

Proposed Rules

Federal Register

Vol. 89, No. 213

Monday, November 4, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 902

[Docket No. FR-6356-P-01]

RIN 2577-AD17

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Performance Deficiencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: The Public Housing Assessment System (PHAS) governs the assessments, evaluation, and oversight of public housing agencies (PHAs) administering public housing. This proposed rule would revise the weight of PHAS performance indicators to emphasize the importance of occupancy, financial condition, and physical assessments. To the greatest extent possible, scoring indicators would be based on measurable program outcomes and data that is already available to HUD. Additionally, the proposed revisions would allow HUD to respond more quickly and effectively to performance deficiencies when they are first identified, to intervene based on trending performance data, and to delay scoring or assessments when appropriate.

DATES: *Comment Due Date:* January 3, 2025.

ADDRESSES: There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the

commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Note: To receive consideration as a public comment, comments must be submitted through one of the two methods specified above.

Public Inspection of Public Comments. HUD will make all properly submitted comments and communications available for public inspection and copying during regular business hours at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Daniel Threet, Policy Advisor, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410-0500, telephone (202) 402-7513 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at www.regulations.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Last updated in February 2011, 24 CFR part 902 describes how HUD assesses and scores the performance of PHAs in essential public housing operations, on a program-wide and individual-project basis. PHAS assesses PHA performance based on indicators and subindicators described in part 902, which HUD then uses to determine a score or designation for each PHA. The four key indicators, described in 24 CFR 902 subparts B through E, are the physical condition indicator, the financial condition indicator, the management operations indicator, and the Capital Fund program indicator.

The current regulations define the purpose and applicability of the system, the general types of indicators used in assessment, the frequency of assessments, incentives for high performers, and how HUD will respond to PHAs with deficiencies or that are identified as Troubled performers.

In current regulations, the physical condition indicator measures the extent to which a PHA is ensuring that projects meet acceptable basic housing conditions. It draws on independent physical inspections of a PHA's projects provided by HUD and aims to ensure that all residents live in safe, habitable dwellings. The financial condition indicator measures a PHA's ability to maintain sufficient financial resources to support the operation of its Public Housing program. It draws on financial information reported to HUD by PHAs. The management operations indicator measures the PHA's ability to operate its Public Housing program in a way that assists as many households as possible and meets obligations to participants. It draws on unit-status data as well as financial information reported to HUD by PHAs. The Capital Fund program indicator measures the PHA's ability to meet requirements to obligate Capital Fund program grants in a timely fashion. It also measures occupancy rates on the assumption that high occupancy rates reflect success in addressing capital needs. It draws on PHA reporting of the obligation of Capital Fund program grants and unit-status data. Based on these four

indicators, a PHA receives a composite score and a corresponding performance designation (*i.e.*, a PHA may be designated as a High performer, a Standard performer, a Substandard performer, or Troubled performer based on its PHAS assessment).

A full PHAS assessment relies on components that are not simultaneously assessed, so HUD can receive information about poor performance months before a full performance designation status is determined. Under the current regulations, HUD is not able to require a PHA to take corrective action of any deficiency until the full PHAS assessment is complete. For example, problems may be identified during a physical inspection in December, but the PHA may not be identified as a Troubled performer until after audited financials are submitted nine months later. Greater flexibility is needed so that HUD can require, and PHAs can complete, corrective action more promptly.

Beginning in fall 2022, HUD held a series of in-person and virtual listening sessions with PHAs across the country, to solicit feedback from PHAs on what they felt were viable and informative metrics for the evaluation of PHA performance in managing Public Housing. In developing the new proposed subindicators, HUD considered this feedback, striking a balance between what it was important to measure, what is reasonably possible to measure, and what is a fair assessment of PHA performance. In considering various alternative indicators or subindicators, HUD examined whether alternative metrics would require additional information-collection burdens on PHAs, as well as whether alternative metrics could be collected reliably and objectively.

II. This Proposed Rule

This proposed rule would revise and restructure the PHAS indicators as well as adjust the weighting of indicators. It would also make several changes not directly related to scoring. For example, to correct the lag in timing and achieve the desired flexibility, this proposed rule would allow HUD to have broad, flexible authority to require interventions or corrective actions based on component scores as soon as those scores are issued; in advance of a full assessment; considering trending data; or in conjunction with a decision to withhold, deny, or rescind a score or designation, as HUD determines necessary. This proposed rule would also revise the performance indicators and subindicators on which scores are based, in order to better measure

performance and align incentives with the long-term viability of the program. Throughout this proposed rule, HUD has made several technical changes that do not substantively affect requirements.

Subpart A—General Provisions

a. Scope

The proposed rule would expand the scope of assessment tools HUD will use in § 902.1(d), adding other reviews or audits conducted on the PHA to the tools HUD will use to assess management operations. It would also allow HUD to advise PHAs of their performance designations in addition to their scores.

b. Definitions

The proposed rule would make several changes to definitions in § 902.3. First, it would remove the existing definition of “Assessed fiscal year” and add a definition for “Assessment year,” which is defined as the period of time for a single PHAS assessment including a schedule setting forth when component scores will be determined. For example, any property required to undergo a physical inspection once every three (3) years will retain the same PHAS physical condition indicator score it received in the first year of inspection for the second and third years for assessing the PHAS physical condition. In the fourth year, the physical condition score will be based on a new inspection. The financial condition, management operations, and Capital Fund program indicators will still be based on the PHA’s fiscal year for each assessment.

The proposed rule would revise the definition of “Capital Fund troubled” to refer to a PHA that does not satisfy the requirements to pass the Capital Fund indicator evaluation rather than one that does not meet a minimum passing score. This revision would align the definition with HUD’s proposal to determine Capital Fund troubled status based on a pass/fail rather than a numeric score. It would also revise the definition of “Corrective Action Plan” to note that such plan is developed in concert with HUD or by HUD, to introduce the concept that such plan may be based on an individual component score determined prior to the issuance of the overall PHAS score and designation, and that for small rural PHAs the equivalent term is “Corrective Action Agreement” as noted in § 902.105(c). The proposed rule would revise the definition of “Deficiency,” by changing the score for the Capital Fund indicator to a failing evaluation rather than below

50 percent. At § 902.73, the proposed rule specifies that a deficiency may be a finding or determination that requires corrective action in advance of the issuance of an overall PHAS score or performance designation. HUD would also remove the definition of “Dictionary of Deficiency Definitions.” The NSPIRE final rule (88 FR 30442) replaced this dictionary with the NSPIRE Standards and Scoring notices (see 24 CFR 5.709). The NSPIRE final rule revised and retained this definition to instead refer to the NSPIRE Standards and Scoring notices, but after further consideration, HUD has determined that term is no longer used and can be removed. HUD is therefore proposing to remove this definition.

The proposed rule would add a definition for “Designation” to mean a label given to a PHA—“High performer,” “Standard performer,” “Substandard performer,” or “Troubled performer”—based on its overall PHAS score. The definition would include the notion that a PHA that receives a failing evaluation under the Capital Fund program indicator would be designated as a “Capital Fund troubled performer.” Finally, the proposed rule would add a definition for “Score” to distinguish between an overall PHAS score and a component score (an indicator or subindicator score). The definition would specify that the overall PHAS score is a number between 0 to 100 and is calculated by adding together the physical condition, financial condition, and management operations indicator scores. Small rural PHAs (as defined by § 902.101) would continue to be scored per § 902.103.

c. Applicability

The proposed rule would amend § 902.5(a)(3) to update the applicability of this part to Moving-to-Work (MTW) agencies. The proposed rule would eliminate language that PHAS scores do not apply to MTW agencies and would instead state that MTW agencies operating under the Standard MTW Agreement will not be scored in PHAS unless the PHA elects to be scored. The proposed rule would also state that MTW agencies operating under the MTW Operations Notice will be subject to scoring in PHAS.

At the final rule stage, HUD does not plan to have an immediate effective date. Instead, HUD plans to set an effective date one full assessment cycle after the publication of the final rule so that PHAs have time to learn about revised criteria prior to being assessed under them. For example, if the final rule is published in September 2025, the regulations in this part will be

applicable to PHAs beginning with the September 30, 2026 fiscal year end date.

d. Scoring and Designations

In § 902.9, the proposed rule would provide that each PHA will receive an overall PHAS score determined by adding the physical condition indicator (accounts for 40 points), the financial condition indicator (accounts for 30 points), and the management operations indicator (accounts for 30 points). The financial condition and management operations indicators each contain subindicators. The Capital Fund program indicator will no longer be awarded points in the overall PHAS score and will only be evaluated on a pass/fail basis. If a PHA fails the Capital Fund program indicator, its overall performance designation will be Capital Fund troubled. The proposed rule adds a clarification that a PHA will not receive an overall PHAS score nor a performance designation if all of its projects are mixed-finance projects. Part 902 already provides that mixed-finance projects are subject to the physical condition inspections (§ 902.22) but are excluded from the financial condition indicator (§ 902.30) and management operations indicator (§ 902.40).

