

## CHAPTER 12. HUD RESPONSIBILITY: REVIEW OF HA PERFORMANCE

12-1.OBJECTIVE. The objective of this Chapter is to provide guidance to the FO on developing and carrying a monitoring strategy and to set forth requirements for an annual in-office review, resulting in an annual determination of HA performance, and for communication of deficiencies and design of corrective action.

A. A CGP monitoring strategy should be designed to:

1. Establish a framework for determining the appropriate level of monitoring for each HA, consistent with available resources;
2. Obtain sufficient information to make the determinations required by paragraph 12-8, regarding the HA's conformity with the Comprehensive Plan, continuing capacity, and reasonable progress;
3. Support the HA's flexibility in planning and carrying out its modernization strategies under the CGP;
4. Determine HA compliance with program requirements;
5. Ensure that modernization work is progressing efficiently and effectively to preserve or restore housing to decent, safe and sanitary condition for residents;
6. Assure that Federal funds are being managed properly and not being wasted or used for fraudulent purposes; and
7. Assist the HA to improve its performance, and enhance its management and technical capacity.

B. In reviewing HA performance under the CGP, the FO shall determine whether the HA is complying with the statutory and regulatory requirements of the CGP. In the area of management improvements, the FO will determine whether the HA carried out the activities set forth in its Annual Statement or Five-Year Action Plan, but not whether those activities resulted in the correction of the identified management deficiency. For example, a PHA has a management deficiency under the Public Housing Management Assessment Program (PHMAP) related to vacancy number and percentage and the PHA's proposed activity to correct the

deficiency is to develop and issue a revised occupancy manual as a CGP-funded management improvement. In evaluating performance under the CGP, the FO will determine

whether the PHA issued the manual within the established target date, but not whether vacancies were actually reduced. In whether vacancies were actually reduced and take appropriate action to remedy any lack of performance in achieving vacancy reduction.

- C. In conducting reviews for HA compliance with CGP requirements under subparagraph B, including on-site monitoring reviews, the FO shall determine whether the HA is carrying out the physical and management improvement activities set forth in the Annual Statement or Five-Year Action Plan. If during the conduct of such reviews, the FO identifies new management deficiencies, through PHMAP or other monitoring, not addressed in the HA's Comprehensive Plan, the FO shall pursue correction under the PHMAP for PHAs or under '950.135 for IHAs. Where new management deficiencies are subsequently addressed in a Memorandum of Agreement (MOA)/Improvement Plan (IP) for PHAs or a Management Improvement Plan (MIP) for they shall result in an amendment to the Management Needs Assessment in the subsequent year FFY, as needed.

12-2.APPROACH TO CGP MONITORING. The FO should view CGP monitoring not as a once a year or periodic activity, but as a continuous process. Such a process involves telephone contacts, written communications, analysis of reports and audits, and periodic meetings. The overriding goal of monitoring should be to avoid deficiencies and, where possible, to ensure satisfactory HA performance. The emphasis should be on prevention, detection, and correction, with a positive attitude on the part of HUD staff. Whenever possible, deficiencies should be corrected through discussion, negotiation or technical assistance in a manner that maximizes HA flexibility and discretion. The two major types of CGP reviews, the on-site monitoring review and the annual in-office monitoring review, are discussed in paragraphs 12-5 and 12-7, respectively.

12-3.SCOPE OF CGP MONITORING. Section 14(e)(4)(B) of the Act requires that HUD, at least annually, conduct whatever reviews are necessary to determine whether the HA has carried out its activities on a timely basis in conformance with its Comprehensive Plan, has a continuing capacity to carry out its Plan, and is making reasonable progress toward satisfying Secretary-prescribed performance standards and toward completion of its modernization. As further defined by the regulation, CGP monitoring focuses on six key areas which are:

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1) timeliness of work; 2) completion of physical work to modernization and energy conservation standards; 3) eligibility of work items in relation to overall eligibility, specific program rules, and consistency with the Annual Statement and Five-Year Action Plan; 4) compliance with procurement requirements; 5) compliance with financial management

requirements; and 6) reasonable progress to meet the needs identified in the Physical and Management Needs Assessments, whether or not these needs are funded by the CGP. Non-CGP monitoring may produce information or reports that can be incorporated into CGP monitoring.

