

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Part 903**

[Docket No. FR-4420-I-01]

RIN 2577-AB89

**Public Housing Agency Plans**

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule implements an important new component of public housing and tenant-based assistance operations—the public housing agency plans. Through these plans—a 5-year plan and an annual plan—a public housing agency (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 public housing agency plans constitute one of several public housing reforms made by the Quality Housing and Work Responsibility Act of 1998. This rule establishes initial procedures and requirements for development, submission and implementation of the plans.

**DATES:** Effective Date: March 22, 1999.

*Comment Due Date:* April 19, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Rod Solomon, Senior Director for Policy and Legislation, 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) 708-0730 (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. This Rulemaking**

Section 511 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) requires that not later than 120 days after the date of enactment of the QHWRA HUD shall issue an interim rule to require the submission of an interim public housing agency plan. This interim rule is issued in accordance with section 511.

Section 511, which added section 5A to the United States Housing Act of 1937 (USHA), (42 U.S.C. 1437 *et seq.*) also requires that before the final rule is issued, HUD will seek the recommendations on implementation of the public housing plans from organizations representing (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. Section 511 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations.

In addition to the general solicitation of public comments on this interim rule, HUD specifically seeks through this rulemaking recommendations on implementation of the public housing agency plans from the three groups mentioned above: (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. HUD believes that other appropriate parties should include representatives of affected communities. HUD will notify the public of the dates, times and locations of the public forums. HUD therefore expects that this rule will be clarified and improved as the rulemaking process progresses.

With the publication of this rule, however, PHAs should begin preparing their plans for Fiscal Year 2000 (PHA fiscal years commencing January 1, 2000 and thereafter).

**II. Background**

*A. The Need for and Benefits of Comprehensive Planning by PHAs*

The recently enacted QHWRA makes important changes to the operations and programs of public housing and tenant-based assistance. These changes are designed to revitalize and improve HUD's public housing and tenant-based assistance programs. One of the most important changes made by the QHWRA is the introduction of the public housing agency plans—a 5-year plan and an annual plan. The 5-year plan describes

the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the subsequent 5 years. The annual plan provides details about the PHA's immediate operations, program participants, programs and services, and the PHA's strategy for handling operational concerns, residents' concerns and needs, programs and services for the upcoming fiscal year. Both planning mechanisms (the 5-year plan and the annual plan) require PHAs to examine their existing operations and needs, and to design long-range and short-range strategies to address those needs. Through this planning mechanism, PHAs will make more efficient use of Federal assistance, more effectively operate their programs, and better serve their residents.

Secretary Andrew Cuomo has long believed that greater efficiency and effectiveness in the use of HUD assistance can be achieved by HUD program participants when the participants engage in comprehensive planning activities that allow them to examine the needs of the individuals they serve, consult with interested and affected parties, and design strategies to address those needs. In 1994, Secretary Cuomo, then the Assistant Secretary for Community Planning and Development, established the consolidated plan for community planning and development programs (the "Consolidated Plan" was established by final rule published on January 5, 1995, 60 FR 1878). The Consolidated Plan combined the planning, application and reporting requirements of several HUD community planning and development programs. Through the Consolidated Plan, States and localities examine their needs and design their own strategies to address those needs. This planning process includes (1) the involvement of citizen participation in the planning process, (2) the creation of an action plan that provides the basis for the program participant to assess its performance; and (3) the consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions. (Note that the Consolidated Plan includes an Analysis of Impediments to Fair Housing Choice.) The Consolidated Plan establishes renewed partnerships among HUD, State and local governments, public and private agencies, tribal governments, and communities by empowering the entities and individuals to work with one another, to work with HUD field staff, and with other entities, to fashion

creative solutions to community problems.

The public housing agency plans embody, in many respects, the concepts of HUD's Consolidated Plan. Like the Consolidated Plan for CPD Programs, the public housing agency plans provide a planning mechanism by which a PHA can examine its long-range needs and its short-range needs, specifically the needs of the families that it serves, and design both long-term strategies and short-term strategies for addressing those needs. Like the Consolidated Plan, the public housing agency plans involve consultation with affected groups in the development of the plan.

The Consolidated Plan has been a highly successful mechanism for comprehensive planning for community needs. HUD believes that the public housing agency plans also will prove to be a successful mechanism for comprehensive planning for the needs of those served by PHAs.

#### *B. Increased Flexibility, Local Accountability, Reduction in Submissions*

While the QHWRA contemplates a comprehensive planning process for public housing and tenant-based assistance, and while the elements listed for inclusion in the annual plan are extensive, the purposes of the QHWRA emphasize deregulation, consolidation and flexibility for PHAs. The QHWRA also authorizes HUD to allow submission of streamlined plans by high-performing PHAs and small PHAs that are not designated as troubled. The challenge for HUD and PHAs is how to fulfill these purposes and still assure adequate local accountability by the PHA. HUD's response to this challenge is that PHAs which are permitted to submit streamlined plans must provide a reasonable means by which the public can obtain any basic information that is not included in the plans. For PHAs that are not eligible to submit streamlined plans, HUD has strived in this first rule to keep the plan submission requirements complete but simple. HUD is accepting references to any plan materials that are already in existence and which already have been submitted to HUD rather than require resubmissions of these materials to HUD. HUD, however, also requires that while these materials need not be resubmitted to HUD, PHAs must ensure local availability of the required Plan components to their residents and members of the public.

In addition to moving toward increased flexibility and local accountability, one of the goals of the

PHA annual plan is to reduce the number of PHA submissions to HUD. To the extent practicable, the PHA annual plan will eventually consolidate all PHA information that is required to be submitted under existing HUD planning and reporting requirements into one document. The objective is for the PHA annual plan to eventually supersede submission requirements currently imposed on PHAs under various HUD programs. The elimination of all other currently required submissions cannot be accomplished with this interim rule. HUD is working, however, to phase out other submissions and consolidate them as part of the annual plan, and certain submissions will soon be folded into the annual plan submission, as described below.

For example, HUD intends that the planning submissions required under HUD's modernization program will be superseded by this new PHA planning process commencing with modernization funds made available by Congress for Federal Fiscal Year 2000. HUD will issue a separate notice that provides PHAs with more information about how the modernization program submissions are superseded by this new PHA planning process. Another change brought about by the annual plan is in the submissions and approval process for site-based waiting lists. As further discussed below, PHAs will not need prior HUD approval to implement site-based waiting lists, other than the approval provided under the annual plan. Other submissions required of PHAs, for example those required under HUD's Drug Elimination Program, are expected to be folded into the PHA annual plan submission. Existing planning and reporting submissions remain applicable, however, until HUD notifies PHAs (through this interim rule or other means) that they have become part of the PHA annual plan, and HUD establishes the new submission procedures.

In addition to consolidating other required submissions in the PHA annual plan, HUD intends that the new public housing agency planning process, to the extent practicable, will allow for a PHA to plan for all of its program needs based on the PHA's fiscal year. Allowing a PHA to plan for all of its programs based on a PHA's fiscal year will assist PHAs in planning in a comprehensive manner and will expedite the release of public housing funds. As discussed further below, HUD will require the PHA annual plan to be submitted 75 days in advance of a PHA's fiscal year. Since the first PHA fiscal years that will be funded with Federal Fiscal Year (FFY) 2000 funds

begin on January 1, 2000, the first PHA annual plan (and 5-Year Plan) will be due 75 days before January 1, 2000. PHA plans will be due thereafter to match the commencement of PHA fiscal years, which are staggered on a quarterly basis. In addition to the benefits to PHAs of this scheduling, receipt of PHA plans on a quarterly schedule will assist HUD with its review process, and allow HUD the opportunity to provide better feedback to a PHA on its plan where such feedback is necessary.

