

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 902, 903 and 985

[Docket No. FR-4753-P-01]

RIN 2577-AC34

**Deregulation for Small Public Housing
Agencies**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would simplify and streamline HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937. Specifically, the proposed rule would further streamline the PHA Annual Plan requirements for certain small PHAs. HUD also proposes to deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP), consistent with its basic regulatory responsibilities. HUD believes that these changes will alleviate administrative burden, and better enable small PHAs to focus on their core mission of providing decent, safe, and affordable housing for the neediest American families. In addition to the changes that solely concern small PHAs, this proposed rule would also streamline HUD's review of the Annual Plans submitted by all PHAs (large and small).

DATES: *Comments Due Date:* September 13, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, 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 this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would simplify and streamline HUD's regulatory requirements for small public housing agencies (PHAs) that administer the public housing and voucher assistance programs under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the "1937 Act"). HUD has an obligation to monitor and regulate the use of Federal housing funds in order to ensure that taxpayer dollars are well spent. HUD is also mindful that compliance with its regulatory requirements may impose administrative burdens on PHAs and divert scarce resources. The cost of excessive regulation is especially problematic for small PHAs, because they often possess the fewest staff and technical resources.

This proposed rule would make several deregulatory changes to alleviate the administrative burden imposed on small PHAs, while still requiring basic accountability. The proposed rule would further streamline the PHA Annual Plan requirements for small PHAs. HUD also proposes to deregulate the assessment and scoring of small PHAs under the Public Housing Assessment System (PHAS) and the Section 8 Management Assessment Program (SEMAP) consistent with its basic regulatory responsibilities. HUD believes that deregulating small PHAs will better enable them to focus on their core mission of providing safe, decent, and affordable housing to the neediest American families.

The specific deregulatory changes that would be made by this proposed rule are as follows:

A. Further Streamlining PHA Annual Plan Requirements (24 CFR Part 903)

The PHA Plan process provides an easily identifiable source by which public housing residents, participants in the tenant-based assistance programs, and other members of the public may locate basic PHA policies rules and requirements concerning the PHA's operations, programs, and services. Through these plans—a 5-Year Plan and an annual plan—a PHA advises HUD, its residents, and members of the public of the PHA's mission for serving low-income and very low-income families, and the PHA's strategy for addressing those needs. HUD's regulations for the PHA Plans are located at 24 CFR part

903. This proposed rule would simplify PHA Annual Plan requirements.

1. Further Streamlining Annual Plan Submission Requirements for Small PHAs

In accordance with section 5A of the 1937 Act (which established the PHA Plan process), HUD's PHA Plan regulations at § 903.11(a)(2) and (c)(2) currently provide for the submission of streamlined Annual Plans by small PHAs (those with less than 250 public housing units) 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 (see the PHAS regulations at § 902.67 for how a PHA is designated as troubled or determined to be "at risk" of being designated as troubled). On September 18, 2000, HUD issued Public and Indian Housing (PIH) Notice 2000-43, which implemented a new streamlining initiative for small PHAs: the "Small PHA Plan Update." The Small PHA Plan Update reduces the amount of information contained in a streamlined plan by requiring that—for certain plan elements—PHAs need only describe the changes made since submission of their last Annual Plan. A copy of PIH Notice 2000-43 may be obtained via the HUD Internet homepage at <http://www.hud.gov>.

HUD proposes to further streamline the PHA Annual Plan submission requirements for small PHAs. Specifically, the proposed rule would require that the Annual Plan submitted by a small PHA only address policies concerning capital improvements (see § 903.7(g)) and the civil rights certification (see § 903.7(o)). For the other policies and programs that § 903.11(c)(2) currently requires must be addressed in a PHA's streamlined plan (such as deconcentration, demolition and disposition, housing needs, and financial resources), the PHA would only be required to submit a certification listing those policies it has revised since submission of its last Annual Plan. In addition, the small PHA would also be required to certify that: (i) The Resident Advisory Board had an opportunity to review and comment on the changes prior to implementation; (ii) the changes were duly approved by the PHA board of directors (or similar governing body); and (iii) the revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

Every fifth fiscal year, in the same year the PHA submits its 5-Year Plan, the small PHA would be required to submit a more detailed Annual Plan that more fully addresses the elements

required under § 903.11(c)(2). However, PHAs would not be required to provide information concerning pet ownership policies (see § 903.7(n)) and fiscal year audit findings (see § 903.7(p)), since the PHA is already required to maintain these supporting documents and make them available to the public. Further, the information concerning housing needs (see § 903.7(a)) need only be provided to the extent that it pertains to the housing needs of families on the PHA's public housing and tenant-based assistance waiting lists. The PHA already provides the other housing needs information required under § 903.7(a) through the Consolidated Plan process under 24 CFR part 91.

In order to facilitate HUD review of small PHA 5-Year and streamlined Annual Plans, the proposed rule also provides that HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year, rather than the fifth PHA fiscal year). This change will split the workload for HUD offices reviewing small PHA plans among two years, thus expediting HUD review and approval of the PHA plans.

In addition to the substantive changes discussed above, this proposed rule would also consolidate Annual Plan submission requirements for small PHAs in a separate regulatory section (§ 903.12). This non-substantive, organizational revision is designed to improve the clarity of the plan submission requirements and the deregulatory changes being proposed by HUD.

2. Streamlining the Scope of HUD Review for All PHAs

The proposed rule would also streamline HUD's review of Annual Plans submitted by all PHAs (large and small), by implementing the statutory authority provided by section 5A(i)(2) of the 1937 Act to exempt certain plan elements from HUD review and approval. Specifically, the proposed rule provides that HUD's review of Annual Plans will generally be limited to the PHA policies concerning deconcentration (see § 903.7(b)), capital improvements (see § 903.7(g)), demolition and disposition (see § 903.7(h)), and the civil rights certification (see § 903.7(o)). As required by section 5A(i)(2), HUD will also review any other plan element that has been challenged.

B. Biannual PHAS Assessments for Small PHAs With Less Than 250 Public Housing Units (24 CFR part 902).

HUD's regulations at 24 CFR part 902 describe the policies and procedures

governing the PHAS. The PHAS provides a management tool for effectively and fairly measuring the performance of a PHA. The goals of the PHAS are to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD, and the general public. This proposed rule would streamline and simplify the assessment and scoring of small PHAs under the PHAS.

The proposed rule would provide for the assessment and scoring of a small PHA with less than 250 public housing units once every other PHA fiscal year (as opposed to the current annual PHAS rating) unless the PHA elects to have its performance assessed on an annual basis or is designated as troubled. Given the limited number of public housing units managed by small PHAs, it is unlikely that there will be significant variations in performance from year to year and the risk of going to biannual scoring is minimal. Accordingly, HUD has determined that, unless the PHA has a history of poor performance and is designated as troubled, a biannual PHAS assessment is sufficient to monitor its performance.

C. Deregulating SEMAP for Small PHAs (24 CFR part 985).

HUD's regulations at 24 CFR part 985 describe the policies and procedures governing the SEMAP. SEMAP provides for objective measurement of the performance of a PHA in key areas of the tenant-based assistance program. SEMAP enables HUD to ensure program integrity and accountability by identifying PHA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. PHAs can use the SEMAP performance analysis to assess their own program operations. The proposed rule would make three deregulatory changes to SEMAP concerning small PHAs.

1. Exemption for Small PHAs Not Subject to Single Audit Act Requirements

The proposed rule would exempt PHAs that expend less than \$300,000 in Federal awards in any PHA fiscal year from SEMAP assessment and scoring. The current SEMAP regulations exempt these small PHAs from assessment under 7 (out of the 16) SEMAP indicators (see § 985.3). The exemption is due to the fact that PHAs with such limited Federal funding are not subject to the requirements of the Single Audit Act. Since HUD uses the annual independent audit to verify the

information provided by PHAs for these indicators, there is no effective method for HUD to assess performance under these factors for PHAs not subject to the Single Audit Act. Given the relatively small amount of Federal funds expended by these PHAs, and the already limited scope of their SEMAP assessments, conducting SEMAP reviews for these small PHAs is not beneficial enough to justify the administrative burden. Accordingly, HUD proposes to exempt these small PHAs from the requirements of 24 CFR part 985.

2. Biannual SEMAP Assessments for Small PHAs

The proposed rule would also provide for the biannual SEMAP assessment of small PHAs with less than 250 assisted units (as opposed to the current annual SEMAP rating), unless the PHA elects to have its performance assessed on an annual basis or is designated as troubled. As was noted above in the discussion of the proposed changes to the PHAS, the limited number of units serviced by small PHAs makes it unlikely that there will be significant variations in performance from year to year and the risk of conducting SEMAP assessments once every other fiscal year is minimal. Accordingly, HUD has determined that, unless the PHA has a history of poor performance and is designated as troubled, a biannual assessment is sufficient to monitor its performance under SEMAP.

3. Streamlined On-Site Review Requirements for Small PHAs

The proposed rule would also streamline the on-site review requirements for small PHAs designated as troubled. Under the current SEMAP regulations HUD must conduct an on-site review of any PHA that receives an overall performance rating of troubled (see § 985.107(a)). Since SEMAP ratings are generally calculated based on the percentage of the PHA's leased housing units that meet the specified criteria, a difference of one or two units can have a disproportionate impact on a small PHA's SEMAP score. Accordingly, there may be small PHAs designated as troubled for which an on-site review is unnecessary to diagnose problems and potential remedies. The proposed rule would address this concern by providing that HUD may elect not to conduct an on-site review if the PHA has less than 250 assisted units and

HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies. HUD will monitor the performance of a small PHA that is designated as troubled, but for which no on-site review is conducted, by using available data, such as independent public accountant (IPA) audit reports, information derived from the HUD form 50058, and PHA year-end statements.

II. Justification for Reduced Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. In an effort to have an effective rule in place as close as possible to the beginning of Fiscal Year 2003, and given that the proposed changes are deregulatory in nature and remove administrative burdens thus better enabling small PHAs to focus on their core mission of providing decent, safe, and affordable housing, the Department believes that a 30-day public comment period is justified under these circumstances. All public comments will be considered in the development of the final rule.

III. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in the PHA Plan process (24 CFR part 903) and the PHAS (24 CFR part 902) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2535–0106, 2535–0107, 2507–0001, and 2577–0226, respectively. The regulatory amendments contained in §§ 902.9, 903.5, 903.11, and 903.12 of this proposed rule merely modify the scope and frequency of these currently approved information collection requirements to streamline and reduce the paperwork burden imposed on small PHAs. HUD invites public comment on the information collection requirements contained in this proposed rule. All public comments will be considered in the development of the final rule and may result in revisions to the information collection requirements at the final rule stage. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Planning and 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 an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

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

Executive Order 13132, Federalism

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

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

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

List of Subjects

24 CFR Part 902

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

24 CFR Part 903

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

24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 902, 903 and 985 as follows:

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

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

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

2. Add § 902.9 to read as follows:

§ 902.9 Frequency of PHAS scoring for small PHAs.

REAC will assess and score the performance of a PHA with less than

250 public housing units every other PHA fiscal year, unless the small PHA:

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

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

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

§ 902.33 Financial reporting requirements.

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

* * * * *

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

§ 902.60 Data collection.

* * * * *

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

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PART 903—PUBLIC HOUSING AGENCY PLANS

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

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

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

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

(a) * * *

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

* * * * *

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

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

* * * * *

(c) * * *

(2) For small PHAs that are not designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j)(2) of the 1937 Act, the requirements for

streamlined Annual Plans are described in § 903.12.

* * * * *

8. Add § 903.12 to read as follows:

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

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

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

(c) *Streamlined Annual Plan requirements for all other fiscal years.* For all other fiscal years, the streamlined Annual Plan must include the information required by § 903.7(g) and (o) and a certification from the PHA that:

(1) Lists the policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k) and (r) that the PHA has revised since submission of its last Annual Plan; and
(2) Provides assurance by the PHA that:

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

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

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

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

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

* * * * *

(b) *Scope of HUD review.* HUD's review of the Annual Plan (and any

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

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PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

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

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

11. Add § 985.1(c) to read as follows:

§ 985.1 Purpose and applicability.

* * * * *

(c) *Small PHAs exempt from Single Audit Act requirements.* A PHA that expends less than \$300,000 in Federal awards in any PHA fiscal year is not subject to this part.

12. In § 985.3, remove the second undesignated introductory paragraph.

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

§ 985.105 HUD SEMAP responsibilities.

(a) *Frequency of SEMAP assessments.*

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

(2) *Biannual review for small PHAs.* HUD shall assess and score the performance of a PHA with less than 250 assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or
(ii) Is designated as troubled, in accordance with § 985.103.

* * * * *

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

§ 985.107 Required actions for PHA with troubled performance rating.

(a) *On-site reviews.* (1) *Required reviews for troubled PHAs.* Except as provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

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

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

(ii) HUD determines that an on-site review is unnecessary to determine the

needs of the PHA and the actions

required to address the program
deficiencies.

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Dated: July 18, 2002.

Michael M. Liu,

*Assistant Secretary for Public and Indian
Housing.*

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