

(2) Due to the fact that the PHA and not the RMC/AME is ultimately responsible to the Department under the ACC, a PHA's score will be based on all of the developments covered by the ACC, including those with management functions assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable). This is necessary because of the limited nature of an RMC/AME's management functions and the regulatory and contractual relationships among the Department, PHAs and RMC/AMEs.

(3) A significant feature of RMC management is that 24 CFR §§ 964.225 (d) and (h) provide that a PHA may enter into a management contract with an RMC, but a PHA may not contract for assumption by the RMC of the PHA's underlying responsibilities to the Department under the Annual Contributions Contract (ACC).

(4) When a PHA's management functions have been assumed by an AME:

(i) If the AME assumes only a portion of the PHA's management functions, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(ii) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

(5) To ensure quality management results from a contract between an AME and a PHA, or between an AME and HUD, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in such contract. Failure to meet the performance criteria would be a basis for termination of the contract. However, even in the absence of explicit contractual provisions, this part applies to AMEs in accordance with paragraph (b)(4) of this section, above.

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#### § 901.5 Definitions.

*Actual vacancy rate* is the vacancy rate calculated by dividing the total number of vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

*Adjusted vacancy rate* is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons. It is calculated by dividing the total number of adjusted vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

*Alternative management entity (AME)* is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order, pursuant to a court ordered receivership agreement, if applicable, or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with § 901.1(b)(2), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

*Assessed fiscal year* is the PHA fiscal year that has been reviewed for management performance using the PHMAP indicators. Unless otherwise indicated, the assessed fiscal year is the immediate past fiscal year of a PHA.

*Assistant Secretary* means the Assistant Secretary for Public and Indian Housing of the Department.

*Available units* are dwelling units, (occupied or vacant) under a PHA's Annual Contributions Contract, that are available for occupancy, after excluding or adjusting for units approved for non-dwelling use, employee-occupied units, and vacant units approved for deprogramming (units approved for demolition, disposition or units that have been combined).

*Average number of days for non-emergency work orders to be completed* is calculated by dividing the total of the:

(1) Number of days in the assessed fiscal year it takes to close active non-emergency work orders carried over from the previous fiscal year;

(2) The number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and

(3) The number of days all active non-emergency work orders are open in the assessed fiscal year, but not completed, by the total number of non-

emergency work orders used in the calculation of paragraphs (1), (2) and (3), of this definition.

*Average turnaround time* is the annual average of the total number of turnaround days between the latter of the legal expiration date of the immediate past lease or the actual move-out date of the former tenant (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Average turnaround time is calculated by dividing the total turnaround days for all units re-occupied during the assessed fiscal year by the total number of units re-occupied during the assessed fiscal year.

*Cash reserve* is the amount of cash available for operations at the end of an annual reporting period after all necessary expenses of a PHA or development have been paid or funds have been set-aside for such payment. The cash reserve computation takes into consideration both short-term accounts receivable and accounts payable.

*Confirmatory review* is an on-site review for the purposes of State/Area Office verification of the performance level of a PHA, the accuracy of the data certified to by a PHA, and the accuracy of the data derived from State/Area Office files.

*Correct* means to improve performance in an indicator to a level of grade C or better.

*Cyclical work orders* are work orders issued for the performance of routine maintenance work that is done in the same way at regular intervals. Examples of cyclical work include, but are not limited to, mopping hallways; picking up litter; cleaning a trash compactor; changing light bulbs in an entryway; etc. (Cyclical work orders should not be confused with preventive maintenance work orders.)

*Deficiency* means any grade below C in an indicator or component.

*Down time* is the number of calendar days a unit is vacant between the later of the legal expiration date of the immediate past lease or the actual move-

out date of the former resident, and the date the work order is issued to maintenance.

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

*Dwelling rent to be collected* means dwelling rent owed by residents in possession at the beginning of the assessed fiscal year, plus dwelling rent charged to residents during the assessed fiscal year.

*Dwelling rent uncollected* means unpaid resident dwelling rent owed by any resident in possession during the assessed fiscal year, but not collected by the last day of the assessed fiscal year.

*Dwelling unit* is a unit that is either leased or available for lease to eligible low-income residents.

*Effective lease date* is the date when the executed lease contract becomes effective and rent is due and payable and all other provisions of the lease are enforceable.

*Emergency* means physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.

*Emergency status abated* means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.

*Emergency work order* is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

*Employee occupied units* refers to units that are occupied by employees who are required to live in public housing as a condition of their job, rather than the occupancy being subject to the normal resident selection process.

*HQS* means Housing Quality Standards as set forth at §982.401 of this title, except that §982.401(j) of this title

does not apply and instead part 35, subparts A, B, L, and R of this title apply.

*Improvement Plan* is a document developed by a PHA, specifying the actions to be taken, including timetables, that may be required to correct deficiencies where the grade for an indicator is a grade D or E, and shall be required to correct deficiencies of failed indicators, identified as a result of the PHMAP assessment when an MOA is not required.

*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 through § 901.45.

