

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 903**

[Docket No. FR-4420-F-10]

RIN 2577-AB89

Rule to Deconcentrate Poverty and Promote Integration in Public Housing

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Public Housing Agency Plan regulations to fully reflect the importance of deconcentration by income and affirmatively furthering fair housing in a PHA's admission policy, consistent with the directive to achieve "One America," and to provide further direction to PHAs on the implementation of deconcentration and affirmatively furthering fair housing. This final rule follows publication of an April 17, 2000 proposed rule and takes into consideration public comment received on the proposed rule. The amendments made by this final rule concerning the deconcentration component of a PHA's admission policy are applicable to PHAs with fiscal years commencing on and after July 1, 2001.

DATES: January 22, 2001.

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

SUPPLEMENTARY INFORMATION:**I. Background—April 17, 2000 Proposed Rule**

On April 17, 2000 (65 FR 20686), HUD published a rule that proposed to amend the deconcentration provisions of HUD's October 21, 1999 Public Housing Agency Plan final rule to achieve two purposes: (1) to assure that PHAs know what they must do to deconcentrate poverty in the public housing program; and (2) to assure that PHAs know what they must do to affirmatively further fair housing, as it relates to admissions to public housing.

The approach to deconcentrate property provided in HUD's April 17,

2000 proposed rule generally would have required public housing agencies (PHAs) to determine an overall average income for tenants in their family developments; characterize each building as higher income or lower income based on whether the average income in the building is above or below the overall average; and require that lower income families be admitted to higher income buildings and higher income families be admitted to lower income buildings.

II. Changes Made at the Final Rule Stage

As will be discussed in more detail below in Section IV of this preamble, HUD received many good suggestions and recommendations on modification of HUD's April 17, 2000 proposal and on alternative strategies and methods that could be utilized by PHAs to deconcentrate poverty in public housing. After careful consideration of all comments, this final rule adopts a deconcentration of poverty approach similar to that provided in the proposed rule, an approach that focuses on a determination of average income, but with some significant changes that increase flexibility for PHAs in addressing concentration of poverty specific to their communities.

The approach adopted at this final rule stage is as follows:

*Deconcentration of Poverty in Public Housing***Public Housing Developments Exempt from Deconcentration and Income Mixing Requirements**

After further consideration of how the deconcentration and income mixing provisions would apply to various types of public housing developments, HUD determined that certain developments should be exempt from the requirement to deconcentrate poverty because of the development's resident population, type or types of units, or number of units. Public housing developments that are exempt from application of the requirement to deconcentrate poverty and mix incomes are the following:

- Public housing developments operated by a PHA with fewer than 100 public housing units;
- Public housing developments operated by a PHA which house only elderly persons or persons with disabilities, or both;
- Public housing developments operated by a PHA that operates only one general occupancy, family public housing development;
- Public housing developments approved for demolition or for

conversion to tenant-based assistance; and

- Public housing developments which include public housing units operated in accordance with a HUD-approved mixed-finance plan using HOPE VI or public housing funds awarded before the effective date of this rule, provided that the PHA certifies (and includes reasons for the certification) as part of its PHA Plan (which may be accomplished either in the annual Plan submission or as a significant amendment to its PHA Plan) that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed finance plan, including provisions regarding the incomes of public housing residents to be admitted to that development, which has been developed in consultation with residents with rights to live at the affected development and other interested persons.

Analyzing Concentration of Poverty as Part of PHA Annual Planning Process.

The final rule clarifies that as part of a PHA's annual planning process, a PHA must submit with its Annual Plan an admissions policy designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income developments and lower income tenants into higher income developments. To comply with this statutory requirement, the rule provides that a PHA must conduct an analysis of the incomes of the families residing in public housing developments that are subject to the requirement to deconcentrate poverty. Public housing developments that are subject to the requirement to deconcentrate poverty are general occupancy, family public housing developments, excluding those developments, identified earlier in this preamble, as being exempt from the requirement, and are referred to as "covered developments."

Promoting Deconcentration of Poverty and Income Mixing in Developments with Concentration of Poverty. To meet the statutory requirement to develop an admissions policy designed to provide for deconcentration of poverty and income mixing in covered developments identified to have a concentration of poverty, the rule provides for a PHA to undertake the following steps.

Step 1—Determine Average Income of All Families Residing in All Covered Developments. For Step 1, a PHA shall determine the average income of all families residing in all covered developments. A PHA may use median incomes, instead of average income,

provided that the PHA includes a written explanation in its PHA Annual Plan justifying use of median incomes in the PHA's Annual Plan.

Step 2—Determine Average Income of Families in Each Covered Development. For Step 2, a PHA shall determine the average income of all families residing in each covered development. In determining average income for each development, a PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD. The range of incomes calculated by a PHA using this method is referred to as the Established Income Range.

Step 3—Determining Which Developments Are Outside the Established Income Range. For Step 3, a PHA shall determine whether each of its covered developments falls above, within or below the Established Income Range, which is defined as those covered developments where the average income is between 85 percent and 115 percent (inclusive of those percentages) of the PHA-wide average for covered developments.

Step 4—Option to Provide Reasons Developments Are Outside of the Established Income Range. For Step 4, a PHA which has covered housing developments with average incomes outside the Established Income Range may explain or justify the development income profile for these developments as being consistent with and furthering both the goals of deconcentration as specified by the statute (bringing higher income tenants into lower income developments and vice versa) and the local goals and strategies contained in the PHA Annual Plan. Elements of explanations or justifications that may satisfy these requirements may include, but shall not be limited to the following:

(1) The covered development or developments are subject to consent decrees or other resident selection and admission plans mandated by court action;

(2) The covered development or developments are part of the PHA's programs, strategies or activities specifically authorized by statute, such as mixed-income or mixed-finance developments, homeownership programs, self-sufficiency strategies, or other strategies designed to deconcentrate poverty, promote income mixing in public housing, or increase the incomes of public housing residents, or the income mix is otherwise subject to individual review and approval by HUD;

(3) The covered development's or developments' size, location and/or configuration promote income

deconcentration, such as scattered site or small developments;

(4) The income characteristics of the covered development or developments are explained by other circumstances.

