

Addressing Performance Deficiencies under the CDBG Entitlement and State Programs

March 25, 1991

Special Attention of: Notice: CPD-91-10
All Regional Administrators Issued: March 25, 1991
All Regional CPD Directors Expires: March 25, 1992
All Category A Field Office Managers
All Field Office CPD Directors Cross References:

SUBJECT: Addressing performance deficiencies under the Community Development Block Grant Entitlement and State Programs

1. PURPOSE

This Notice provides guidance on addressing instances of non-performance and non-compliance under the CDBG Entitlement and State programs and identifies the circumstances under which Headquarters action is required.

2. APPLICABILITY

- A. This Notice applies to the CDBG Entitlement program and the CDBG State program.
- B. The procedures outlined in this Notice apply to all deficiencies identified through in-house and on-site reviews and audits, including those involving Civil Rights Related Program Requirements (CRRPRS).
- C. Program deficiencies identified in audit findings and the related recommendations contained in the audit report shall be handled in accordance with Handbook 2000.6 Rev. 2, Audits Management System, except that this Notice provides specific guidance where the management decision sets forth actions that can only be taken with Headquarters' approval and actions which may involve administrative hearings.

3. SUPERSEDED MATERIAL

The guidance provided in this Notice supersedes Notice CPD-89-27, Modified Procedures for Addressing Performance Deficiencies under the CDBG Entitlement Program, dated April 11, 1989.

4. BACKGROUND

HUD's statutory responsibility for ensuring compliance with Title I program requirements and standards is met by reviewing actual grantee performance and, when deficiencies are found, taking steps to ensure that effective corrective actions are taken. Emphasis is placed in this Notice on working cooperatively with grantees to validate findings and to agree upon voluntary grantee actions to correct the deficiencies.

Where voluntary efforts fail to effectively resolve deficiencies in a timely manner, the Assistant Secretary for Community Planning and Development will consider invoking a grant condition, or withholding or reducing grant funds. In cases involving civil rights deficiencies, the Assistant Secretary for FH&EO shall be notified and asked to advise the Assistant Secretary for Community Planning and Development on the course of action to be followed.

In all cases, a clear and complete record describing the deficiency and the actions taken to resolve it is essential. Such a record will help ensure that grantees are treated fairly and that, if necessary, HUD's actions can be successfully supported.

5. CPD REVIEW FINDINGS - GENERAL

A finding is defined in paragraph 1-6.d of the CPD Monitoring Handbook, 6509.2 REV-4, as "a deficiency in program performance based on a statutory or regulatory requirement for which sanctions or other corrective actions are authorized." If such a deficiency is identified at any time during HUD's review of a grantee's performance, a finding must be made. For example, where there is a program requirement for appropriate documentation of low/mod benefit and that documentation either does not exist, is incomplete, or does not support the conclusion reached, the grantee must be notified that a finding has been made and given the opportunity to contest the finding. In this example, the grantee might contest the finding by providing documentation overlooked by HUD which supports the use of Title I funds for this activity.

NOTE: If the Field Office is not sure that there is a firm basis for the finding or does not know what remedy would be appropriate, the Regional Office or Headquarters should be consulted before the grantee is advised of the finding.

Each finding requires corrective action. The corrective action should be suitable to the nature and severity of the deficiency. Section 570.910 of the regulations provides a listing of actions which may be taken to correct the deficiency. Corrective and remedial actions should be designed to prevent a continuation or recurrence of the deficiency and to mitigate, to the extent possible, the adverse effects or consequences of the deficiency. Keep in mind that there may be a number of acceptable solutions to resolving a deficiency and the grantee should be offered the opportunity to respond to the finding with its own solution for corrective action which HUD agrees will achieve these objectives.

Findings have the potential to become the subject of HUD funding sanctions requiring an administrative hearing or litigation. Therefore, each finding must be adequately documented at the time the finding is made, through, for example, use of the checklists provided in the Monitoring Handbook, 6509.2 REV-4, or GPR Review Handbook, 6510.2 REV-1, a note to the file, or a letter to the grantee. The conclusions reached must be supported by the facts in the case and those facts must be available in the office monitoring file for that grantee.