12-4. USE OF RISK ANALYSIS. The FO shall use a risk analysis methodology to: establish priorities for monitoring; determine the most effective use of staff and travel resources; determine which HAs require more frequent on-site monitoring than the time frames in paragraph 12-5C; identify the functional areas within the CGP to be emphasized; and determine the intensity of the on-site review. Use of risk analysis will ensure that those HAs which represent the greatest vulnerability to fraud, waste, and mismanagement receive a level of monitoring appropriate to their level of vulnerability. The FO shall conduct a risk analysis for each HA using the following four general risk factors: program complexity; local capacity; recent problems; and past monitoring. Based on the significance of the problems identified, the FO shall prioritize HAs for on-site review and establish its monitoring strategy.

A. Program complexity includes, but is not limited to:

1. Large CGP grant amounts;
2. Large number of high cost developments;
3. Activities involving subgrantees, such as RMCS; and
4. Modernization activities which are particularly complex or which involve multiple parties.

B. Local capacity includes, but is not limited to:

1. Staff turnover;
2. Experience level of HA staff;

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3. Past ability to adequately carry out CIAP or CGP activities and responsibilities;
4. Adequacy of progress;
5. Productivity of staff; and
6. Previous CIAP experience.

C. Recent problems include, but is not limited to:

1. Inaccurate or incomplete reports;
2. Audit findings or no audit;

3. Resident/citizen comments or complaints, including those received under paragraph 11-4B;
  4. Failure to meet implementation schedules set forth in approved Annual Statements;
  5. Issues remaining from a previous monitoring review;
  6. Trending which indicates that a problem is worsening; and
  7. Litigation.
- D. Past monitoring includes, but is not limited to:
1. Recurring findings;
  2. Inability to clear findings adequately;
  3. Need to review actions taken to clear previous findings; and
  4. No on-site review for a long period of time.

12-5. ON-SITE CGP MONITORING REVIEW.

- A. Intensity of On-Site Review. The on-site CGP monitoring review may be a limited review or an in-depth, comprehensive review of the HA's CGP activities. The intensity of the review shall be dictated by the risk analysis factors described in paragraph 12-4. HAs with large, complex CGP programs and PHAs which are

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- designated Mod Troubled under the PHMAP shall receive in-depth monitoring. HAs that have not been monitored in-depth in the recent past or whose capacity has been weakened due to staff turnover also may be scheduled for more intensive reviews.
- B. Frequency of On-Site Review. The following time frames are the standards for the frequency of on-site reviews. However, on-site reviews may be conducted more or less frequently, based on the FO's use of risk analysis in paragraph 12-4. The on-site CGP review may be combined with other reviews to maximize the use of staff and travel resources.
1. For PHAs designated Mod Troubled under the PHMAP, the standard for on-site monitoring is two times per year.
  2. For all other HAs, the standard for on-site monitoring is once a year.

C. Coverage of On-Site Review. The FO is responsible for determining whether the HA has adequate systems and controls in place to ensure its own compliance with program requirements during its implementation of the CGP, and for monitoring the HA's adherence to its own systems and controls. The FO shall review the HA's systems and test whether those systems are working by sampling the HA's activities in the following areas during the on-site review:

1. HA inspection reports to determine whether the HA or its architect has adequately inspected its modernization activities to ensure that the physical work is being carried out in accordance with the plans and specifications;
2. Inspection of the physical work completed and in progress to ensure that the activities undertaken are eligible modernization activities and in compliance with the modernization and energy conservation standards and with program accessibility requirements at 24 CFR 8.23 regarding substantial and other alterations, and that any problems with work quality are being corrected;
3. Inspection of units and review of HA annual unit inspections reports to determine the extent to which physical needs identified in the Physical Needs Assessments have been met