The proposed rule would amend § 902.11 to allow HUD to withhold a designation altogether if HUD exercises its authority at § 902.66 to do so (as described further in the changes to Subpart F). To receive a High performer or Standard performer designation, a PHA would need to receive a passing evaluation under the Capital Fund program indicator along with the existing percentage of available points available in its overall PHAS score. This change is required to accommodate the move to evaluating the Capital Fund program indicator on a pass/fail basis, which is discussed in Subpart E below. The current regulation requires that High performers and Standard performers receive at least 50 percent of the points available under the Capital Fund indicator. For Standard performers, HUD may elect to craft Corrective Action Plans rather than have a PHA submit a Corrective Action Plan. Further assistance from HUD in crafting Corrective Action Plans will benefit smaller PHAs or those with capacity-related challenges, allowing for the collective development of plans quickly. Except for small rural PHAs subject to § 902.105, a PHA designated as a Troubled performer would be subject to the remedies provided in 42 U.S.C. 1437d(j)(4). The proposed rule would remove paragraph (d)(2) of this section and replace it with a new paragraph (e) to § 902.11—Capital Fund troubled

performer—explaining that if a PHA receives a failing evaluation under the Capital Fund program indicator, it will be designated as a Capital Fund troubled performer and be subject to corrective actions separate from or in addition to the requirements of a memorandum of agreement.

e. Frequency

This proposed rule would amend § 902.13 to allow HUD to suspend or skip assessments and allow PHAs to request that HUD extend the time between PHAS assessments in accordance with requirements HUD may issue by Notice. HUD may grant such extension requests for good cause when it deems it appropriate. HUD specifically seeks comment on what should constitute good cause for HUD to approve a PHA delay request (*see* “Questions for public comment,” *infra.*, Section III, #9). For example, public input may suggest that PHAs need to request an extension when they experience a natural disaster or other emergency that affects their properties (*e.g.*, severe localized flooding), or if supply chain delays or staffing shortages prevent maintenance work. A new paragraph (a)(4) would be added to § 902.13 noting that properties of small PHAs would be inspected per § 5.705(c), which describes the timing of inspection cycles for various HUD programs and how inspection scores affect those cycles.

This proposed rule would revise paragraph (b)(2) of § 902.13 to indicate that if projects are not inspected in accordance with the cycle laid out in § 5.705, the assessment year will be extended just for the physical condition indicator, to ensure that old inspection scores are not rolled forward inappropriately. For example, if a new inspection is required within 3 months of an anniversary date of March 1 and the inspection is not performed until July 1, HUD will not issue the overall PHAS score until those inspections are completed and will use the July inspections, along with inspections of other PHA properties completed on time, to determine the PASS score and the overall PHAS score for that assessment year. HUD further proposes to revise 902.13(b)(2) to note that HUD may exercise discretion to skip the PHA’s assessment year, should a delayed physical condition inspection occur 6 months after the end of the assessment year. This means that the PHA would not receive an overall PHAS score for that assessment year, and the late physical inspection would be used for the subsequent PHAS assessment instead. In the example above, should

the inspection that was due within 3 months of March 1 not be performed until the following January, HUD would choose to not issue an overall PHAS score for the PHA for that assessment year. The inspection performed in January would be used for the overall PHAS score for the next assessment year. This would ensure that HUD does not inappropriately reuse inspection scores for the purpose of determining overall PHAS scores. Other indicator scores will continue to be issued as they are determined in either situation.

This proposed rule would revise paragraph (b)(4) of § 902.13 to specify that in years subsequent to the baseline year, the physical inspection schedule in § 5.705(c) will determine whether a property’s physical condition score is based upon a new inspection or the previous inspection. The baseline year refers to the year in which a physical inspection takes place and in which HUD determines whether a property needs to be inspected again in one, two, or three years as outlined in § 5.705(c). The baseline year will also be used to determine the next PHAS assessment for PHAs subject to small PHA deregulation.

Subpart B—Physical Condition Indicator

This proposed rule would add language to paragraph (b) of § 902.25 to clarify that indicator scores will be issued in advance of an overall PHAS score and that, as with the financial condition and management operations indicator scores, a PHA may be subject to appropriate oversight and action as soon as project scores or the overall physical condition indicator score is issued. The proposed language would also note that indicator scores issued in advance of an overall PHAS score are subject to revision by HUD.

Subpart C—Financial Condition Indicator

This proposed rule would add language to paragraph (b) of § 902.35 describing the subindicators that will be used to determine the financial condition indicator score. The language notes that the formulas for these subindicators will be provided by Notice and that MTW agencies will have variant formulas to account for the flexibilities of the MTW Demonstration.

The proposed rule would amend the description of the Quick Ratio (QR) subindicator, which compares quick assets—cash and assets that are easily convertible to cash—to current liabilities. Specifically, the proposed rule clarifies that neither quick assets nor current liabilities include inter-

program balances due to or due from other PHA projects, programs, and activities of a temporary nature. This is because HUD has found that inclusion of inter-program balances in the QR may overstate liquidity. The proposed rule would change the Months Expendable Net Assets Ratio subindicator to the Months Operating Reserve (MOR) subindicator. The MOR measures adequacy of reserves as a unit of time. It is the ratio of current assets less current liabilities to average monthly operating expenses and is the number of months a project can operate using currently available, unrestricted resources, before reaching insolvency. The proposed rule would change the Debt Service Coverage Ratio subindicator to the Expense Management (EM) subindicator, which would measure the efficiency of operations. The EM is the ratio of operating revenues—tenant rents and Operating Fund grants less transfers from the Capital Fund—to operating expenses as defined by the HUD Financial Data Schedule. In general, the expense management indicator is targeted to provide an assessment of how well a PHA is managing its expenses given their revenues. PHAs would be evaluated on the basis of how well they effectively ramp up or down expenses as revenue streams change. (In the PHAS scoring notice, HUD may indicate that this measurement takes place over a rolling 3–5 year period.) The benefit of this change will be that PHAs will be incentivized to improve budgeting work, and to ensure operations are right sized to annual revenues, while also providing tools to HUD to work with PHAs to address such deficiencies sooner in the process.

The proposed rule would add language to paragraph (c) of § 902.35 noting that, as with the physical condition and management operations indicator scores, the financial condition indicator score will be issued in advance of an overall PHAS score, will be subject to revision by HUD, and may subject a PHA to appropriate oversight and action as soon as it is issued.

Paragraph (d) of § 902.35 specifies how many points make up the financial condition indicator score. The proposed rule would change the maximum number of points on which this score is based from 25 to 30. The proposed rule would provide that a score of at least 18 points is needed for a PHA to receive a passing score under the financial condition indicator.

Subpart D—Management Operations Indicator

The proposed rule would replace paragraphs (a)(2) and (3) of § 902.43, which describe management operations subindicators. The Tenant Accounts Receivable subindicator and Accounts Payable subindicator would be removed, as a PHA's performance on these issues is already indirectly reflected in the financial condition indicator. Paragraph (a)(2) would assess a PHA's "timely reexaminations" of tenants based on the PHA's approved reexamination schedule. This subindicator would rely on tenant data already provided to HUD by PHAs. Paragraph (a)(3) would measure "audit compliance" by using findings in independent audits or HUD audits or reviews. The audit compliance subindicator would measure the extent to which the PHA is meeting program compliance requirements. In paragraph (b) of § 902.43, the proposed rule would allow HUD to assess the management operations indicator through other information available to HUD, in addition to information electronically submitted to HUD through FDS.

As noted above, HUD considered a wide range of alternative subindicators (e.g., work-order fulfillment), but found that many would require additional information-collection burdens or would be difficult for HUD to collect in a reliable, consistent manner.

The proposed rule would remove and reserve § 902.44, which would mean that the management operations indicator would no longer be adjusted for physical condition and neighborhood environment (PCNE). Analysis of the pattern of adjustments between 2015 and 2019 indicates that nearly all properties received points for physical condition (which reflects only the age of the housing stock), so the adjustment does not highlight exceptional challenges for select PHAs. Likewise, a diminishing minority of PHAs received points for neighborhood environment, which is an adjustment made if the project is in a census tract in which at least 40% of families have an income below the poverty rate, suggesting it is no longer an issue that requires adjustment.

This proposed rule would add language to paragraph (b) of § 902.45 to clarify that, as with the financial and physical condition indicators, the management operations indicator score will be issued in advance of an overall PHAS score, will be subject to revision by HUD and may subject a PHA to appropriate oversight and action as soon as it is issued. The proposed rule would

change the maximum number of points for the management operations indicator from 25 points to 30 points. A PHA must achieve at least 18 points to receive a passing score under the management operations indicator.