Step 5—Policy for Deconcentrating Poverty and Income Mixing in Developments Outside the Established Income Range. Where the income profile for a covered development is not sufficiently explained or justified in the PHA Annual Plan submission, the PHA shall include in its admissions policy specific strategies to promote deconcentration of poverty and income mixing in such covered development. Compliance with the statutory deconcentration requirement is not intended to impair or adversely affect the PHA's ability to exercise the authority to institute or implement other provisions in the statute such as local preferences or site-based waiting lists. Depending on local circumstances, a PHA's deconcentration strategy, included as part of the PHA's admissions policy (which may be undertaken in conjunction with other efforts such as efforts to increase self-sufficiency or current residents), may include but is not limited to one or more of the following:

(1) Providing incentives designed to encourage families with incomes below the Established Income Range to accept units in developments with incomes above the Established Income Range or the reverse situation—to encourage families with incomes above the Established Income Range to accept units in developments with incomes below the Established Income Range. Incentives include rent incentives, affirmative marketing plans, or added amenities;

(2) Targeting investment and capital improvements toward developments with an average income below the Established Income Range to encourage applicant families whose income is above the Established Income Range to accept units in those developments;

(3) A preference for admission of working families in developments below the Established Income Range;

(4) PHAs may skip a family on the waiting list to reach another family in an effort to further the goals of the PHA's deconcentration policy. Skipping to promote deconcentration shall not be considered an adverse action;

(5) Other strategies as permitted by statute and determined by the PHA in consultation with the residents and the community, through the PHA Annual Plan process, to be responsive to the local context and the PHA's strategic objectives.

Consistent with the Public Housing Reform Act, a PHA's admissions policy and any specific deconcentration strategies that are part of the admissions policy may not impose or require any specific income or racial quotas for any developments.

Determining Compliance with Deconcentration and Income Mixing Requirements. HUD shall consider a PHA to be in compliance with the deconcentration requirements if:

(1) The PHA's income analysis shows that the PHA has no general occupancy family developments to which the deconcentration requirements apply—that is the average incomes of the covered development are within the Established Income Range;

(2) The PHA has covered developments with average incomes above or below the Established Income Range and the PHA provides a sufficient explanation in its Annual Plan that supports that (i) the income mix is consistent with the requirements for deconcentration of poverty and income mixing, despite the categorization of the covered developments as above and below the Established Income Range, and (ii) the income mix of such development or developments is consistent with and furthers the locally determined goals of the PHA's Annual and Five Year Plans; or

(3) The PHA incorporates in its admissions policy, specific strategies the PHA will take that can be expected to promote deconcentration of poverty and income mixing in developments with average incomes outside of the Established Income Range and implements this admissions policy.

Fair Housing Regional Approaches and Voucher Housing Search Assistance

The final rule does not contain any changes from the proposed rule with respect to fair housing requirements. HUD, nevertheless, is taking this opportunity to emphasize the potential importance of regional approaches as PHAs pursue their responsibilities to affirmatively further fair housing, pursue deconcentration of poverty and attempt to offer their families maximum housing choices. In many urban areas, the limited jurisdictions of individual PHAs and these PHAs' individual waiting lists, forms and rules may limit to the extent to which families move across PHA lines even when there are work or school-related reasons to do so. PHAs can and should address these issues through measures such as providing lists of other public housing agencies and federally assisted housing in the metropolitan area and participating in regional counseling and

mobility efforts to assist voucher holders.

With respect to voucher holders, housing counseling and transportation assistance may help accomplish these goals and contribute to voucher holders' success. Such expenses are eligible voucher administrative fee expenses. In addition, HUD may allow PHAs to convert voucher program funds to administrative fees for this purpose where the PHA shows that these expenditures will not reduce the number of families that otherwise would receive and successfully use vouchers in that fiscal year. HUD will issue further guidance on this matter by January 15, 2001.

III. Implementation of Amended Deconcentration and Income Mixing Requirements

The amendments made by this final rule concerning the deconcentration component of a PHA's admission policy are applicable to PHAs with fiscal years commencing on and after July 1, 2001.

IV. Public Comments on the April 17, 2000 Proposed Rule

The public comment period for the April 17, 2000 proposed rule, closed on June 1, 2000, and at the end of the comment period, HUD received 193 public comments. In this section of the preamble, HUD provides a summary of the public comments and HUD's responses to issues or questions raised by the commenters. The heading "Comment" states the comment made by a commenter or commenters and the heading "Response" presents HUD's response to the issue or issues raised by the commenter or commenters.

Comment: The final rule should provide an exemption for high performing PHAs and certain standard performing PHAs. By exempting high performing and certain standard performing PHAs, HUD will be following the statutory and regulatory scheme of rewarding high performing and standard performing PHAs for managing all aspects of their programs, including deconcentration goals, in an effective manner.

Response. HUD's Public Housing Assessment System, the system by which PHAs are determined to be high performing, standard or troubled agencies, does not assess the concentration of poverty in PHA developments. Since this factor is not assessed as part of a PHA's management of a development, an exemption on this basis would not be appropriate.

Comment: The rule should focus on neighborhoods not just developments. HUD should concentrate on assisting

localities to improve their housing stock (housing production and neighborhood improvement) in entire neighborhoods, as incentives to attract higher-income people. The rule should not just focus on developments within a neighborhood.

Response. The Public Housing Reform Act, in amending the U.S. Housing Act of 1937, requires HUD to focus on income concentration in buildings and developments. Paragraph (3)(B)(i) of section 16 of the U.S. Housing Act of 1937, captioned "Prohibition of Concentration of Low-Income Families" provides in relevant part as follows:

A public housing agency shall submit with its annual public housing agency plan under section 5A an admissions policy 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. Although the Public Housing Reform Act requires a focus on income

concentration in public housing developments, HUD recognizes that efforts directed solely to the income makeup of a housing development may not succeed in achieving deconcentration. Under its HOPE VI Program, HUD has been successful in transforming entire neighborhoods, including the physical structures of public housing. Under HUD's mixed-finance programs, PHAs can leverage private capital with HUD funding and create mixed-income communities. Recently, HUD published its interim rule implementing a new Fair Market Rents policy that HUD anticipates will also assist in promoting deconcentration of poverty. HUD is working with its PHA partners to confront the problem of concentration of poverty through several approaches.

Comment: The goal of deconcentration is best achieved by emphasizing economic development activities. Rather than the approach advocated by the proposed rule, deconcentration is best achieved by emphasizing such approaches as mobility counseling, incentives for the development of regional strategies and the general support of economic development activities. Promoting integration regionally can help alleviate economic disparities among cities and their suburban counterparts.

Response: As noted in the response to the earlier comment, HUD agrees that concentration of poverty should be addressed through several approaches. With respect to the approaches recommended by the commenter, HUD has been working with its PHA partners to provide mobility counseling to applicants, landlord outreach and other

steps to increase housing choice in the voucher program and promote racial and economic deconcentration.

Comment: HUD's proposed rule contradicts the intent of the Public Housing Reform Act which is to deregulate public housing and give PHAs more flexibility. The intent of the Public Housing Reform Act is to give PHAs the flexibility to fashion independent and localized economic development strategies. HUD's April 17, 2000 proposed rule is in direct conflict with statutory intent by mandating a certain approach to deconcentration of poverty. Congress gave PHAs, not HUD, the discretion to adopt deconcentration strategies.

HUD Response. HUD has provided increased flexibility for PHAs to develop more localized strategies to deconcentrate poverty.

Comment: A deconcentration of poverty approach that focuses on buildings, not developments, conflicts with the statute, causes significant administrative difficulties, and adversely affects use of site-based waiting lists. The proposed rule conflicts with the statute because the proposed rule requires deconcentration on a building-by-building basis, while the statute requires deconcentration on a "project" basis. A building-by-building approach creates significant administrative difficulties. Managing individual waiting lists for each building will require PHAs to hire additional staff to track income information by building.

Response. HUD believes that in including an income analysis of buildings, HUD's April 17, 2000 proposed rule was not in conflict with the statute. The statute speaks in terms of buildings and developments. However, as discussed in Section II of this preamble, the rule was revised at the final rule stage to address only developments.

Comment: The deconcentration of income requirement appears to be in conflict with the income targeting requirement. There will most likely be conflicts in some situations between the income targeting requirement and the deconcentration requirement because income targeting dictates that a PHA target 40 percent of new admissions at the 30 percent or less area median income level, and the deconcentration policy may dictate that a higher income household be placed in a vacant unit. At the final rule stage, HUD must clarify how a PHA is to comply with both the deconcentration of income requirement and the income targeting requirement.

HUD Response. These two requirements were established to work

in support of one another. Congress established the deconcentration requirement to assure that the extremely low-income families targeted by PHAs under the income targeting requirement or otherwise admitted to public housing are not concentrated in one or more developments.

Comment: Skipping over lower income families to offer units to higher income families is unfair and would harm those persons that badly need affordable housing. Skipping may adversely affect applicants who have been on the waiting list a long time and desperately need affordable housing. Skipping will either have the effect of denying these longterm applicants housing or significantly delaying their admission to housing. Skipping may also have the effect of denying very low-income applicants the opportunities to participate in self-sufficiency programs offered by PHAs. Skipping should only be used where there is a significant difference in incomes among residents, which is not the case in the majority of public housing developments.

HUD Response. HUD understands the concerns about skipping but also recognizes that skipping may be needed by a PHA to achieve the objectives of deconcentration without adversely affecting the family or families skipped. Any local preference system involves skipping from the order otherwise required by a waiting list organized by date of application. In that respect, skipping to achieve deconcentration goals is the same.

Comment: HUD's proposed rule exceeds statutory authority by using race and income as measures of compliance with the deconcentration requirement. The provisions in the proposed rule regarding deconcentration of income are the only provisions derived from the Public Housing Reform Act. References in HUD's proposed rule to racial concentrations in public housing are subject to the provisions of the Fair Housing Act and various civil rights laws, not the Public Housing Reform Act. In view of the statute's permissive language regarding the measures a PHA may utilize to achieve deconcentration, as well as the specific statutory prohibition against income or racial quotas in the implementation of deconcentration policies, HUD's proposed rule, by including provisions to address racial concentration, is not consistent with the clear intent of the Public Housing Reform Act.

HUD Response. The provisions in the rule that address compliance with the deconcentration of poverty requirement of the Public Housing Reform Act are

limited to a discussion of income deconcentration. There is no discussion of racial concentration in these provisions. However, in the proposed rule and this final rule, HUD does remind PHAs of their responsibilities under the Fair Housing Act, and their responsibilities to affirmatively further fair housing, and provides guidance on how this obligation to affirmatively further fair housing may be carried out.

Implementation of the deconcentration of poverty requirement of the Public Housing Reform Act does not preclude HUD from including in this rule provisions or references to requirements imposed on PHAs by other statutes or regulations. Further, section 511(d)(15) of the Public Housing Reform Act (section 5A(d)(15) of the U.S. Housing Act), which establishes the PHA Plan, requires a PHA to certify that it will carry out its PHA Plan in conformity with the Fair Housing Act and other nondiscrimination statutes and that it will affirmatively further fair housing. This is the first time the PHAs have been required explicitly by statute to comply with the affirmatively further fair housing requirement. Part of the PHA's Annual Plan is the PHA's admissions policy. HUD's rule properly addresses compliance with the statutory deconcentration requirement and the statutory nondiscrimination requirements.

Comment: HUD should clarify that the provisions in the rule concerning affirmatively further fair housing are applicable to admissions. In the preamble to the proposed rule, HUD clearly states that the rule is issued to fully reflect the importance of deconcentration by income as well as the importance of affirmatively furthering fair housing in a PHA's admission policy. The "purpose" section of the rule, § 903.1, however, inadvertently omits reference to affirmatively furthering fair housing "in admissions." This section simply refers to a PHA's responsibility to affirmatively further fair housing. Because this section is directed towards a PHA's admissions policy, which includes a deconcentration policy, the phrase "in admissions" must follow the phrase "to affirmatively further fair housing" for clarity purposes.

HUD Response. HUD agrees with the commenter and has added this language to § 903.1.

Comment: The final rule should require specific deconcentration steps to affirmatively further fair housing. A PHA should be required to certify that it will use deconcentration steps that the PHA has specifically identified and other actions as appropriate in order to

meet its obligation to affirmatively further fair housing. The final rule should include specific performance criteria that will measure a PHA's progress toward achieving deconcentration and desegregation goals.

HUD Response. HUD believes that its provisions in the rule, which are unchanged from the proposed rule stage, strike the appropriate balance of clarifying a PHA's obligation to affirmatively further fair housing and providing guidance on how such obligation may be carried out by PHAs.

Comment: HUD oversteps its authority with the affirmatively furthering fair housing requirement imposed on PHAs in this rule. HUD's affirmatively furthering fair housing requirement seeks to create a new fair housing enforcement mechanism whereby HUD may challenge a PHA's civil rights certification if HUD believes that the PHA is not achieving the desired outcomes of its deconcentration policy. PHAs are committed to ensuring against discrimination in housing and guaranteeing equal opportunity and meaningful choice in carrying out their mission. PHAs have no legal duty to take undefined steps to affirmatively furthering fair housing.

HUD Response. As noted in an earlier response, the Public Housing Reform Act requires a PHA to include with its Annual Plan a certification that the PHA will carry out its PHA plan in conformity with certain nondiscrimination statutes, including the Fair Housing Act, and will affirmatively further fair housing. In view of this certification, which can be challenged, HUD has an obligation to provide PHAs with guidance on the types of actions that will be recognized as actions to affirmatively further fair housing.

Comment: PHAs should not be penalized if racial concentration in their developments mirror that of the surrounding community. PHAs should not be found to have discriminated on the basis of race if the racial and ethnic characteristics of the PHA's development mirror that of the surrounding community. Before HUD challenges a civil rights certification, HUD should have documented evidence that a PHA is not in compliance with its certification and representations to HUD.

HUD Response. To determine if PHAs are complying with their obligation to affirmatively further fair housing, HUD does not assess a PHA on the racial makeup of its developments. A PHA is assessed by the actions taken to offer housing choice or incentives that make

a particular development more attractive, or to engage in marketing efforts that are designed to reduce racial concentration, to name a few examples from the rule. A HUD challenge to a civil rights certification will be based on documented evidence that a PHA is not affirmatively furthering fair housing or the PHA is not in compliance with civil rights statutes, contrary to what the PHA has certified.

Comment: HUD should not implement any deconcentration requirement until the Multifamily Tenants Characteristics System (MTCS) can provide accurate information on average tenant income for each family development. Using MTCS data to compare each PHA development with the corresponding authority-wide average would assist in the determination of a standard income deviation from the overall norm. Developments within the standard deviation would not be subject to deconcentration efforts. However, using current MTCS data to determine poverty concentrations would not work because MTCS does not separate data when a PHA has, for instance, an elderly high-rise and a townhouse development under the same HUD project number. MTCS does not aggregate data if, for instance, townhouses have three different HUD project numbers because they were built under three different development budgets. There is also a problem with MTCS in that income amounts shown on MTCS reports reflect only income used in rent calculations, exclusive of income disregard as new earned income, non-reportable income or earnings excluded under Jobs-Plus.

HUD Response. The analysis to be done by PHAs to be in compliance with the statutory requirement to deconcentrate poverty is not dependent upon the MTCS data system, but HUD recognizes that this system would facilitate the PHA's analysis. HUD has worked to correct problems with MTCS and is continuing to work with PHAs to increase the level of reporting.

Comment: HUD's proposal to deconcentrate poverty without modifications will not achieve the desired result. There are other approaches to deconcentration that can be implemented more simply and successfully than HUD's approach. The comments that HUD received on its proposal to deconcentrate poverty ranged from a request to withdraw the entire proposal to proceeding with the proposal as is. The majority of the comments, however, stated that HUD's proposal was complicated and would not achieve deconcentration of poverty in concentrated areas. Many

commenters offered suggestions on how HUD's proposal could be improved and recommended certain modifications to the proposal. Other commenters suggested alternative methods to deconcentrate poverty. All the suggestions and recommendations were carefully considered and Section II of this preamble reflects the recommendations that were adopted at this final rule stage.

In this preamble, HUD does not provide the details of all recommendations for changes to its own proposal or the details of all the alternative deconcentration methods that were suggested, but the following provides an overview of the comments and critiques of HUD's proposal to deconcentrate poverty, as provided in the April 17, 2000 proposed rule, as well as an overview of alternative deconcentration approaches (HUD recognizes that there is overlap in these two categories).

Overview of comments on HUD's proposal to deconcentrate poverty. The deconcentration of poverty approach proposed by HUD is complex and will be difficult to administer. HUD's proposal does not include self-sufficiency strategies which are crucial to improving the income of residents and thereby helping to promote deconcentration. HUD's proposal is too vague and imprecise to achieve the objectives of deconcentration, and may in fact cause a higher concentration of poverty. HUD's proposal will result in longer waiting lists for housing. HUD's proposal does not take into account that some housing authorities do not have large waiting lists from which to select tenants. HUD's proposal does not focus sufficiently on incentives; the statute encourages incentives to achieve deconcentration. HUD's proposal prevents PHAs from fully implementing local preferences as provided by the Public Housing Reform Act. HUD's proposal has the effect of reinstating Federal preferences that were eliminated by the Public Housing Reform Act. HUD's proposal exceeds statutory authority by requiring PHAs to use "skipping" for the purpose of deconcentration while the Public Housing Reform Act allows, but does not require, PHAs to use skipping. HUD's proposal will have the effect of creating income and racial quotas, which is prohibited by the Public Housing Reform Act. HUD's proposal will adversely affect PHAs' Family Self-Sufficiency programs where certain developments have been designated for occupancy by FSS families only. HUD's proposal will undermine HOPE VI programs because most of all the HOPE

VI buildings would be classified as above income and therefore target only below-average income families. HUD's proposal will only result in the labeling of developments and income steering that HUD has worked so hard in the past to eliminate. HUD's proposal provides no guidance concerning the length of time that deconcentration procedures must be followed; in other words, the proposal does not specify how many offers to higher income families must be made before a unit can be offered to a lower income family. Without clear direction in the rule, units could remain vacant for months. Additionally, the delays in filling units could negatively affect a PHA's PHAS score. HUD's deconcentration approach does not address the issue of the proximity of buildings in public housing developments; deconcentration will not be achieved if the buildings are in close proximity to one another. HUD's deconcentration approach does not address the issue of buildings that are located in concentrated poverty neighborhoods. HUD's definition of "building" as one or more contiguous structures containing at least 8 public housing units is not clear and requires further elaboration (e.g., what is meant by contiguous; does building mean 8 units in total or 8 units in each structure). HUD's deconcentration approach does not take into consideration the impact on elderly persons or persons with disabilities. HUD's definition of building presents too small a structure for deconcentration and would create an administrative burden for PHAs. How does a PHA address deconcentration in the context of a situation where the majority of the PHA's residents are low income elderly persons or persons with disabilities. Generally, elderly persons, as a result of social security income, are higher income tenants, buildings occupied predominately by the elderly will be classified as higher income, and elderly persons on the waiting list may be skipped over for units in an elderly building. HUD's deconcentration approach is costly. The delay in filling vacancies which will result if this approach is implemented will adversely affect a PHA's revenues. HUD needs to clarify what it means by higher income families. HUD's proposal will have a detrimental impact on PHA's voluntary transfer policies. HUD's proposal does not take into account the source of a family's income. The rule should distinguish between earned income and assistance. HUD's proposal conflicts with the policy goals of HOPE VI and mixed finance developments.

Overview of comments proposing alternative approaches to deconcentrate poverty. HUD should adhere to the deconcentration approach that was in the final PHA Plan rule published on October 21, 1999. The October 21, 1999 final rule provided a reasonable approach and adequate guidance concerning deconcentration and income mixing by PHAs. The appropriate deconcentration approach is a PHA specific approach where each PHA establishes its own goals and specific plans to reach those goals. It is virtually impossible for HUD to develop a deconcentration policy that will address all of the variables found in all PHAs' jurisdictions. A deconcentration policy must be left to the PHAs to develop locally. Deconcentration methods should include incentives such as flat rents and ceiling rents, lowering the percentage of adjusted income that goes for rent from 30 percent to 25 percent and income deductions (e.g., for transportation, uniforms, etc.) for working families. A suitable deconcentration approach would be one that provides for PHAs to set separate goals for three categories of developments: (1) developments in poverty areas; (2) developments well outside of poverty areas, and (3) developments that fall in between. The deconcentration approach that HUD noted in its April 17, 2000 proposed rule was an approach that HUD considered but did not adopt, is preferable to the approach that HUD proposed in the April 17, 2000 rule. The second approach (not adopted) allows PHAs to concentrate limited resources on areas with the greatest need of deconcentration. The final rule should offer an option of deconcentration methods from which PHAs may choose and also allow PHAs to design their own method. Any deconcentration approach should exempt tenant assignment and selection plans that are required by court order. Deconcentration should be implemented through a "metropolitan" directive issued to PHAs and that focuses on creating affordable rental housing opportunities in entire metropolitan areas. Properties located in high poverty neighborhoods that have yet to undergo revitalization should be exempted from the requirement to deconcentrate pending a site or neighborhood redevelopment plan. Deconcentration methods should focus on strategies to improve the incomes of current tenants, such as targeted workforce development programs or more vigorous implementation of

section 3.¹ Any deconcentration approach should exempt developments that are occupied by elderly persons or persons with disabilities. To include special populations as part of a deconcentration strategy will negatively affect the ability of a PHA to implement a designated housing plan. An effective deconcentration approach is one that encourages and promotes the development of public housing in non-concentrated areas. Small and medium-sized developments should be exempt from the deconcentration requirement. Small PHAs (PHAs with less than 250 units) should be exempt from the deconcentration requirement; the purpose of deconcentration is to address the poverty concentration problems of large urban housing authorities. PHAs with small scattered sites (less than 50 units per development) should be exempt from the deconcentration requirement. All scattered site developments should be exempt from the deconcentration requirement because the very nature of a scattered site program is to achieve deconcentration. PHAs with one development and one building should be exempt from the deconcentration requirement. For developments located in Empowerment Zones or in census tracts that qualify for Empowerment Zone status, a PHA should be allowed to skip over lower income applicants to reach higher income applicants at any and all complexes located in these areas. Moving to Work and the Jobs Plus demonstration programs should be exempt from the requirement to deconcentrate poverty because these programs are already designed to promote increased diversity of income among residents. The term "general occupancy public housing development" and "general occupancy development building" when used in reference to the determination of average income, should be defined to include buildings or developments with family units and should exclude buildings or developments that are serving exclusively the elderly, persons with disabilities or a combination of the elderly and persons with disabilities. An effective deconcentration approach should address adjustments in average income by family size and number of bedrooms. Families residing in

¹ Section 3 refers to section 3 of the Housing and Urban Development Act of 1968 which requires, among other things, recipients of certain HUD assistance, including public housing assistance, to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing.

developments approved for demolition or conversion for tenant-based assistance should be excluded from the average-income calculation. A deconcentration approach should not be dependent solely upon an analysis of average incomes, but rather PHAs should be allowed to use median incomes, census tract incomes, average incomes with standard deviations or other income analyses. An effective deconcentration approach should be based on thresholds that are a certain percentage of median income and significantly different from a PHA's average income (e.g., 25 percent or 50 percent) so that income mixing can actually be achieved. Average income should be determined by site, not by development or building. There needs to be a middle tier of buildings that are neither higher nor lower income to which a deconcentration policy would not apply. A PHA's deconcentration policy should consist of a certification by the PHA that it has complied with the 40 percent/30 percent income targeting requirement.

HUD Response. Again, HUD appreciates all the suggestions and recommendations on how deconcentration of poverty may be achieved in public housing. Section II of this preamble, which describes the changes made at the final rule stage reflects the suggestions and recommendations offered by the commenters that HUD has adopted.

HUD is retaining the requirement that the PHAs determine the average incomes of all families residing the public housing developments that are not exempt and subject to the deconcentration of poverty requirement (the covered developments). To design a policy, as required by the Public Housing Reform Act, that requires bringing higher income tenants in to lower income developments and lower income tenants into higher income developments, necessitates an analysis by the PHAs of the income characteristics of their developments. The final rule, however, provides for exempted middle tiers of developments and for various other exceptions. The final rule also allows PHAs more flexibility in developing specific actions for covered developments that the PHA believes will achieve deconcentration of poverty for those developments.

Comment: Skipping over families on the waiting list appears to violate Fair Housing Act requirements. Because of the correlation between income and race in most of the country's developments, the impact of this rule would be felt disproportionately by minority households which will be denied

housing for no other reason than that the available units are in lower income buildings.

HUD Response. Skipping is permitted by both the Public Housing Reform Act and this rule; skipping is not in violation of Fair Housing Act requirements provided it is uniformly applied by the PHA. If skipping is not applied in an objective and uniform manner by a PHA, then the PHA may be vulnerable to a charge of violation of Fair Housing Act requirements. The circumstances under which a PHA will skip a family to achieve deconcentration of poverty should be specified in the PHA's deconcentration policy. Skipping is permitted but not required and will occur less frequently because of the additional flexibility in the final rule.

Comment: Deconcentration can be achieved by HUD identifying problem developments and requiring corrective action. MTCS data contains all relevant information for HUD to comply with the statutory requirement that the Secretary review the income and occupancy characteristics of public housing developments. Once it is determined that there are violations then the Secretary has the authority to require appropriate corrective action. This is the best strategy to address the perceived income concentration problem.

HUD Response. The statutory requirement to deconcentrate poverty does not impose an obligation only on HUD to review the income and occupancy characteristics of public housing developments. The statute requires a PHA to include as part of the PHA's Annual Plan submission an admissions policy designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income developments and vice versa. The statute envisions a preventive approach, not simply a corrective approach. The purpose of HUD's rule is to help PHAs achieve a successful preventive approach to poverty concentration. Moreover, under this final rule only those general occupancy developments with average incomes significantly above or below the PHA average must be addressed.

Comment: HUD's final rule should clarify that it does not apply to State Housing Finance Agencies (HFAs) and other similar state housing agencies. The rule is ambiguous as to whether it applies to state HFAs. The rule should be rewritten to provide a clear exemption for statewide agencies, such as state HFAs.

HUD Response. The deconcentration provisions do not apply to statewide agencies except to the extent that they

are operating public housing; they apply to all public housing except for those developments exempted by the deconcentration provisions. In all the rulemaking stages of the PHA Plan rule, this is the first time this question has been raised. HUD believes that this is clear, and no additional statement is needed in the rule.

Comment: Is deconcentration applicable to a public housing development undergoing modernization? HUD needs to clarify at the final rule stage whether the requirement to deconcentrate is applicable to a development undergoing modernization which requires the residents to be relocated to other developments.

HUD Response. A PHA's deconcentration policy is not applicable to involuntary transfers among developments as this final rule makes clear.

Comment: HUD should clarify that a PHA's deconcentration policy applies to all mixed-finance developments/buildings that receive HUD operating subsidy. HUD should provide at the final rule stage that the deconcentration requirement does not apply to existing mixed-finance where investors, developers and PHAs have already entered into HUD-approved contracts which require the income mix in the developments, and should not apply to future developments. The following highlights the differences among commenters on the applicability of the deconcentration requirement to mixed-finance developments:

The final rule should make clear that it applies to any mixed finance development or building or unit that receives HUD operating subsidy. It should not matter that the development is owned or managed by an entity other than the PHA. These developments should not be exempt from the requirement to deconcentrate poverty.

The final rule must exempt, at a minimum, existing mixed-finance developments. PHAs and developers contractually obligate themselves to maintain specified income tiers and follow a prescribed admissions and occupancy policy in operating these properties. HOPE VI/mixed finance transactions (both closed and future transactions) should be specifically excluded from the deconcentration rule. HUD is already successful in achieving income mixing in HOPE VI and mixed finance units, and application of the deconcentration requirement will reduce not increase the success rates of these types of units in achieving income mixing.

HUD Response. The final rule exempts public housing units operated in accordance with a HUD-approved mixed finance plan using HOPE VI or public housing funds awarded before the effective date of this final rule, provided that the PHA certifies (and includes reasons for the certification) as part of its PHA Plan (which may be accomplished either in the annual Plan submission or as a significant amendment to its PHA Plan) that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed finance plan, including provisions regarding the incomes of public housing residents to be admitted to that development, which has been developed in consultation with residents with rights to live at the affected development and other interested persons. HUD recognizes that for many of these developments, as commenters have indicated, PHAs are contractually obligated to maintain specified income tiers, or their HOPE VI funding proposal assumed such tiers.

HUD, however, is not granting a blanket exemption for all mixed-finance or HOPE VI developments. As noted in the October 21, 1999 final rule, in response to a similar comment received under that rulemaking, the Public Housing Reform Act does not limit applicability of the deconcentration requirement to traditional public housing. (See 64 FR 56854, middle column.)

Comment: Data by development and building should be collected on an annual basis to determine effectiveness of income growth policies. HUD's rule should require yearly collection of data by development and by building even for developments or buildings that may be exempt from the deconcentration requirement.

HUD Response. The PHA's deconcentration policy must be included each year in the PHA's Annual Plan submission. The required steps for deconcentrating poverty, as provided in the rule, include a determination of the average income of all families residing in covered developments and an assessment of which developments fall outside the Established Income Range. At the final rule stage, HUD has limited the PHA's average income determination to developments, and not buildings. After consideration of comments, HUD acknowledges the concerns that an analysis of income by building may result in increased administrative burden for PHAs without a corresponding increased benefit in promoting deconcentration of poverty. HUD declines the commenter's

suggestion to require an income determination for developments that are not subject to deconcentration.

Comment: The incomes of public housing residents constantly fluctuate which makes annual determinations of average income unreliable. PHAs may experience significant differences in income levels from year to year because residents initiate and terminate employment fairly frequently. PHAs should have the option of recalculating the average development incomes more often than once a year if they so choose. Because income fluctuates constantly, does compliance with the deconcentration requirement mean that families would have to move if the "higher income building" in which they reside decreases (i.e., becomes a low income building) or vice-versa?

HUD Response. HUD believes that the additional flexibility provided by this final rule addresses this concern.

Comment: A family's return to a development should not be limited to a right of return to the same site. Some HOPE VI proposals include scattered sites which may include the original site that is being revitalized along with other sites or may include entirely new sites. The deconcentration policy should not interfere with any PHA commitment to families who have the right of return to this type of HOPE VI development or other development.

HUD Response. Neither the statutory requirement to deconcentrate poverty nor the requirements of this rule interfere with any commitments made by a PHA to a family with respect to a family's right to return to a site, including new sites, following revitalization.

Comment: The rule needs to address more fully unit refusal by a family and whether removing a family from a waiting list for refusal to accept a unit constitutes an adverse action against the family. Removing a family from the waiting list for reasons due entirely or in part to the family's refusal to accept a deconcentration offer of a unit constitutes an adverse action against the family. The rule needs to clearly provide that a family cannot be removed for refusing a deconcentration offer of a unit.

HUD Response. Removing a family from the waiting list for the family's refusal to accept a unit offered as part of the PHA's strategy to deconcentrate poverty is an adverse action prohibited by the statute. A family cannot be removed from the waiting list for this reason. However, a PHA may uniformly limit the number of offers to each applicant.

Comment: The proposed rule violates the statutory requirement that HUD finalize the agency plan rule only after considering comments presented through an enhanced rulemaking process. Congress mandated that the final rule implement the PHA Agency Plans be subject to an enhanced rulemaking process that would allow for more public input into the process. HUD was required to convene two public forums at which those making recommendations could respond to concerns regarding the proposed agency plan rule prior to implementation. While HUD conducted such forums, the deconcentration provisions in the April 17, 2000 proposed rule were not included in the prior rule and were not the subject of discussion at these forums.

HUD Response. HUD complied with the statutory mandate to undertake enhanced rulemaking before implementation of the PHA Plan final rule, which was issued on October 21, 1999. This enhanced rulemaking covered all aspects of the PHA Plan. Moreover, the statute does not require HUD to undertake enhanced rulemaking for every amendment or change HUD subsequently makes to the PHA Plan rule. The April 17, 2000 proposed rule was limited to clarifying a PHA's requirements to deconcentrate by income and affirmatively furthering fair housing, and adding language that allowed for HUD to further simplify the PHA Plan submission for PHAs permitted to submit a streamlined plan. (HUD already has implemented the streamlining amendment through a final rule published on August 14, 2000 (65 FR 49484).) Although HUD republished the entire PHA Plan rule on April 17, 2000, with the exception of these two areas, no substantive changes were made to the rule. The rule was republished for the convenience of the reader, and to make plain language changes.

Comment: The rule is not in compliance with the Regulatory Flexibility Act, Unfunded Mandates Reform Act and the Executive Order on Federalism. HUD's proposed rule would have a significant economic impact on a substantial number of small entities and would impose an unfunded federal mandate and substantial direct compliance costs on local jurisdictions. Compliance with the deconcentration requirement will require software modifications and additional data entry on a building-by-building analysis, and the creation and implementation of new procedure manuals and these actions will have a significant economic impact on housing authorities.

HUD Response. HUD disagrees with the commenters that the proposed rule would have imposed a significant economic impact on a substantial number of small entities. HUD, however, appreciates these comments, and specifically solicited comments about the impact on small entities under its Regulatory Flexibility Act statement on whether PHAs believed the proposed rule would have a significant economic impact on small entities. HUD believes that the changes made in the rule at the final rule stage minimize concerns raised by the commenters. The rule is not in violation of the Executive Order on Federalism or Unfunded Mandates. Public housing is federally funded and the deconcentration requirement established by Congress is to ensure that every effort is made to address concentration of poverty in federally funded housing.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in the PHA Plan were previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), at the time of publication of the PHA Plan final rule on October 21, 1999, and assigned OMB control number 2577–0226. This final rule published today only makes changes to the deconcentration component of the PHA Annual Plan's statement of the PHA's deconcentration and other policies that govern eligibility, selection and admissions. A modification to HUD's existing and approved information collection requirements for this rule has been submitted to OMB for review and approval under the Paperwork Reduction Act. The modification, when approved, will be announced through separate notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule amends HUD's Public Housing Agency Plan regulations to fully reflect the importance of deconcentration by income in public housing and the importance of affirmatively furthering

fair housing. This rule does not create an undue burden on small PHAs. This rule exempts several types of developments, including developments with fewer than 100 units, from the requirement to deconcentrate poverty in public housing.

Executive Order 13132, Federalism

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

Environmental Impact

The Finding of No Significant Impact with respect to the environment was prepared during the interim rulemaking stage of the Public Housing Agency Plan regulations in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Regulatory Review

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

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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

List of Subjects in 24 CFR Part 903

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

For the reasons stated in the preamble, HUD revises part 903 of title 24 of the Code of Federal Regulations to read as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

Sec.

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

- 903.1 What is the purpose of this subpart?
 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

Subpart B—PHA Plans

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

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

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

§ 903.1 What is the purpose of this subpart?

The purpose of this subpart is to specify the process which a Public Housing Agency, as part of its annual planning process and development of an admissions policy, must follow in order to develop and apply a policy that provides for deconcentration of poverty and income mixing in certain public housing developments and to affirmatively further fair housing in admissions.

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

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

(a) *General.* The PHA's admission policy includes the PHA's policy designed to promote deconcentration of poverty and income mixing in accordance with section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n), which is submitted to HUD as part of the PHA Annual Plan process. Deconcentration of poverty and income mixing is promoted by a policy that provides for bringing higher income tenants into lower income developments and lower income tenants into higher income developments.

(1) The provisions of this section apply to applicants to and residents seeking voluntary transfers within covered public housing developments ("covered developments" as specified in paragraph (b) of this section).

(2) The statutory requirement to design a policy to provide for deconcentration and income mixing is not to be construed to impose or require any specific income or racial quotas for any development or developments.

(b) *Applicability of deconcentration of poverty and income mixing requirements.*

(1) *Developments subject to deconcentration of poverty and income mixing requirements.* The deconcentration requirements of this subpart apply to general occupancy, family public housing developments, excluding those developments listed in paragraph (b)(2) of this section. Developments to which this subpart is applicable are referred to as "covered developments".

(2) *Developments not subject to deconcentration of poverty and income mixing requirements.* This subpart does not apply to the following public housing developments:

(i) Public housing developments operated by a PHA with fewer than 100 public housing units;

(ii) Public housing developments operated by a PHA which house only elderly persons or persons with disabilities, or both;

(iii) Public housing developments operated by a PHA which consist of only one general occupancy, family public housing development;

(iv) Public housing developments approved for demolition or for conversion to tenant-based assistance; and

(v) Public housing developments which include public housing units operated in accordance with a HUD-approved mixed-finance plan using HOPE VI or public housing funds awarded before the effective date of this rule, provided that the PHA certifies (and includes reasons for the certification) as part of its PHA Plan (which may be accomplished either in the annual Plan submission or as a significant amendment to its PHA Plan) that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed finance plan, including provisions regarding the incomes of public housing residents to be admitted to that development, which has been developed in consultation with residents with rights to live at the affected development and other interested persons.

(c) *Deconcentration of poverty and income mixing.*

(1) *Steps for implementation.* To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered public housing developments, a PHA must comply with the following steps:

(i) *Step 1.* A PHA shall determine the average income of all families residing in all the PHA's covered developments. A PHA may use median income, instead of average income, provided that the PHA includes a written explanation in its PHA Annual Plan justifying use of median income in the PHA's Annual Plan.

(ii) *Step 2.* A PHA shall determine the average income of all families residing in each covered development. In determining average income for each development, a PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

(iii) *Step 3.* A PHA shall determine whether each of its covered developments falls above, within or below the Established Income Range. The Established Income Range is 85 percent to 115 percent (inclusive of 85

percent and 115 percent) of the PHA-wide average income for covered developments as defined in Step 1.

(iv) *Step 4.* A PHA with covered developments having average incomes outside the Established Income Range may explain or justify the income profile for these developments as being consistent with and furthering two sets of goals: the goals of deconcentration of poverty and income mixing as specified by the statute (bringing higher income tenants into lower income developments and vice versa); and the local goals and strategies contained in the PHA Annual Plan. Elements of explanations or justifications that may satisfy these requirements may include, but shall not be limited to the following:

(A) The covered development or developments are subject to consent decrees or other resident selection and admission plans mandated by court action;

(B) The covered development or developments are part of PHA's programs, strategies or activities specifically authorized by statute, such as mixed-income or mixed-finance developments, homeownership programs, self-sufficiency strategies, or other strategies designed to deconcentrate poverty, promote income mixing in public housing, increase the incomes of public housing residents, or the income mix is otherwise subject to individual review and approval by HUD;

(C) The covered development's or developments' size, location, and/or configuration promote income deconcentration, such as scattered site or small developments;

(D) The income characteristics of the covered development or developments are sufficiently explained by other circumstances.

(v) *Step 5.* Where the income profile for a covered development is not explained or justified in the PHA Annual Plan submission, the PHA shall include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing in applicable covered developments. Depending on local circumstances, a PHA's deconcentration policy (which may be undertaken in conjunction with other efforts such as efforts to increase self-sufficiency or current residents) may include but is not limited to providing for one or more of the following actions:

(A) Providing incentives designed to encourage families with incomes below the Established Income Range to accept units in developments with incomes above the Established Income Range, or vice versa, including rent incentives,

affirmative marketing plans, or added amenities;

(B) Targeting investment and capital improvements toward developments with an average income below the Established Income Range to encourage applicant families whose income is above the Established Income Range to accept units in those developments;

(C) Establishing a preference for admission of working families in developments below the Established Income Range;

(D) Skipping a family on the waiting list to reach another family in an effort to further the goals of the PHA's deconcentration policy;

(E) Providing such other strategies as permitted by statute and determined by the PHA in consultation with the residents and the community, through the PHA Annual Plan process, to be responsive to the local context and the PHA's strategic objectives.

(2) *Determination of compliance with deconcentration requirement.* HUD shall consider a PHA to be in compliance with this subpart if:

(i) The PHA's income analysis shows that the PHA has no general occupancy family developments to which the deconcentration requirements apply; that is, the average incomes of all covered developments are within the Established Income Range;

(ii) The PHA has covered developments with average incomes above or below the Established Income Range and the PHA provides a sufficient explanation in its Annual Plan that supports that the income mix of such development or developments is consistent with and furthers the goal of deconcentration of poverty and income mixing and also the locally determined goals of the PHA's Annual and Five Year Plans, and the PHA therefore need not take further action to deconcentrate poverty and mix incomes; or

(iii) The PHA's deconcentration policy provides specific strategies the PHA will take that can be expected to promote deconcentration of poverty and income mixing in developments with average incomes outside of the Established Income Range.

(3) *Right of return.* If a PHA has provided that a family that resided in a covered public housing development has a right to admission to a public housing unit in that development after revitalization, the requirements of paragraph (c) of this section do not preclude fulfilling that commitment or a PHA's commitment to return a family to another development after revitalization.

(4) *Family's discretion to refuse a unit.* A family has the sole discretion

whether to accept an offer of a unit made under a PHA's deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy. In accordance with the PHA's established policies, the PHA may uniformly limit the number of offers received by applicants.

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

(d) *Fair housing requirements.* All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and with regulations to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Fair Housing Act. A PHA cannot assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations (§ 1.4(b)(1)(ii) of this title).

(2) *Affirmatively Furthering Fair Housing.* PHA policies that govern eligibility, selection and admissions under its PHA Plan should be designed to reduce racial and national origin concentrations. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs should take affirmative steps to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin or other prohibited basis (§ 1.4(b)(1)(iii) and (6)(ii) of this title).

(ii) Such affirmative steps may include but are not limited to, appropriate affirmative marketing efforts; additional applicant consultation and information; and provision of additional supportive services and amenities to a development.

(3) *Validity of certification.* (i) HUD will take action to challenge the PHA's certification under § 903.7(o) where it appears that a PHA Plan or its implementation:

(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing; or

(B) Is creating new segregation in housing.

(ii) If HUD challenges the validity of a PHA's certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in paragraph (d)(2)(ii) of this section.

(e) *Relationship between poverty deconcentration and fair housing.* The requirements for poverty deconcentration in paragraph (c) of this section and for fair housing in paragraph (d) of this section arise under separate statutory authorities and are independent.

Subpart B—PHA Plans

§ 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c-1).

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

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

§ 903.4 What are the public housing agency plans?

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

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD; and

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

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

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

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

(c) *Applicability.* The requirements of this subpart only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(d) *Authority for waivers.* In addition to the waiver authority provided in § 5.110 of this title, 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.

§ 903.5 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 as amended on December 22, 2000, is the PHA fiscal year that begins July 2001. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning July 1, 2001.

(2) For all PHAs, the first 5-Year Plans are due 75 days before the commencement of their fiscal year.

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

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before July 1, 2001, to comply with the requirements of this part as amended on December 22, 2000, at the time they submit their next Annual Plan for fiscal years beginning on or after July 1, 2001. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

(b) *The Annual Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000, is the PHA fiscal year that begins July 1, 2001.

(2) For all PHAs, the first Annual Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due no later than 75 days before the commencement of their fiscal year.

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

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

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

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

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

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

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

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

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the

housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

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

(ii) Elderly families and families with disabilities;

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

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

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

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

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

(1) *Deconcentration Policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

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

(i) The PHA regularly submits required occupancy data to HUD's

Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

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

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

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

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

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

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

(C) Taking any steps necessary to remedy the problems surfaced during the review; and

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

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and

deconcentration is applicable only to public housing.)

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

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

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

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

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

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

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

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

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

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

(A) The required description of the action to be taken;

(B) A certification of consistency with the Consolidated Plan;

(C) A description of how the plan is consistent with the Consolidated Plan;

(D) A relocation plan that includes the availability of units in the area and adequate funding; and

(E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

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

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

(i) *A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.*

(1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

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

(A) Only elderly families;

(B) Only families with disabilities; or

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

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

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

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

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

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

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

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

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

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

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

(1) This statement describes:

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

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

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

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

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

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

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

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

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

(2) The information required by paragraph (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.*

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

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

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

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

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

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

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

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

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

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

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(b) and:

(i) Examines its programs or proposed programs;

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

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

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

(v) Maintains records reflecting these analyses and actions.

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

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

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

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

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

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

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

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

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the

1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (part 901 of this title) or the Public Housing Assessment System (part 902 of this chapter) include its operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

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

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

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

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

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

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

(c) A streamlined plan must include the information provided in this paragraph (c). The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, 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(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. 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).

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in

homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

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

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

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

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

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

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

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

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve

on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

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

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

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

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

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

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

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

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan

and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

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

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

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

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

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

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

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

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

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

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

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

§ 903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a

significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Not later than 75 days after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD will issue

written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

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

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

(c) *Designation of due date as submission date for first plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted no earlier than the due date as provided in § 903.5.

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

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

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

Dated: December 14, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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