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and brought up to the modernization and energy conservation standards;

4. Supporting documentation, maintained on file at the HA in support of the Comprehensive Plan, to ensure that modernization activities are consistent with the needs identified; and records documenting the degree and adequacy of resident consultation and participation;
5. Compliance with requirements for procurement and contract administration;
6. Correctness of HA revisions to the Annual Statement which did not require prior HUD approval;
7. Compliance with HUD financial management and accounting requirements with respect to the HA's internal controls for its modernization program, as determined by the fiscal audit;
8. Compliance with other statutory and regulatory requirements, such as displacement, relocation and acquisition requirements;

9. Review of the HA's progress toward obligating and expending funds and completing the work set forth in the Annual Statement;
10. Analysis of the HA's overall capability and the need for additional monitoring;
11. HA's compliance with carrying out management improvement activities set forth in the Annual Statement or Five-Year Action Plan; i.e., the HA undertook or is undertaking what it planned to undertake;
12. Other concerns resulting from the use of risk analysis or from the annual in-office CGP monitoring review; and
13. Where the environmental reviews are conducted by the responsible entity, there is a separate Environmental Review Record (ERR) for each development in the Five-Year Action Plan, which meets all requirements of 24 CFR Part 58; and no physical activities were initiated and no grant funds were obligated or expended before FO execution of Form HUD-

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7015.16, Notice of Removal of Grant Conditions.

12-6. CONFIRMATORY REVIEW/RISK ASSESSMENT.

- A. Public Housing PHMAP Confirmatory Review. The PHMAP confirmatory review is an on-site validation of a PHA's performance under all of the PHMAP indicators. The confirmatory review is performed to verify FO documentation and information to which the PHA has certified regarding its performance. The PHMAP confirmatory review is a separate activity from the on-site CGP monitoring review, although both may be conducted during the same visit to the PHA. However, the PHMAP confirmatory review presents an opportunity to verify FO information concerning PHA performance under the PHMAP indicator relating to modernization.
- B. Indian Housing Risk Assessment and Determination for Allocation of Resources (RADAR). The RADAR is an annual in-office evaluation of the IHA's compliance with programmatic requirements and risk assessment for the purpose of prioritizing FO monitoring of IHAS.

12-7. ANNUAL IN-OFFICE CGP MONITORING REVIEW. The FO shall annually conduct an in-office review during the 75-day period of October 1 - - December 15. In the beginning of the HA's participation in the CGP, the FO shall assess the HA's performance under the CIAP. After the first full operational year of the CGP for any given

HA, the FO shall not consider CIAP experience, except where the HA has not yet had comparable experience under the CGP.

A. Sources of Information. The annual in-office review uses data available at the FO to monitor HA performance under the CGP. At a minimum, these data shall include, but not be limited to:

1. Required CGP reports, including: Form HUD-52837, Performance and Evaluation Report; narrative report on resident and local/tribal government participation during CGP implementation and summary of comments received on draft Report, as set forth in Chapter 11; and, where applicable, Form HUD-52842, Performance and Evaluation Report on Replacement Reserve;
2. Latest HUD-approved Comprehensive Plan, including the Five- Year Action Plan, and the Annual Statement;

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3. Most recent PHMAP/RADAR ratings, to determine the HA's overall performance and whether the HA is adequately addressing management deficiencies identified by the PHMAP/RADAR (see paragraph 12-6);
4. Previous monitoring reports, including CIAP reviews, PHMAP confirmatory reviews, and other reviews;
5. Independent audit reports;
6. Litigation records;
7. Contract files, where prior HUD approval was required; and
8. Coordination with other functional areas, such as Community Planning and Development, Labor Relations, Fair Housing and Equal Opportunity, HUD Counsel, and the Contracting Officer, as appropriate.

B. Review of CGP Report Submission. As part of the annual in-house review, the FO shall review the CGP report submission from the HA, using the Annual In-Office CGP Monitoring Review and HUD Determinations Checklist in Appendix 12-1. A copy of the completed Checklist shall be retained in program files for each HA.