Subpart E—Capital Fund Program Indicator

The proposed rule would make several changes to the Capital Fund program indicator meant to improve the performance indicator system and remove duplication. The current Capital Fund program indicator measures occupancy according to different standards from the management operations indicator. The proposed rule would revise paragraph (a) of § 902.50 to remove the occupancy subindicator from the Capital Fund program indicator and limit what the indicator examines to the time taken by a PHA to obligate funds in relation to statutory deadlines. It would also restructure PHA evaluation under the paragraph (c) of § 902.50 to remove subindicators. Instead, PHAs would be evaluated on a pass/fail basis based on whether they satisfied the timeliness of fund obligation required by statute. Because assessments would now be pass/fail rather than scored, the proposed rule would revise references to "scores" throughout this subpart. It would also change the language in paragraph (b) of § 902.53 to reflect that in order to achieve a passing evaluation under the Capital Fund program indicator, a PHA must obligate at least 90 percent of Capital Fund program grants or receive HUD approved extensions as documented by the system of record within the time required by statute.

The proposed rule would also remove an unnecessary mention of HOPE VI and Choice Neighborhoods program funds in paragraph (a) of § 902.50.

Subpart F—PHAS Scoring

The proposed rule would revise paragraph (a) of § 902.60, to require a PHA to wait three full fiscal years after the effective date of the final rule before it is allowed to change its fiscal year-end, unless such change is approved by HUD for good cause. For example, PHAs may need to request a change due to a merger with another PHA or another significant organizational change. PHAs or the public may recommend other circumstances that provide good cause.

The proposed rule would require that PHAs submit their written request for a waiver of their audited financial information submission due date to HUD rather than specifying it must be submitted to their local field office in paragraph (c)(1) of § 902.60. HUD

intends to provide a mechanism for the waiver process via notice and update such process by notice as required.

The proposed rule would also remove existing paragraph (e) from § 902.60 and make several revisions to § 902.62.

These changes would be prompted by the revision of the management operations indicator to include a subindicator for audit compliance. Because the findings in audit compliance will inform the management operations score, HUD proposes revisions to allow HUD to reduce the management operations score for failure to submit financial statements timely. Paragraphs (a)(2), (a)(3), and (b)(1) of § 902.62 would be revised so that the responsive actions may apply to the management operations indicator, just as they currently apply to the financial condition indicator.

Currently, HUD may only withhold, deny, or rescind a High Performer or Standard designation and does not have flexibility to require corrective action when withholding a score or designation. This proposed rule would give HUD the authority to withhold any score or designation if it determines the circumstances necessitate HUD not issuing that score or designation. In exceptional circumstances (e.g., when gross malfeasance is discovered that would not be identified by PHAS), withholding a score or designation would help avoid any miscommunication about HUD's assessment of the PHA. Withholding a low score or troubled designation may be appropriate in rare circumstances when corrective action should be undertaken without first engaging in a two-year Memorandum of Agreement. Paragraph (a)(2) of § 902.64 would be revised to allow HUD to withhold, deny or rescind a PHAS score in addition to changing it, as is currently allowed. Section 902.66 would add paragraph (a)(1), which would allow HUD to withhold, deny, or rescind a score as well as a designation of any level from troubled performer to high performer. A designation may be withheld even when all component scores have been issued. Paragraph (a)(2) of § 902.66 would allow HUD to withhold, deny or rescind incentives or high performer designation or standard performer designation and add that it may do so, among other reasons, if a PHA demonstrates egregious performance issues not reflected in its PHAS score. Paragraph (a)(3) of § 902.66 would allow HUD to withhold, deny or rescind substandard performer or troubled performer designations at its discretion. Paragraph (a)(4) of § 902.66 would allow HUD to withhold, deny or rescind

component scores or an overall PHAS score at its discretion. When scores are withheld, denied or rescinded, HUD would need to notify the PHA, provide the basis for the decision, and allow for an appeal as described in § 902.69.

The proposed rule would also permit HUD to require corrective action while a score or designation is being withheld if performance deficiencies are identified. Paragraph (b) of § 902.64 would be revised to describe the new notification timeline: HUD will issue component scores for indicators and subindicators after they are determined and in advance of the overall PHAS score. Such scores would be provisional and subject to revision by HUD, and PHAs would be subject to oversight and action as soon as a component score is issued. The overall PHAS score would be issued one month after the indicator scores for the assessment year have been finalized unless HUD withholds a component score or overall score. Paragraph (a)(3) of § 902.66 would allow HUD to substitute corrective requirements when deemed necessary, and under paragraph (a)(4) of § 902.66 HUD could require a PHA to exercise appropriate oversight and take corrective actions as specified in § 902.73, requiring a PHA to correct deficiencies within a specified time period.

Paragraph (b) of § 902.66 would give HUD discretion to re-designate a PHA where that PHA's designation has been denied or rescinded. HUD may also decide not to assign the PHA a new designation.

The proposed rule would revise 902.69 to remove potentially confusing language that there are multiple distinct processes—one to appeal a designation and another to petition to remove a designation. These revisions to 902.66, 902.69, and 902.73 would not limit a PHA's ability to appeal HUD decisions or to make second order appeals when compared to the current regulatory language.

Subpart G—PHAS Incentives and Remedies

The proposed rule would revise § 902.73 to expand HUD's authority to subject a PHA to appropriate oversight and corrective action as soon as a component score is issued or considering trending data, in advance of issuance of a PHAS designation category. Paragraph (a) would provide HUD the authority to require corrective actions when scores or designations are withheld, denied, or rescinded, as HUD determines appropriate and would also provide HUD greater authority to determine the appropriate time for

corrective action and progress reports. It would allow required corrective actions to be incorporated into a Memorandum of Agreement (MOA) or Corrective Action Plan (CAP) if the PHA is later designated as a troubled or substandard performer. Paragraphs (b) and (d) would be amended to allow HUD to relay deadlines by means other than through a CAP because there may not always be a CAP depending on when HUD requires corrective action under paragraph (a).

The proposed rule would revise paragraph (b) of § 902.75 to clarify that an executed MOA for a troubled performer is an enforceable contract, the material breach of which by a PHA, is the basis, among other remedies available under law, for determination of substantial default.

The proposed rule would amend the example in paragraph (g)(3) of § 902.75 to align with the proposed changes to part 902. The example provides a scenario in which a troubled performer PHA fails to execute a MOA with HUD or fails to show a substantial improvement.

The proposed rule would add a new § 902.76 to distinguish Capital Fund troubled as its own designation rather than as one dependent on a designation of "Troubled." The new section would describe remedies with respect to the Capital Fund troubled performer designation and provide HUD authority to require a PHA to correct deficiencies within a time period specified by HUD. The requirements to correct deficiencies, and consequences for failure to correct deficiencies so identified, will otherwise be the same as for substandard performers as described in § 902.73. Separating the Capital Fund troubled performer designation from the troubled performer designation will allow the PHA to avoid entering into a MOA when the only performance deficiency is with respect to the Capital Fund, and the underlying deficiency can be resolved upon the next timely obligation. The Capital Fund troubled performer designation would also allow HUD to combine such designation with the substandard performer designation or the troubled performer designation.

The proposed rule would add a sentence to the end of § 902.81 making clear that a resident is not restricted from communicating any complaint or concern about a PHA to HUD in writing at any time. This addition is not a change to the current regulations and is being added only for clarification.

Subpart H—Assessment of Small Rural Public Housing Agencies

The proposed rule would revise sections of 24 CFR 902 subpart H—Assessment of small rural Public Housing Authorities to conform with the revisions in the rest of part 902. The proposed rule would delete references to PCNE from paragraph (a) of 902.103 to parallel the removal of that concept in § 902.44. Paragraphs (c), (c)(5) and (d) of § 902.105 would be revised to align with § 902.75. Changes would be made throughout §§ 902.107 and 902.109 to conform with §§ 902.66 and 902.69, with variations where necessary to reflect the differences between the PHAS assessment and the Small and Rural assessment. Section 902.111 would be renamed “Remedies for troubled small rural PHAs” to align with § 902.83.

Additionally, among the changes this proposed rule would make to small PHAs, it would remove paragraph (c)(4) from § 5.705 applying a triennial inspection cycle for small PHAs per 24 CFR 902.13(a).

