

under *more than one* of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in §902.75.

(2) *Troubled in one area.* (i) A PHA that achieves less than 60 percent of the total points available under *only* one of the following indicators, PHAS Indicators #1, #2, or #3, shall be considered a substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in §902.75.

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund sub-indicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see §902.43(a)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

(d) *Withholding designation.* (1) In *exceptional circumstances*, even though a PHA has satisfied all of the PHAS Indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial non-compliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, non-compliance with civil rights, non-

discrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial non-compliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated either a standard performer or troubled performer depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

(3) The denial or rescission of a designation of high performer or standard performer does not affect the PHA's numerical PHAS score.

(4) A PHA that disagrees with the basis for denial or rescission of the designation may make a written request for reinstatement of the designation to the Assistant Secretary for Public and Indian Housing which request shall include reasons for the reinstatement.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36045, June 6, 2000]

#### § 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors)

occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.*, minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then REAC may take one or a combination of the following actions:

- (i) Undertake a new inspection;
- (ii) Correct the physical inspection report;
- (iii) Issue a corrected physical condition score;
- (iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (*i.e.*, high performer, standard performer, or troubled performer). If REAC determines that a new inspection is warranted, and the new inspection results in a significant

change from the original physical condition score, and the PHA's PHAS score and PHAS designation, REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* REAC will consider conducting a technical review of a PHA's resident 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,