

**§ 901.130**

**24 CFR Ch. IX (4-1-06 Edition)**

if the reason the PHA received a deficient grade in any indicator or component was due to the fact the PHA did not submit a required report in a timely manner or without an approved time extension.

(iii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a failing grade in any indicator or component was due to the fact that the PHA did not provide justifying documentation to the independent auditor for any indicator(s) or component(s) the PHA certified to.

(2) The appeal shall be submitted to the State/Area Office and shall include supporting documentary justification of the reasons for the appeal.

(3) The State/Area Office will make determinations on initial appeals and will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(4) Appeals submitted to the State/Area Office without appropriate documentation will not be considered and will be returned to the PHA.

(b) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary for Public and Indian Housing.

(c) A PHA may appeal the denial of an initial appeal by the State/Area Office to the Assistant Secretary for Public and Indian Housing for the following reasons:

(1) Initial appeals denying high performer designation;

(2) Initial appeals denying the removal of troubled designation;

(3) Initial appeals denying the removal of mod-troubled designation;

(4) The denial of an appeal of a determination of intentional false certification;

(5) Data errors;

(6) The denial of exclusion or modification requests when their denial affects a PHA's total weighted score;

(7) The denial of an adjustment based on the physical condition and neighborhood environment of a PHA's developments;

(8) The refusal of a petition in accordance with § 901.140 to remove troubled or mod-troubled designations.

(d) A PHA may appeal its management assessment rating to the Assistant Secretary for Public and Indian Housing only for the reasons stated in paragraph (c) of this section.

(e) A PHA may not appeal its PHMAP score to the Assistant Secretary unless it has submitted its certification to the State/Area Office.

(f) Appeals submitted to the Assistant Secretary for Public and Indian Housing without appropriate documentation will not be considered and will be returned to the PHA.

(g) The date and place by which any appeal must be submitted will be specified in the letter from the State/Area Office notifying the PHA of any determination or action. For example, the State/Area Office initial notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

**§ 901.130 Incentives.**

(a) A PHA that is designated high performer or standard performer will be relieved of specific HUD requirements, effective upon notification of high or standard performer designation.

(b) A PHA shall not be designated a mod-high performer and be entitled to the applicable incentives unless it has been designated an overall high performer.

(c) High-performing PHAs, and RMCs that receive a grade of A on each of the indicators for which they are assessed, will receive a Certificate of Commendation from the Department as well as special public recognition.

(d) Representatives of high-performing PHAs may be requested to serve on Departmental working groups that will advise the Department in such areas as troubled PHAs and performance standards for all PHAs.

(e) State/Area Offices may award incentives to PHAs on an individual basis

for a specific reason(s), such as a PHA making the right decision that impacts long-term overall management or the quality of a PHA's housing stock, with prior concurrence from the Assistant Secretary.

(f) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36):

(1) PHAs will still be subject to regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(g) In exceptional circumstances, the State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with § 901.115(i).

#### § 901.135 Memorandum of Agreement.

(a) After consulting the independent assessment team and reviewing the report identified in section 6(j)(2)(b) of the 1937 Act, a Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and/or mod-troubled. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem, or other relevant areas identified as problematic;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent actions, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(b) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;