III. Questions for Public Comments

HUD welcomes comments on all aspects of this proposed rule. In addition, HUD specifically requests comments on the following topics:

Question for Comment #1: PHAS Metrics—The proposed rule would revise indicators and subindicators to allow HUD to conduct a more accurate PHAS assessment. Do the proposed metrics accurately assess a PHA’s performance or are there other metrics that would be appropriate for inclusion in PHAS? Do the new proposed subindicators for the financial condition indicator appropriately measure the PHA’s financial performance? Do the new proposed subindicators for the management operations indicator appropriately measure the PHA’s ability to manage its Public Housing program? Would scoring PHAs for the proposed subindicators create incentives to maintain and improve the quality of housing for families in the Public Housing program?

The proposed rule would also make minor modifications to the relative weight of the indicators in the overall PHAS score. Are the proposed weights of the Physical Condition, Financial Condition, and Management Operations indicators appropriate?

Question for Comment #2: MTW Agencies—MTW Expansion agencies operate under the MTW Operations Notice and will be scored in PHAS. Given the flexibilities available to MTW agencies, variant formulas or

subindicators may be necessary to properly evaluate such agencies. What are the appropriate indicators and subindicators for MTW agencies? If any of the proposed indicators and subindicators for non-MTW PHAs are not appropriate for MTWs, what would serve as a suitable replacement? Do other considerations need to be made for incentives and remedies for MTW agencies?

Question for Comment #3: Capital Fund program indicator—This proposed rule would change several aspects of the Capital Fund program indicator. The Capital Fund program indicator would no longer be scored but would be evaluated on a pass/fail basis; however, Capital Fund Troubled performers could still be subject to oversight. The Capital Fund Troubled performer designation would be revised such that it could be combined with the Substandard or Troubled Performer designation, and requirements to correct deficiencies due to Capital Fund Troubled status would otherwise be the same as for Substandard performers. HUD solicits feedback on the extent to which removing points from the obligation indicator and making it a pass/fail standard improves its usefulness as a metric. HUD also solicits feedback on whether it should maintain the Capital Fund-troubled designation.

Question for Comment #4: Reserves—This proposed rule does not provide specific scoring criteria for the subindicators, but it does propose a subindicator for Months of Operating Reserve (MOR). When specific scoring criteria are defined, should HUD set upper and lower limits on reserves held? Would that answer be different if PHAs had specific accounts into which they could put reserves that would be treated differently (e.g., Capital Replacement Reserve accounts)? Should scoring upper or lower reserve limits interact with other features of the financial, physical, or management performance? For the Months of Operating Reserve subindicator and all other financial subindicators, how should HUD take into consideration other sources of funds (i.e., those generated through entrepreneurial activities or other actions by the PHA) that PHAs secure to pay for expenses? How can HUD ensure that PHAs are not penalized for entrepreneurial activity that secures additional sources of funding? Additionally, HUD would like to solicit comment with respect to MTW and non-MTW agencies alike on the topic of a reserve calculation. If HUD establishes such a calculation, what should be included?

Question for Comment #5: Expense management—This proposed rule replaces the Debt Service Coverage Ratio with the Expense Management subindicator. Should the Expense Management subindicator include other sources of Public Housing operating revenue, such as program income? Should it exclude any specific operating expenses? Is there value to looking only at Public Housing subsidy plus rent rather than looking at all sources of revenue?

Question for Comment #6—Physical Condition and Neighborhood Assessment—HUD has proposed eliminating the PCNE adjustment to the management operations indicator. Will the removal of those adjustments improve HUD’s ability to accurately assess a PHA’s performance? If there are strong reasons not to eliminate the PCNE adjustment, would moving the PCNE adjustment to the physical condition indicator be a better location for such adjustments?”

Question for Comment #7—Risk assessment and other models of assessment—The indicators and subindicators that are appropriate to measuring a PHA’s performance in operating its Public Housing program may not provide a full picture of the long-term health of that program, or some criteria may not be appropriate for inclusion in PHAS although they are informative for assessing future risks. Are there any indicators that are not appropriate for performance assessment but valuable for a separate system of risk assessment? How should HUD act upon findings from a separate system of risk assessment? More generally, should HUD consider other models for assessing PHA management of Public Housing, as an alternative or complement to PHAS?

Question for Comment #8: Interventions—This proposed rule would make it explicit that HUD may require corrective action as soon as component scores are issued or in response to multi-year downward trends in performance. It would also make explicit that HUD may withhold a designation or score and require corrective action. When HUD does withhold, deny, or rescind a designation or score, how should HUD notify the PHA and what is the appropriate process for a PHA to appeal such a decision?

Question for Comment #9: PHA requests for delay—The proposed rule allows PHAs to request a delay in inspection timing. What should constitute good cause for HUD to approve a PHA delay request? How

should HUD evaluate requests to delay inspections or assessments?

Question for Comment #10: SEMAP—Should HUD seek to better align PHAS and SEMAP (Section Eight Management Assessment Program), and if so, how? What would be the benefits and potential problems of such an alignment? Do PHAs who operate both Public Housing and the Housing Choice Voucher program face challenges because of differences between PHAS and SEMAP?

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

This rule has been determined to be a “significant regulatory action” as defined in Section 3(f) of Executive Order 12866, but not significant under section 3(f)(1) of the Order. HUD has prepared an initial regulatory impact analysis and has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs. The analysis is available at www.regulations.gov and is part of the docket file for this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. This rule revises the performance indicators in HUD’s PHAS regulations. The changes allow HUD to base scores more on measurable program data rather than process. Revisions would allow HUD to respond more quickly and effectively to performance deficiencies when they are first identified, to intervene based on trending performance data, and to delay scoring or assessments when appropriate. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at <http://www.regulations.gov>.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Paperwork Reduction Act

The information collection requirements contained in this rule are currently approved by OMB and have been given OMB Control Numbers 2502–0369, 2535–0107, 2577–0083, and 2577–0157. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule will not impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure; Aged; Claims; Crime; Government contracts; Grant programs—housing and community development; Individuals with disabilities; Intergovernmental relations; Loan programs—housing and community development; Low and moderate income housing; Mortgage insurance; Penalties; Pets; Public housing; Rent subsidies; Reporting and recordkeeping requirements; Social security; Unemployment compensation; Wages.

24 CFR Part 902

Administrative practice and procedure; Public housing; Reporting and recordkeeping requirements.

For the reasons stated above, HUD proposes to amend 24 CFR parts 5 and 902 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

§ 5.705 [Amended]

■ 2. Amend § 5.705 by removing paragraph (c)(4) and redesignating paragraphs (c)(5) through (8) as paragraphs (c)(4) through (7), respectively.

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

■ 3. The authority citation for part 902 continues to read as follows:

Authority: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d), 1437z–10.

Subpart A—General Provisions

■ 4. Amend § 902.1 by revising paragraphs (b), (d), and (f) to read as follows:

§ 902.1 Purpose, scope, and general matters.

* * * * *

(b) *Scope.* PHAS is a strategic measure of the essential housing operations of projects and PHAs. PHAS does not evaluate the compliance of a project or PHA with every HUD-wide or program-specific requirement or objective. Although not specifically evaluated through PHAS, PHAs are responsible for complying with nondiscrimination and equal opportunity requirements, including but not limited to those specified in 24 CFR 5.105, requirements under the Fair Housing Act (42 U.S.C. 3601–19), the obligation to affirmatively further fair housing, requirements under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), requirements under title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), requirements under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), and requirements of other federal programs under which the PHA is receiving assistance. A PHA’s adherence to these requirements will be monitored in accordance with the applicable statutes, program regulations and the PHA’s Annual Contributions Contract (ACC).

* * * * *

(d) *Assessment tools.* HUD will make use of uniform and objective criteria for the physical inspection of projects and PHAs and for the financial confidence of projects and PHAs and will use data from appropriate PHA data systems, as well as from other reviews or audits conducted on the PHA to assess management operations. For the Capital Fund program indicator, HUD will use information provided in the electronic Line of Credit Control System (eLOCCS) or successor systems. Based on this data, HUD will assess and score the results, advise PHAs of their scores and performance designations, and identify low-scoring and poor-performing projects and PHAs so that these projects and PHAs will receive the appropriate consideration and assistance.

* * * * *

(f) *Scoring procedures.* HUD’s scoring procedures will be published from time to time in the **Federal Register** for public comment.

- 5. Amend § 902.3 as follows:
 - a. Remove the definition of “Assessed fiscal year”;
 - b. Add in alphabetical order the definition of “Assessment year”;
 - c. Remove the definition of “Capital-fund troubled”;
 - d. Add in alphabetical order the definition of “Capital-fund troubled performer”;
 - e. Revise the definitions of “Corrective action plan” and “Deficiency”;
 - f. Remove the definition of “Dictionary of Deficiency Definitions”; and
 - g. Add in alphabetical order the definitions of “Designation” and “Score”.

The revisions and additions read as follows:

§ 902.3 Definitions.