HUD intends for the planning currently required under the modernization program and Drug Elimination Grant Program to be placed on the submission schedule for the PHA plans. Funding for these programs will be provided by formula in the future. The QHWRA requires all capital funds to be distributed by formula. This formula funding is being developed through negotiated rulemaking. The QHWRA allows formula funding for drug elimination funds. (Note that elsewhere in today's **Federal Register**, HUD is publishing an Advance Notice of Proposed Rulemaking on HUD's proposal to provide formula funding for Drug Elimination Program grant funds.) To assure that capital funds are made available to PHAs in a timely fashion, PHAs that are scheduled to submit PHA plans in the second half of the Federal Fiscal Year (i.e., in April and July) may receive access to funds midway through the Federal Fiscal Year for which funds are being distributed. PHAs may receive access to these funds as long as they have submitted as part of the previous year's Annual Plan a multi-year capital plan covering activities to be undertaken in the coming year. To accommodate the expedited schedule for release of capital funds, once the new capital formula is established, HUD expects to determine formula shares based on formula characteristics of a PHA 90 days earlier than has been the case in the past (June 30 rather than September 30 of the preceding fiscal year).

In addition to moving toward a reduction in administrative burden through the consolidation of PHA required submissions in the PHA plan, HUD, as part of the HUD 2020 Management Reform effort, is moving toward electronic reporting for all required submissions under its programs. HUD is aware that automated systems are being used more and more extensively nationwide, including more extensive use by PHAs and other entities that participate in HUD programs. Vice President Gore's Report of the National Performance Review has,

as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113-117, Reg. 2) To meet the Vice President's objective and HUD's own objective to keep in step with modern technology, HUD already has converted several required reporting submissions in both its public housing programs and in its multifamily programs to electronic submission. In addition to making submissions easier for its program participants (paper reduction), electronic data assists HUD and its program partners to exchange information more easily and to monitor activity, note trends in programs and the performance of the program participants (weaknesses and strengths) and better serve the families and communities that HUD programs are designed to serve.

HUD specifically invites comments from PHAs on suggestions to streamline or merge current information requirements already reported electronically to HUD with the additional requirements listed in this rule.

For these two new plans required by QHWRA, HUD is developing as expeditiously as possible software that will allow for, and eventually require, electronic submission of the PHA annual plan and 5-year plan. This software will not be solely directed at facilitating electronic submissions, through the internet or other means, but is anticipated to provide recommended uniform formats and layouts for the submission of information required by the 5-year plan and annual plan. The uniformity of formats should make for easier reading by HUD, the PHAs, and most importantly the public housing residents and the public, generally. Until this software is developed and ready for use, PHAs should follow the guidance for submission of plan information as provided in this rule and through any additional guidance documents that HUD may issue.

As stated earlier, HUD's objective is that the planning process contemplated by this new statutory requirement to develop Annual Plans and 5-Year Plans will prove to be as successful a planning mechanism as the Consolidated Plan. In this regard, HUD specifically solicits comments from PHAs on the feasibility and importance of additional steps to coordinate the 5-Year Plan and/or Annual Plan with the submission of the Consolidated Plan either in whole or in part.

### III. The Public Housing Agency Plans

Section 511 of the QHWRA provides for two types of plans to be submitted by a PHA—a long range 5-year plan (5-Year Plan) that describes the mission of the PHA and the PHA's goals and objectives for achieving its mission over the next 5 years, and an annual plan (Annual Plan) that provides more details about the PHA's current policies, operations, programs and services.

As will be discussed further below, one of HUD's primary goals for public housing and tenant-based assistance is ensuring compliance with all applicable nondiscrimination requirements, such as the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act, as well as affirmatively furthering fair housing. This goal remains and is more clearly specified by the QHWRA's PHA plan requirements as well as by other amendments made by the QHWRA to the USHA.

#### A. The 5-Year Plan

##### 1. What the QHWRA Requires

Section 511 of the QHWRA requires that a PHA must submit to HUD a 5-year plan that provides a statement of:

- The PHA's mission for serving the needs of low-income and very low-income families in the PHA's jurisdiction during the next 5 fiscal years; and
- The PHA's goals and objectives that will enable the PHA to serve the needs of the low-income and very low-income families as identified by the PHA for the next 5 fiscal years.

Section 511 provides that the 5-Year Plan must cover a period of 5 PHA fiscal years that follow the date that the PHA submits its 5-Year Plan to HUD. For example, if a PHA's fiscal year runs January 1st to December 31st, the due date for the submissions of the plans by the PHA is no later than 75 days before January 1st. For a PHA with a fiscal year beginning January 1st, the 5 years covered by the 5-Year Plan will be the 5 fiscal years beginning January 1, 2000, January 1, 2001, January 1, 2002, January 1, 2003, and January 1, 2004.

The first 5-Year Plan will be due at the same time as the first PHA Annual Plan. Subsequent 5-Year Plans will be due to HUD once every 5 years. PHAs will not be required to submit an annual update to the 5-Year Plan, but PHAs will be required to explain any substantial deviations from the 5-Year Plan in their Annual Plans. After submission of the first 5-Year Plan, PHAs in their succeeding 5-Year Plans,

in addition to addressing their mission, goals and objectives for the next 5 years, must address the progress made by the PHA in meeting its goals and objectives described in the previous 5-Year Plan.

With respect to substantial deviations, HUD believes that this refers to a change in a PHA's mission or change in a goal or objective to meet that mission. HUD specifically solicits comment on how "substantial deviations" should be defined.

#### 2. An Acceptable 5-Year Plan

In reviewing a PHA's 5-Year Plans, HUD believes that a PHA's mission, goals and objectives should be consistent with and contribute to HUD's mission and goals and objectives, which also overlay almost all HUD programs. HUD's mission is to promote adequate and affordable housing, economic opportunity, and a suitable living environment without discrimination. HUD's strategic goals that are applicable to PHAs are (1) increasing the availability of decent, safe and affordable housing in American communities; (2) ensuring equal opportunity in housing for all Americans; (3) promoting self-sufficiency and asset development of families and individuals; and (4) improving community quality of life and economic vitality.

In establishing goals and objectives, PHAs must set quantifiable ones, where possible. For example, a goal of providing decent, safe and sanitary housing can be measured partly by a PHA's physical inspection score under the Public Housing Assessment System. The goal of promoting economic self-sufficiency can be measured by PHA residents that no longer require assistance because of welfare-to-work or similar initiatives. Additional examples of quantifiable measures and more information on HUD's mission, goals and objectives can be found in HUD Fiscal Year 2000 Annual Performance Plan, located at HUD's web site (<http://www.hud.gov>).

HUD specifically seeks comments on what constitutes an acceptable 5-Year Plan.

#### B. The Annual Plan Pertaining to Section 8 Assistance, Capital Funds, and Annual Contributions for Operation of Lower Income Housing Projects

The second plan required by Section 511 of the QHWRA is an Annual Plan that the PHA must submit for each year for which the PHA receives assistance under section 8(o) or section 9 of the USHA. Section 511 provides for 18 components of the Annual Plan. The content of each component and HUD's

permitted form of submission of each component is discussed in Section IV of this preamble, which follows.

#### IV. The Annual Plan

##### A. Statutory Contents of the Annual Plan, Generally, and HUD Guidance on Submissions

Section 511 specifies the information that must be included in the Annual Plan for the fiscal year for which the PHA receives assistance under section 8(o) or section 9 of the USHA. The statutory components of the Annual Plan are fully provided in the regulatory text of this interim rule. This section of the preamble does not repeat the complete statutory language or the regulatory text language, but rather provides a brief summary of the statutorily required contents for each component. Therefore, it is important for the reader to review the regulatory text, as well as this preamble, for a full description of what is required for the Annual Plan. It is also important for the reader to note that 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, selection policies) and not the statutory or regulatory requirements that govern these components.

