

Civil Rights - Public Housing

PHOTOCOPY
PRESERVATION



Nov 9

Bruce -

Attached is the
Public Housing Rule. I
understand the Secretary
has spoken to you about
the possibility of the President
announcing this action.

Thanks,

Jacquie

202-708-0270

~~COPIES~~

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ERIC L. —
Poss event?
November 8, 1999 BR

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 903

[Docket No. FR-4420-F-05]

RIN 2577-AB89

Public Housing Agency Plans

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

ACTION: Final rule.

SUMMARY: On October 21, 1999, HUD published its final rule implementing section 511 of the Quality Housing and Work Responsibility Act of 1998. Section 511 introduces the public housing agency (PHA) plans -- a 5-Year Plan and an Annual Plan. In this publication, HUD reissues this rule to clarify and emphasize the importance of deconcentration of poverty and income mixing to a PHA's admissions policy. The October 21, 1999 final rule failed to fully reflect the importance of deconcentration in public housing. HUD revises this part of the rule not only to reflect the importance of deconcentration but to make the regulatory text clearer on the application of deconcentration and to provide better direction on implementation of deconcentration. HUD also makes several clarifying language changes throughout the rule to make the PHA Plan regulation clearer for PHAs, their residents and members of the public. Additionally, for PHAs that must submit their first Annual Plans in December 1999 or January 2000, this rule provides these PHAs with the option to submit their first plans on or before January 31, 2000.

HUD reissues the entire rule for the convenience of the reader.

DATES: Effective Date: [Insert date that is 30 days after publication]

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

SUPPLEMENTARY INFORMATION:

I. Background

On October 21, 1999 (64 FR 56844), HUD published its final rule implementing section 511 of the Quality Housing and Work Responsibility Act of 1998 (Public law 105-276, approved October 21, 1998; 112 Stat. 2461) (referred to as the "Public Housing Reform Act"). Section 511 introduces the public housing agency (PHA) plans -- a 5-Year Plan and an Annual Plan. Through these plans, a PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs.

The October 21, 1999 final rule followed publication of a February 18, 1999 interim rule. HUD solicited public comments on this interim rule, and also held four public forums at various locations throughout the nation. On July 30, 1999, HUD also issued its electronic template for the PHA Plans, and instructions and supplemental guidance on the preparation and submission of the PHA Plans. The October 21, 1999 final rule provided a detailed history of the PHA Plan rulemaking. The October 21, 1999 final rule also provided a detailed summary of the changes made to the PHA Plan regulation at the final rule stage, and a detailed discussion of the issues raised by the public commenters on the rule, including those issues raised at the four public forums. This reissuance of the PHA Plan final rule does not repeat the rulemaking history, the discussion of changes made at the final rule stage or the public comments.

The primary purpose of reissuance of the PHA Plan final rule is to have the PHA Plan regulation fully reflect the importance of deconcentration of poverty and income mixing in a PHA's admission policy, and the importance of a PHA to deconcentrate in accordance with that policy, the requirements of HUD's PHA Plan regulation and the requirements of the Public Housing Reform Act. This rule also makes nonsubstantive changes throughout the regulatory text to make the PHA Plan regulation, overall, more clear and understandable, consistent with President Clinton's Plain Language Initiative. (For example, lengthy paragraphs were divided into subparagraphs, lengthy sentences were divided into more than one sentence, and HUD strived in several places to use simpler terminology.) Additionally, for PHAs that must submit their first Annual Plans in December 1999 or January 2000, this rule provides these PHAs with additional time to prepare and submit their plans if they so choose, provided that their plans are submitted no later than January 31, 2000.

II. Deconcentration

In the discussion of changes made at the final rule stage, the preamble to the October 21, 1999 final rule discussed the changes made to the PHA Plan regulatory provision that addresses the Annual Plan component of the PHA's admission policy and the PHA's deconcentration policy that is integral to its admission policy (see 64 FR 56845). The preamble stated that HUD revised this regulatory provision to simplify and clarify the deconcentration and income-mixing requirements. The preamble clarified that deconcentration applies to all family (general occupancy) developments. The preamble further stated that:

With respect to the actions then to be taken, PHAs may offer incentives to eligible families that would help accomplish the deconcentration and income mixing objectives. Skipping of a family on a waiting list to reach another family with a lower or higher income is required, provided that such skipping is uniformly applied. Such skipping must be adopted by a PHA to the extent necessary to implement the statute's requirements. Skipping families is consistent with site-based and community-wide waiting lists. Admissions policies related to deconcentration do not impose specific quotas.