1. Completeness Review. Within 14 calendar days of receipt, the FO shall review the Report for completeness. The FO shall promptly either return the incomplete Report to the HA for correction and resubmission or, for minor changes, record a telephone correction from the HA. Where the FO determines that the Report is complete, no letter to the HA is required

and the FO shall enter receipt of the Report in LOCCS before reviewing the Report for substance. If the FO does not enter receipt of the Report within 30 days after the due date of September 30, LOCCS will automatically suspend future payments for the grant. The HA shall make any additions or modifications resulting from the completeness review within 30 calendar days from the date of return by the FO.

2. Substantive Review. After the Report has been determined to be complete, the FO shall conduct the substantive review and make the determinations set forth in paragraph 12-8, using the Checklist in Appendix 12-1.

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12-8.HUD DETERMINATIONS. At least annually, in conjunction with the annual

in-office monitoring review in paragraph 12-7, and at any other time during the year where circumstances warrant new determinations, the FO shall make the following determinations. [Sec. 14(g); Sec. 14(e)(4)(B)]; ['968.335(a) or '950.660(a)]

- A. Conformity with Comprehensive Plan. The FO shall determine whether the HA has carried out its activities in a timely manner and in accordance with its Annual Statement, latest HUD-approved Five-Year Action Plan, and other statutory and regulatory requirements.
- B. Continuing Capacity. Although the FO determines whether a PHA is Mod Troubled under the PHMAP or an IHA is high risk under '950.135, the FO shall determine whether the HA has a continuing capacity to carry out its Comprehensive Plan in a timely manner and expend the annual grant funds.
  1. In general, HUD expects that the HA will obligate its current year's allocation of CGP funds within two years of the date of receipt from HUD and expend such funds within three years of the date of receipt from HUD, unless longer time frames are initially approved by the FO.
  2. The FO shall give particular attention to HA efforts to accelerate the progress of its modernization program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.
- C. Reasonable Progress. The FO shall determine whether the HA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:
  1. With respect to the physical condition of each development whether the HA has brought, or is making reasonable progress toward bringing, all of its developments to the modernization and energy

conservation standards; and

2. With respect to the management condition of the HA, whether the HA has implemented or is implementing the work specified in the Annual Statement or Five-Year Action Plan, which are designed to address deficiencies identified through the PHMAP/RADAR, HUD reviews, or audits.

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12-9.DOCUMENTS FOR COMMUNICATING DEFICIENCIES. In the CGP, there are three

methods for communicating HUD determinations of deficiency: a letter; a notice of deficiency; and a corrective action order.

- A. Letter. A letter shall cover minor issues, situations where similar lapses have generally not occurred in the past, or errors which are infrequent and not typical of the HA's performance. A letter may provide non-binding advice concerning HA priorities and other matters involving judgement. A letter may be used alone or refer to an attached notice of deficiency or corrective action order which covers more serious concerns. For example, a letter covering a variety of minor concerns, such as occasional lapses in maintenance or complete back-up data, may reference an attached corrective action order prescribing steps to be taken regarding a serious, long-standing procurement issue.

- B. Notice of Deficiency or Corrective Action Order.  
['968.335(b) and (c) or '950.660(b) and (c)]

1. A notice of deficiency shall be issued, in lieu of a letter, when the deficiency is of a more serious nature, has persisted for a substantial period of time, or represents a pattern of errors and the FO believes that the HA will promptly comply with the FO request that the HA take corrective action. It is important to note that, in a notice of deficiency, the FO requests, not orders corrective action by the HA. It is not necessary for HUD Counsel to review and approve a notice of deficiency because the notice does not become a part of the ACC Amendment. The notice shall be issued by the OPH Director/ONAP Administrator.
2. A corrective action order shall be used to address the same type of deficiencies as a notice of deficiency in cases where the FO is not confident that the HA will comply unless corrective action is ordered, not requested. It is not necessary for a notice of deficiency to precede a corrective action order. However, if a notice has been issued and the HA has not complied, a corrective action order should be issued quickly to ensure compliance. A corrective action

order shall be concurred in by HUD Counsel and issued by the OPH Director/ONAP Administrator. An order becomes a formal part of the ACC Amendment and is enforceable by declaration of breach of the ACC or by withholding funds.