*Lease up time* is the number of calendar days between the time the repair of a unit is completed and a new lease takes effect.

*Local occupancy/housing codes* are the minimum standards for human occupancy, if any, as defined by the local ordinance(s) of the jurisdiction in which the housing is located.

*Maintenance plan* is a comprehensive annual plan of a PHA's maintenance operation that contains the fiscal year's estimated work schedule and which is supported by a staffing plan, contract schedule, materials and procurement plan, training, and approved budget. The plan should establish a strategy for meeting the goals and time frames of the facilities management planning and execution, capital improvements, utilities, and energy conservation activities.

*Major systems* include, but are not limited to, structural/building envelopes which include roofing, walls, windows, hardware, flashing and caulking; mechanical systems which include heating, ventilation, air conditioning, plumbing, drainage, underground utilities (gas, electrical and water), and fuel storage tanks; electrical systems which include underground systems, above ground systems, elevators, emergency generators, door bells, electronic security devices, fire alarms, smoke alarms, outdoor lighting, and indoor lighting (halls, stairwells, public areas and exit signs); and transformers.

*Make ready time* is the number of calendar days between the date the unit is

referred to maintenance for repair by a work order and occupancy is notified that the unit is ready for re-occupancy.

*Memorandum of Agreement (MOA)* is a binding contractual agreement between a PHA and HUD that is required for each PHA designated as troubled and/or mod-troubled. The MOA sets forth target dates, strategies and incentives for improving management performance; and provides sanctions if performance does not result.

*Move-out date* is the actual date when the resident vacates the unit, which may or may not coincide with the legal expiration of the lease agreement.

*Non-emergency work order* is any work order that covers a situation that is not an immediate threat to life, health, safety, or property, or that is unrelated to fire safety.

*Percent of dwelling rent uncollected* is calculated by dividing the amount of dwelling rent uncollected by the total dwelling rent to be collected.

*PHA* means a public housing agency. As appropriate in accordance with § 901.1(b)(2), PHA also includes AME.

*Percentage of emergency work orders completed within 24 hours* is the ratio of emergency work orders completed in 24 hours to the total number of emergency work orders. The formula for calculating this ratio is: total emergency work orders completed (or emergency status abated) in 24 hours or less, divided by the total number of emergency work orders.

*PHA-generated work order* is any work order that is issued in response to a request from within the PHA administration.

*Preventive maintenance program* is a program under which certain maintenance procedures are systematically performed at regular intervals to prevent premature deterioration of buildings and systems. The program is developed and regularly updated by the PHA, and fully documents what work is to be performed and at what intervals. The program includes a system for tracking the performance of preventive maintenance work.

*Preventive maintenance work order* is any work done on a regularly scheduled basis in order to prevent deterioration or breakdowns in individual units or major systems.

*Reduced actual vacancy rate within the previous three years* is a comparison of the vacancy rate in the PHMAP assessment year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the vacancy rate in the assessment year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

*Reduced the average time it took to complete non-emergency work orders during the previous three years* is a comparison of the average time it took to complete non-emergency work orders in the PHMAP assessment year (the immediate past fiscal year) with the average time it took to complete non-emergency work orders of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the average time it took to complete non-emergency work orders in the PHMAP assessment year from the average time it took to complete non-emergency work orders in the earlier year. If a PHA elects to certify to the reduction of the average time it took to complete non-emergency work orders during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

*Resident-generated work order* is a work order issued by a PHA in response to a request from a lease holder or family member of a lease holder.

*Resident management corporation (RMC)* means the entity that proposes to enter into, or that enters into, a management contract with a PHA in accordance with 24 CFR 964.120. As appropriate in accordance with § 901.1(b)(2), RMC also includes AME.

*Routine operating expenses* are all expenses which are normal, recurring fiscal year expenditures. Routine expenses exclude those expenditures that are not normal fiscal year expenditures and those that clearly represent work of such a substantial nature that the expense is clearly not a routine occurrence.

*Standards equivalent to HQS* are housing/occupancy inspection standards that are equal to HUD's Section 8 HQS.

*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 (ACC) or a Memorandum of Agreement.

*Unit days available* are the number of days that the available units were available for occupancy in a PHA fiscal year. Unit days available are calculated by adding the number of days that each unit was available for occupancy in the year.

*Units approved for non-dwelling use* refers to units approved for non-dwelling status for use in the provision of social services, charitable purposes, public safety activities and resident services, or used in the support of economic self-sufficiency and anti-drug activities.

*Units vacant due to circumstances and actions beyond the PHA's control* are dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the units. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are required to remain vacant because of fire/police investigations, coroner's seal, or as part of a court-ordered or HUD-approved desegregation effort.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. This category does not include units vacant only because they do not meet minimum housing and building code standards pertaining to construction or habitability under Federal, State, or local laws or regulations, except when these code violations are caused for reasons beyond the control of the PHA, rather than as a result of management and/or

maintenance failures by the PHA. Examples of exempted units under this category are: vacant units that are documented to be uninhabitable for reasons beyond the PHA's control due to high/unsafe levels of hazardous/toxic materials (e.g., lead-based paint or asbestos), by order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA, and units kept vacant because they became structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations). Other examples are 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 and vacant units required to remain vacant because of fire/police investigations, coroner's seal, or court order.