PHAs may consider a number of approaches as they examine designing an admissions policy to achieve the goals of deconcentration and

income mixing, such as the use of skipping over certain families on waiting lists based on incomes; the establishment of certain preferences such as worker preferences; appropriate affirmative marketing efforts; additional applicant consultation and information; provision of additional supportive services and amenities; and rent incentives authorized by the Act. Of course, PHA policies must be in writing and followed consistently, and must affirmatively further fair housing.

While the preamble to the October 21, 1999 final rule set out directly and accurately the interplay of deconcentration in a public housing agency's admission policy, the regulatory text did not fully reflect the preamble, nor did the regulatory text sufficiently simplify and clarify the subject of deconcentration as the preamble indicated would be the case.

President Clinton and Vice President Gore have indicated their commitment to "One America," where families are not segregated by income or by race. President Clinton stated, during consideration of the Public Housing Reform Act, that "the federal government should lead the way in word and deed." Secretary Cuomo is implementing this major reform legislation to assure that the letter and the spirit of the law requiring deconcentration are realized. This rule revises the regulatory text to fully reflect the importance of deconcentration in a PHA's admission policy, consistent with this directive to achieve "One America". This rule also revises regulatory text to provide practical steps for a PHA to follow to achieve deconcentration of poverty and income mixing. Additionally, this final rule reorganizes the Annual Plan components listed in § 903.7 to have the admissions/deconcentration component of the PHA Annual Plan follow the housing needs component of the PHA Annual Plan. Although the February 18, 1999 interim rule and the October 21, 1999 final rule followed the statutory organization for the listing of PHA Annual Plan components, the admissions/deconcentration policy component is of such significance, this component should immediately follow the housing needs component of the Annual Plan.

Because of the plain language changes made throughout the rule and for the convenience of the reader, this rule is being reissued in its entirety.

III. PHA Plans Due in December 1999 and January 2000

As noted earlier in this preamble, for PHAs with their first plans due on December 1, 1999 or on January 15, 2000, this rule provides these PHAs with the option of taking additional time to prepare and submit their plans, provided that their plans are submitted no later than January 31, 2000.

IV. Justification for Final Rule

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure would be contrary to the public interest. This final rule revises the PHA Plan final rule, as published on October 21, 1999 (64 FR 56844) to make clarifying changes, to provide PHAs -- many of whose first PHA plans are otherwise due to be submitted to HUD on December 1, 1999 -- with specific guidance on how to implement a deconcentration policy and to permit delayed submission of the first plans due to HUD. The October 21, 1999 rule provided that PHAs should determine a PHA-wide average income in family developments and classify applicant families and public housing buildings as higher or lower income based on that average. The rule did not make it clear what action must be taken with respect to these higher and lower income applicants relative to the higher or lower income buildings. Nor did the rule specify how scattered site developments, mixed-finance developments, or developments being considered for demolition or conversion to tenant-based assistance would be treated. It also failed to specify how local preferences would fit within a deconcentration policy.

This rule is needed to clarify those issues before PHA Plans are submitted. It provides for a simple method of accomplishing deconcentration - a major goal of the Public Housing Reform Act. Therefore, it is necessary to publish this rule for effect as soon as possible, not delaying its publication for prior solicitation of comments, so that PHAs can comply with the clarified requirements concerning deconcentration.

V. Findings and Certifications

Regulatory Flexibility Act

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 does not have a significant economic impact on a substantial number of small entities. This final rule is a reissuance of a final rule published on October 21, 1999, with clarification and plain language changes made to the earlier final rule. This final rule does not alter the Regulatory Flexibility finding made in the October 21, 1999 final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. 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

The Finding of No Significant Impact with respect to the environment was prepared during the interim rulemaking stage of this rule, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule, and is available for public inspection between 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 7th Street, SW, Washington, DC 20410.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (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 rule does 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 in 24 CFR Part 903

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

For the reasons stated in the preamble, HUD reissues the final rule published on October 21, 1999 (64 FR 56844), by making clarifying revisions to 24 CFR part 903 to read as follows:

PART 903--PUBLIC HOUSING AGENCY PLANS

- § 903.1 What are the public housing agency plans?
- § 903.3 When must a PHA submit the plans to HUD?
- § 903.5 What information must a PHA provide in the 5-Year Plan?
- § 903.7 What information must a PHA provide in the Annual Plan?
- § 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?
- § 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?
- § 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?.
- § 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?
- § 903.17 What is the process for obtaining public comment on the plans?
- § 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?
- § 903.21 May the PHA amend or modify a plan?
- § 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?
- § 903.25 How does HUD ensure PHA compliance with its plans?

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

§ 903.1 What are the public housing agency plans?

