

CHAPTER 7. TARGETED INTERVENTIONS

7-1 OBJECTIVE. The objective of this Chapter is to provide guidance to Field Offices on targeted interventions.

7-2 PURPOSE OF TARGETED INTERVENTIONS.

A. HUD's use of targeted interventions. If a PHA and local leadership have shown themselves unwilling or unable to improve performance, despite attempts by HUD to address PHA problems cooperatively, HUD may be left with no alternative to a targeted intervention. Field Office staff should not hesitate to recommend such intervention when clearly justified. Examples include:

1. Violation of the ACC;

2. Resistance to the monitoring review final report or other previously agreed upon approach. The PHA and/or local leadership deny the problems and/or inappropriately place the blame on others;

3. Unwillingness to work with HUD to develop an acceptable OIP, IP or MOA;

4. Repeated failure to achieve overall improvement goals when the reason(s) are within the PHA's control.

B. The purpose of targeted interventions is not to "punish" the PHA but to enable improvement. The aim of intervention is to create the necessary conditions for improvement.

C. While the interventions outlined in paragraphs 7-3 through 7-7 are presented in order of increasing severity, HUD is not required to exhaust one remedy before moving to the next. Any one response can be selected and implemented, or used in combination with other intervening actions, if appropriate.

7-3 CONTROL OF PHA EXPENDITURES.

A. Limiting or controlling PHA expenditures includes such measures as instituting in-depth budget review and/or establishing specific limitations or conditions on expenditures that are related to the source of the PHA's failed performance. HUD review and approval of operating budgets for

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certain PHAs is an effective means of remotely monitoring a PHA's financial plan. Operating budget review enables HUD to take action correct PHA nonperformance/noncompliance by establishing specific limitations upon expenditures. The conditions under which a PHA shall be required to submit its operating budget to

HUD for review and approval are as follows:

1.All troubled PHAs shall be subject to an in-depth budget review by the Field Office;

2.Non-troubled PHAs failing one or more of the PHMAP financial indicators may also be required to submit operating budgets to the Field Office for review and approval;

3.Section 14 addresses those circumstances under which a substantial breach of the ACC related to operating expenditures can be determined to have occurred.

B.Imposition of Budgetary Limitations. The imposition of budgetary limitations will be warranted if a PHA is unable or unwilling to use its financial resources to solve its problems.

1.In conjunction with HUD budget approval, HUD may impose explicit conditions or limitations related to noncompliance; and/or

2.HUD may also 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.

C.Establishing procurement thresholds above which certain PHA modernization procurement documents must have prior HUD approval. Section 14 of the ACC addresses other defaults or breaches and other remedies. The Field Office may determine the need to impose procurement thresholds under the CIAP or CGP. Procurements covered include: (1) architectural and engineering (A&E) and other professional services contracts; (2) construction solicitation; and (3) contract modifications.

D.Withholding or conditioning discretionary funding; e.g., CIAP, MROP, development, resident initiatives grants, etc. The above interventions are interim sanctioning actions to demonstrate the seriousness of HUD's intentions, allow further assessment of the PHA's management capability, and prevent misuse of funds. The Department has found that withholding discretionary funding rarely produces improved performance and invariably

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damages housing authority residents. This sanction may, therefore, only be exercised by the Assistant Secretary, and Field Office staff must be prepared to provide substantial documentation to justify such a recommendation. Limiting or controlling funds (e.g., by requiring alternative management) may provide sufficient incentive for improvement. In fact, these measures can even become a vehicle for technical assistance and for protecting PHA management from unwanted political pressures. A positive reception should prompt the Field Office to try the actions outlined in paragraph 6-3B, "Carrying out cooperative

problem solving." However, if these actions do not inspire a renewed interest in cooperative problem-solving they shall not be sustained indefinitely. Rather, HUD shall follow with stronger actions designed to remove undesirable management and institute more direct HUD control over the PHA.

E. Issuing a notice of deficiency or corrective action order for CGP. Refer to the CGP Handbook 7485.3, Chapter 13.

7-4 REMOVAL OF PHA PERSONNEL.

A. Removing specific PHA personnel is appropriate only when PHA performance problems can be traced to certain individual(s), such as the Executive Director, other top management staff, or members of the Board of Commissioners. Under no circumstances shall this action be pursued without prior consultation with the Assistant Secretary for Public and Indian Housing Attention: Director. Office of Assisted Housing.

B. Field Office options. Field Office options include:

1. Working with the PHA Executive Director, Board of Commissioners, or local appointing authorities to facilitate the PHA's replacement of personnel.

2. Seeking Limited Denial of Participation (LDP). This administrative sanction is authorized in 24 CFR 24.700 and involves denial or conditioning, participation on a temporary basis. The Field Office Public Housing Director is authorized to order an LDP for any participant or contractor and its affiliate except HUD-FHA approved mortgagees. In each case, even if the offense or violation is criminal or fraudulent the decision to order an LDP shall be discretionary and in the best interests of the Government. 24 CFR 24.700 addresses the LDP, in part, as outlined below.

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

(1) Mismanagement could be a debarable offense. The sanctions of suspension or an LDP could also be used, as appropriate. As an example, a PHA that repeatedly fails to take adequate action to resolve findings from reviews, audits, and surveys represents a clear case of mismanagement;

(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 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 Field Office;

(12) Debarment or suspension by any other Federal agency for any cause substantially the same as provided in 24 CFR 24.305; or

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(13) Indictment or Information (prosecutor's legal document charging someone with a crime) shall constitute adequate evidence for the purpose of LDP actions.

b. An 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.

c. 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.

d. An LDP shall be initiated by advising a participant or contractor, and any specifically named affiliate, by mail, return receipt requested:

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(1) That the sanction is effective as of the date of the notice;

(2) 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;

(3) Of the cause(s) relied upon under 24 CFR 24.605 for imposing the sanction;

(4) Of the right to request in writing within 30 calendar 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;

(5) 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; and

(6)After 30 calendar 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.

e.Upon receipt of a request for 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 24.613. Although the formal rules of procedure contained in 24 CFR 24 do not apply to the conference, the participant or contractor may be represented 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

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participant shall be advised of the right to request a formal hearing in writing within 30 calendar days of receipt or notice of the decision. This decision shall be issued promptly, but in no event later than 20 calendar days after the conference and receipt of materials.

f.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 calendar 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 24.311.

3.Suspension and debarment are available as administrative sanctions pursuant to regulations at 24 CFR 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 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 related to 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.

4. Individuals facing LDP, suspension, or debarment have the right to an administrative hearing, at which HUD's motion may be denied. Therefore, it is critical that Field Offices do everything possible to build a strong case, specifically:

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a. Supply specific, complete, and well-documented evidence of poor performance and of HUD efforts to initiate improvement and provide fair warning of the impending action. Several months of written indications of specific performance violations and communications with the PHA about these violations are essential evidence. Thus, as noted previously, it is critically important that the Field Office document and justify all review findings and clearly inform the PHA of the results of all reviews.

b. Ensure that Field Office staff are briefed about the reasons for the action so that HUD testimony is consistent.

c. Caution Field Office staff against using pejorative or personal language about the PHA, since such language can encourage the judge to interpret the case as HUD's "personal vendetta."

d. Replacing specific PHA personnel through LDP, suspension, or debarment can provide the necessary impetus for change. If so, the Field Office should carry out those actions outlined in paragraph 6-3B,

"Carrying out cooperative problem solving." However, if these measures do not generate renewed interest in cooperative problem solving, they should be followed by stronger actions designed to institute more direct HUD control over the PHA.

7-5 ALTERNATIVE MANAGEMENT.

A. Instituting alternative management arrangements for a PHA's individual developments and/or functions provides HUD with a targeted means for bringing a PHA to an acceptable level of performance. This option is appropriate when HUD has identified persistent management weaknesses in specific areas of a PHA's operations; e.g., individual developments/all developments or particular functions such as the modernization function, and other actions/sanctions employed by the Field Office have been ineffective. It allows HUD to supplement or replace current PHA management in these areas, without having to assume direct control of the PHA's entire operation.

B. Section 502 of the National Affordable Housing Act (NAHA), as amended by the Housing and Community Development Act of 1992, provides HUD with the ability to take remedial action against a PHA once a determination has been made that a substantial default has occurred.

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1. Possible alternative management entities normally include private management companies, other PHAs, and resident management corporations (RMCs).

2. Withholding or conditioning discretionary HUD funding can be an effective incentive for achieving alternative management.

3. Instituting an alternative management arrangement for specific PHA developments or functions can provide the necessary impetus for improved performance. If so, the Field Office should pursue those actions outlined in paragraph 6-3B, "Carrying out cooperative problem-solving," working closely with alternative management entities, as well as PHA and local leadership to bring all units and functions to an acceptable level of performance.

4. If PHA and local leadership resist these measures and the PHA continues to perform poorly in those functions and developments that remain under its control, these actions should be followed by stronger actions, as deemed appropriate.

7-6 DECLARATION OF SUBSTANTIAL BREACH.

A. The declaration of substantial default or breach of contract is a drastic measure and should only be considered when: (1) PHA performance problems are severe, pervasive, and systemic; (2) the

PHA and/or the locality consistently and vigorously resists problem-solving efforts; and (3) other remedies have been exhausted or determined inappropriate because of the urgent need to take immediate action.

B. Based upon a Headquarters' finding of Substantial Default or Substantial Breach of the ACC by a PHA, sanctions may be imposed; i.e., freezing the PHA's bank accounts and funds, seeking court appointment of a receiver, taking over control of PHA management (putting private management in place, etc.), seeking a court injunction or action for specific performance, etc.

1. A plan for alternative management of the PHA should be developed. The effect of this action is to place the PHA under HUD's management control. When considering this option, it is critical that Field Office staff develop a concrete and specific plan for both transitional and long-term management of the PHA in advance of the actual declaration. The purpose of a transition plan is to ensure

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smooth PHA operations between the time of takeover and the institution of final management arrangements. Options include:

a. Retaining current PHA management, but exercising strict control through such mechanisms as freezing bank accounts and funds;

b. Procuring short-term "crisis management" services from other management entities that have been pre-approved by Headquarters for this purpose. On an interim basis, these entities can take over management of the entire PHA, individual developments, and/or specific functions; e.g., modernization, procurement, personnel administration.

2. The purpose of a long-term plan is to facilitate the installation of competent, permanent management at the PHA. Options include:

a. Persuading local leadership to install a new top management team and Board of Commissioners acceptable to HUD;

b. Procuring an alternative management entity to operate the entire PHA operation. Possible entities include private management firms, other PHAs, non-profit organizations, and resident organizations; or

c. Procuring alternative management entities to operate selected developments and/or functions. Possible entities include other PHAs, non-profit organizations and private management companies.

3.As with an LDP, suspension, and debarment, the PHA has the right to contest HUD's action. Therefore, it is critical that the Field Office anticipating such an action build a credible case and carry out the procedure in a professional manner. Key ingredients for successful prosecution of substantial default or breach include:

a. Specific, complete, and well-documented evidence of the PHA's poor performance and of HUD efforts to initiate improvement and provide fair warning of the impending action. At least several months of written indications of specific performance violations and communications with the PHA about these violations are essential. Thus, as noted previously, it is critically important that the Field Office document and justify all review findings and clearly inform the PHA of the results of all reviews;

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b. Ensuring that Field Office staff are briefed about the reasons for the action; and

c. Cautioning Field Office staff against using pejorative or personal language about the PHA.

4. Once a new management team has been installed, the Field Office should follow those steps outlined in paragraph 6-3, "Seeking and Carrying Out Cooperative Problem-Solving."

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