained in the development. PHAs are required to provide HUD or its representative with access to the development, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be pro-

vided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given "0" points for the development or developments involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process (PHAS PASS Notice 3), which will be published in the FEDERAL REGISTER. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Physical Condition Scoring Process that is currently in effect can be found at the REAC Internet site at <http://www.hud.gov/reac> or obtained from REAC's Technical Assistance Center at 888-245-4860 (this is a toll free number).

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment. (See paragraph (c) of this section which provides for further adjustments of physical condition score under certain circumstances.)

(1) *Adjustments in three areas.* Adjustments to the PHA physical condition score will be made in three factually observed and assessed areas (inspectable areas):

- (i) Physical condition of the site;
- (ii) Physical condition of the common areas on the property; and
- (iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.

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

(3) *Adjustment for physical condition (property age) and neighborhood environment.* HUD will adjust the physical score of a PHA's property subject to both the physical condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify in the manner prescribed by HUD, the extent to which the conditions apply, and to which inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a property's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood en-

vironments, exceed the maximum potential weighted points assigned to the respective property's inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the Physical Condition Indicator, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Database adjustment.* (1) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under certain circumstances, HUD may determine it is appropriate to review the results of a PHA's physical inspection which are unusual or incorrect due to facts and circumstances affecting the PHA's property which are not reflected in the inspection or which are reflected inappropriately in the inspection.

(i) These circumstances are not those that may addressed by the technical review process described in § 902.68. The

circumstances addressed by this paragraph (c)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the PHA has been scored for elements (e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining, and the PHA has notified the proper authorities regarding the deficient structure.

(ii) An adjustment due to these circumstances may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (c) of this section. The notice will be applicable to both public housing and multifamily housing properties covered by 24 CFR part 5, subpart G.

(2) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(i) The circumstances addressed by this paragraph (c)(2) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing development that re-

sults in damage to the development) or natural disasters. (The circumstances addressed in paragraph (c)(2) of this section are not those addressed by the technical review process in §902.68.)

(ii) To adjust a physical condition score based on circumstances addressed in paragraph (c)(2) of this section, the PHA must submit a request to the applicable HUD HUB/Program Center requesting a reinspection of the PHA's properties. The request must be submitted within 15 days of the issuance of the physical condition score to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

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

(i) An occupied dwelling unit or other areas of a PHA development undergoing modernization are subject to physical inspection; the unit and other areas of the PHA development are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA development that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the development that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(ii) An adjustment due to modernization work in progress may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and the notification shall include supporting documentation of the modernization

§ 902.26

24 CFR Ch. IX (4-1-04 Edition)

work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(d) *Overall PHA Physical Condition Indicator score.* The overall Physical Condition Indicator score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties of the PHA.

(e) *Thresholds.* (1) The physical condition score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36044, June 6, 2000]

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(1) If exigent health and safety items are identified in the report, the PHA will have the opportunity to correct all exigent health and safety deficiencies noted on the report and request a reinspection.

(2) The correction of exigent health and safety deficiencies and the request for reinspection must be made within 15 days of the PHA's receipt of the

Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the exigent health and safety deficiencies that have been corrected, and the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, REAC will arrange for a complete reinspection of the development(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the development, and REAC will issue a new inspection report (the final inspection report).

(4) If any of the previously identified exigent health and safety deficiencies that the PHA certified were corrected are found during the reinspection to be not corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 15 days, the physical inspection report issued to the PHA will be the final physical inspection report.

(b) The Physical Inspection Report includes the following items:

(1) Normalized weights as the "possible points" by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.