(a) There are two public housing agency plans. They are:

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD [NOTE TO REVIEWER: THIS WAS MOVED (WITHOUT CHANGE) FROM § 903.5]; and

(2) The Annual Plan (Annual Plan) that the PHA must submit to HUD for each fiscal year immediately following the date on which the Annual Plan is due to HUD and for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) The purpose of the plans is to provide a framework for:

(1) Local accountability; and

(2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

(c) HUD may prescribe the format of submission (including electronic format submission) of the plans. HUD also may prescribe the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(d) The requirements of this part only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(e) In addition to the waiver authority provided in 24 CFR 5.110, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

(f) References to the "1937 Act" in this part refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.)

§ 903.3 When must a PHA submit the plans to HUD?

(a) 5-Year Plan. (1) The first PHA fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning January 1, 2000. The first 5-Year Plans for such PHAs are due December 1, 1999, or, at the option of the PHA, any time after December 1, 1999, but no later than January 31, 2000.

(2) For PHAs whose fiscal years begin after January 1, 2000, the 5-Year Plans are due no later than 75 days before the commencement of their fiscal year or, at the option of PHAs whose fiscal year begins April 1, 2000, no later than January 31, 2000.

(3) For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(4) PHAs may choose to update their 5-Year Plans every year as good management practice. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

(b) The Annual Plan. (1) The first fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first Annual Plans for such PHAs are due December 1, 1999, or, at the option of the PHA, anytime after December 1, 1999, but no later than January 31, 2000.

(2) For PHAs whose fiscal years begin after January 1, 2000, the first Annual Plans are due 75 days in advance of PHAs fiscal year commencement dates or, at the option of PHAs whose fiscal year begins April 1, 2000, no later than January 31, 2000.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due 75 days in advance of the commencement of a PHA's fiscal year.

§ 903.5 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction, in a manner that furthers deconcentration; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, the PHA must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year Plans, must address:

(1) The PHA's mission, goals and objectives for the next 5 years; and

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan.

§ 903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, such as the PHA's admission policy and deconcentration plan, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan are the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the

PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) A statement of housing needs. (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions. This statement must describe the PHA's deconcentration policy applicable to public housing and other policies that govern resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

(1) Deconcentration Policy. The PHA's admissions policy with respect to public housing, implementing the statutory requirement to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. (Section 16(a)(3)(B) of the 1937 Act, 42 U.S.C. 1437n) This requirement is applicable to all public housing developments occupied predominately by families with children ("family developments"), except for those approved for demolition or for conversion to tenant-based assistance.

(i) General. To implement this requirement, the PHA must admit lower income families to higher income buildings (or developments) and admit higher income families to lower income buildings (or developments), using the following steps:

(A) Step 1. Annually determine the average income of all families residing in all of its family developments.

(B) Step 2. Annually determine the average income of all families residing in each building of each family development.

(C) Step 3. Determine which family development buildings have an average income higher than the PHA average for family developments -- designated "higher income buildings" -- and which have an average income lower than the PHA average for family developments -- designated "lower income buildings".

(D) Step 4. Determine which families on the waiting list have incomes higher than the PHA-wide average income for family developments -- designated "higher income families" for this purpose -- and which have incomes lower than the PHA-wide average for family developments -- designated "lower income families" for this purpose.

(E) Step 5. When a unit becomes available for occupancy in a higher income building, the PHA must skip families on the waiting list if necessary to reach a lower income family to whom it will offer the unit. When a unit becomes available for occupancy in a lower income building, the PHA must skip families on the waiting list if necessary to reach a higher income family to

whom it will offer the unit. Skipping is required with respect to both site-based and community-based waiting lists, and it must be uniformly applied.

(ii) Applicability of local preferences. In determining which higher income or lower income families to admit to a lower income or a higher income building, the PHA must use its waiting list. The PHA may use its local admission preferences, except if using them would result either in offering a unit in a higher income family development to a higher income family or in offering a unit in a lower income family development to a lower income family. However, if a PHA has a preference for homeless persons, for families paying more than 50 percent of their income in rent, or for families who are victims of domestic violence, it may use such a preference when determining which family to admit to any building, and may admit a family with such a preference instead of a family that otherwise would be offered the unit. PHA policies must affirmatively further fair housing.

(iii) Definition of "building". For purposes of applying this deconcentration policy, a "building" is one or more contiguous structures containing at least 8 public housing dwelling units.

(iv) Scattered site and small developments. If a development contains no structures that qualify as a building, the deconcentration requirement is applied to the entire development.

(v) Mixed-finance developments. In mixed-finance developments, including HOPE VI projects, all units, and not solely public housing units, are to be considered for purposes of classifying buildings and developments as higher income or lower income. In determining the average family income of each building that is in a mixed-finance development, all family incomes count. The PHA may make a reasonable estimate of the incomes of the non-public housing families. However, for purposes of determining the PHA-wide average income of families in family developments, only the incomes of public housing families in these developments are considered.