* * * * *

Assessment year is the period of time evaluated for a single PHAS assessment, in which all component scores and an overall PHAS score are generated. Component scores are based on the PHA’s fiscal year for the financial condition, management operations, and Capital Fund program indicators, and are based on physical inspections completed prior to score generation, as determined by 24 CFR 5.705(c) for the physical condition indicator.

* * * * *

Capital fund troubled performer refers to a PHA that does not satisfy the requirements to pass the Capital Fund indicator evaluation.

Corrective Action Plan (CAP) means a plan, as provided in § 902.73(a), that is developed by a PHA in concert with HUD or by HUD that specifies the actions to be taken, including timeframes, that shall be required to correct deficiencies identified under any of the PHAS indicators and subindicators, and identified as a result of a PHAS assessment or on the basis of individual component scores determined prior to issuance of the overall PHAS score and designation, when a memorandum of agreement (MOA) is not required. For small rural PHAs, the equivalent term is *Corrective Action Agreement (CAA)*, as noted in § 902.105(c).

* * * * *

Deficiency means any finding or determination that requires corrective action, or any score below 60 percent of the available points for the physical condition, financial condition, or management operations indicators, and any failing evaluation for the Capital Fund indicator. In the context of

physical condition and physical inspection in subpart B of this part, “deficiency” means a specific problem, as described in the documents published in the **Federal Register** that contain the inspection standards and scoring values pursuant to 24 CFR part 5, subpart G, such as a hole in a wall or a damaged refrigerator in the kitchen that can be recorded for inspectable items.

Designation means the performance category or label given to a PHA (*i.e.*, “High performer,” “Standard performer,” “Substandard performer,” or “Troubled performer”) based on their overall PHAS score. A PHA that receives a failing evaluation under the Capital Fund program indicator will be designated as a “Capital Fund troubled performer.”

* * * * *

Score means the overall PHAS score, which is a number from 0 to 100 calculated by adding the physical condition indicator score, the financial condition indicator score, and the management operations indicator score, except as provided in § 902.103 for small rural PHAs. By contrast, “component score” refers to an indicator score itself (*e.g.*, the financial condition indicator score) or to a subindicator score (*e.g.*, the number of points awarded for the Quick Ratio subindicator).

* * * * *

■ 6. Amend § 902.5 by revising paragraphs (a)(2) introductory text and (a)(3), and removing and reserving paragraph (b) to read as follows:

§ 902.5 Applicability.

(a) * * *

(2) *ACC.* The ACC assigns legal responsibility for all public housing operations to the PHA, except where DF—RMC assumes management operations.

* * * * *

(3) Moving to Work (MTW) PHAs operating under the MTW Standard Agreement shall not be scored in PHAS unless the PHA elects to be scored. If the PHA elects to be scored, the agency shall continue to be scored for the duration of the demonstration. MTW PHAs operating under the MTW Operations Notice shall be subject to this rule.

(b) [Reserved]

■ 7. Revise § 902.9 to read as follows:

§ 902.9 PHAS Scoring.

(a) *Indicators and subindicators.* Each PHA will receive an overall PHAS score, rounded to the nearest whole number, and designation based on three

indicators: Physical condition, financial condition, and management operations. The financial condition and management operations indicators contain subindicators, and the scores for the subindicators are used to determine a single score for each of these PHAS indicators. Individual project scores are used to determine a single score for the physical condition, financial condition, and management operations indicators. A fourth indicator, the Capital Fund program indicator, does not contribute to the overall PHAS score but can affect the performance designation. The Capital Fund program indicator is entity-wide and evaluated on a pass/fail basis. If all of a PHA's projects are mixed-finance projects, they will not receive an overall PHAS score nor a performance designation.

(b) *Overall PHAS score and indicators.* The overall PHAS score is determined by adding the score values for three of the four indicators, as follows:

(1) The physical condition indicator accounts for 40 percent (40 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart B of this part.

(2) The financial condition indicator accounts for 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart C of this part.

(3) The management operations indicator accounts for 30 percent (30 points) of the overall PHAS score. The score for this indicator is obtained as indicated in subpart D of this part.

(4) The Capital Fund program indicator is not awarded points in the overall PHAS score, though when a PHA fails the Capital Fund program indicator, they will be designated as a Capital Fund troubled performer. The evaluation for this indicator is obtained as indicated in subpart E of this part.

■ 8. Amend § 902.11 by revising the introductory text and paragraphs (a)(1), (b), and (d), and adding paragraph (e) to read as follows:

§ 902.11 PHAS performance designation.

All PHAs that receive a PHAS assessment shall receive a performance designation, unless HUD exercises authority at § 902.66 to withhold a designation. The performance designation is based on the overall PHAS score and the four indicators, as set forth below.

(a) * * *

(1) A PHA that achieves a score of at least 60 percent of the points available under the financial condition, physical condition, and management operations indicators, receives a passing evaluation

under the Capital Fund program indicator, and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

* * * * *

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if the PHA achieves an overall PHAS score of at least 60 percent, and at least 60 percent of the available points for the physical condition, financial condition, and management operations indicators, and a passing evaluation for the Capital Fund program indicator.

(2) At HUD's discretion, a standard performer may be required to submit and operate under a Corrective Action Plan. At HUD's discretion, HUD may elect to craft Corrective Action Plans rather than to have the PHA submit a Corrective Action Plan.

* * * * *

(d) *Troubled performer.* A PHA that achieves an overall PHAS score of less than 60 percent shall be designated as a troubled performer, except for those PHAs subject to § 902.105. A PHA designated as a troubled performer will be subject to the remedies provided in section 6(j)(4) of the Act (42 U.S.C. 1437d(j)(4)).

(e) *Capital Fund troubled performer.* In accordance with section 6(j)(2)(A)(i) of the Act (42 U.S.C. 1437d(j)(2)(A)(i)), a PHA that receives a failing evaluation under the Capital Fund program indicator under subpart E of this part will be designated as a Capital Fund troubled performer. A PHA designated as a Capital Fund troubled performer will be subject to corrective actions separate from or in addition to the requirements of a memorandum of agreement.

■ 9. Amend § 902.13 by revising the introductory text and paragraph (a)(3), adding paragraph (a)(4), and revising paragraphs (b)(2) and (4) as follows:

§ 902.13 Frequency of PHAS assessments.

The frequency of a PHA's PHAS assessment is determined by the size of the PHA's Low-Rent program and its PHAS designation. HUD may, due to unforeseen circumstances or other cause as determined by HUD, extend the time between assessments or suspend or skip assessments by direct notice to the PHA and relevant resident organization or resident management entity, and any other general notice that HUD deems appropriate. PHAs may request that HUD extend the time between PHAS

assessments in accordance with such requirements as HUD may issue by Notice, and HUD may grant requests for good cause when HUD deems it appropriate.

(a) * * *

(3) All other small PHAs may receive a PHAS assessment every year, including a PHA that is designated as troubled in accordance with § 902.75.

(4) Properties of small PHAs will be inspected as described in § 5.705(c).

(b) * * *

(2) The physical condition score for each project will determine the frequency of inspections of each project in accordance with the inspection cycle laid out in § 5.705(c). The PHAS physical condition indicator score for an assessment year shall be calculated by taking the unit-weighted average of the most recent physical condition score for each project, except that, starting July 1, 2023, no new physical condition indicator will be issued for a PHA until every project under the PHA has been inspected on or after July 1, 2023. If projects are not inspected in accordance with the cycle laid out in § 5.705(c), the assessment year will be extended only for the physical inspection indicator until such time as the relevant inspections are performed to ensure that the last physical condition score of record will not be reused for future assessments. HUD may exercise discretion to skip the assessment should a delayed physical condition inspection occur 6 months after the assessment year ends. A PHA will not receive an overall PHAS assessment score until all inspections are completed.

* * * * *

(4) In the first, baseline year, each PHA will receive an evaluation on all four PHAS indicators (physical condition, financial condition, management operations, and Capital Fund program), which will be used to generate their overall PHAS score. In subsequent years, if the physical inspection schedule requires a new inspection for a PHA property, the physical condition score for that property will be based upon the new inspection. If a new physical inspection is not required that year, the physical condition score for that property will be based upon the most recent physical inspection. This baseline year will also be used to determine the next PHAS assessment for PHAs subject to small PHA deregulation.

* * * * *

Subpart B—Physical Condition Indicator

■ 10. Amend § 902.25 by revising paragraph (b) to read as follows:

§ 902.25 Physical condition scoring and thresholds.

* * * * *

(b) *Overall PHA physical condition indicator score.* The overall physical condition indicator score is a unit-weighted average of project scores. The sum of the unit-weighted values is divided by the total number of units in the PHA's portfolio to derive the overall physical condition indicator score. The overall physical condition indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as project scores or the overall physical condition indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

* * * * *

Subpart C—Financial Condition Indicator

■ 11. Amend § 902.35 by revising paragraphs (b) through (d) to read as follows:

§ 902.35 Financial condition scoring and thresholds.