This section of the preamble also includes HUD guidance on how the information for Annual Plan components may be compiled and submitted. HUD guidance includes using or referencing materials that PHAs already may have compiled or are in the process of compiling under current program planning and reporting requirements. Where these materials are used or referenced, the PHA must clearly identify the source of the materials, and must clearly identify for the public where these materials can be obtained or inspected. The submission guidance provided in this rulemaking is primarily for the first Annual Plan submission or at most for the first two years. HUD anticipates that the comments submitted on this rule, and the recommendations made at the public forums, will assist HUD in developing more long-term guidance on submissions to be made under the Annual Plan. At the final rule stage or in a future rulemaking, HUD may not only provide guidance but may prescribe the information that must be submitted to satisfy the statutory and regulatory requirements and may prescribe the format of submission. Before taking this action, HUD wants the benefit of public comment and the

recommendations from the three groups identified in section 511 of the QHWRA.

HUD specifically invites comment on the manner of submission of the information required under the Annual Plan.

For those components of the Annual Plan for which the PHA has no submission (for example, if the PHA has no projects targeted for demolition or disposition), the PHA must state in its Annual Plan the reason that this component is not addressed (again, in the example provided, a simple statement that no projects are targeted for demolition/disposition). Each component of the Annual Plan that is required to be addressed must be addressed in some fashion. Additionally, HUD points out that certain PHA activities, such as demolition, disposition, conversion to vouchers, designation, and public housing homeownership programs, have separate submission and approval processes as well as specific HUD review and approval periods. These processes remain in place and are not superseded by the Annual Plan. As noted earlier, however, PHAs may submit relevant approval documents and other materials relating to these separate processes along with the Annual Plan if these materials are clearly identified as being part of one of these separate processes.

In providing an overview of the statutory components of the Annual Plan as well as HUD's submission guidance in this section of the preamble, the reader should note that the components of the Annual Plan apply to both public housing and Section 8 tenant-based assistance, except where specifically stated otherwise.

1. *Housing Needs. What the QHWRA Requires.* A statement of the housing needs of the low-income and very-low income families (including elderly families and families with disabilities) in the jurisdiction served by the PHA and on the PHA's waiting list.

HUD notes that it has specified two categories of families—extremely low-income families (i.e., families with incomes below 30 percent of the area median) and households of various races and ethnic groups—within categories of families listed by the QHWRA. (Please see § 903.7(a)(1) of regulatory text.) HUD added the extremely low-income family category because (1) the needs of extremely low-income families are specifically addressed in the local consolidated plans with which PHA plans (5-Year and Annual) must be in compliance; and (2) the QHWRA targets housing assistance to extremely low-income

families. HUD added the breakdown by racial and ethnic groups because such breakdown is consistent with a PHA's civil rights obligations under section 511.

*Submission Guidance.* PHAs may obtain this information from the Consolidated Plan for their jurisdiction if the Consolidated Plan accurately describes their housing needs. Rather than restate the Consolidated Plan's housing needs statement, the PHA may submit any applicable portions of the Consolidated Plan. The information about needs of families on waiting lists must of course come from the PHA's analysis of the waiting list.

PHAs which are not in a city or county with its own Consolidated Plan may include in their submissions any applicable portions of the Consolidated Plan for the State. PHAs whose jurisdictions encompass more than one Consolidated Plan jurisdiction may include portions of all applicable Consolidated Plans. These PHAs also will need to examine their waiting lists to specify the housing needs arising from families on the waiting list.

Whether or not a PHA includes an applicable portion of a Consolidated Plan for this component of the Annual Plan, the PHA's statement of housing needs must be consistent with the needs described in the Consolidated Plan for the jurisdictions served by the PHA. The statute requires consistency with the Consolidated Plan.

2. *Financial Resources. What the QHWRA Requires.* A statement of the financial resources available to the PHA and the planned uses of those resources.

*Submission Guidance.* PHAs should provide a statement of: (a) The estimated financial resources available for the support of the Federal public housing and tenant-based assistance programs administered by the PHA during the plan year; and (b) the planned use of available resources in support of these programs. The statement of resources available should include the sources of funds supporting each federal program, including current federal grants, prior year grant funds, dwelling rental income, any other sources of non-grant income (including donations, leveraged funds, entrepreneurial, program, or investment income), and reserves. The planned uses of these resources should be displayed by major category of activity including: public housing operations, public housing modernization and/or development, section 8 payments to owners, anti-crime and security activities; services to assisted families; and program administration.

3. *Policies Governing Eligibility, Selection, Admissions. What the QHWRRA Requires.* A statement of: (a) the PHA's policies governing eligibility, selection and admission (including any admission preferences), assignment, and occupancy policies with respect to public housing and Section 8 tenant-based assistance, as applicable, and (b) procedures for maintaining waiting lists, including the public housing admissions policy for deconcentration of lower-income families and any public housing site-based waiting list procedures.

*Submission Guidance.* PHA admissions policies, occupancy policies, and waiting lists policies are currently required by existing regulations and the requirements to adopt and maintain these policies have not been repealed. With respect to the information required by this component of the Annual Plan, PHAs need not submit these policies with their Annual Plan if they already have been submitted and approved by HUD (for example, the Tenant Selection and Assignment Plan). In this case, however, PHAs must identify in the Annual Plan the policies that have been submitted and approved. Additionally, if there have been any changes or additions to these policies since HUD approval of these policies, the PHA must submit the changes or additions. Where the changed or additional policies are contained in existing PHA documents, the PHA may excerpt and include relevant portions of those documents as part of this component. For tenant-based assistance, PHAs must include those applicable portions of the Section 8 Administrative Plan. Please see discussion in Section IV.C of this preamble for submission guidance regarding admissions policies related to deconcentration of poverty and site-based waiting lists.

*Applicability.* The policies governing eligibility, selection and admissions and waiting list administration is applicable to public housing and tenant-based assistance, except for the information requested on site-based waiting lists and deconcentration. This information is applicable only to public housing.

4. *Rent Determination. What the QHWRRA Requires.* A statement of the discretionary policies of the PHA that govern rents charged for public housing units, including flat rents, and rental contributions of families assisted under section 8(o) of the USHA.

*Submission Guidance.* For this component of the Annual Plan, PHAs should submit the listing of minimum rents, flat rents and any discretionary rent policies not mandated by statute.

For tenant-based assistance, PHAs should submit minimum rent and payment standard policies.

5. *Operation and Management. What the QHWRRA Requires.* A statement of the PHA's rules, standards, and policies governing maintenance and management of the housing owned, assisted, or operated by the PHA, and management of the agency and programs of the agency.

*Submission Guidance.* PHAs should submit a list of their basic rules, standards and policies governing maintenance and management of public housing, and management of the PHA and the programs administered by the PHA. PHAs also should identify where the rules, standards and policies are maintained and may be reviewed, specifically including measures necessary for the prevention or eradication of pest infestation. With respect to tenant-based assistance programs, PHAs should list the programs, the number of households assisted, and the estimated number of units becoming available annually.

*Applicability.* The list of PHA rules, standards and policies regarding management and maintenance of housing applies only to public housing. Information about PHA management, standards and policies, and the programs administered by the agency, however, applies to public housing and tenant-based assistance.

6. *Grievance Procedures. What the QHWRRA Requires.* A statement of the grievance procedures that the PHA makes available to their residents.