(vi) Family's discretion to refuse a unit. A family has the sole discretion whether to accept an offer of a unit made under this

deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under this deconcentration policy.

(vii) Relationship to income targeting requirement. Nothing in this deconcentration policy relieves a PHA of the obligation to meet the requirement to admit annually at least 40 percent families whose incomes are below 30 percent of area median income. (See section 16(a)(2) of the 1937 Act, 42 U.S.C. 1437n(a)(2).)

(2) Waiting List Procedures. The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments. The information required by this paragraph (b)(2) must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act (42 U.S.C. 1437d(s)), for public housing. Section 6(s) of the 1937 Act permits PHAs to establish a system of site-based waiting lists for public housing that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD; (C) Taking any steps necessary to remedy the problems surfaced during the review; and

(D) Taking the steps necessary to affirmatively further fair housing.

(3) Other admissions policies. The other policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.) All admission and occupancy policies must comply with Fair Housing Act requirements and regulations and affirmatively further fair housing. The PHA may not require any specific income or racial quotas for any development or developments.

(c) A statement of financial resources. This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by

the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) A statement of the PHA's rent determination policies. This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) A statement of the PHA's operation and management. (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA.

(2) The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation. Pest infestation includes cockroach infestation.

(3) This statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) A statement of the PHA grievance procedures. This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. These procedures include public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) A statement of capital improvements needed. With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) A statement of any demolition and/or disposition. (1) Plan for Demolition/Disposition. With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) Interim Plan for Demolition/Disposition. (i) Before submission of the first Annual Plan, a PHA may submit an interim PHA Annual Plan solely for demolition/disposition. The interim plan must provide:

- (A) The required description of the action to be taken;
- (B) A certification of consistency with the Consolidated Plan; (C) A description of how the plan is consistent with the Consolidated Plan;
- (D) A relocation plan that includes the availability of units in the area and adequate funding; and
- (E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

(ii) Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25) with the following exception. If a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted.

(iii) The actual application for demolition or disposition may be submitted at the same time as submission of the interim plan or at a later date.

(i) A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities. (1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

(ii) The PHA will apply for designation for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e).

(2) The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) A statement of the conversion of public housing to tenant-based assistance. (1) This statement describes:

(i) Any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5);

(ii) The status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note); or

(iii) The PHA's plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t).

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33.

(3) For both voluntary and mandatory conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(4) The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(5) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) A statement of homeownership programs administered by the PHA.

(1) This statement describes:

(i) Any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y));

(ii) Any homeownership programs administered by the PHA under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h));

(iii) An approved HOPE I program (42 U.S.C. 1437aaa); or

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z-4).

(2) The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) A statement of the PHA's community service and self-sufficiency programs. (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted

families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (1) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) A statement of the PHA's safety and crime prevention measures.

(1) With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments. The plan also must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(2) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(3) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m) (1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see 24 CFR part 761).

(4) If HUD determines at any time that the security needs of a public housing development are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) A statement of the PHA's policies and rules regarding ownership of pets in public housing. This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing. The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a-3).

(o) Civil rights certification. (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The PHA also must certify that it will affirmatively further fair housing.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA:

(i) Examines its programs or proposed programs;

(ii) Identifies any impediments to fair housing choice within those programs;

(iii) Addresses those impediments in a reasonable fashion in view of the resources available;

(iv) Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and

(v) Maintains records reflecting these analyses and actions.

(p) Recent results of PHA's fiscal year audit. This statement provides the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) A statement of asset management. To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) Additional information to be provided. (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (24 CFR part 901) or the Public Housing Assessment System (24 CFR part 902) include its operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

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

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the following information:

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). 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). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHA's that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or the council's representatives as the Resident Advisory Board. If the PHA makes such appointment, the members of the jurisdiction-wide resident council or the council's representatives shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b) (2) of this section.

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

(3) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board (or Boards) has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(4) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board

or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

§ 903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

- (a) The PHA has conducted the public hearing;
- (b) The PHA has considered all public comments received on the plan;
- (c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

§ 903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

(b) Each significant amendment or modification to a plan submitted to HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

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

(a) Review of the plan. When the PHA submits its Annual Plan to HUD, including any significant amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD;

(3) The plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(4) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) Disapproval of the plan. (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD;

(ii) Is not consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iv) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the PHA submits the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b) (3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(c) Designation of due date as submission date for initial plan submissions. For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted on their due date as provided in § 903.3.

(d) Public availability of the approved plan. Once a PHA's plan has been approved, a PHA must make the approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

§ 903.25 How does HUD ensure PHA compliance with its plan?

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

DATED: _____

Harold Lucas, Assistant Secretary for
Public and Indian Housing

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