* * * * *

(b) *Subindicators of the financial condition indicator.* The following subindicators will be used to determine the financial condition indicator score. The formulas for these subindicators will be provided by public notification. Please note that MTW agencies will have variant formulas, which will also be provided by public notification, to account for the flexibilities of the MTW Demonstration.

(1) *Quick Ratio (QR).* The QR compares quick assets to current liabilities. Quick assets are cash and assets that are easily convertible to cash and do not include inventory or inter-program balances due from other PHA projects, programs, and activities of a temporary nature. Current liabilities are those liabilities that are due within the next 12 months, not including inter-program balances due to other PHA projects, programs, and activities of a temporary nature. A QR of less than one indicates that the project's ability to make payments on a timely basis may be at risk.

(2) *Months Operating Reserve (MOR).* The MOR measures adequacy of reserves as a unit of time. The MOR is

the ratio of current assets less current liabilities to average monthly operating expenses. The result of this calculation is the number of months that a project can operate using currently available, unrestricted resources, before reaching insolvency.

(3) *Expense Management (EM).* The EM ratio measures the efficiency of operations. EM is the ratio of operating revenues to operating expenses. EM operating revenues are tenant rents and Operating Fund grants less transfers from Capital Fund. EM expenses are all operating expenses as defined by the HUD Financial Data Schedule (FDS).

(c) *Overall PHA financial condition indicator score.* The overall financial condition indicator score is a unit-weighted average of project scores. The sum of the weighted values is then divided by the total number of units in the PHA's portfolio to derive the overall financial condition indicator score. The overall financial condition indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as the overall financial condition indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(d) *Thresholds.* (1) The PHA's financial condition score is based on a maximum of 30 points.

(2) In order for a PHA to receive a passing score under the financial condition indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator.

(3) A PHA that receives fewer than 18 points available under this indicator will be categorized as a substandard financial condition agency.

Subpart D—Management Operations Indicator

■ 12. Amend § 902.43 by revising paragraphs (a)(2) and (3) and paragraph (b) to read as follows:

§ 902.43 Management operations performance standards.

(a) * * *

(2) *Timely Reexaminations.* This subindicator measures the extent to which the PHA is performing regular reexaminations of family income and composition on time. Assessment will monitor timely reexamination based on the PHA's approved reexamination schedule (e.g., triennially where MTW waiver authority allows a PHA to delay reexamination up to three years).

(3) *Audit Compliance.* This subindicator measures the extent to which the PHA is meeting program compliance requirements, as measured by findings in independent audits or HUD audits or reviews.

(b) *Assessment under the Management Operations Indicator.* Projects will be assessed under this indicator through information that is electronically submitted to HUD through the FDS and other information available to HUD.

§ 902.44 [Removed and Reserved]

■ 13. Remove and reserve § 902.44.

■ 14. Amend § 902.45 by revising paragraphs (b) and (c) to read as follows:

§ 902.45 Management operations scoring and thresholds.

* * * * *

(b) *Overall PHA management operations indicator score.* The overall management operations indicator score is a unit-weighted average of project scores. The sum of the weighted values is divided by the total number of units in the PHA's portfolio to derive the overall management operations indicator score. The overall management operations indicator score will be issued after it is determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as the overall management operations indicator score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(c) *Thresholds.* (1) The PHA's management operations score is based on a maximum of 30 points.

(2) In order to receive a passing score under the management operations indicator, a PHA must achieve a score of at least 18 points or 60 percent.

(3) A PHA that receives fewer than 18 points will be categorized as a substandard management operations agency.

Subpart E—Capital Fund Program Indicator

■ 15. Amend § 902.50 by revising paragraphs (a), (c), and (d) to read as follows:

§ 902.50 Capital Fund program assessment.

(a) *Objective.* The Capital Fund program indicator examines the period of time taken by a PHA to obligate funds in relation to statutory deadlines for obligation for all Capital Fund program

grants for which fund balances remain during the assessment year.

* * * * *

(c) *Capital Fund Indicator.*

Performance under the Capital Fund program indicator is evaluated on a pass or fail basis, determined by whether the PHA satisfied the timeliness of fund obligation requirement in section 9(j) of the Act. This examines the period of time it takes for a PHA to obligate funds from the Capital Fund program under section 9(j)(1) of the Act (42 U.S.C. 1437g(j)(1)).

(d) *Method of assessment.* The assessment required under the Capital Fund program indicator will be performed through analysis of obligated amounts in HUD's eLOCCS (or its successor) for all Capital Fund program grants that were open during the assessment year. This indicator measures a statutory requirement for the Capital Fund program. Other aspects of the Capital Fund program will be monitored by HUD through other types of reviews under 24 CFR part 905.

(1) PHAs are responsible to ensure that their Capital Fund program information is submitted to eLOCCS by the submission due date.

(2) A PHA may not appeal its PHAS score, Capital Fund program indicator failure, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS and/or the PIC systems by the submission due date.

■ 16. Revise § 902.53 to read as follows:

§ 902.53 Capital Fund program assessment and thresholds.

(a) *Assessment.* The Capital Fund program indicator provides an assessment of a PHA's ability to obligate Capital Fund program grants in a timely manner on capital, modernization, development and financing needs.

(b) *Thresholds.* (1) The PHA's Capital Fund program indicator is not assigned points but assessed on a pass/fail basis.

(2) In order to receive a passing evaluation under the Capital Fund program indicator, a PHA must obligate at least 90 percent of Capital Fund program grants as documented in eLOCCS (or its successor) within the time required by statute or have HUD approved extensions under section 9(j)(2) of the Act (42 U.S.C. 1437g(j)(2)).

Subpart F—PHAS Scoring

■ 17. Amend § 902.60 by:

■ a. Revising paragraph (a);

■ b. In paragraph (c)(1), removing the words "its local field office", and adding, in their place, the word "HUD"; and

■ c. Removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

The revision to read as follows:

§ 902.60 Data Collection.

(a) *Fiscal year reporting period—limitation on changes after PHAS effective date.* To allow for a period of consistent assessments to refine and make necessary adjustments to PHAS, a PHA is not permitted to change its fiscal year end for the first 3 full fiscal years following [EFFECTIVE DATE OF FINAL RULE] unless such change is approved by HUD for good cause.

* * * * *

§ 902.62 [Amended]

■ 18. Amend § 902.62 by:

■ a. In paragraph (a)(2), removing the words "financial condition indicator score" and adding, in their place, the words "financial condition and management operations indicator scores";

■ b. In paragraph (a)(3), removing the words "financial condition indicator" and adding, in their place, the words "financial condition and management operations indicators"; and

■ c. In paragraph (b)(1), after the words "financial condition" adding the words "or management operations".

■ 19. Amend § 902.64 by:

■ a. In paragraph (a)(2) after the words "may be changed", adding the words "or withheld, denied, or rescinded"; and

■ b. Revising paragraph (b).

The revision to read as follows:

§ 902.64 PHAS scoring and audit reviews.

* * * * *

(b) *Issuance of a score by HUD.* (1) The component scores for individual indicators will be issued after they are determined, in advance of issuance of the overall PHAS score. PHAs may be subject to appropriate oversight and action as soon as a component score is issued, as noted in § 902.73. Indicator scores issued in advance of an overall PHAS score are provisional and are subject to revision by HUD.

(2) An overall PHAS score will be issued for each PHA one month after all indicator scores for the assessment year have been finalized, unless HUD uses the authority in § 902.66 to withhold a component score or overall PHAS score. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(d), 902.35(a), and 902.68; any adjustments resulting from the appeal process provided in § 902.69; and any

adjustments determined necessary as a result of the independent public accountant (IPA) audit.

(3) Each PHA (or RMC) shall post a notice of its final PHAS score and designation in appropriate conspicuous and accessible locations in its offices within 2 weeks of receipt of its final PHAS score and designation. In addition, HUD will post every PHA's PHAS score and designation on HUD's internet site.

* * * * *

■ 20. Revise § 902.66 to read as follows:

§ 902.66 Withholding, denying, and rescinding score or designation.

(a) *Withholding, denying, and rescinding score or designation.* (1) If determined as appropriate or necessary by HUD, HUD may withhold, deny, or rescind a designation of any level, from troubled performer to high performer. A designation may be withheld or denied even when all component scores have been issued. HUD may conduct any review as it may determine necessary.