*Submission Guidance.* PHA grievance procedures and informal review and hearing procedures for tenant-based assistance are currently required by existing regulations and the regulatory requirements to provide these policies have not been repealed. Submission of these procedures (including any procedures affecting public housing and tenant-based assistance applicants) satisfies this component of the Annual Plan.

7. *Capital Improvements. What the QHWRRA Requires.* With respect to public housing projects owned, assisted, or operated by the PHA, the PHA's plan describing the capital improvements necessary to ensure long-term physical and social viability of the projects.

*Submission Guidance.* PHAs should submit a list of its capital projects and the estimates of costs. Alternatively, in at least the first year of implementation, an update of the Comprehensive Grant Plan forms will satisfy this component of the Annual Plan. With respect to the capital improvement plans, PHAs may submit 5-Year Plans and update them

annually. This is good management practice and this will allow PHAs to have HUD-approved spending items for future years, as is the case now under the annual statements for the Comprehensive Grant Program.

*Applicability.* This section is applicable only to public housing.

8. *Demolition and/or Disposition. What the QHWRRA Requires.* A description of any public housing project owned by the PHA for which the PHA will apply for demolition and/or disposition approval and the timetable for demolition and/or disposition.

*Submission Guidance.* PHAs that already have submitted or have prepared demolition or disposition requests in accordance with the applicable law, regulations or notices may submit these requests, if not already submitted, or may reference a request already submitted. If already submitted, the PHA should advise of the date of submission. If no request has been prepared or submitted, the PHA should identify any project or portion of a project targeted for demolition/disposition and the PHA's estimated timetable for this activity. The description of targeted demolition/disposition in the Annual Plan should include the timetable for submission of the demolition/disposition application.

*Applicability.* This section is applicable only to public housing.

9. *Designation of Public Housing for Elderly Families or Families with Disabilities or Elderly Families and Families with Disabilities. What the QHWRRA Requires.* Identification of any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated, or plans to designate, for occupancy only by elderly families, or only by families with disabilities, or for elderly families and families with disabilities.

*Submission Guidance.* The option to designate public housing for elderly families, or families with disabilities, or for elderly families and families with disabilities was authorized by section 622(a) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992, 106 Stat. 3672, 3813), which amended section 7 of the USHA. Section 7 was amended a second time by section 10 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, approved March 28, 1996), and this more recent statute establishes the current requirements for designation. These requirements are provided in PIH Notice 98-24.

For this component of the Annual Plan, the PHA should follow the same

submission procedure allowed for the demolition/disposition component of the Annual Plan. PHAs that already have submitted or have prepared designation plans in accordance with current HUD procedures, may submit their designations plans, if not already submitted, or may reference a plan already submitted. If a designation plan already has been submitted, the PHA should advise of the date of submission. If no designation plan has been prepared or submitted, the PHA should identify any project or portion of a project targeted for designation and the PHA's estimated timetable for this activity.

*Applicability.* This section is only applicable to public housing.

**10. Conversion of Public Housing.** *What the QHWRA Requires.* A description of any building or buildings that the PHA is required to convert, or voluntarily plans to convert to tenant-based assistance, and both an analysis of the projects or buildings required to be converted and a statement of the amount of assistance received that is to be used for rental assistance or other housing assistance in connection with the conversion.

*Submission Guidance.* HUD will be issuing a rule in the near future on voluntary conversions. Until that rule has been issued for effect, PHAs are not required to address the subject of voluntary conversions. For mandatory conversions, until a rule is issued on changes under the QHWRA, PHAs should submit a list of projects or portions of projects identified by the PHA or HUD as covered by section 202 of the FY 1996 HUD Appropriations Act (42 U.S.C. 14371 note) and the status of such projects or portions of projects covered by section 202.

*Applicability.* This section is applicable to public housing and only that tenant-based assistance which is to be included in a conversion plan.

**11. Homeownership.** *What the QHWRA Requires.* A description of any homeownership programs administered by the PHA under section 8(y) of the USHA, or any homeownership programs for which the PHA has applied or will apply to administer under new section 32 of the USHA (added by section 536 of the QHWRA), once that section is implemented.

*Submission Guidance.* PHAs should describe any homeownership programs previously approved or proposed for approval under the Public Housing 5(h) Ownership program, or the HOPE I Homeownership Program, or section 32, or which they will administer under the section 8(y) voucher homeownership program and should describe the basic

elements of these homeownership programs.

**12. Community Service and Self-Sufficiency.** *What the QHWRA Requires.* A description of any community service and self-sufficiency programs of the PHA, any policies or programs for the enhancement of economic and social self-sufficiency of assisted families, and how the PHA will comply with the requirements of section 12(c) and (d) of the USHA, as added by the QHWRA.

*Submission Guidance.* PHAs should list and briefly describe any programs coordinated, promoted, or provided, including program size and means of allocating assistance to households. This includes any activities under programs such as Family Self-Sufficiency (including required and actual program size), Section 3 (Section 3 of the Housing and Urban Development Act of 1968), activities funded by HUD under the Economic Development Supportive Services Program (EDSS) and other similar programs. In addition, PHAs must address how they will comply with section 12(d) of the USHA which addresses treatment of income changes resulting from welfare program requirements. Until rulemaking is completed for section 12(c) the USHA (which relates to community service), PHAs are not required to address this aspect of the community service and self-sufficiency component.

*Applicability.* 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.

**13. Safety and Crime Prevention.** *What the QHWRA Requires.* The PHA's plan for safety and crime prevention to ensure the safety of the residents that it serves, that is developed in consultation with local law enforcement.

*Submission Guidance.* For this component, PHAs may describe any plans or measures directed toward safety and crime prevention of a PHA's residents as required by the QHWRA, and include any materials required to be included for participation in the Public Housing Drug Elimination Program (once new regulations for the program are issued). Please see Section IV.F. of this preamble for further discussion about forthcoming HUD regulations to implement section 586 of the QHWRA which makes changes to HUD's Public Housing Drug Elimination Program.

*Applicability.* This section only applies to public housing.

**14. Ownership of Pets in Public Housing.** *What the QHWRA Requires.* A

statement of the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the USHA.

*Submission Guidance.* HUD's regulations in 24 CFR part 5, subpart C, specify the current statutory requirements governing household pets in public and assisted housing for elderly families and families with disabilities, and allow PHAs to establish rules governing the keeping of household pets in these projects. The existing statute and regulations, however, are limited to projects for elderly families and families with disabilities. Additionally, the existing regulations are not applicable to animals that are used to assist persons with disabilities.

Section 526 of the QHWRA amends the USHA to add a new section 31 that provides conditions for ownership of household pets in public housing projects other than those for elderly families and families with disabilities. Section 526, however, requires HUD to implement this new section through proposed and final rulemaking. Until HUD issues these new regulations for effect, PHAs are not required to submit this component of the Annual Plan.

*Applicability.* This section only applies to public housing.

**15. Civil Rights Certification.** *What the QHWRA requires.* A certification by the PHA that it will carry out its plan in conformity with all applicable civil rights requirements and will affirmatively further fair housing.

*Submission Guidance.* The civil rights certification of the QHWRA is a critical component of the Annual Plan and must be submitted. The certification is twofold: that the PHA will carry out its plan in compliance with all applicable civil rights requirements and that the PHA will affirmatively further fair housing. Additionally, the certification is not only applicable to a PHA's Annual Plan but also to its 5-Year Plan.

**16. Most Recent Fiscal Year Audit.** *What the QHWRA Requires.* The results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the USHA.