There also should be adequate documentation in the file about the acceptability of the grantee's response to the finding. Use the Finding Summary Sheet (HUD 40013A) where the initial grantee response is not acceptable, so there will be a convenient record or paper trail of all actions HUD and the grantee have taken to resolve the finding. Make notes of informal consultations and other meetings with the grantee so the record is clear as to what happened and when. While we emphasize voluntary action and working closely with the grantee to remedy the problem, there will be instances

where the Field Office must pursue corrective actions in Headquarters. There must be a record which identifies, supports, and documents all actions which have taken place.

6. PROCEDURES - MONITORING FINDINGS

The procedures described below are designed to foster uniformity in the processing of findings, including the development of complete records in all cases and the consistent application of remedies. The following steps shall be followed in addressing violations of program requirements identified through any form of monitoring, including performance report reviews, follow-up on citizen complaints and newspaper articles and on-site visits. Paragraph 7 below describes procedures for dealing with audit findings.

A. Whenever non-compliance is found, take the following preliminary actions:

1. Advise the grantee in writing of the finding, including the following:

(a) Identification of the requirement that has not been met, including the citation of the specific provision of the regulations and, if applicable, OMB Circular.

(b) Advice on corrective or remedial actions, including time frames, the Field Office believes are appropriate for the grantee to take:

NOTE: In the case of the State program, first ask the State to indicate how it will remedy the problem. Provide advice on corrective or remedial actions only if the Field Office believes that the State's proposed remedy is inadequate.

(c) An opportunity within a specified reasonable period of time to contest the validity of the finding or to negotiate alternative corrective or remedial actions

2. Record the finding in the FOMRS/CPD system as appropriate.

3. If the grantee successfully contests the finding or takes corrective action that the Field Office believes satisfies the finding, so notify the grantee and record the resolution date in the FORMS/CPD system as appropriate.

4. If the grantee response is not satisfactory to the Field Office or the response has not been received by the due date, initiate a Finding Summary Sheet by filling in the blocks on the top half of the form, except block 5. This form is not required when the grantee's initial response to the finding is acceptable.

B. Work with the grantee in an effort to resolve the finding on a voluntary basis, through such actions as mutually agreed upon changes in management procedures or reimbursement by the grantee of its line of credit. A variety of voluntary corrective actions are authorized in section 570.910 of the regulations. Maintain a chronology of these efforts by keeping the Finding Summary Sheet up to date. Where the grantee voluntarily reimburses the line of credit, document the basis upon which the finding was resolved on the Finding Summary Sheet, and enter the appropriate data in the FORMS/CPD system. When the corrective action is reimbursement of amounts improperly expended, the following guidelines apply. Grantees must be advised to reimburse the line of credit where the amount of the repayment will be

disbursed by the recipient within seven calendar days or the amount is less than \$10,000 and will be disbursed within thirty calendar days. Only in those exception cases, may a grantee reimburse its program account in lieu of reimbursing its line of credit. If the grantee wishes to have the finding resolved by a voluntary grant reduction, the information in paragraph 6E. below must be provided to Headquarters.

NOTE: Even where the grantee chooses a grant reduction rather than reimbursement to the line of credit, Headquarters approval for the reduction must be sought because authority for grant reductions has not been delegated to the field.

C. There are, of course, instances where efforts to resolve the finding with voluntary actions are unsuccessful. Please notify the Entitlement Communities Division in Headquarters when either of the following two actions have been taken: advising an entitlement grantee that a certification is no longer acceptable and that additional assurances will be required (570.910(b)(3)), or changing the method of payment to the recipient from a line of credit basis to a reimbursement basis (section 570.910(b)(6)). Such notification should include a copy of the letter sent to the grantee advising them of the action being taken. While Field Offices have the authority to impose such actions, we want to be informed at an early date of these cases since such actions are indications of a potential need for Headquarters involvement in the future.

D. Where the finding still has not been resolved after appropriate actions authorized to Field Offices in section 570.910 have been invoked, the Field Office should recommend to Headquarters a restriction on the use of funds or a grant reduction. It may be appropriate to offer the grantee an opportunity for an information consultation before the recommendation is submitted. The Field Office shall route the recommendation to Headquarters through the Regional Office.

E. To assist the Regional Office and Headquarters in assessing the situation, the Field Office shall submit the following information to the Regional Office:

1. A thorough description of the basis for the finding, identification of the specific program requirement (including the citation of the regulation, and if applicable, OMB Circular) that was not met;
2. A statement of the remedy the Field Office proposes be taken;
3. A complete chronology of actions taken to date to resolve the finding, including copies of letters exchanged between the Field Office and the grantee, and if an informal consultation was held, indicate when it was held, with whom, and provide a synopsis of the discussions and the conclusions reached;
4. Except in cases where the grantee agrees to a grant reduction, a statement of whether (and if so, how) the nature of the noncompliance is such that the obligation of additional funds for affected activities will likely involved continued or future failure to comply with the regulations;
5. Where appropriate, a statement of whether the Field Office recommends FH&EO Regional Compliance activity; and

6. The names and telephone numbers of HUD field staff who are most familiar with the details of the case.
7. After reviewing the information submitted by the Field Office, the Regional Office shall forward that information, together with the Regional Office's recommendation, if any, to the Assistant Secretary for Community Planning and Development.

7. PROCEDURES - AUDIT FINDINGS

The procedures for resolving audit findings and recommendations are set forth in the Audits Management System (AMS) Handbook 2000.6 Rev-2. However, the following steps shall be taken when the Field Offices proposed management decision agrees in whole or in part with the audit finding and the corrective action plan requires a reduction or withholding of grant funds or a repayment which the grantee does not agree to make voluntarily.

A. The Field Office shall refer the matter through the Regional Office to Headquarters for purposes of pursuing a remedy. To assist the Regional Office and Headquarters in assessing the situation, the Field Office shall submit the following information to the Regional Office:

1. The audit report and the proposed management decision of the Field Office agreeing in whole or in part with the audit finding, including the grantee's response to the audit finding and setting forth the proposed corrective action plan;
2. A complete chronology of actions taken to date to resolve the finding, including the grantee's response to the audit finding and recommendation;
3. A statement of whether (and if so, how) the nature of the non-compliance is such that the obligation of additional funds for affected activities will likely involve continued or future failure to comply with the regulations (not necessary for a voluntary reduction); and
4. The names and telephone numbers of Field Office staff who are most familiar with the details of the case.

B. After reviewing the information submitted by the Field Office, the Regional Office shall forward that information, together with the Regional Office recommendation to the Assistant Secretary for Community Planning and Development.

8. HEADQUARTERS ACTIONS

The Assistant Secretary for Community Planning and Development will decide whether or not to pursue a remedy in those cases submitted to Headquarters for consideration. When the action taken by the Assistant Secretary concerns an audit finding, and that action is inconsistent with the management decision, the Inspector General for Audit shall concur in the decision. If the Inspector General non-concurs in the Assistant Secretary's decision, the procedures authorized in paragraph 7-3.a.(4) of Audits Management Handbook 2000.6 Rev-2 shall be followed.

A. If the Assistant Secretary decides not to pursue a remedy, she will send a memorandum to the Regional Office and Field Office notifying them of that decision and the reasons for making it.

B. If the Assistant Secretary decides that a grant condition should be made, a memorandum authorizing such action shall be sent to the Regional Office and the Field Office.

C. If the Assistant Secretary decides that a final attempt should be made to resolve the problem before initiating a grant withholding or reduction action, an informal consultation with the grantee will be arranged, during which the opposing sides can present their positions and supporting documentation to the Assistant Secretary.

D. If the Assistant Secretary decides to withhold or reduce grant funds, a Notice of Opportunity for a Hearing will be sent from the Assistant Secretary with a copy to the Field, notifying the grantee of the action HUD plans to take and the grantee's opportunity for a formal hearing before an Administrative Law Judge. At this time, the field may be required to suspend or limit payments to the grantee pending final action.

E. If the grantee subsequently takes, or agrees to take, corrective actions the Assistant Secretary determines to be sufficient to remedy the deficiency, the program office will prepare a memorandum, concurred in by OGC, to that effect from the Assistant Secretary to the Field and Regional Office. The Field Office shall be responsible for so notifying the grantee and for monitoring and verification of grantee implementation, as appropriate.

F. If the grantee fails to request a hearing within the time specified following receipt of the Notice of Opportunity for a Hearing, the Assistant Secretary may send a memo to the field authorizing withholding or reduction of the grant.

G. If Headquarters receives a request from the grantee for a hearing, the case will be referred through the Office of General Counsel to the Administrative Law Judge (ALJ).

H. The ALJ will set the procedures for the hearing and the hearing date and location.

9. FIELD OFFICE FOLLOW-UP

A. The Field Office shall implement the decision of the Assistant Secretary and the ALJ as appropriate.

B. When final action has been taken to close the monitoring or audit finding, the Field Office shall enter the date in the FORMS/CPD or AMS system as appropriate.