(2) HUD may withhold, deny or rescind incentives or high performer designation or standard performer designation, including in but not limited to circumstances in which a PHA:

(i) Is operating under a special agreement with HUD (e.g., a civil rights Conciliation or Voluntary Compliance Agreement);

(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;

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations; or

(vi) Demonstrates other egregious performance issues not reflected in

PHAS component scores that require significant corrective action, as HUD determines necessary.

(3) HUD may withhold, deny, or rescind substandard performer or troubled performer designation and accompanying requirements at its discretion. HUD may substitute other corrective requirements when HUD determines it is necessary.

(4) HUD may withhold, deny, or rescind component scores or an overall PHAS score at its discretion. HUD must notify the PHA when scores are withheld, denied, or rescinded, provide the basis for the decision, and allow for appeal as described in § 902.69. At the time of withholding, denying, or rescinding scores, HUD may also require the PHA to undertake corrective actions as specified in § 902.73.

(b) *Effect on designation.* If a high performer designation is denied or rescinded, the PHA may be designated a standard performer, substandard performer, or troubled performer, depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If a standard performer designation is denied or rescinded, the PHA may be designated as a substandard performer or troubled performer. Alternatively, HUD may choose not to assign the PHA a new designation status, as it deems appropriate.

(c) *Effect on score.* The denial or rescission of a designation of high performer or standard performer shall not affect the PHA's numerical PHAS score, except where the denial or rescission is under paragraph (a)(2)(iv) of this section.

■ 21. Revise § 902.69 to read as follows:

§ 902.69 PHA right of appeal.

(a) *Appeal of troubled performer designation and petition for removal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation;

(2) Appeal its final overall PHAS score; and

(3) Appeal actions under § 902.66.

(b) *Appeal of PHAS score.* (1) If a PHA believes that an objectively verifiable and material error(s) 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 performer, substandard performer, standard performer, 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 substandard performer or standard performer, or from standard performer to high performer). Inspection appeals must be made in accordance with the requirements of § 5.711.

(2) A PHA may not appeal its PHAS score, Capital Fund program score, or both, based on the fact that it did not submit its Capital Fund program information to eLOCCS or updated profile information in PIC or subsequent PIC replacement system by the submission due date.

(c) *Appeal procedures.* (1) To appeal a troubled performer designation or a final overall PHAS score, a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the overall PHAS score to the PHA.

(2) An appeal of a troubled performer 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 evidence that a material error occurred. An appeal submitted to HUD without supporting documentation will not be considered and will be returned to the PHA.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation or score under § 902.66 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of appeals.* Upon receipt of an appeal of a final overall PHAS score, of a troubled performer designation, or appeal of action taken under § 902.66 from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA's file and the evidence submitted by the PHA to determine whether an error occurred.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material errors has occurred, HUD will undertake a new inspection of the project, arrange for audit services, adjust the PHA's score, or perform other reexamination of the financial, management, or Capital Fund program information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's

decision on appeal of a PHAS score, or issuance of a troubled performer designation will be final agency action.

(2) HUD will issue a written decision on all appeals made under this section.

Subpart G—PHAS Incentives and Remedies

■ 22. Amend § 902.71 by revising paragraph (a)(2) and the first sentence of paragraph (b) to read as follows:

§ 902.71 Incentives for high performers.

(a) * * *

(2) *Public recognition.* High performer PHAs and DF-RMCs or RMCs that receive a score of at least 60 percent of the points available for the physical condition, financial condition, and management operations indicators, and a passing score for the Capital Fund program indicator, and achieve an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer and will receive a Certificate of Commendation from HUD, as well as special public recognition, as provided by the HUD field office.

* * * * *

(b) * * * Relief from any 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 regulatory requirements. * * *

* * * * *

■ 23. Revise § 902.73 to read as follows:

§ 902.73 PHAs with deficiencies.

(a) *Oversight and action.* Standard and substandard performers will be subject to appropriate oversight and action by HUD. PHAs may also be subject to appropriate oversight and action by HUD as soon as a component score is issued for the PHA or for a specific project, or in light of performance trends (*e.g.*, if overall PHAS scores or component scores notably decline for three years, even if the latest score would not classify the PHA as substandard), or when scores or designations are withheld, denied, or rescinded.

(1) HUD may require a PHA to correct deficiencies in performance within a time period as specified by HUD when HUD determines it is necessary to do so on the basis of a component score, overall PHAS score or performance designation, or performance trend. HUD may require such action as a result of performance at the Asset Management Project (AMP) or PHA level (*i.e.*, HUD may require corrective action for one AMP or across all a PHA's projects). HUD may require the PHA to undertake

such corrective actions in advance of issuance of an overall PHAS score or PHAS designation. If the PHA is subsequently identified as a troubled or substandard performer after being required to undertake corrective actions, such corrective actions may be later incorporated into a Memorandum of Agreement or Corrective Action Plan, as appropriate.

(2) When HUD exercises authority at § 902.66 to withhold, deny, or rescind a score or designation, HUD may also require a PHA to correct deficiencies in performance or undertake other corrective action, in a time period as specified by HUD. If the PHA is subsequently identified as a troubled or substandard performer after being required to undertake corrective actions, such corrective actions may be later incorporated into a Memorandum of Agreement or Corrective Action Plan, as appropriate.

(b) *Correction of deficiencies*—(1) *Time period for correction.* After a PHA’s (or DF–RMC’s or RMC’s) receipt of its final overall PHAS score and designation as: A standard performer, within the range described in § 902.73(a)(1); or substandard performer, within the range described in § 902.73(a)(2), a PHA, DF–RMC or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD-executed Corrective Action Plan or as otherwise communicated by HUD, if required.

(2) *Notification and report to regional or field office.* A PHA shall notify the regional or field office, as identified by HUD, of its action to correct a deficiency. A PHA shall also forward an RMC’s report of its action to the regional or field office to correct a deficiency. A DF–RMC shall forward directly to the regional or field office its report of its action to correct a deficiency.

(c) *Failure to correct deficiencies.* (1) If a PHA (or DF–RMC or RMC) fails to correct deficiencies within the time period noted in paragraph (b) of this section, or to correct deficiencies within the time specified in a Corrective Action Plan or as otherwise specified by HUD, or within such extensions as may be granted by HUD, the field office will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or RMC) will provide the field office with its reasons for lack of progress in negotiating, executing, or carrying out the Corrective Action Plan or making the corrective actions otherwise required by HUD, within 30 days of the PHA’s receipt of the noncompliance notification. HUD will advise the PHA

as to the acceptability of its reasons for lack of progress.

(3) If HUD determines that the reasons the PHA (or DF–RMC or RMC) has provided for lack of progress are unacceptable, HUD will notify the PHA (or DF–RMC or RMC) that it will take such actions as it may determine appropriate in accordance with the provisions of the Act and other statutes, the ACC, this part, and other HUD regulations, including, but not limited to, the remedies available for substantial default.

■ 24. Amend § 902.75 by:

- a. Revising paragraphs (b) introductory text and (b)(5);
- b. In the second sentence of paragraph (c), adding the word “factual” before the word “discrepancies”; and
- c. Revising paragraphs (d)(1) and (2), and (g)(2) and (3).

The revisions read as follows:

§ 902.75 Troubled performers.

* * * * *

(b) *Memorandum of agreement (MOA).* Within 30 days of notification of a PHA’s designation as a troubled performer, HUD will initiate activities to negotiate and draft an MOA. An MOA is required for a troubled performer. The executed MOA is an enforceable contractual agreement between HUD and a PHA. Material breach of the MOA by the PHA is a basis, among other remedies available under law, for determination of substantial default. The scope of the MOA may vary depending upon the extent of the problems present in the PHA. It shall include, but not be limited to:

* * * * *

(5) The PHA’s commitment to take all prescribed actions to achieve the targets;

* * * * *

(d) * * *

(1) *Expiration of the first assessment year improvement period.* Upon the expiration of the one assessment year period that started on the date on which the PHA receives initial notice of a troubled performer designation, the PHA shall, by the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation, improve its performance by at least 50 percent of the difference between the initial PHAS assessment score that led to the troubled performer status and the score necessary to remove the PHA’s designation as a troubled performer.

(2) *Expiration of 2 assessment year recovery period.* Upon the expiration of the 2 assessment year period that started on the date on which the PHA received the initial notice of a troubled performer

designation, the PHA shall, by the next PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation, improve its performance and achieve an overall PHAS score of at least 60 percent of the total points available.