*Submission Guidance.* This information will be obtained by HUD's Real Estate Assessment Center (REAC) beginning June 30, 2000 (for PHAs with fiscal years ending September 30, 1999 and after) through its financial assessment subsystem (FASS). For audits prior to June 30, 2000, HUD Field Offices will either have a copy of a PHA's most recent audit, or will obtain a copy from the OMB Clearinghouse. Accordingly, since this information is

already in HUD's possession, PHAs are not required to make a separate submission of this component of the Annual Plan. As with any other Annual Plan component for which information is in the possession of the PHA (as well as HUD) but which is not required to be submitted to HUD as part of the Annual Plan, PHAs must provide a reasonable means by which the public may obtain or review this information.

**17. Asset Management. What the QHWRA Requires.** A statement of 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. This statement also should address the PHA's strategy for managing its assets with respect to tenant-based assistance.

**Submission Guidance.** PHAs should submit a general statement explaining how they will deploy physical, financial and other assets to fulfill their mission, goals and objectives, to the extent that this information is not already addressed in other components of the Annual or 5-Year Plan.

**18. Other Information—Table of Contents, Executive Summary and Progress Report.** The QHWRA authorizes HUD to require submission of any other relevant information. The rule provides for three specific submissions.

First, a table of contents that corresponds to the Annual Plan's components in the order listed in the rule must be submitted. The table of contents also must identify the location of any materials that are not being submitted with the Annual Plan (for example, if REAC has the financial information required, the table of contents would note this and the date submitted to REAC.)

Second, an executive summary must be submitted which provides a brief overview of the information that the PHA is submitting in its Annual Plan and relates the Annual Plan programs and activities to the PHA's mission and the goals, as described in the 5-Year Plan. The executive summary also must explain any substantial deviation of these activities from the 5-Year Plan.

Third, for all Annual Plans following submission of the first Annual Plan, a brief summary must be included of the PHA's progress in meeting the mission and goals described in the 5-Year Plan.

HUD specifically solicits comments on these items that HUD has added to the Annual Plan submission and seeks

recommendations on any other items that should be included.

#### *B. What Constitute Acceptable Plans*

An acceptable and approvable Annual Plan or 5-Year Plan is one that addresses all subjects required to be addressed by the statute and regulations, and contains all required information and meets the applicable statutory and regulatory requirements. Failure to submit a plan by the deadline, failure to submit information required by the plan, or failure of the information provided to meet the Plan requirements may result in HUD's disapproval of plan, in whole or in part, and may result in action by HUD that it determines to be an appropriate response to the PHA's failure to submit the plan or information required by the plan. This action may include withholding of funding.

#### *C. Certain Components of the Admissions Policy Submission*

##### **1. Deconcentration of Poverty and Income-Mixing in Public Housing**

Section 513 of the QHWRA makes several amendments to section 16 with respect to deconcentration of poverty and income targeting, effective immediately. HUD's Notice of Initial Guidance on the QHWRA, published elsewhere in today's **Federal Register**, and which addresses those provisions of the QHWRA which are effective immediately, provides further guidance on the initial requirements for the new deconcentration provisions.

The Annual Plan's required submission on the PHA's policies governing eligibility, selection and admissions includes the PHA's description of its admissions policy. This admissions policy must be designed 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.

A PHA may offer incentives to eligible families that would help accomplish the deconcentration and income-mixing objectives. In addition, skipping of a family on a waiting list specifically to reach another family with a lower or higher income is permissible, provided that such skipping is uniformly applied. Skipping families is consistent with site-based waiting lists. Such skipping must be adopted by a PHA if necessary to implement an admissions policy that effectively meets the statute's requirements. Admissions policies relating to deconcentration do not impose specific quotas. In adopting deconcentration and income-targeting

provisions, Congress recognized that significant income disparities may occur both in the income levels of public housing developments and in the income levels of the neighborhoods in which the public housing developments are located (income levels for neighborhoods are approximate income levels based on census tract information).

To effectively develop an admissions policy that encourages deconcentration of poverty and income-mixing, PHAs should analyze expeditiously their public housing stock and tenant incomes. PHAs must: (1) determine and compare the relative tenant incomes of each development and the incomes of census tracts in which the developments are located, and (2) consider what policies, measures or incentives are necessary to bring higher income families into lower income developments (or, if appropriate to achieve the deconcentration of poverty, into developments in lower income census tracts) and lower-income families into higher-income projects (or if appropriate to achieve the deconcentration of poverty, into developments in higher income census tracts). PHA policies must devote appropriate attention to both of these goals.

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 QHWRA. PHAs with relatively few units or projects should comply with deconcentration and income-mixing requirements by adopting any necessary changes in their admissions policies based on their circumstances, taking into account current tenant populations, applicant populations and housing resources. Of course, PHA policies must be in writing and followed consistently, and must affirmatively further fair housing. It is not permissible to achieve deconcentration and income-mixing for developments as a whole, but with unacceptable disparities between areas or buildings within developments.

##### **2. Site-Based Waiting Lists**

This interim rule implements the QHWRA's authorization for PHAs to adopt and implement site-based waiting

lists under certain conditions (as specified in section 525 of the QHWRRA) and the statute's directive that PHAs can do this notwithstanding any law, regulation, notice or handbook to the contrary, except that applicable civil rights laws apply. In addition, the QHWRRA states that each applicant shall benefit from full disclosure by the PHA of any options available to the applicant with respect to the selection of developments.

The Senate Committee Report on the QHWRRA, which provides, with respect to legislative history, the most detailed statement on site-based waiting lists, cites several of the possible benefits of site-based waiting lists, but also acknowledges that past HUD limitations on site-based waiting lists were based on concern about racial steering and a desire to prevent housing discrimination. The Senate Committee anticipated that PHAs will assure that all applicants are aware of their rights under fair housing and civil rights laws, and encouraged HUD to monitor implementation so that steering does not occur.

HUD interprets this legislative history to mean that PHAs should be allowed to implement site-based waiting lists once PHA Annual Plans proposing site-based lists are approved by HUD, and that every reasonable action should be taken by PHAs to assure that applicants can make informed choices and that the programs are carefully monitored. This interim rule allows for implementation of site-based waiting lists in this fashion and specifies the necessary protections. All PHAs that request a site-based waiting list as part of their PHA Plan admissions policies (including those PHAs presently using site-based waiting lists and which wish to continue to do so) must meet the thresholds described in the regulation. To ensure that a plan proposing a site-based waiting list is consistent with the civil rights laws, regulations and certifications, HUD will determine whether any significant changes in the levels of racial and ethnic composition occur as a result of the implementation of the site-based waiting list, and whether any pattern or practice of discrimination exists.

Some PHAs may wish to implement site-based waiting lists before approval of their initial PHA Annual Plans, as an integral part of the implementation of admissions policies to promote deconcentration of poverty in public housing or to achieve other plan objectives. If so, PHAs may follow current procedures for requesting HUD approval. HUD will take into account the standards established by this interim

rule when reviewing any such request for approval.

### 3. Admissions Policy and Civil Rights Requirements

The QHWRRA includes a statutory requirement that PHA annual plans include civil rights certifications and these responsibilities are a fundamental objective of the annual plan. To do so, PHAs should develop admissions policies to achieve greater housing choice and opportunity on a non-discriminatory basis at each of their sites, for both tenants and applicants, and annually conduct the analysis to satisfy the elements of their civil rights certifications.

#### *D. Additional Plan Information for Troubled PHAs and PHAs at Risk of Being Designated Troubled*

Section 511 of the QHWRRA provides that the Secretary may require any additional information in the PHA's Annual Plan that the Secretary determines to be appropriate for each PHA that (1) is at risk of being designated as troubled under section 6(j)(2) of the USHA, or (2) is designated as troubled under section 6(j)(2). To these categories, HUD includes a PHA that is at risk of being designated as troubled or is designated as troubled under HUD's new Public Housing Assessment System (24 CFR part 901).

Certain additional information that is important to the PHA's progress in recovery from troubled status or near-troubled status will be available through HUD's Troubled Agency Recovery Center (TARC). The TARCs, part of the HUD 2020 Management Reform effort, were established to assist PHAs designated as troubled to reach improved performance through the development and implementation of sustainable solutions. The TARC works with a PHA to develop and implement an intervention strategy to help raise the PHA's level of performance. The PHA reports to the TARC and the TARC monitors the PHA's performance. To the extent that HUD can obtain additional information on troubled PHAs through the TARC it will do so to reduce duplication of submissions. HUD, however, retains the authority provided by the QHWRRA to request any additional information from a troubled PHA for the PHA Annual Plan that HUD determines is appropriate, and may not be available at the TARC. A troubled PHA must make available locally (to its residents and members of the public) its memorandum of agreement and operating budgets in addition to other materials required by this interim rule. For PHAs at risk of being designated

troubled and that are not being monitored by the TARC, HUD may request additional information for the PHA Annual Plan similar to that information which is required of troubled PHAs by the TARC.

#### *E. Streamlined Annual Plan for Certain PHAs*

Section 511 also provides that the Secretary may establish a streamlined plan for:

- PHAs that are determined to be high performing PHAs;
- PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled under section 6(j)(2) of the USHA; and
- PHAs that only administer tenant-based assistance and that do not own or operate public housing.

In this interim rule, HUD exercises this authority to allow streamlined plans for high performing PHAs, nontroubled small PHAs, and PHAs that only administer Section 8 tenant-based assistance. HUD generally will exempt these categories of PHAs from submitting elements of the Annual Plan which (1) simply reflect good management practice, or compliance with regulatory requirements and therefore not discretionary policies (for example, operation and management practices; grievance procedures); (2) are inapplicable to a PHA's operations (notably with respect to a PHA's administration of Section 8 tenant-based assistance); or (3) require HUD approval before the PHA may take action and also require Board of Commissioners approval (for example, designation plans, public housing homeownership programs, and conversion to vouchers). As noted above, PHAs are urged to fully inform their assistance recipients and the public generally, of PHA policies that exist but are exempt from submission, and must indicate how the public may receive more information about these policies in a reasonable fashion.

#### *F. Interim Plan for Demolition/Disposition*

*Interim Plan for Demolition/Disposition.* Before submission of the first Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition/disposition. The interim plan must provide the required description of the action to be taken, include a certification of consistency with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. 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. The actual application for demolition or disposition could be submitted at the same time or at a later date.

*G. The Resident Advisory Board: Establishment and Consultation*

To assist PHAs in the development of their annual plans, section 511 of the QHWRA provides for the establishment of a Resident Advisory Board. The QHWRA provides that each PHA must establish one or more Resident Advisory Boards, and the membership on the board or boards must adequately reflect and represent the residents assisted by the PHA.

The purpose of the Resident Advisory Board is to assist the PHA and make recommendations regarding the development of the Annual Plan. The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and, in submitting the final 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.

HUD specifically will require PHAs to appoint as Resident Advisory Boards jurisdiction-wide resident councils where they exist, or local resident councils, that are in compliance with tenant participation regulations (see 24 CFR part 964). PHAs will be required to encourage tenants that are not represented by such resident councils to seek representation on these councils in accordance with any applicable tenant participation regulations. Section 8 tenant-based assistance recipients also must be represented on resident councils because their interests may be very different from those of public housing residents. Although the QHWRA allows HUD to waive the resident advisory board requirement where current organizations adequately represent residents, HUD's strong preference is that PHAs appoint those organizations as Resident Advisory Boards rather than seek waivers.

*H. Consistency With the Consolidated Plan*

Section 511 of the QHWRA provides that the PHA must ensure that its Annual Plan is consistent with the Consolidated Plan for the jurisdiction in which the PHA is located. PHAs whose

jurisdictions encompass more than one Consolidated Plan jurisdiction must ensure consistency with any applicable Consolidated Plans. The Annual Plan must contain a certification by the appropriate State or local officials that the plan is consistent with the Consolidated Plan and provide a description of the manner in which the applicable contents of the Annual Plan are consistent with the Consolidated Plan. This consistency requirement is applicable to both the 5-Year Plan and the Annual Plan.

As part of fulfilling this requirement, the Annual Plan should also be consistent with the local jurisdiction's Analysis of Impediments to Fair Housing Choice (AI), which describes barriers to fair housing choice and opportunity that affect, among others, public housing and Section 8 tenants and applicants, and outlines actions to be taken to address the impediments. Where impediments have been identified relating to the administration of public housing and Section 8 tenant-based assistance programs, the impediments must be addressed in the PHA's Annual Plan, including any appropriate actions to be taken to remove them.

**V. Adoption, Submission, Amendments, and Review of the Plans**

*A. Public Information and Notice About the Plans*

Section 511 of the QHWRA requires the board of directors or similar governing body of the PHA to conduct a public hearing to discuss the PHA plans and to invite public comment regarding the plans. The hearing is to be conducted at a location that is convenient to the residents served by the PHA. Section 511 also requires that not later than 45 days before the public hearing is to take place, the PHA must:

- Make the proposed PHA plan (either the 5-Year Plan or Annual Plan, or both, as applicable) 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
- 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.

Where practical, a PHA notice to the public should include electronic posting on the internet. A PHA also should contact all organizations and groups that the PHA believes are interested in the operations, programs and services of the

PHA (for example, organizations that the PHA is aware have previously expressed interest) and specifically seek their comments and recommendations on the Annual Plan or 5-Year Plan or both, as applicable.

*B. When 5-Year Plan and/or Annual Plan Are Ready for Submission to HUD*

Section 511 of the QHWRA provides that a PHA may adopt its 5-Year Plan and Annual Plan and submit the plans to HUD only after:

- The PHA has conducted the public hearing;
- The PHA has considered all public comments received on the plans;
- The PHA has made any changes to the plans, based on comments, in consultation with the Resident Advisory Board or other resident organization.

*C. Submission of the 5-Year Plan and Annual Plan to HUD*

Section 511 of the QHWRA provides that the first 5-Year Plan and Annual Plan are to be submitted by the PHA beginning with the PHA fiscal year in which the PHA first will receive Federal fiscal year 2000 funding under sections 8(o) or 9 of the USHA. After the first Annual Plan is submitted, section 511 requires that not later than 75 days before the start of each succeeding fiscal year of the PHA, the PHA shall annually submit to HUD a plan which may be an update, including any amendments or modifications to any previous year's Annual Plan.

*D. Amendments and Modifications to the 5-Year Plan and Annual Plan*

Section 511 of the QHWRA also provides that 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 plans but provides that significant amendments or modifications:

- May not be adopted until the PHA has duly called a meeting of its board of directors (or similar governing body), the meeting is open to the public, and the plan is adopted at the meeting; and
- May not be implemented until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, discussed in Section E below.

With respect to the 5-Year Plan, HUD believes that significant amendments or modifications are those that make a change to the PHA's mission, or the goals and objectives to enable the PHA to meet the needs of the families that it

serves, or both. With respect to the Annual Plan, HUD believes that significant amendments or modifications are those that make significant changes to information provided by the PHA in its Annual Plan. For example, the PHA's housing needs or its strategies for meeting those needs has changed substantially, or the PHA has made substantial changes to its planned use of financial resources.

HUD specifically seeks comments on what should constitute "significant" amendments or modifications to either the 5-Year Plan or Annual Plan.

#### *E. HUD's Review of the 5-Year Plan and Annual Plan, Determination of Compliance and Approval and Disapproval*

*Review of the Plans.* Upon submission by the PHA to HUD of the PHA's plans, and any amendment or modification to the plans, HUD shall review the plans and determine whether the contents of the plan:

- Provide the information that is required to be included;
- Are consistent with the information and data available to HUD and with the Consolidated Plan for the jurisdiction in which the PHA is located; and
- Are not prohibited by or inconsistent with the USHA or any other applicable Federal law.

*Disapproval.* HUD may disapprove a PHA plan (5-Year Plan or Annual Plan), in its entirety or in part, or may disapprove any amendment or modification to the plan, only if HUD determines that the plan, or any amendment or modification to the plan:

- Does not provide all the information that is required to be included in the plan;
- Is not consistent with the information and data available to HUD or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and
- Is not consistent with the USHA or other applicable Federal law.

Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its amendment or modification to the plan, HUD shall issue written notice to the PHA if the plan or any part of the plan has been disapproved. The notice must state with specificity the reasons for the disapproval. 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 components of the plan required to be submitted and that were submitted, and reviewed by HUD

were in compliance with applicable requirements and the plan has been approved.

*Public Availability of the Approved Plan.* Once a PHA's plan has been approved, a PHA must make its approved plan available for review and inspection, at the principal office of the PHA during normal business hours.

HUD specifically seeks comments on whether the final rule should provide that a PHA must post notice in the developments owned, operated or administered by the PHA that the plan has been approved and information on where the plan may be inspected, and also whether the PHA should post notice in a newspaper of general circulation that the plan has been approved and information about where it may be inspected.

#### *F. PHA's Compliance With the Plan*

A PHA must comply with the policies, rules, and standards adopted in the plan as approved by HUD. To ensure that a PHA is in compliance with its plan, HUD shall respond appropriately to any complaint concerning PHA noncompliance with its plan. HUD also may be informed of a PHA's compliance with its plan through PHA reports on progress, results of audits, performance evaluation scores and other means. If HUD determines that a PHA is not in compliance with its plan, HUD will take necessary and appropriate action to ensure compliance by the PHA.

#### *G. The PHA Annual Plan as It Relates to Existing Regulations and the Necessity for Conforming Regulatory Amendments*

HUD also is aware that conforming amendments must be made to existing regulations as a result of the changes made to the USHA by the requirements of the PHA Plans as well as changes made to the USHA by other QHWRA amendments. HUD anticipates making these conforming changes at the final rule stage or through other rulemakings. HUD also may decide that matters now covered by this preamble should be part of the regulatory text. For example, an item that HUD recommended should be submitted in the preamble submission guidance provided for a particular component may be a required submission item at the final rule stage.

With this in mind, HUD specifically welcomes comments on whether various described items in the submission guidance provided should or should not be required submission items at the final rule stage.

#### **VI. Issues on Which HUD Specifically Seeks Comment**

HUD seeks comments on all aspects of this rulemaking. However, throughout this preamble, HUD has specifically requested comment on certain issues and questions. For the convenience of the reader, the following restates those issues and questions, and adds an additional question on the rule's organization.

1. The feasibility of combining the 5-Year Plan and/or Annual Plan with the submission of the Consolidated Plan either in whole or in part.

2. Ways to streamline or merge current information requirements already reported electronically by PHAs to HUD with the additional requirements listed in this rule.

3. How should the term "substantial deviation" be defined.

4. What constitutes an acceptable 5-Year Plan?

5. The manner of submission of the information required under the Annual Plan.

6. HUD's addition of items to the Annual Plan submission and whether commenters recommend any other items for inclusion.

7. What should constitute "significant" amendments or modifications to either the 5-Year Plan or Annual Plan?

8. What methods should HUD use to encourage PHAs to utilize metropolitan-wide strategies to increase the success of deconcentration approaches.

9. Whether the final rule should provide that a PHA must post notice in the projects owned, operated or administered by the PHA that the plan has been approved and provide information on where the plan may be inspected, and also whether the PHA should post notice in a newspaper of general circulation that the plan has been approved and information about its availability for review.

10. Whether any items in the submission guidance provided for the Annual Plan should or should not remain required submission items at the final rule stage.

11. Is the rule organized in a manner that is helpful and should the rule include a definition section?

#### **VII. Findings and Certifications**

##### *Justification for Interim Rule*

It is the general practice of HUD to publish a rule for public comment before issuing a rule for effect, in accordance with its regulations in 24 CFR part 10. Section 511 of the Quality Housing and Work Responsibility Act of 1998, however, specifically directs that

HUD issue this regulation as an interim rule.

*Paperwork Reduction Act*

The information collection requirements in this interim rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates the total reporting and recordkeeping burden that will result from the PHA Plans are as provided under the caption "Reporting Burden." As the preamble to this rule

has discussed, many of the PHA Plan items represent existing reporting and recordkeeping requirements. Therefore the reporting burden does not an entirely new reporting burden but instead reflects the existing reporting burden which has been modified by the PHA Plan requirements.

REPORTING BURDEN

Number of respondents	Freq. of response	Est. time (hours)	Total (hrs.)
3,400	1	104 hrs	353,600
Total Reporting Burden: 353,600.			

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the collection of information to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the rule, however. Comments must refer to the rule by name and docket number (FR-4420) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,  
Office of Management and Budget,  
New Executive Office Building,  
Washington, DC 20503  
and  
Mildred Hamman, Reports Liaison  
Officer, Department of Housing &  
Urban Development, Office of Public

and Indian Housing, Room 4238, 451 Seventh Street, SW, Washington, DC 20410

*Executive Order 12866*

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington DC, 20410.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This interim rule implements, by statutory directive, a comprehensive planning system for public housing agencies which also provides for consolidated statement of PHA policies on various PHA operations and also provides a consolidated reporting mechanism. The public housing agency plans ultimately should minimize administrative burden on all PHAs, including small PHAs, consistent with reasonable accountability. HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. In this regard, the interim rule provides for submission of a streamlined plan by small entities. HUD is soliciting additional

recommendations on how small PHAs might fulfill the purposes of the rule (and the statutory requirements) in a way that is less burdensome to them.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this interim rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule pertains solely to Federal assistance and no programmatic or policy changes would result from this interim rule that affect the relationship between the Federal Government and State and local governments.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made 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). The Finding 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.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended by adding part 903 to read as follows:

#### PART 903—PUBLIC HOUSING AGENCY PLANS

Sec.

903.1 What are the public housing agency plans?

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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 5 PHA fiscal years; and

(2) The annual plan (Annual Plan) that the PHA must submit to HUD for each fiscal year for which the PHA receives:

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

(ii) Public housing operating subsidy or capital fund (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 local accountability and 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 its operations, programs and services.

(c) HUD may prescribe the format of submission (including electronic format submission) of the plans. 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.

#### § 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 will be due no later than 75 days before January 1, 2000. For PHAs whose fiscal years begin after January 1, 2000, their 5-Year Plans are due no later than 75 days before the commencement of their fiscal year. 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.

(2) 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.

(b) *The Annual Plan.* The first Annual Plan submitted by a PHA must be submitted 75 days in advance of the first PHA fiscal year in which the PHA receives Federal fiscal year 2000 funds. Since the first PHA fiscal year funded with Federal Fiscal Year 2000 funds will commence January 1, 2000, the first Annual Plan will be due 75 days in advance of that date or October 15, 1999. PHAs with later fiscal year commencement dates must submit their Annual Plans 75 days in advance of their fiscal year commencement date.

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 for the 5 PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD, 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; 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, PHAs must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submission of the first 5-Year Plan, a PHA in their succeeding 5-Year Plans, in addition to addressing their mission, goals and objectives for the next 5 years, must address the progress made by the PHA in meeting its goals and objectives described in the previous 5-Year Plan.