(3) *Changing market conditions.* Examples of units in this category are small PHAs that are located in areas experiencing population loss or economic dislocations that face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures. Where a PHA claims extraordinary market conditions, the PHA will be expected to document the market conditions to which it refers (the examples of changing population base and competing projects are the simplest), the explicit efforts that the PHA has made to address those conditions, the likelihood that those conditions will be mitigated or eliminated in the near term, and why the market conditions are such that the PHA is prevented from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the vacant units. In order to justify the adjustment, the PHA will need to document the specific market conditions that exist and document marketing and outreach efforts. The PHA will need to describe when the downturn in market conditions occurred, the location(s) of the unit(s) effected, the likelihood that these circumstances will be mitigated or eliminated in the near term and why the market conditions are such that they

are preventing the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating, or modernizing the vacant units.

(4) *Natural disasters.* These are vacant units that are documented to be uninhabitable because of damaged suffered as a result of natural disasters such as floods, earthquakes, hurricanes, tornadoes, etc. In the case of a "natural disaster" claim, the PHA would be expected to point to a proclamation by the President or the Governor that the county or other local area in question has, in fact, been declared a disaster area.

(5) *Insufficient funding.* Lack of funding for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds (only PHAs with less than 250 units are eligible to apply and compete for CIAP funds). This definition will cease to be used if CIAP is replaced by a formula grant.

(6) *Casualty Losses.* Vacant units that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received. The vacancy days exempted are those included in the period of time between the casualty loss and the receipt of funds from the insurer to cover the loss in whole or in part.

*Vacancy day* is a day when an available unit is not under lease by an eligible low-income resident. The maximum number of vacancy days for any unit is the number of days in the year, regardless of the total amount of time the unit has been vacant. Vacancy days are calculated by adding the total number of days vacant from all available units that were vacant for any reason during the PHA's fiscal year.

*Vacant unit* is an available unit that is not under lease to an eligible low-income family.

*Vacant unit turnaround work order* is a work order issued that directs a vacant unit to be made ready to lease to a new resident and reflects all work items to prepare the unit for occupancy.

*Vacant unit undergoing modernization* as defined in 24 CFR §990.102. In addition, the following apply when computing time periods for a vacant unit undergoing modernization:

(1) If a unit is vacant prior to being included in a HUD-approved modernization budget, those vacancy days that had accumulated prior to the unit being included in the modernization budget must be included as non-exempted vacancy days in the calculation.

(2) The calculation of turnaround time for newly modernized units starts when the unit is turned over to the PHA from the contractor and ends when the lease is effective for the new or returning resident. Thus, the total turnaround time would be the sum of the pre-modernization vacancy time, and the post-modernization vacancy time.

(3) Unit-by-unit documentation, showing when a vacant unit was included in a HUD-approved modernization budget, when it was released to the PHA by the contractor, and when a new lease is effective for the new or returning resident, must be maintained by the PHA.

(4) Units remaining vacant more than two FFYs after the FFY in which the modernization funds are approved, may no longer be exempted from the calculation of the adjusted vacancy rate if the construction contract has not been let. These units may be exempted again, but only after a contract is let.

*Vacant units approved for deprogramming* exist when a PHA's application for the demolition and/or disposition of public housing units has received written approval from HUD; or when a PHA's application to combine/convert has received written approval from HUD.

*Work order* is a directive, containing one or more tasks issued to a PHA employee or contractor to perform one or more tasks on PHA property. This directive describes the location and the type of work to be performed; the date and time of receipt; date and time issued to the person or entity performing the work; the date and time the work is satisfactorily completed; the parts used to complete the repairs and the cost of the parts; whether the

damage was caused by the resident; and the charges to the resident for resident-caused damage. The work order is entered into a log which indicates at all times the status of all work orders as to type (emergency, non-emergency), when issued, and when completed.

*Work order completed during the immediate past fiscal year* is any work order that is completed during the PHA's fiscal year regardless of when it may have been received.

*Work order deferred for modernization* is any work order that is combined with similar work items and completed within the current PHMAP assessment year, or will be completed in the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

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#### **§ 901.10 Indicator #1, vacancy rate and unit turnaround time.**

This indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time. This indicator has a weight of x2.

(a) For the calculation of the actual and adjusted vacancy rate (and, if applicable, unit turnaround time), the following three categories of units (as defined in the rule at §901.5), that are not considered available for occupancy, will be completely excluded from the computation:

(1) Units approved for non-dwelling use.

(2) Employee occupied units.

(3) Vacant units approved for deprogramming (i.e., demolition, disposition or units that have been combined).

(b) For the calculation of the adjusted vacancy rate and turnaround time, the vacancy days for units in the following categories (fully defined in the rule at §901.5) shall be exempted: