

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Parts 902, 903 and 985

[Docket No. FR-4753-F-02]

RIN 2577-AC34

### Deregulation for Small Public Housing Agencies

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

**ACTION:** Final rule.

**SUMMARY:** This final rule simplifies and streamlines HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (1937 Act). Consistent with HUD's basic regulatory responsibilities, the final rule further streamlines the PHA Annual Plan requirements for certain small PHAs and deregulates the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP). These changes will alleviate administrative burden and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. The final rule follows publication of an August 14, 2002, proposed rule and takes into consideration the public comments received on the proposed rule.

**DATES:** Effective Date: July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4116, Washington, DC 20410-0001; telephone (202) 708-0713 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 14, 2002 (67 FR 53276), HUD published a proposed rule for public comment to simplify and streamline its regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). The proposed rule would further streamline the PHA

Annual Plan requirements for certain small PHAs. The proposed rule also would deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with HUD's basic regulatory responsibilities. The proposed changes were designed to alleviate administrative burden and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. In addition to the changes that solely concern small PHAs, the proposed rule would also streamline HUD's review of the Annual Plans submitted by all PHAs (large and small). The preamble to the August 14, 2002, proposed rule provides additional details regarding the proposed deregulatory changes to HUD's regulations.

##### II. This Final Rule; Significant Changes to the August 14, 2002, Proposed Rule

This final rule follows publication of the August 14, 2002, proposed rule and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the August 14, 2002, proposed rule are as follows: *Additional streamlined Annual Plan components.* The final rule provides that, in addition to information regarding capital improvements and the civil rights certification, the streamlined Annual Plans submitted by small PHAs must also address any PHA initiatives concerning site-based waiting lists (see § 903.7(b)(2)), any homeownership programs administered under section 8(y) of the 1937 Act (see § 903.7(k)(1), and any project-based voucher assistance (as provided in section II.D. of HUD's January 16, 2001, **Federal Register** notice regarding revisions to the PHA Project-Based Assistance Program (66 FR 3605 at 3608, middle column) and section III.C. of PIH Notice 2001-4 issued on January 19, 2001), if applicable. This information concerns discretionary PHA programs and policies that are required, either by regulation or statute, to be addressed in the PHA Plan, and for which no alternative method exists for obtaining prior HUD approval.

*SEMAP exemption for non-audit PHAs.* The proposed rule would have exempted small PHAs not subject to the requirements of the Single Audit Act from review under SEMAP. The final rule no longer exempts these small PHAs from SEMAP review. Small, non-audit PHAs will continue to be subject to SEMAP assessment and scoring, in

accordance with the current SEMAP regulations.

*Timing of biennial PHAS and SEMAP assessments.* The final rule continues to provide for biennial PHAS and SEMAP assessments for small PHAs. To facilitate compliance with biennial assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under PHAS or SEMAP for that fiscal year.

##### III. Discussion of the Public Comments Received on the August 14, 2002, Proposed Rule

The public comment period on the August 14, 2002, proposed rule closed on September 13, 2002. HUD received twenty-one public comments on the proposed rule. Comments were received from PHAs, two of the major national organizations representing PHAs, and low-income housing advocates, and service providers. The majority of the commenters supported the rule and applauded HUD's efforts to provide regulatory relief for small PHAs. Several commenters, however, had reservations about certain elements of the rule and suggested changes for addressing these concerns. In many cases, the commenters recommended additional deregulatory changes not contained in the proposed rule.

The summary of comments that follows presents the major issues and questions raised by the public commenters on the August 14, 2002, proposed rule. The underlined headings present the issue or question and are followed by a brief description of the commenter's reasoning. The discussion of the public comments is organized as follows:

Section IV of this preamble discusses the general public comments on the proposed rule.

Section V of the preamble discusses the public comments regarding the proposed changes to the PHA Annual Plan requirements.

Section VI of the preamble discusses the public comments regarding the proposed changes to the PHAS.

Section VII of the preamble discusses the public comments regarding the proposed changes to SEMAP.

##### IV. Discussion of General Public Comments on the Proposed Rule

*Comment: Support for proposed rule.* The majority of the public commenters supported the proposed rule, applauding HUD's efforts to reduce the regulatory burden imposed on small PHAs. The commenters wrote that the proposed rule is a "firm step in the right direction" and "offers a foundation to

provide necessary relief for small agencies," but "still not pose a risk to the Department, residents or the taxpaying public."

**HUD response.** HUD appreciates the support expressed by the commenters. The final rule will alleviate the administrative burden imposed on small PHAs, while still requiring basic accountability. These deregulatory changes will better enable small PHAs to focus on their primary mission of providing housing assistance to low-income families.

**Comment: Deregulation of procurement and contracting procedures is also required.** One commenter wrote that many small PHAs have difficulty complying with the multiple regulatory and paperwork requirements related to the procurement process and requested that HUD also undertake efforts to streamline and simplify these requirements. The commenter noted that many contractors in the locality of a small PHA are frequently small businesses themselves. The commenter wrote that these small businesses are also ill-equipped to deal with the procurement requirements and, therefore, not inclined to contract with small PHAs. In particular, the commenter wrote that two changes would make it more attractive for these small businesses to contract with small PHAs: (1) raising the dollar value threshold that triggers Davis-Bacon wage rates from \$2,000 to \$10,000; and (2) relaxing the Section 3 low-income hiring requirements. The commenter noted that these are both sensitive issues and would probably require statutory changes, but urged that HUD at least consider these points to alleviate procurement problems for small PHAs and lower the costs for businesses that wish to deal with them.

**HUD response.** As the commenter notes, the requested changes involve issues that will require further consideration and may require statutory changes in order to be implemented. Further, the procurement and contracting issues highlighted by the commenter are not regulatory in nature and, therefore, outside the scope of this rulemaking. Accordingly, the final rule does not adopt the recommendations made by the commenter.

**Comment: HUD should exercise its statutory authority to provide small PHAs with greater flexibility in the management of the public housing Capital and Operating Funds.** One commenter noted that section 9(g)(2) of the 1937 Act authorizes small PHAs to use amounts allocated from these funds for eligible capital and operating costs, "regardless of the fund from which the

amounts were allocated." The commenter wrote that, contrary to this statutory flexibility, the current HUD regulations require that small PHAs submit a Capital Fund plan for using allocations from the Capital Fund solely for capital activities. The commenter wrote that implementing section 9(g) would greatly benefit small PHAs by providing relief from the administrative burden of separately tracking allocations from the two public housing funds.

**HUD response.** HUD has not adopted the recommendations made by the commenter. The suggested regulatory changes were not included as part of the August 14, 2002, proposed rule. Since the changes suggested by the commenter are outside the scope of the proposed rule, HUD has not revised the rule in response to this comment.

**Comment: High performing PHAs that do not participate in the Operating Fund should be granted the ability to use operating funds, operating reserves, and funds in excess of operating reserves for development and modernization.** One commenter submitted this recommendation. The commenter wrote that these PHAs create their own excess revenues that, due to current HUD regulatory requirements, are locked into reserves. The commenter wrote that the suggested deregulatory changes would allow these PHAs to perform their housing operations, and provide additional improvements and additional affordable housing, without imposing any added burden on HUD. The commenter agrees with current regulations providing that any additional units or developments built with these funds are not eligible for future subsidy under the Operating Fund.

**HUD response.** HUD has not revised the rule in response to this comment. The amendment recommended by the commenter is outside the scope of this final rule, which is concerned with deregulatory changes designed to assist small PHAs.

**Comment: HUD needs to provide small PHAs with additional assistance regarding the use and implementation of automated systems.** One commenter recommended that HUD develop outreach and technical assistance specifically for small PHAs with regard to automated systems, and that HUD improve its communication overall with small PHAs regarding its plans for information technology. The commenter wrote that small PHAs do not possess the best hardware or software for connecting with HUD's systems. The commenter wrote that an early-warning system of several months for changes and new products, coupled with

appropriate technical assistance, would help small PHAs prepare and assimilate to HUD's requirements.

**HUD response.** The proposed rule has not been revised to reflect the commenter's suggestion. The issue of technical assistance is not regulatory in nature and, therefore, outside the scope of this final rule. However, HUD currently provides, and will continue to provide, technical assistance to PHAs.

**Comment: Further review and streamlining of data collection requirements is required.** Two commenters wrote that HUD should reevaluate the type and amount of information that small PHAs are required to collect and report to HUD. The commenters wrote that HUD should then assess whether there are duplicative or excessively burdensome requirements that should be eliminated. For example, one of the commenters wrote that the reporting requirements under the PHAS Management Assessment Sub-System (MASS) and the Financial Assessment Sub-System (FASS) are administratively burdensome and need to be simplified. The commenter also wrote that several of the MASS reporting requirements, such as the dates units became vacant, are already available through the electronic PIH Information Center (PIC), and are, therefore, duplicative.

**HUD response.** HUD has not revised the proposed rule in response to this public comment. In response to the commenter's statement concerning duplicative data, HUD notes that MASS and PIC are concerned with different types of information. To use the example of vacancy rate data raised by the commenter, MASS collects and measures information regarding a PHA's performance in leasing vacant units, while PIC collects information on the number of vacant units a PHA has on an annual basis. However, HUD will review the PHAS data collection requirements and determine whether any can be streamlined or consolidated as part of future changes to the PHAS.

**Comment: HUD should monitor PHAs to determine whether the deregulatory changes will have an impact on the number of units that a PHA operates.** One commenter cautioned that the rule might have the unintended negative consequence of causing PHAs to reduce the availability of public housing or vouchers in their jurisdictions, in order to have the benefit of the regulatory relief.

**HUD response.** HUD does not anticipate that PHAs will violate their mission by intentionally reducing the number of families they serve in order to benefit from regulatory relief. As

stated above in this preamble, the goal of the final rule is to better enable small PHAs to focus on their core mission of providing housing assistance to poor families. HUD will monitor the impact of the final rule on PHAs and will revise the rule as necessary to ensure that the deregulatory changes do not conflict with the provision of decent, safe, and sanitary housing to families in need.

*Comment: Streamlining changes should be extended to large PHAs and high-performing PHAs.* One commenter suggested that the deregulatory benefits of the proposed rule should be provided to all PHAs, large and small alike. The commenter wrote that "all PHAs, regardless of being small or large, would be better able to serve their clients without the administrative burdens defined in the proposed rule." Another commenter suggested that the streamlining changes should be extended to high-performing PHAs and to PHAs that do not participate in the Operating Fund program. The commenter wrote that these PHAs have displayed the ability to operate in an effective manner without extensive HUD regulation and monitoring. The commenter wrote that PHAs that function with positive revenues and do not take operating subsidy from HUD should be regulated differently than those receiving allocations from the Operating Fund.

*HUD response.* HUD has not revised the proposed rule to incorporate these suggestions. HUD is aware that large PHAs may also benefit from deregulation and will examine whether there are actions that can be taken to alleviate the regulatory burdens currently imposed on these PHAs.

*Comment: Small PHAs with less than 250 units should be completely exempt from Annual Plan and assessment requirements.* Two commenters made this suggestion. The commenters wrote that the time and energy spent to comply with these requirements impedes PHAs in providing services to their clients.

*HUD response.* HUD has not adopted the suggestion made by the commenter. While the provisions of the 1937 Act establishing the PHAS and the PHA Plan process provide HUD with the flexibility to establish streamlined requirements for small PHAs, they do not authorize the exemption of small PHAs from these requirements altogether.

## V. Discussion of the Public Comments on the Proposed Changes to the PHA Annual Plan

### A. Comments Regarding Definition of Small PHA

*Comment: Applicability of streamlining changes should be clarified.* Three commenters requested greater clarity on how the streamlining changes to the PHA Plan will apply to PHAs that manage both public housing and voucher programs. The commenters wrote that the proposed rule appears to streamline the Annual Plan process only for small PHAs with less than 250 public housing units (regardless of the number of voucher units they operate). However, the preamble discussion of the Annual Plan refers to Public and Indian Housing (PIH) Notice 2000-43 (issued on September 18, 2000), which defines small PHA to mean PHAs that operate 250 or fewer units of public housing and 250 or fewer voucher units. One of the commenters asked whether a PHA with less than 250 public housing units, but more than 250 voucher units, would qualify for the new streamlined Annual Plan procedures.

*HUD response.* The streamlined Annual Plan requirements apply to PHAs with less than 250 public housing units, irrespective of the number of voucher units administered by the PHA.

*Comment: Suggested changes to definition of a small PHA.* Three commenters suggested a revised definition of a small PHA. One commenter wrote that the final rule should define a small PHA as one with less than 100 public housing and voucher units combined. The commenter wrote that this definition is consistent with the definition contained in legislation pending in Congress. Another commenter wrote that the final rule should define a small PHA as one with fewer than 100 public housing units.

Yet another commenter wrote that the final rule should revise the definition of a small PHA to include only PHAs with less than 250 assisted units, including both public housing and voucher units. This commenter wrote that the proposed rule would create the anomalous result that a PHA with 250 public housing units, but potentially thousands of voucher units, would be considered "small" and have fewer planning and reporting requirements than a PHA with 260 public housing units and no voucher units at all. In addition, the commenter noted that the proposed rule would treat all PHAs that only administer vouchers the same, regardless of the size of their voucher

programs. The commenter wrote that its suggested change would be the fairest and easiest to understand, and would treat similar PHAs in a similar manner.

Two other commenters, however, urged HUD to ensure that the final rule includes the same definition of small PHA as the proposed rule. One of the commenters endorsed the proposed definition, writing that it will enable PHAs to "focus on the delivery of quality services and being responsive to their community, rather than worrying about filing reports with HUD."

*HUD response.* After careful consideration of all of the suggestions offered by the commenters, HUD has decided not to revise the definition of a small PHA for purposes of the streamlined Annual Plan requirements. The final rule continues to define a small PHA as one with less than 250 public housing units. The number of voucher units administered by the PHA is not taken into consideration for purposes of the definition. This definition of a small PHA is consistent with section 5A(k) of the 1937 Act, which authorizes the establishment of streamlined Annual Plan requirements.

### B. Comments Regarding Resident and Public Participation in the PHA Plan Process

*Comment: Existing Resident Council should be allowed to substitute for the Resident Advisory Board.* One commenter wrote that, given the difficulties faced by small PHAs in finding residents interested in serving on a Resident Advisory Board (RAB), another way to lessen the administrative burden on these small PHAs would be to allow an existing PHA Resident Council to substitute for the RAB.

*HUD response.* HUD has not revised the proposed rule in response to this comment. The PHA Plan regulations at § 903.13(b) already provide that if a jurisdiction-wide Resident Council that complies with HUD's tenant participation regulations in 24 CFR part 964 exists, the PHA shall appoint the Resident Council or the Council's representatives to the RAB. Further, as provided in PIH Notice 2000-36 (issued on August 21, 2000), if a PHA has made every effort, but has still been unsuccessful in finding residents to serve on a RAB, the PHA may appoint all its residents as the RAB. Should this occur, the PHA must provide adequate notice to the residents that all residents are appointed to the RAB. The PHA must ensure that a RAB consisting of all the residents is provided the same opportunity to comment on the PHA Plans, and the PHA must consider these resident comments when drafting the

final Plan in the same manner as for any other RAB. A copy of PIH Notice 2000-36 may be downloaded from HUD's Client Information and Policy Systems (HUDCLIPS) Web site at <http://www.hudclips.org>.

*Comment: Small PHAs should not be required to use a resident survey.* One commenter wrote that the resident survey is an unnecessary administrative requirement for small PHAs. The commenter wrote that the low response rate does not justify its use. Further, the high degree of interaction between the staff of a small PHA and the residents allows for a greater sense of resident satisfaction than any survey can provide.

*HUD response.* HUD has not adopted this comment. The information available to HUD indicates that small PHAs have a high response rate for their resident surveys. HUD agrees that residents of small PHAs are more easily able to interact with PHA staff than residents of larger PHAs. However, HUD also continues to believe that resident surveys provide a valuable additional resource for small PHAs in evaluating and responding to the needs of their residents.

*Comment: Small PHAs should be required to make reasonable and appropriate efforts to ensure participation by the RAB and the public in the streamlined PHA Plan process.* Three commenters made this suggestion. The commenters also suggested that the final rule require that a small PHA consider the comments provided by the RAB in the development of its Plan submission, and that the PHA provide documentation of having done so, as required under the current PHA Plan regulations.

*HUD response.* HUD has not revised the proposed rule in response to this comment. This final rule (as did the August 14, 2002, proposed rule) continues to ensure the participation of residents in the streamlined Annual Plan process. Specifically, the final rule requires that small PHAs submitting a streamlined Plan must provide the RAB with an opportunity to review and comment on proposed changes to the PHA's policies and programs. Further, the PHA is required to make the revised policies and programs available for public review and inspection, which will allow the public to confirm RAB participation in the streamlined Plan process.

*Comment: PHAs should be required to make certain basic information available to the public, regardless of Plan streamlining.* One commenter wrote that, irrespective of streamlining, PHAs should be required to annually

provide certain basic information to the RAB, tenants, PHA board members, and the public. For public housing, this information would consist of the total number of units, the number of vacant units, the expected unit turnover rate during the upcoming year, and the average time it takes to rent a vacated unit. For vouchers, the information would consist of the total number of voucher units (adjusted baseline), the number and percentage of "leased-up" units, the expected turnover rate for the coming year, whether the PHA has received a letter from HUD warning that the PHA may lose voucher units if it does not increase its voucher utilization rate, and the voucher utilization rate that the PHA must achieve in order to qualify for additional vouchers. In addition to this information, the commenter suggested that PHAs also be required to make their PHAS and SEMAP scores available to the public (both the overall score and the scores on each indicator), along with an explanation of any plans on how the PHA intends to improve its scores.

*HUD response.* HUD has not adopted this comment. The information requested by the commenter is either available via the Internet or through direct request to the PHA or HUD. For example, members of the public may obtain information regarding PHA operations and resident characteristics via the Internet by accessing <http://www.hud.gov/offices/pih> and clicking on the "Online Systems" link. The reports entitled "Housing Authority Profiles" and "Form 50058—Resident Characteristics Report" provide information on, among other things, the total number of public and low-rent housing units, the number of occupied public housing units, and the number of housing choice vouchers operated by the PHA, as well as on the income, tenant payment amounts, family status, and age of residents. Further, each PHA is able to access its PHAS score through HUD's Internet homepage at <http://www.hud.gov/reac>. In the near future, HUD also intends to post PHA SEMAP scores, overall PHAS grades, and PHAS/SEMAP indicator grades and designations on its Web site. For other information regarding program utilization, interested persons can submit a written inquiry to their PHA or to HUD. Accordingly, since the requested information is already readily available to the public, there is no need to revise this rule to adopt the commenter's suggestion.

#### *C. Comments Regarding Civil Rights Requirements*

*Comment: The civil rights certification should be submitted under*

*penalty of perjury.* One commenter suggested that the Annual Plan regulations be revised to provide that the Executive Director of the PHA sign the required civil rights certification under penalty of perjury. The commenter also recommended that designees of the PHA governing board and the Resident Advisory Board be required to also sign the certification.

*HUD response.* HUD has not adopted this comment. PHAs that fail to comply with nondiscrimination and fair housing requirements are already subject to sanction under the applicable civil rights statute and implementing HUD regulations.

*Comment: A PHA should not be eligible to submit a streamlined Annual Plan if it does not meet the civil rights "threshold requirements" contained in HUD's Super Notice of Funding Availability (SuperNOFA).* One commenter made this recommendation.

*HUD response.* HUD has not adopted the suggestion made by the commenter. The civil rights review conducted for a PHA submitting an Annual Plan should not be comparable to the civil rights threshold review conducted for SuperNOFA applicants. The SuperNOFA threshold criteria are applied to potential grantees applying for limited funding and are used to distinguish between more competitive and less competitive applicants. HUD has determined that only those SuperNOFA applicants who are in full compliance with certain civil rights requirements and do not have unresolved civil rights charges of various kinds should be eligible to compete for discretionary HUD funding. The submission of an Annual Plan, however, is a statutory requirement and does not affect the amount of HUD subsidy for which the PHA is eligible. All PHAs (large and small) are required to conduct their housing programs in accordance with applicable civil rights and nondiscrimination requirements and are required to certify that they will comply with these requirements.

*Comment: The PHA Plan template should be revised to ask whether the PHA maintains data indicating the level of participation in the PHA's programs by members of different racial and ethnic minority groups.* One commenter made this suggestion. The commenter suggested that the PHA be asked to also state whether the PHA makes this data available to program participants and other interested parties, maintains and makes available similar data regarding the level of participation by persons with disabilities, and whether the PHA has determined if there is a need for services in languages other than English.

*HUD response.* HUD already collects the data requested by the commenter through its form HUD-50058. Specifically, PHAs are required to provide information regarding the participation in their public housing and voucher programs by members of different racial and ethnic groups, as well as by persons with disabilities. This information is summarized in the Resident Characteristics Report Module of PIC, which HUD makes available to the public.

#### *D. Other Comments Regarding Annual Plan*

*Comment: HUD should exempt small PHAs from the requirement of submitting their Annual Plans to HUD.* One commenter suggested that a small PHA be permitted to simply certify that the public (including residents) has reviewed its Annual Plan and that the PHA provided adequate notice for public review and comment.

*HUD response.* HUD does not have the statutory authority to adopt the recommendation made by the commenter. The submission of the PHA Plans is a statutory requirement mandated by section 5A of the 1937 Act.

*Comment: All PHAs that administer voucher programs should be required to report annually at least on the Annual Plan components included in the streamlined Plan for "voucher only" PHAs.* One commenter wrote that small PHAs with 0–249 public housing units, but that also operate some vouchers, should be required to report on the PHA Plan components that HUD has considered to be important to voucher programs. The commenter wrote that it is particularly important that PHAs obligated to operate Family Self-Sufficiency programs for voucher families be held to the current reporting and planning requirements of § 903.7(l). The commenter wrote that if HUD exempts small PHAs from some of the reporting requirements that now apply to voucher-only PHAs, all of the components of the current streamlined voucher-only Plan should have to be included in the more complete 5-year Plan. Another commenter wrote that small PHAs that administer a voucher program should at least be required to submit on an annual basis the civil rights certification (required under § 903.7(o)) and the statement of the PHA's rent determination policy (required under § 903.7(d)).

*HUD response.* HUD has not revised the rule in response to this comment. Section 5A(k) of the 1937 Act authorizes HUD to establish streamlined PHA Plan requirements for PHAs with less than 250 public housing units, irrespective of

the number of vouchers administered by the PHA. Accordingly, HUD does not believe that small PHAs that also administer tenant-based voucher assistance should be subject to more extensive reporting requirements than other small PHAs. The imposition of these additional requirements would be inconsistent with the statutory language of section 5A and frustrate the purpose of this rule to alleviate the administrative burden imposed on PHAs. The information supplied by small PHAs in their streamlined Annual and 5-Year Plans will supplement other data available to the public and to HUD regarding the PHA's performance, programs, and management.

*Comment: Capital improvement data should not be required until actual funding amount is provided.* One commenter made this suggestion. The commenter wrote that all PHAs, large and small, spend time and money to prepare an accurate five-year budget, which forms part of the PHA Plan submission. However, because these budgets may be due to HUD before the actual amount of capital funding is determined (depending on the start of the PHA's fiscal year), the PHA may be required to prepare a completely revised budget once the funding amount is known.

*HUD response.* The commenter's suggestion would require changes in the timing and processing of PHA Plan submissions that HUD is not prepared to make at this time. Accordingly, HUD has not revised the rule in response to this comment.

*Comment: The PHA Plan requirements are already streamlined for small PHAs, and further streamlining is not necessary.* One commenter made this recommendation.

*HUD response.* HUD does not agree with the commenter. The additional streamlining changes to the PHA Plan requirements made by this final rule will reduce administrative burden, eliminate duplicative reporting requirements, and better enable small PHAs to focus on their core mission of providing affordable housing to poor families. Therefore, HUD has not revised the rule in response to this comment.

*Comment: Rather than merely providing a list of the Annual Plan policies it has revised, a small PHA submitting a streamlined Plan should be required to affirmatively state that it has not revised each relevant Plan component, or explain the changes it has made to any of the components, since submission of the PHA's last Plan.* One commenter made this suggestion. The commenter wrote that such a

change to the rule would ensure that policy changes that have been made are not inadvertently overlooked and not reported.

*HUD response.* HUD has not adopted the suggestion made by the commenter. The final rule contains sufficient safeguards to ensure that the PHA's governing board, HUD, residents, and the public are made aware of policy changes made by the PHA. Specifically, the PHA must provide the RAB with the opportunity to review and comment on the policy changes prior to implementation by the PHA. Further, the PHA must provide assurance that the changes were duly approved by the PHA board of directors (or similar governing body) and must make the revised policies available for public review and inspection.

*Comment: A PHA should not be permitted to submit only a certification with respect to its policies on demolition and disposition that the PHA has revised since submission of its last Annual Plan.* One of the commenters wrote that demolition and disposition are of such great public importance that they should be addressed on an annual basis by PHAs. The commenter suggested that, at a minimum, small PHAs should be required to certify, under penalty of perjury by the Executive Director and the Chairperson of the PHA Board, that the PHA will not dispose of or demolish any public housing units during the year. Another commenter wrote that the 1937 Act requires HUD to review PHA policies concerning demolition and disposition. The commenter wrote that for this HUD review to have any meaning, each small PHA should be required to affirmatively state that it has not changed its policies with respect to demolition and disposition. The commenters agreed that it is not enough for the PHA to be silent on this issue and for HUD, therefore, to extrapolate that there will be no changes to the policies and practices regarding demolition and disposition.

*HUD response.* HUD has not revised the proposed rule in response to this comment. HUD agrees that the demolition and disposition of public housing units is of great public interest. However, existing regulatory and statutory safeguards are sufficient to ensure that PHAs do not undertake such actions without prior HUD approval and appropriate consultations with affected residents and the community. In addition to the PHA Plan approval process, PHAs wishing to demolish or dispose of a development must submit a full demolition/disposition plan to HUD for approval, in accordance with

section 18 of the 1937 Act. Further, as noted above, the PHA must provide the RAB with the opportunity to review and comment on proposed changes to its policies concerning demolition and disposition. The PHA must also provide assurance that these changes were duly approved by the PHA board of directors (or similar governing body) and must make the revised policies available to the public upon request.

*Comment: The final rule should provide additional guidance regarding what constitutes a challenge of a Plan element for purposes of triggering HUD review.* One commenter made this suggestion. The commenter noted the language of the proposed rule providing that HUD would limit its review of Annual Plans to certain specified elements, and “[a]s required by section 5A(i)(2) [of the 1937 Act], . . . any other plan element that has been challenged” (67 FR 53276, 523277, first column).

*HUD response.* HUD has not revised the rule in response to this comment. HUD may issue future additional guidance regarding challenges to the Annual Plans should it determine that such guidance is necessary.

*Comment: HUD should not eliminate from its review PHA policies on rent computation and rent redeterminations.* One commenter wrote that these policies should be reviewed annually to ensure compliance with the law. According to the commenter, evictions often result from improper PHA rent computations. The commenter wrote that HUD’s continued review of these policies would help to ensure that PHAs comply with all applicable legal requirements.

*HUD response.* HUD has not revised the rule in response to this public comment. As with other PHA policies and programs, any changes to the rent computation and redetermination policies must be reviewed by the RAB, approved by the PHA governing board, and made available to the public for inspection. The existence of such changes must be listed in the PHA’s streamlined Annual Plan and may be flagged by HUD for further monitoring and oversight, depending on the scope and nature of the changes. Inclusion of this information in the Annual Plan is, therefore, unlikely to provide much further assurance that proper rent calculations will be made.

#### *E. Questions Regarding Implementation*

*Comment: How soon will HUD make available a streamlined electronic PHA Annual Plan?* One commenter posed this question. The commenter also asked whether small PHAs would be expected to continue to use the current

electronic Plan template, but simply enter “not applicable” for the reporting requirements eliminated by the regulatory changes.

*HUD response.* HUD is working on the necessary modifications to the electronic PHA Plan template. HUD is also considering further regulatory changes that may affect revisions to the template. When completed, the availability of the revised template will be announced through PIH Notice or other non-regulatory means.

*Comment: How will staggered review of the 5-Year Plans be implemented?* One commenter asked this question. Specifically, the commenter, a small PHA, asked when its 5-Year Plan would be due. The commenter wrote that it is currently preparing its fourth year Annual Plan for submission in 2003.

*HUD response.* This is an implementation issue that will be addressed by HUD in separate non-regulatory guidance. HUD will issue a PIH Notice describing how the staggered review provisions of the final rule will be implemented. The PIH Notice will provide PHAs with sufficient time to bring their policies and procedures governing Annual Plan submissions into compliance with the timelines for staggered HUD review.

#### **VI. Discussion of Public Comments Regarding the Proposed Changes to the PHAS**

*Comment: Questions regarding effective date of deregulatory changes.* Two commenters posed questions regarding the effective date of the deregulatory changes being made by HUD. One of the commenters asked if small PHAs would still be required to electronically submit the currently required PHAS reporting data for Fiscal Year 2002 should the final rule become effective by January 1, 2003.

*HUD response.* The deregulatory changes made by this final rule will become effective on July 24, 2003. The final rule continues to provide for biennial PHAS assessments for small PHAs. To facilitate compliance with biennial PHAS assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under PHAS for that fiscal year.

#### **VII. Discussion of Public Comments Regarding the Proposed Changes to SEMAP**

*Comment: HUD should not exempt non-audit PHAs from SEMAP.* One commenter objected to the proposed exemption from SEMAP assessment and scoring of small PHAs not subject to the requirements of the Single Audit Act.

The commenter objected that the proposed rule would not provide any alternative oversight mechanism for assessing whether exempt PHAs are complying with federal law in administering their voucher programs. The commenter also objected to the number of PHAs that would be exempt from SEMAP, writing that approximately one-third of all PHAs may be exempt from management oversight as a result of the proposed rule. Further, the commenter wrote that if the dollar threshold for federal expenditures subject to the Single Audit Act is ever raised, even more PHAs might be exempt from SEMAP.

The commenter wrote that if HUD is concerned about the unfair impacts of using a fewer number of indicators to conduct SEMAP assessments for non-audit PHAs, there are two alternative solutions that are far less drastic than exempting these PHAs altogether from federal oversight. The first alternative is to allow these small PHAs to self-certify their compliance with the seven SEMAP indicators that are independently verified for other PHAs. The second alternative is to alter the percentage threshold for designation as troubled for these small PHAs. The commenter wrote that either of these alternatives, combined with HUD’s other proposed changes to SEMAP, would reduce the burden on small PHAs and HUD staff, while retaining some federal oversight of program integrity and accountability, which is the purpose of SEMAP.

*HUD response.* Upon reconsideration, HUD agrees with the concerns raised by the commenter and has revised the proposed rule accordingly. Small, non-audit PHAs will continue to be subject to SEMAP assessment and scoring, in accordance with the current SEMAP regulations. Those regulations at § 985.3 provide that non-audit PHAs are exempt from assessment under seven of the SEMAP indicators (indicators (a) through (g)) for which the annual independent audit report is a HUD verification method. However, non-audit PHAs must still complete the SEMAP certification for these indicators, and performance under the indicators is subject to HUD confirmatory review.

*Comment: HUD should consider making SEMAP scores advisory altogether.* One commenter made this recommendation based on the perceived deficiencies with the PIC electronic reporting system. The commenter wrote that PIC does not accept records properly due to a system failure, that it is difficult to clearly identify on PIC which PHA records are being counted towards the PHA’s final SEMAP score,



and that the final SEMAP indicators report is inaccurate.

**HUD response.** HUD has not revised the rule in response to this comment. Adoption of the commenter's suggestion would restrict HUD's ability to require that troubled PHAs undertake remedial action to correct identified management deficiencies, thereby negating one of the purposes of SEMAP assessment. The final rule continues to provide for biennial SEMAP assessments for small PHAs. To facilitate compliance with biennial SEMAP assessments, PHAs with fiscal years ending in the first four quarters following the effective date of this final rule will not be evaluated under SEMAP for that fiscal year.

**Comment:** HUD should increase the Housing Choice Voucher Program administrative fee or provide a base level of funding for small PHAs. One commenter made this recommendation. The commenter wrote that this change is necessary to allow small PHAs to hire and retain adequate qualified staff, and that this would allow small PHAs to submit the required SEMAP certification in a timely manner.

**HUD response.** The suggestion made by the commenter is outside the scope of this rulemaking, which does not concern funding issues. Accordingly, HUD has not revised the proposed rule in response to this comment.

**Comment:** Late submission of SEMAP certification should not result in an automatic designation of "troubled." One commenter wrote that SEMAP does not presently establish penalties for late submittal of the required SEMAP certification, except to provide that the PHA will be designated as "troubled." The commenter wrote that many small PHAs have difficulty complying with this deadline due to limited staffing, and that the automatic designation of troubled is unduly harsh. As an alternative, the commenter suggested that failure of a PHA to submit its SEMAP certification should result in a reduction of one point for each day the submittal is late.

**HUD response.** The change suggested by the commenter is outside the scope of the August 14, 2002, proposed rule and, therefore, HUD has not revised the rule in response to this comment.

## VIII. Findings and Certifications

### Public Reporting Burden

The information collection requirements contained in the PHA Plan process (24 CFR part 903) and the PHAS (24 CFR part 902) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3520) and assigned OMB Control Numbers 2535–0106, 2535–0107, 2507–0001, and 2577–0226, respectively. The regulatory amendments contained in §§ 902.9, 903.5, 903.11, and 903.12 of this final rule merely modify the scope and frequency of these currently approved information collection requirements to streamline and reduce the paperwork burden imposed on small PHAs. In accordance with the Paperwork Reduction Act, HUD 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.

### Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled Regulatory Planning and Review). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

### Unfunded Mandates Reform Act

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

### Executive Order 13132, Federalism

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final 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.

### Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage 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). The Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

### Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the final rule is concerned with small PHAs with less than 250 public housing or leased housing units, the amendments made by the rule are deregulatory in nature. Specifically, the final rule eliminates, simplifies, and streamlines regulatory requirements for these small PHAs regarding the PHA Annual Plan process and assessments conducted under the PHAS and SEMAP. Further, the deregulatory amendments do not change the amount of funding available to these PHAs. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this final rule are 14.850 (for the Public Housing Program) and 14.871 (for the Housing Choice Voucher Program).

### List of Subjects

#### 24 CFR Part 902

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

#### 24 CFR Part 903

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

#### 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent

subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR parts 902, 903 and 985 as follows:

## **PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM**

■ 1. The authority citation for 24 CFR part 902 continues to read as follows:

**Authority:** 42 U.S.C. 1437d(j), 42 U.S.C. 3525(d).

■ 2. Add § 902.9 to read as follows:

### **§ 902.9 Frequency of PHAS scoring for small PHAs.**

REAC will assess and score the performance of a PHA with less than 250 public housing units every other PHA fiscal year, unless the small PHA:

(a) Elects to have its performance assessed on an annual basis; or

(b) Is designated as troubled, in accordance with § 902.67.

■ 3. Revise the introductory paragraph of paragraph § 902.33(a) to read as follows:

### **§ 902.33 Financial reporting requirements.**

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

\* \* \* \* \*

■ 4. Revise the first sentence of § 902.60(d) to read as follows:

### **§ 902.60 Data collection.**

\* \* \* \* \*

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year that is being assessed and scored, with no penalty applying, however, until the 16th day of the third month after the PHA fiscal year end. \* \* \*

\* \* \* \* \*

## **PART 903—PUBLIC HOUSING AGENCY PLANS**

■ 5. The authority citation for 24 CFR part 903 continues to read as follows:

**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

■ 6. Revise § 903.5(a)(3) by adding a sentence at the end to read as follows:

### **§ 903.5 When must a PHA submit the plans to HUD?**

(a) \* \* \*

(3) \* \* \* However, HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year rather than the fifth PHA fiscal year).

\* \* \* \* \*

7. Revise § 903.11(c)(2) to read as follows:

### **§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

\* \* \* \* \*

(c) \* \* \*

(2) For small PHAs that are not designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4) of this chapter) under section 6(j)(2) of the 1937 Act, the requirements for streamlined Annual Plans are described in § 903.12.

\* \* \* \* \*

■ 8. Add § 903.12 to read as follows:

### **§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?**

(a) *General.* PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled (see § 902.67(c) of this chapter) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j) of the 1937 Act may submit streamlined Annual Plans in accordance with this section.

(b) *Streamlined Annual Plan requirements for fiscal years in which its 5-Year Plan is also due.* For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (o) and (r). If the PHA wishes to use the project-based voucher program, the streamlined Annual Plan of the small PHA must also include a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan. The information required by § 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

(c) *Streamlined Annual Plan requirements for all other fiscal years.* For all other fiscal years, the streamlined Annual Plan must include:

(1) The information required by § 903.7(g) and (o) and, if applicable,

§ 903.7(b)(2) with respect to site-based waiting lists and § 903.7(k)(1)(i) with respect to homeownership programs under section 8(y) of the 1937 Act;

(2) If the PHA wishes to use the project-based voucher program, a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan; and

(3) A certification from the PHA that lists the policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k), and (r) that the PHA has revised since submission of its last Annual Plan and provides assurance by the PHA that:

(i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

(ii) The changes were duly approved by the PHA board of directors (or similar governing body); and

(iii) The revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

■ 9. Amend § 903.23 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively and adding new paragraph (b) to read as follows:

### **§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

\* \* \* \* \*

(b) *Scope of HUD review.* HUD's review of the Annual Plan (and any significant amendments or modifications to the plan) will be limited to the information required by § 903.7(b), (g), (h), and (o), and any other element of the PHA's Annual Plan that is challenged.

\* \* \* \* \*

## **PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

■ 10. The authority citation for 24 CFR part 985 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

■ 11. Revise § 985.105(a) to read as follows:

### **§ 985.105 HUD SEMAP responsibilities.**

(a) *Frequency of SEMAP assessments.*  
(1) *Annual review.* Except as provided in paragraph (a)(2) of this section, HUD shall assess each PHA's performance under SEMAP annually and shall assign each PHA a SEMAP score and overall performance rating.

(2) *Biennial review for small PHAs.* HUD shall assess and score the performance of a PHA with less than



250 assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or

(ii) Is designated as troubled, in accordance with § 985.103.

\* \* \* \* \*

■ 12. Revise § 985.107(a) to read as follows:

**§ 985.107 Required actions for PHA with troubled performance rating.**

(a) *On-site reviews.* (1) *Required reviews for troubled PHAs.* Except as

provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

(2) *On-site reviews for small PHAs.* Notwithstanding paragraph (a)(1) of this section, HUD may elect not to conduct an on-site review of a troubled PHA, if:

(i) The PHA has less than 250 assisted units; and

(ii) HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies.

\* \* \* \* \*

Dated: June 16, 2003.

**Michael M. Liu,**

*Assistant Secretary for Public and Indian Housing.*

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