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3. A notice of deficiency or corrective action order shall include the following:
  - a. A citation of the section of the regulation which has been violated;
  - b. A statement of actions that the HA has taken or failed to take which are in violation of the referenced citation(s). The HA's failings must be fully documented by current, accurate information and based on an adequate sample to show the extent and frequency of the problem; and
  - c. A description of the corrective action HUD is requesting (in the case of a notice of deficiency) or requiring (in the case of a corrective action order), the date on which it is to be accomplished (where applicable), and any related reporting requirements. Corrective action may include not only a requirement that the HA correct the deficiency, but also such actions as submitting additional information, submitting documents for prior HUD approval, and not expending funds for particular activities, except with prior HUD approval.

12-10.PROCEDURES FOR COMMUNICATING DEFICIENCIES. A letter, notice of deficiency, or corrective action order may be issued at any time.

However, to ensure that HUD determinations are made at least annually, as required by the statute, and communicated appropriately to the HA, the FO shall make an annual determination of deficiencies.

- A. Annual Determination. During the period of October 1 - December 15, the FO shall annually determine whether the HA has any deficiencies listed in subparagraph C and determine whether any new notice of deficiency or corrective action order should be issued and whether any outstanding notices or orders should be revised or withdrawn.
- B. Communication to the HA.
  1. No later than December 15 of each year, at the completion of the in-house review, a letter shall be sent to each CGP agency stating that there are no deficiencies under subparagraph C or describing any deficiency determined under subparagraph C. Where

deficiencies are identified, the letter may include a proposed new or revised notice or

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order or withdrawing outstanding notices or orders, as appropriate. Similarly, at the completion of any on-site monitoring, the FO shall send to the HA a written summary of the nature of the visit and a statement of any deficiencies found, attaching any proposed new or revised notice or order or withdrawing outstanding notices or orders, as appropriate.

2. The FO shall send any proposed new or revised notice or order to the HA with an invitation to discuss or comment on it within the next 30 calendar days. Letters which do not include a notice or an order as an attachment do not need to include an invitation for comment since they are advisory in nature and cover minor issues or provide non-binding advice.
3. Based on discussions with or information from the HA, the FO may revise the determination of deficiency or the proposed corrective action for such reasons as more current or accurate information, a new assessment of the nature of the deficiency, or a proposal of more appropriate corrective action, or may determine that issuance of a notice or order is not appropriate at that particular time.
4. At the conclusion of the 30-day period, the FO shall send to the HA the letter either with the notice or order or informing the HA that no notice or order will be issued at that time, including the reasons why.

C. Basis for Notice of Deficiency and Order of Corrective Action. The FO may issue a notice of deficiency or corrective action order only if the FO makes a determination of one of the following compliance deficiencies: [Sec. 14(e)(4)(D)]; ['968.335(d) or '950.660(d)]

1. The HA has not submitted the required annual Report in accordance with Chapter 11;
2. The HA has not carried out its activities under the CGP in a timely manner and in accordance with the Annual Statement or the latest HUD-approved Five-Year Action Plan, or other HUD requirements, as set forth in paragraph 12-8A;
3. The HA does not have a continuing capacity to carry out its Comprehensive Plan in a timely manner or expend its annual

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grant funds, as set forth in paragraph 12-8B;