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

The Annual Plan must include the information provided in this section, except that for the first Annual Plan, the following information need not be submitted: the information required by paragraph (l) of this section that pertains to section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j(c)); the information required by paragraph (m) of this section that relates to drug elimination policies; and the information required by paragraph (n) of this section. Additionally, the information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise, and 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, selection policies) and not the statutory or regulatory requirements that govern these components.

(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 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) The housing needs of each of these groups must be identified separately. The identification of housing needs should address issues of affordability, supply, quality, accessibility, size of units and location. 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 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 of the significant PHA operating, capital and other proposed Federal resource commitments 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. In this statement, the PHA also must describe the planned uses for the resources.

(c) *A statement of the PHA's policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies governing resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, assignment and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the U.S. Housing Act of 1937. The requirement to submit PHA policies governing assignment only applies to public housing. This statement also must include the following information:

(1) The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing projects. These procedures must include any site-based waiting lists, as provided by section 6(s) of the U.S. Housing Act of 1937. This section permits PHAs to establish a system of site-based waiting lists that are 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 such adoption is consistent with affirmatively furthering fair housing, such as reasonable marketing activities;

(v) The PHA provides for review of its site-based waiting list policy to determine if it 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);

(B) At least biannually use 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; and

(C) Taking any steps necessary to remedy the problems surfaced during the review and the steps necessary to affirmatively further fair housing.

(2) The PHA's admissions policy with respect to deconcentration of very low-income families and income-mixing. Deconcentration and income-mixing is required by section 16 of the U.S. Housing Act of 1937 (42 U.S.C. 1437n). To implement the requirement, which is applicable specifically to public housing, PHAs must:

(i) Determine and compare the relative tenant incomes of each development, as well as the household

incomes of census tracts in which the developments are located; and

(ii) Consider what admissions policy measures or incentives, if any, will be needed to bring higher-income families into lower-income developments (or if appropriate to achieve deconcentration of poverty, into developments in lower income census tracts) and lower-income families into higher income developments (or if appropriate to achieve deconcentration of poverty, into developments in higher income census tracts). PHA policies must devote appropriate attention to both of these goals. PHA policies must affirmatively further fair housing; and

(i) Make any appropriate changes in their admissions policies.

(3) The policies governing eligibility, selection and admissions are applicable to public housing and tenant-based assistance, except for the information requested on site-based waiting lists and deconcentration. This information is applicable only to public housing.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that pertain to rents charged for public housing units, including applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement 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 describe the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA. This statement also must include a description of any measures necessary for the prevention or eradication of pest infestation which includes cockroach infestation. Additionally, this statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(2) The information pertaining to PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information pertaining to program management 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. This includes 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 (public housing projects owned, assisted or operated by the PHA), this statement describes the capital improvements necessary to ensure long-term physical and social viability of the public housing projects, including the capital improvements to be undertaken in the year in question and their estimated costs. PHAs are encouraged to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* With respect to public housing only, a description of any public housing project, or portion of a public housing project, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p), and the timetable for demolition and/or disposition.

(i) *A statement of the public housing projects designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.* With respect to public housing only, this statement identifies any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated for occupancy only by the elderly families or only by families with disabilities, or by elderly families and families with disabilities or will apply for designation for occupancy by only elderly families or only families with disabilities, or by elderly families and families with disabilities as provided by section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e).

(j) *A statement of the conversion of public housing to tenant-based assistance.* (1) This statement describes any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the U.S. Housing Act of 1937 (42 U.S.C. 1437z-5), or that the PHA plans to voluntarily convert under section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t). The statement also must include an analysis of the projects or buildings required to be converted under section 33, and the amount of assistance received commencing in Federal Fiscal 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(2) 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.*

This statement describes any homeownership programs administered by the PHA under section 8(y) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(y)), or under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h)), or an approved HOPE I program (42 U.S.C. 1437aaa) or for 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 U.S. Housing Act of 1937 (42 U.S.C. 1437z-4).

(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 U.S. Housing Act of 1937 (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.

(2) The information required by paragraph (l) 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.* 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, and the plan must provide, on a project-by-project or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(1) 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;

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

(iv) The information required to be included by the Public Housing Drug Elimination Program regulations if the PHA expects to receive drug elimination program grant funds.

(2) If HUD determines at any time that the security needs of a public housing project 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 issued in accordance with section 31 of the U.S. Housing Act of 1937 (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.), and also certify that it will affirmatively further fair housing. The certification is applicable to both the 5-Year Plan and the Annual Plan.

(2) PHAs shall be considered in compliance with the obligation to affirmatively further fair housing if they examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the

PHA's involvement, and maintain records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* The PHA's plan must include the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* 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.* PHAs also must include in their Annual Plan:

(1) A table of contents that corresponds to the Annual Plan's components in the order listed in this section. The table of contents also must identify the location of any materials that are not being submitted with the Annual Plan;

(2) An executive summary that provides a brief overview of the information that the PHA is submitting in its Annual Plan and relates the Annual Plan programs and activities to the PHA's mission and goals as described in the 5-Year Plan, and explains any substantial deviations of these activities from the 5-Year Plan; and

(3) For all Annual Plans following submission of the first Annual Plan, a brief summary of the PHA's progress in meeting the mission and goals described in the 5-Year Plan.

#### **§ 903.9 Must a troubled PHA include additional information in its Annual Plan?**

Yes. A PHA that is at risk of being designated as troubled or is designated as troubled under section 6(j)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(2)) or under the Public Housing Assessment System (24 CFR part 901) must include its operating budget, and include or reference any applicable memorandum of agreement with HUD or other 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;

(2) PHAs with less than 250 public housing units (small PHAs) and that

have not been designated as troubled under section 6(j)(2); and

(3) PHAs that only administer tenant-based assistance and that 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. 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, 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 PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (f), (k), (l), (o), (p) and (r). The information required by § 903.7(b) (financial resources) can be a statement of the programs the PHA administers and the estimated number of new families to be assisted and total families to be assisted in each program.

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

(a) A Resident Advisory Board is a board whose membership is made up of individuals who adequately reflect and represent the residents assisted by the PHA. The role of the Resident Advisory Board (or Resident Advisory Boards) is to participate in the PHA planning process and to assist and make recommendations regarding the PHA plan. The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards.

(b) Each PHA must establish one or more Resident Advisory Boards, and the membership on the board must adequately reflect and represent the residents assisted by the PHA.

(1) To the extent 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 its representatives as a Resident Advisory Board. 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 Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives.

(2) Where the PHA has a tenant-based assistance program of significant size, 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. Where resident councils do not exist which would adequately reflect and represent the residents assisted by the PHA, the PHA may appoint additional Resident Advisory Boards or Board members, provided that the PHA shall provide reasonable notice to residents and urge that they form resident councils that comply 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. In submitting the final 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. 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?**

The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan to the jurisdiction in which the PHA is located. The Consolidated Plan includes the Analysis

of Impediments to Fair Housing Choice. 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.

**§ 903.17 Must the PHA make public the contents of the plans?**

(a) Yes. 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 or Annual Plan, or both 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) 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.

**§ 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 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, the PHA:

(a) 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

(b) 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.

**§ 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 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 and with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(3) The plan is not prohibited or inconsistent with the U.S. Housing Act of 1937 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 amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any 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 or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(iii) Is not consistent with all applicable 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 amendment or modification to the plan, HUD will issue written notice to the PHA if the plan 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 reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make its approved 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 respond appropriately to any complaint concerning PHA noncompliance with its plan. If HUD determines that a PHA is not in compliance with its plan, HUD will take necessary and appropriate action to ensure compliance by the PHA.

Dated: February 1, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

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