

(5) Incentives for meeting the targets, such as the removal of Grade F PHA designation;

(6) The consequences for failing to meet the targets including, but not limited to, the sanctions that may be imposed. Sanctions include the imposition of budget and management controls by HUD, declaration of substantial default, and subsequent actions. Subsequent actions include judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions HUD deems appropriate; and

(7) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the MOA and rectifying the PHA's deficiencies.

(d) *Parties to the MOA.* An MOA will be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution) or a receiver (pursuant to a court ordered receivership agreement, if applicable);

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

(3) The Director of the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA.

(e) *Failure to execute MOA or improve performance under MOA.* HUD will take further action if the PHA fails or refuses to execute an MOA within the period provided in paragraph (b) of this section, or the PHA operating under an executed MOA does not improve its performance as provided in paragraph (f) of this section. HUD shall take the actions required by § 902.77(a).

(f) *Recovery.* (1) Two year maximum recovery period. After referral to the appropriate HUD office for remedial action, the PHA has two years to improve its performance as measured by the PHAS indicators. The PHA must improve its performance in each year of the two-year period as required by the Act or HUD will take further action as set forth in § 902.77.

(2) *Benchmarks.* (i) By the end of the first year, the PHA must make the following improvements. For a Grade F PHA, for each indicator with a grade of F, the PHA must improve that indicator's grade value by at least 50 percent of the difference between its value and the minimum grade value for a grade of D. For a Capital Fund Grade F PHA, the PHA must obligate 50

percent of the unobligated funds and/or expend 50 percent of the unexpended funds.

(ii) By the end of the second year, the PHA must make the following improvements. For a Grade F PHA, the PHA must achieve an overall PHAS grade of D and a grade of D for each of the four indicators. For a Capital Fund Grade F PHA, the PHA must obligate 100 percent of the unobligated funds and/or expend 100 percent of the unexpended funds.

(iii) The end of the first year is one year from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation. The end of the second year is two years from the date the PHA receives the initial notice of its final overall PHAS grade and Grade F PHA designation.

(g) *Audit review.* HUD shall perform an audit review and may, at its discretion, select the audit firm to perform the audit of the PHA that is a Grade F PHA. Further, HUD may, at its discretion, serve as the audit committee for the audit in question.

(h) *Continuation of services to residents.* To the extent feasible, all services to residents will continue uninterrupted during the time a PHA is a Grade F PHA and under jurisdiction of the appropriate HUD office.

§ 902.77 Actions and sanctions.

(a) *Actions against Grade F PHAs.* (1) Failure to execute or meet the MOA requirements. The failure of a Grade F PHA to execute or meet the requirements of an MOA in accordance with § 902.75 constitutes a substantial default under § 902.79. The HUD office with jurisdiction over the PHA while the PHA is a Grade F PHA will recommend to the Assistant Secretary that the PHA be declared in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within a period not to exceed 30 days unless the Assistant Secretary determines that a longer period is appropriate, HUD shall take further action.

(2) *Actions.* (i) For PHAs with fewer than 1250 units, HUD shall initiate either the judicial appointment of a receiver or an administrative receivership.

(ii) For PHAs with 1250 or more units, HUD shall initiate the judicial appointment of a receiver or an administrative receivership, but may only initiate an administrative receivership while HUD's petition for judicial receivership is pending.

(iii) For all PHAs, following the recommendation of the Assistant Secretary, HUD shall initiate the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Actions against other PHAs in substantial default.* A PHA that is not a Grade F PHA, but that has been found to be in substantial default under the provisions of § 902.79 also is subject to further action. The Assistant Secretary makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period of time, HUD shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83, as recommended by the Assistant Secretary. HUD also may initiate such other available sanctions, including limited denial of participation, suspension, debarment, and referral to the appropriate federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3) of the Act (42 U.S.C. 1437d(j)(3)).

(2) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(3) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(4) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (c)(3) of this section, in accordance with section 6(j)(3)(D) of the Act.

(d) *Continuation of services to residents.* To the extent feasible, all services to residents shall continue uninterrupted, during the time a PHA is under referral to HUD.

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The