* * * * *

(g) * * *

(2) For purposes of paragraph (g) of this section, substantial improvement is defined as the improvement required by paragraph (d) of this section. The maximum period of time for remaining in troubled performer status before being referred to the Assistant Secretary is 2 years after the initial notification of the troubled performer designation. Therefore, the PHA must make substantial improvement in each assessment year of this 2-year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example:

A PHA receives an overall PHAS score of 50 points; 60 points is a passing score. The PHA must achieve at least 55 points overall (50 percent of the 10 points necessary to achieve a passing score of 60 points) on the next PHAS assessment that is at least 12 months after the initial notice of the troubled performer designation to continue recovery efforts. In the second year, the PHA must achieve a minimum score of 60 points overall (a passing score) on the PHAS assessment that is at least 24 months after the initial notice of the troubled performer designation. If the PHA fails to achieve the 5-point increase on the year-one assessment, or if the PHA achieves the 5 point increase on the year-one assessment, but fails to achieve the minimum passing score of 60 points on the year-two assessment, HUD will notify the PHA that it will take such actions as it may determine appropriate in accordance with the provisions of the ACC and other HUD regulations, including, but not limited to, the remedies available for substantial default.

* * * * *

■ 25. Add § 902.76 to subpart G to read as follows:

§ 902.76 Capital Fund troubled performers.

Upon a PHA’s designation as a Capital Fund troubled performer, the PHA will be subject to appropriate oversight and actions by HUD. HUD may require a PHA to correct deficiencies in performance within a time period as specified by HUD. The requirements to correct deficiencies, and consequences for failure to correct deficiencies so identified, will otherwise be the same as

for substandard performers as described in § 902.73 unless HUD exercises remedies and enforcement actions provided in 24 CFR part 905.

§ 902.79 [Amended]

■ 26. Amend § 902.79 by removing the final word of the paragraph, “period”, and adding, in its place, the word “year”.

§ 902.81 [Amended]

■ 27. Amend § 902.81 by adding, to the end of the paragraph, the words “Further, nothing in this section prohibits any resident from communicating to HUD in writing regarding their experience or complaint with the PHA at issue.”

§ 902.83 Remedies for troubled performer PHAs.

■ 28. Amend § 902.83 by removing, from the end of paragraph (a)(3), the words “for any other substantial default by a PHA”, and revising the section heading to read as shown above.

Subpart H—Assessment of Small Rural Public Housing Agencies

■ 29. Amend § 902.103 by revising paragraph (a) to read as follows:

§ 902.103 Public housing assessment of small rural PHAs.

(a) *Small rural public housing assessment.* The public housing program of small rural PHAs as defined in § 902.101 shall be assessed and scored based only on the physical condition of their public housing properties in accordance with 24 CFR part 5, subpart G. Such agencies shall not be subject to PHAS except as noted below.

* * * * *

■ 30. Amend § 902.105 by:

■ a. Revising paragraphs (c) introductory text and (c)(5); and

■ b. In the second sentence of paragraph (d), adding the word “factual” before the word “discrepancies”.

The revisions read as follows:

§ 902.105 Troubled small rural PHAs.

* * * * *

(c) *Corrective Action Agreement (CAA).* Within 30 days of notification of a PHA’s designation as a troubled performer, HUD will initiate activities to negotiate and develop a CAA. A CAA is required for a troubled performer. The final executed CAA is an enforceable contractual agreement between HUD and a PHA. The scope of the CAA may vary depending upon the extent of the problems present in the PHA. The term of the CAA will not exceed one year and is subject to renewal at the discretion of

HUD if HUD determines that the circumstances requiring the CAA still exist at the expiration of the term of the CAA based on the annual assessment frequency as included in § 902.103. It shall include, but not be limited to:

* * * * *

(5) The PHA’s commitment to take all prescribed actions to achieve the targets;

* * * * *

■ 31. Revise § 902.107 to read as follows:

§ 902.107 Withholding, denying, and rescinding score or designation.

(a) *Withholding score or designation.*

(1) If determined as appropriate or necessary by HUD, HUD may withhold, deny, or rescind a designation of any level, from troubled performer to high performer. HUD may conduct any review as it may determine necessary.

(2) HUD may withhold, deny, or rescind incentives or high performer designation or non-troubled performer designation, including in but not limited to circumstances in which a PHA:

(i) Is operating under a special agreement with HUD (*e.g.*, a civil rights Conciliation or Voluntary Compliance Agreement);

(ii) Is involved in litigation that bears directly upon the physical 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;

(v) Demonstrates substantial noncompliance in one or more areas of a PHA’s required compliance with applicable laws and regulations, including areas not assessed under the small rural assessment. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the ACC. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing projects and operate them consistent with federal laws and regulations; or

(vi) Demonstrates other egregious performance issues not reflected in PHAS component score that require significant corrective action, as HUD determines necessary.

(3) HUD may withhold, deny, or rescind non-troubled or troubled

performer designation and accompanying requirements at its discretion. HUD may substitute other corrective requirements when HUD determines it is necessary.

(4) HUD may withhold, deny, or rescind an overall PHAS score at its discretion. HUD must notify the PHA when scores are withheld, denied, or rescinded, provide the basis for the decision, and allow for appeal as described in § 902.109.

■ 32. Amend § 902.109 by revising the section heading, paragraph (a) and paragraphs (c) through (f) to read as follows:

§ 902.109 Right to appeal troubled designation.

(a) *Appeal of troubled performer designation.* A PHA may take any of the following actions:

(1) Appeal its troubled performer designation; and

(2) Appeal any actions taken under § 902.107.

* * * * *

(c) *Appeal procedures.* (1) To appeal a troubled performer designation a PHA must submit a request in writing to the Deputy Assistant Secretary of the Real Estate Assessment Center, which must be received by HUD no later than 30 days following the issuance of the score to the PHA.

(2) An appeal of a troubled performer designation must include the PHA’s supporting documentation and reasons for the appeal. An appeal of an assessment score must be accompanied by the PHA’s evidence that a material error occurred.

(d) *Denial, withholding, or rescission.* A PHA that disagrees with the basis for denial, withholding, or rescission of its designation or score under § 902.107 may make a written request for reinstatement within 30 days of notification by HUD of the denial or rescission of the designation to the Assistant Secretary, and the request shall include reasons for the reinstatement.

(e) *Consideration of appeals.* Upon receipt of an appeal of a final overall assessment score, of a troubled performer designation, or appeal of action taken under § 902.107 from a PHA, HUD will evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. HUD will review the PHA’s file and the evidence submitted by the PHA to determine whether an error occurred.

(f) *Notice and finality of decisions.* (1) If HUD determines that one or more objectively verifiable and material error has occurred, HUD will undertake a

new inspection of the project, adjust the PHA's score, or perform other reexamination of information, as appropriate in light of the nature of the error that occurred. A new score will be issued and an appropriate performance designation made by HUD. HUD's decision on appeal of an assessment score, or issuance of a troubled performer designation will be final agency action.

(2) HUD will issue a written decision on all appeals made under this section.

■ 33. Revise § 902.111 to read as follows:

§ 902.111 Remedies for troubled small rural PHAs.

The remedies for small rural PHAs with troubled public housing programs that remain troubled under § 902.108 will be the same as those remedies for PHAs assessed under PHAS as described in § 902.83.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2024-25469 Filed 11-1-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386 and 387

[Docket No. FMCSA-2024-0280]

RIN 2126-AC76

Broker and Freight Forwarder Financial Responsibility; Extension of Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to amend its November 16, 2023, final rule, "Broker and Freight Forwarder Financial Responsibility," by extending the compliance date for certain provisions from January 16, 2025, to January 16, 2026. This action is being proposed because FMCSA has determined that only its forthcoming online registration system will be used to accept filings and track notifications, and this functionality will not be added to its legacy systems. As the new system is not expected to be available before January 16, 2025, FMCSA proposes to extend the compliance date to provide regulated entities time to begin using

and familiarizing themselves with the system before compliance is required.

DATES: Comments must be received on or before November 19, 2024. Comments should be limited to the proposed change in the compliance date.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2024-0280 using any one of the following methods:

- *Federal Rulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- *Fax:* (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Ana Alvarez, Financial Analyst, Office of Registration, Financial Responsibility Filings Division, FMCSA, 1200 New Jersey Avenue SE, West Building, 6th Floor, Washington, DC 20590; (202) 366-0401; ana.alvarez@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this NPRM as follows:

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy
- II. Executive Summary
 - A. Purpose and Summary of the Regulatory Action
 - B. Costs and Benefits
- III. Abbreviations
- IV. Legal Basis
- V. Background
- VI. Discussion of Proposed Rulemaking
- VII. Regulatory Analyses
 - A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act (Small Entities)
 - C. Assistance for Small Entities
 - D. Unfunded Mandates Reform Act of 1995
 - E. Paperwork Reduction Act
 - F. E.O. 13132 (Federalism)
 - G. Privacy
 - H. E.O. 13175 (Indian Tribal Governments)

I. National Environmental Policy Act of 1969

J. Rulemaking Summary

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2024-0280), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0280/document>, click on this NPRM, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM.

Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic