

§ 901.205

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

(d) The Department may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(e) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

§ 901.205 Notice and response.

(a) If information from an annual assessment, as described in § 901.100, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs," or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(s) of the Board, and shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (d) of this section, the Department will take control of the PHA, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 901.210, and any additional authority for such action.

(d) Upon receipt of the notification described in paragraph (c) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in the Department's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

§ 901.210 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an AME to assume

management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA; and

(4) The provision of intervention and assistance necessary to remedy emergency conditions.

(c) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 901.215 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a noncompetitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.220 Resident participation in competitive proposals to manage the housing of a PHA.

(a) When a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP) pursuant to section 6(j)(3)(A)(i) of the 37 Act, the RFP, in addition to publishing the selection criteria, will:

(1) Include a requirement for residents to notify the Department if they want to be involved in the selection process; and

(2) Include a requirement for the PHA that is the subject of the RFP to post a notice and a copy of the RFP in a prominent location on the premises of each housing development that would be subject to the management chosen under the RFP, for the purposes of notifying affected residents that:

(i) Invites residents to participate in the selection process; and

(ii) Provides information, to be specified in the RFP, on how to notify the Department of their interest.

(b) Residents must notify the Department by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify the Department must equal at least 20 percent of the residents, or the notification of interest must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

(c) If the required percentage of residents notify the Department, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory members are subject to all applicable confidentiality and disclosure restrictions.

§ 901.225 Resident petitions for remedial action.

The total number of residents that petition the Department to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of