

survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of resident survey results, REAC will review the PHA's file and evidence submitted by the PHA. If REAC's review determines that an error has been documented, REAC may take one or a combination of the following actions:

- (i) Undertake a new survey;
- (ii) Correct the resident survey results report;
- (iii) Issue a corrected resident services and satisfaction score;
- (iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

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

(1) Appeal its troubled designation (including designation as troubled with respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *Appeal of PHAS score.* If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled, standard, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d) and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for

the PHA (*i.e.*, from troubled performer to standard performer, or from standard performer to high performer).

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

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

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an objectively verifiable and material error has been documented by the PHA, REAC will convene a Board of Review, in accordance with the procedures of paragraphs (d) and (e) of this section, to evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. For appeal of PHAS scores, the Board of Review may determine that REAC should undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

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

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

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Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), ef-

fective upon notification of high performer designation.

(ii) The development or developments of a PHA that receives a physical condition score of 90 percent or greater under PHAS Indicator #1 shall be subject to a physical inspection every other year rather than annually. (All developments of the high performer PHA are subject to inspection every other year, not only those inspected for which the physical condition score of 90 percent or greater was achieved.)

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program. Where permissible by statute or regulation, eligibility for high performers to receive bonus points in HUD's funding competitions, will be stated in HUD's notices of funding availability or other funding documents.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section 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 or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA 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 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

- (1) Regular independent auditor (IA) audits.
- (2) Office of Inspector General (OIG) audits or investigations will continue