4. The HA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph 12-8C. Failure to meet PHMAP performance standards is not a management deficiency under the CGP; however, failure to carry out actions and strategies identified in the Annual Statement or Five-Year Action Plan to remedy PHMAP failures is a deficiency under the CGP;
  5. An audit conducted in accordance with 24 CFR Part 44 or other HUD reviews reveals deficiencies that the FO reasonably believes require corrective action;
  6. The HA has failed to repay HUD for amounts awarded under the CGP that were improperly expended; or
  7. An IHA is determined by HUD to be high risk in accordance with '950.135, or the IHA fails to meet, or make reasonable progress toward meeting, the goals established in its MIP under '950.135.
- D. Purpose of Corrective Action. The FO shall design corrective action to: prevent a continuation of the deficiency; mitigate any adverse effects of the deficiency to the extent possible; and prevent a recurrence of the same or similar deficiencies.
- E. Types of Corrective Action. The FO may direct the HA to take one or more of the following corrective actions to bring it into compliance: ['968335(e) or '950.660(e)]
1. Correct the deficiency in a time period prescribed by HUD;
  2. Submit additional information:
    - a. Concerning the HA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for the HA not meeting the standards in paragraph 12-8;
    - b. Explaining any steps that the HA is taking to correct the deficiencies;
    - c. Documenting that HA activities were consistent with the HA's Annual Statement, Five-Year Action Plan, or other applicable laws, regulations, or program requirements; and

- d. Demonstrating that the HA has a continuing capacity to carry out the Comprehensive Plan in a timely manner.
3. Submit schedules for completing the work identified in its Annual Statement and report more frequently on its progress in meeting the schedules;
4. Notwithstanding '85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:
  - a. Proposed architectural/engineering (A/E) and other professional services contracts before execution;
  - b. Complete construction and bid documents before issuing solicitations,
  - c. Proposed award of contracts, including construction and equipment contracts and management contracts; or
  - d. Proposed contract modifications prior to issuance.
5. Submit supporting material to document one or more of the statements, resolutions, and certifications submitted as part of the HA's Comprehensive Plan, Annual Statement or Performance and Evaluation Report;
6. Not to incur financial obligations. Note: The FO may suspend payments for one or more activities;
7. Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;
8. Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function; or
9. Take such other corrective actions that the FO determines appropriate to correct HA deficiencies consistent with

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outstanding regulations and guidance.

- F. Assessment of Compliance with Notices and Orders. The FO shall monitor compliance with all reporting dates and progress deadlines established in the notice of deficiency or corrective action order and shall assess all outstanding notices and orders to determine the following:
  1. If progress under the notice or order has been sufficient to eliminate or substantially reduce the

deficiency, the notice or order shall be terminated by notification to the HA. A copy of this notification shall be attached to the ACC Amendment.

2. If progress under the notice or order has been poor, the FO shall consider ordering alternative corrective action by issuing a new, more stringent notice or order, or changing from a notice to an order. The new notice or order must comply with all provisions of paragraph 12-9B and 12-10B, including consultation with the HA.
3. If the HA has failed to take the action required in a corrective action order, the FO shall either issue a new order, take steps toward declaration of breach of the ACC with respect to all or some of the HA's functions, issue sanctions against responsible individuals, take steps toward withholding funds, or take other sanctions authorized under law or regulation, as described in paragraph 12-12.

12-11. GUIDANCE FOR DETERMINATION OF DEFICIENCIES AND DESIGN OF APPROPRIATE CORRECTIVE ACTION.

- A. General Principles. Section 119 of the Housing and Community Development Act of 1987, in establishing the CGP, stated as one of its purposes "to provide considerable discretion to HAs to decide the specific improvements, the manner of their execution, and the timing of the expenditure of funds in the modernization of developments under Section 14 of the United States Housing Act of 1937." Accordingly, not only is the scope of HUD's up-front review of the Comprehensive Plan and Annual Statement markedly limited, but HUD review of program operations should also encourage and permit HAs as much flexibility as possible, maintaining compliance with the law, regulations, and other HUD requirements.

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1. All thresholds applicable in the CIAP are automatically removed for the CGP program (see paragraph 10-4). Therefore, any notice or order establishing prior HUD review shall be based on an up-to-date assessment of current capability as well as recent experience and past performance. For an HA just entering the CGP, if the HA's submissions under the CIAP were substantially correct, there should be no need to impose thresholds for the CGP.
2. All notices and orders shall be based on one of the deficiencies in paragraph 12-10C. Failure to comply with CIAP requirements, such as failure to submit required information in a timely manner, is not a basis

for a CGP notice or order. However, notices and orders should be fully considered in the first year of the CGP, based on CIAP experience in relation to the specific deficiencies listed in paragraph 12-10C.

3. Corrective action shall be targeted at and justified by the specific deficiency to which it is addressed.
4. Failure to take the corrective action specified in a notice is grounds for issuance of an order where the original deficiency still exists. However, failure to take the correction action specified in a notice is not grounds for issuance of an order where the original deficiency no longer exists. For example, if a notice requests prior HUD approval of contracts because there has been a finding that work has not been done to the modernization standards and the HA has not submitted its contracts for prior HUD review, an order cannot be issued to correct that deficiency unless the work is still not being done to the modernization standards.
5. If the HA uses CGP funds for ineligible purposes, the FO may use an order to require the HA to repay HUD from nonprogram funds. If such repayment is not forthcoming, the FO may recommend withholding of a portion of the HA's next year's grant pursuant to paragraph 12-12.
6. Items that are repaired or replaced in one year may sometimes require repair or replacement in a subsequent year. Generally, such action should not result in a determination of a deficiency. However, where the HA has had a documented high rate of failure of a particular piece of equipment or a rehabilitation practice with a usable

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lifetime well below expected norms for the situation and degree of wear, the FO may issue a notice or order to prevent the HA from continuing to use that type of equipment or rehabilitation practice.

B. Examples of Use of Letters, Notices, and Orders.

1. If the HA expends CGP funds on an ineligible item, the FO shall direct the HA in writing to charge the item to another program, if appropriate, and reimburse the CGP. The FO letter shall confirm any conversation with HA staff.
2. If a small percentage of units inspected show incomplete or poor workmanship in a few items, the FO should handle the matter as set forth in subparagraph B1, through an oral conversation and a confirming

letter requesting that the HA go back to the contractor and have the items corrected. However, if the quality failures are more serious, or there is a persistent pattern of failure, a notice or order should be issued.

3. If the HA continues to fail to perform cost analyses on A/E contracts despite the provision of technical assistance and the issuance of a letter requesting correction of the deficiency, a notice/order should be issued requesting/requiring that the HA specifically hire a person to carry out this requirement, or obtain prior FO approval on all A/E contracts exceeding a certain amount, or take any other appropriate action to correct the deficiency.
4. If the HA has a pattern of slippage where several contracts are significantly behind schedule without any action on the part of the HA to enforce the schedule, the FO may handle the situation through an oral conversation and a confirming letter if the slippage has not been typical of the HA's behavior in the past. If the slippage represents a continuing pattern, a notice or order should be issued.

12-12.FAILURE TO COMPLY WITH CORRECTIVE ACTION ORDER. [Sec. 14(e)(4)(D)]; ['968.335(f) or '950.660(f)]

- A. Available Compliance Mechanisms. If the HA fails to take the required corrective action, in addition to issuing a more stringent order HUD may withhold funds temporarily until the HA has corrected the deficiency and can administer the funds

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- legally and responsibly. Such withholding provisions apply on a case-by-case basis to all HAs, including those designated as Mod Troubled, and are not related to the reductions in formula funding for Mod Troubled PHAs under paragraph 3-9. In addition, for substantive non-compliance by the HA, HUD may declare breach of the ACC with respect to all or some of the HA's functions so that such functions or the entire HA can be administered by another entity.
- B. Use Of Compliance Mechanisms. It is not HUD's intention to withhold funds and then reallocate the funds to other HAs, except in the most extreme and rare cases where it is not possible to resolve the situation in a more satisfactory manner. Wherever possible, it is HUD's intention to permit the full formula share to be available to each HA so that its physical and management deficiencies may be corrected and decent, safe and sanitary housing may be provided to residents.
  - C. Procedures.

1. Before recommending declaration of breach or withholding of funds, the FO shall give the HA, within a prescribed period of time, an opportunity to provide any additional facts and data concerning the proposed action. The FO's recommendation shall be sent to Headquarters for review and action. The recommendation shall include supporting documentation in the form of copies of all corrective action orders issued to the HA with which the HA failed to comply, data that documents the continuing existence of the deficiency or deficiencies on which the orders were based and the failure to comply with the orders, all correspondence with the HA and written reports of meetings with the HA regarding the deficiency and the orders, applicable monitoring reports, and any other information which would assist in a HUD determination of whether to declare breach or withhold funds.
2. In the case of a recommendation of breach, the FO shall specify which functions of the HA should be declared in breach. In the case of a recommendation of withholding of funds, the FO shall specify the amount of funds that should be withheld, actions that the HA should take during the time the funds are withheld to correct the continuing deficiency, and the length of time that the funds should be held before reallocation is considered if significant progress to correct the deficiency is not made.

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3. The Assistant Secretary for Public and Indian Housing (PIH) shall review the FO's recommendations and supporting documentation, including the HA's facts and data, and determine what, if any, functions should be declared in breach, whether funds should be withheld, the amount of funds to be withheld, any conditions under which HUD will consider providing all or part of the funds to the HA, and the date on which reallocation will be considered if adequate progress is not made to correct the deficiency. The Assistant Secretary for PIH shall directly notify the HA, with copies of the letter of notification to the FO.
- D. Reallocation. Where HUD has withheld for the period of time prescribed in the withholding action some or all of the HA's annual grant, HUD may reallocate some or all of such amounts to other HAs under the CGP, subject to approval in appropriations acts. ['968.335(g) or '950.660(g)]
1. Before considering reallocation, the FO shall prepare for the Assistant Secretary for PIH a report of the current status of the HA with regard to the failure to take corrective action on which the withholding of

funds was based. The report shall be fully documented with current data, monitoring reports, correspondence with the HA, minutes of any meeting with the HA, and any other information useful to the Assistant Secretary's decision as to whether or not to reallocate the funds. The report also shall include a recommendation as to whether all or part of the funds should be reallocated.

2. Before making a determination regarding reallocation of some or all of the HA's annual grant, the Assistant Secretary for PIH shall notify the HA in writing of the an opportunity to provide, within a prescribed period of time, any additional facts and data concerning the proposed action.
3. Based on the FO report and recommendation, any submission from the HA, and any other relevant information available, the Assistant Secretary for PIH shall determine whether to reallocate all or part of the funds that have been withheld and shall provide direct written notification to the HA, with a copy. of the notification to the FO. ['968.335(h) or '950.660(h)]

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4. Any reallocation shall be made to PHAs which are not designated as either Troubled or Mod Troubled under the PHMAP at 24 CFR Part 901, and to IHAs which have been determined by HUD to be not high risk under '950.135, based on the relative needs of these PHAs and IHAS, as determined under the formula set forth in Chapter 3.
- E. Notification to Residents. The HA's Board of Commissioners shall provide written notification to affected residents of HUD's final determination to withhold funds, declare a breach of the ACC, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination. ['968.335(i) or '950.660(i)]
  - F. Recapture. Based on a recommendation from the FO, Headquarters may recapture for good cause any grant amounts previously provided to the HA, based upon a determination that the HA has failed to comply with the requirements of the CGP. Before recapturing some or all of the HA's annual grant, the Assistant Secretary for PIH shall give written notification to the HA and give it an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action. ['968.335(i) or '950.660(j)]
  - G. Cumulative Remedies. The authority to condition, withhold, reallocate or recapture an HA's grant, as provided in this paragraph, is in addition to the authority set forth in

paragraph 3-9 to reduce a PHA's formula allocation based upon its designation as a Mod Troubled PHA. ['968.335(k) or '950.660(k)]