

CHAPTER 12. SANCTIONS

12-1. INTRODUCTION. This Chapter addresses sanctions available to HUD if a PHA fails to comply with Federal regulatory requirements and provisions of Part II of the Annual Contributions Contract (ACC) applicable to its performance, or in the case of a Troubled PHA, where it fails to perform in accordance with its Memorandum of Agreement (MOA).

12-2. BUDGETARY REVIEW/APPROVAL. HUD approval of operating budgets represents one of the most effective means for the enforcement of HUD requirements. The following regulatory and contractual provisions enable HUD to take action through the budget review and approval process to correct PHA noncompliances by establishing specific limitations upon expenditures.

- a. Regulatory Provisions. Through regulatory provisions at 24 CFR Part 990.112(b) HUD has indicated that its review of PHA budgets will "normally" be limited in nature. However, 24 CFR Part 990.112(c) provides in part, as follows:

"HUD reserves the right at any time to deviate from the limited Operating Budget review provided in paragraph (b) of this section if HUD finds that the PHA is operating its program in a manner which threatens the future serviceability, efficiency, economy, or stability of the housing which it operates. If such action is deemed necessary, the HUD Field Office will normally notify the PHA prior to its submission of the Operating Budget that HUD will subject the Operating Budget to a detailed review."

- (1) All Troubled PHAs shall have their operating budgets subjected to a detailed review by the HUD Field Office in accordance with 24 CFR Part 990.112(c).

- b. Contractual Provisions. Section 407(H) of the ACC addresses the requirements for control of PHA operating budgets, and Section 507(2) addresses those circumstances under which a substantial breach of the ACC related to operating expenditures can be determined to have occurred.

- (1) Section 407(H) of the ACC provides as follows:

2/90

12-1

"The Local Authority shall not (1) at any time after the end of the Initial Operating Period for any project incur any Operating Expenditures

with respect to such Project except pursuant to and in accordance with an approved Operating Budget for such Project, nor (2) during any Fiscal Year or other budget period, incur with respect to any Project expenditures in excess of the amounts included in approved Operating Budgets for Controlled Accounts as may be specified by the Government, nor (3) incur Operating Expenditures for any purpose or in any amount contrary to any condition or modification imposed by the Government upon any Operating Budget: Provided, That nothing in this subsection (H) shall preclude the incurring of expenditures in emergencies where necessary to eliminate an immediate serious hazard to life, health, or safety of the occupants of a Project, and that the amount of any such emergency expenditures shall be reported promptly to the Government and the Operating Budget shall be amended accordingly."

- (2) Section 507(2) of the ACC indicates that a substantial breach of the ACC shall be defined as having occurred based upon the following:

"If the Local Authority, in violation of subsection (H) of Sec. 407, has (a) at any time after the end of the Initial Operating Period for any Project incurred any Operating Expenditures with respect to such Project except pursuant to and in accordance with an approved Operating Budget for such Project, or (b) during any Fiscal Year or other budget period incurred with respect to any Project total Operating Expenditures in excess of the amount therefor shown in an approved Operating Budget (including revisions thereof) governing such Fiscal Year or other budget period."

- c. Imposition of Budgetary Limitations. The imposition of budgetary limitations will include:

2/90

12-2

- (1) In conjunction with HUD budget approval, impose explicit conditions or limitations reasonably related to noncompliance.
- (2) Plan and implement follow-up action to assure that violations of the budgetary limitation will come to the prompt attention of HUD. This could involve special reporting requirements or on-site visits.

12-3. WITHHOLDING OPERATING SUBSIDIES.

- a. Performance Funding System (PFS) 224. CFR Part 990.115(c) of the PFS regulations specify that operating subsidy payments may be withheld equal to the estimated loss of rental income due to the PHA's failure to conduct reexaminations of resident incomes as required in Section 207(A) of the ACC.
- b. ACC. Where the Field Office has already approved the PHA's budget or executed a letter of intent, operating subsidy may still be withheld on the basis of a determination by HUD of Substantial Default under Section 506 or Substantial Breach under Section 507 of the ACC. If a Troubled PHA does not comply with its MOA requirements, the Field Office may determine, where appropriate, that the nature and severity of the noncompliance constitutes a Substantial Breach or Substantial Default of the ACC. In either instance, the Field Office shall refer the matter, in writing, to the Regional Office for its review and recommendation. The Regional Office shall refer the matter, with its recommendation, in writing, to Headquarters, Assistant Secretary for Public and Indian Housing, Attention: Director, Project Management Division. The final determination and declaration of Substantial Default or Substantial Breach shall be made by Headquarters, as will the specification of those actions which HUD will require in order to cure such Substantial Default or Substantial Breach.
- c. Use of Letter of Intent. See paragraph 10-8d of this Handbook.

12-4. SUBSTANTIAL DEFAULT OR SUBSTANTIAL BREACH SANCTIONS. Based upon a Headquarters' finding of Substantial Default or Substantial Breach of the ACC by a PHA, sanctions may be imposed, i.e., freezing of the PHA's bank accounts and funds, seeking court appointment of a Receiver, taking

2/90

12-3

over control of PHA management, seeking a court injunction or action for specific performance, etc.

12-5. SUSPENSION AND DEBARMENT. Suspension and debarment are available as administrative sanctions pursuant to regulations at 24 CFR Part 24. Suspensions involve a disqualification from participation in HUD programs for a temporary period because of adequate credible evidence of criminal, fraudulent or seriously improper conduct. Debarment means exclusion from participation in HUD programs for a specified period as a result of criminal offenses or other violations. Specific causes and

conditions applicable to these sanctions are found in 24 CFR Part 24. They could be applicable to the PHA itself as a Federal contractor or participant, but most often they probably would be applied to a specific employee or employees of a PHA or to individuals or firms doing business with the PHA, such as contractors, attorneys and consultants. All actions directed toward suspension or debarment must be initiated by the Assistant Secretary for Public and Indian Housing and may be taken on the basis of an investigation by the Office of the Inspector General or referral from program staff. The party involved is entitled to an administrative hearing by HUD and specific procedural requirements as set forth in the pertinent regulation must be observed. Principals and their affiliates who are suspended or debarred by an Assistant Secretary of HUD are excluded from further direct or indirect participation in all HUD programs nation-wide for a period of years and their names appear in the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs.

12-6. LIMITED DENIAL OF PARTICIPATION (LDP). This administrative sanction is authorized in 24 CFR Part 24.700 and involves denial of, or conditioned, participation on a temporary basis. A Regional Administrator, Office Manager or Director of an Office of Indian Programs is authorized to order a LDP affecting any participant or contractor and its affiliates except HUD-FHA approved mortgages. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a LDP shall be discretionary and in the best interests of the Government. 24 CFR Part 24.700 addresses the LDP, in part, as outlined below.

a. Causes. A LDP shall be based upon adequate evidence of any of the following causes:

2/90

12-4

-
- (1) Approval of an applicant for insurance would constitute an unsatisfactory risk;
 - (2) Irregularities in a participant's or contractor's past performance in a HUD program;
 - (3) Failure of a participant or contractor to maintain prerequisites of eligibility to participate in a HUD program;
 - (4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;
 - (5) Failure to satisfy, upon completion, the

requirements of an assistance agreement or contract;

- (6) Deficiencies in on-going construction projects;
- (7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;
- (8) Commission of an offense listed in 24 CFR Part 24.305;
- (9) Violation of any law, regulation or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or a conditional or final commitment to insure or guarantee;
- (10) Making or procuring to be made any false statement for the purpose of influencing in any way the action of the Department;
- (11) Imposition of a LDP by any other HUD Regional or Field Office;
- (12) Debarment or suspension by any other Federal agency for any cause substantially the same as provided in 24 CFR Part 24.305; and
- (13) Indictment or Information shall constitute adequate evidence for the purpose of LDP actions.

2/90

12-5

-
- b. Period and Scope of a LDP. A LDP extends to both direct and indirect participation in the program under which the cause arose, except that where it is based on an indictment, conviction, suspension or debarment by another agency, it need not be based on offenses against HUD and it may apply to all programs. Such participation includes receipt of any direct or indirect benefit or financial assistance through grant or contractual arrangements; direct or indirect benefit or assistance in the form of loan guarantees or insurance; and award of procurement contracts, notwithstanding any quid pro quo given or whether the Department gives anything in return. The sanction may be imposed for a period not to exceed 12 months and is effective only within the geographic jurisdiction of the office imposing it. The term "program" may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of the Assistant Secretary for Public and Indian Housing.

- (1) This sanction shall be effective immediately upon issuance, and shall remain effective up to 12 months thereafter. If the cause for the LDP is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it. The imposition of a LDP shall not affect the right of the Department to suspend or debar any person under this part.
- (2) An affiliate or organizational element may be included in a LDP solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

c. Notice.

- (1) A LDP shall be initiated by advising a participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

2/90

12-6

- (a) That the sanction is effective as of the date of the notice;
- (b) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under 24 CFR Part 24.605 for imposing the sanction;
- (d) Of the right to request in writing within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;
- (e) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(2) After 30 days, the official imposing the LDP shall notify the Participation and Compliance Officer for Housing Programs that no conference has been requested. If a conference is requested within the 30-day period, no notice shall be given unless a decision to affirm all or a portion of the remaining period of exclusion is issued. The Participation and Compliance Officer shall be responsible for notifying all HUD Field Offices of sanctions imposed.

d. Conference. Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under 24 CFR Part 24.613. Although the formal rules of procedure contained in 24 CFR Part 26 do not apply to the conference, the participant or contractor may be represented

2/90

12-7

by counsel and may present all relevant information and materials to the official, or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the LDP. If the decision is to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of notice of the decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

e. Appeal. Where the decision is to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with Headquarters, Attention: Debarment Docket Clerk. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at 24 CFR Part 24.311 through 24.314.

12-7. IMPOSITION OF THRESHOLDS. Section 201 of the ACC addresses the use of projects and Sections 508(A) and (B) address other defaults or breaches and other remedies. The Field Office may determine, in accordance with the Comprehensive Improvement Assistance Program (CIAP) Handbook 7485.1 REV-4, paragraph 8-6, the need for the imposition of thresholds for a PHA's procurement actions. Such procurement actions include: (1) the advertisement and award of architectural

and engineering (A&E) contracts funded from lower income public housing operating funds; and (2) A&E contracts, modernization contracts and contract modifications/change orders funded from CIAP funds in instances of fraud, waste or mismanagement or where the serviceability, efficiency, economy and/or stability of projects is deficient. Deficiencies include poor or nonexistant fiscal management, maintenance management and/or administrative management. Thresholds may be imposed in order to ensure compliance with Federal procurement requirements in accordance with 24 CFR Part 85.36 and/or in recognition of deficiencies cited in the most recent reviews/audits of a PHA.

a. Section 201 of the ACC provides as follows:

2/90

12-8

"The Local Authority shall at all times operate each project (1) solely for the purpose of providing decent, safe, and sanitary dwellings (including necessary appurtenances thereto) within the financial reach of Families of Low Income, (2) in such manner as to promote serviceability, efficiency, economy, and (3) in such manner as to achieve the economic and social well-being of the tenants thereof."

b. Section 508(A) of the ACC provides as follows:

"Neither the provision of the special remedies set forth in Sec. 501 and Sec. 502 in the event of a Substantial Default or a Substantial Breach, as the case may be, or any exercise thereof, shall affect or abrogate any other remedy which may be available to the Government in the event of a Substantial Default, Substantial Breach, or any other default or breach; and the Government may, during any period in which it holds title to or possession of the Projects pursuant to Sec. 501 or Sec. 502, exercise any other remedy available to it. Neither the definition of certain defaults or breaches as Substantial Defaults or Substantial Breaches, nor the provision of special remedies therefor, shall be deemed to constitute an agreement that any other type of default or breach shall be considered insignificant or without remedy."

c. Section 508(B) of the ACC provides as follows:

"If the Local Authority shall at any time be in default or breach, or take any action which will result in a default or breach, in the performance

or observance of any of the terms, covenants, and conditions of this Contract, then the Government shall have, to the fullest extent permitted by law (and the Local Authority hereby confers the Government the right to all remedies both at law and in equity which it is by law authorized to so confer) the right (in addition to any rights or remedies in this Contract specifically provided) to maintain any and all actions at law or in equity against the Local Authority to enforce the correction of any such default or breach or to enjoin any such default or breach."

2/90

12-9

12-8. MODERNIZATION AND DEVELOPMENT FUNDS. HUD regulations state that HUD's approval of both modernization and development programs can be made contingent upon adherence to HUD requirements.

- a. Modernization. 24 CFR Part 968.5 provides that, as a condition for eligibility for an allocation of modernization funding, the PHA must agree to comply with all policies, procedures and requirements prescribed by HUD for the modernization (see the CIAP Handbook 7485.1 REV-4, Chapter 3).
- b. Development. 24 CFR Part 941.302 imposes an eligibility requirement for the administrative capability of a PHA. Paragraph (c) of that part, pertaining to submission of applications, requires evidence that:

"... the PHA has the capability to develop the project and operate all of its projects in compliance with program requirements."

(See Handbook 7417.1 REV-1, Chapter 4, Section 3 and Chapter 5, Section 3.)

12-9. NON-EMERGENCY CIAP, MROP AND DEVELOPMENT APPLICATIONS, except for units provided for replacement housing pursuant to the 1987 Housing Act, should be approved only after it is verified by the Regional Office that the goals for a Troubled PHA under a fully executed MOA relating to failed performance were substantially achieved by the PHA. If such applications have received prior approval, the Regional Office should similarly condition the following implementation procedures on the achievement of those goals as they coincide with the appropriate quarter of the MOA:

- (1) Postpone execution of the ACC Amendment;
- (2) Postpone authorization to proceed under Force Account;

- (3) Postpone advertisement of A&E contracts;
- (4) Postpone bidding for construction contracts based on plans and specifications;
- (5) Postpone site approval (Development only); and
- (6) Postpone advertisement for Turnkey proposals (Development only).

2/90

12-10

12-10. CUMULATIVE REMEDIES. Section 508(C) of the ACC addresses cumulative remedies and provides as follows:

"The remedies of the Government, whether provided by law or by this Contract, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise, at the same or different times, of any other such remedies for the same default or breach or for any other default or breach by the Local Authority of any covenant or agreement on its part contained in this Contract."

12-11

2/90
