Grants Evaluation Guidebook

Office of Native American Programs

U.S. Department of Housing and Urban Development

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Introduction

In December 1999, the original ***Grants Evaluation Guidebook*** was printed and distributed to Office of Native American Programs (ONAP) Grants Evaluation (GE) staff. That guidebook was developed to establish and define the business process for the ONAP Office of Grants Evaluation. Since that time, ONAP has had the opportunity to field test the processes and procedures contained in the guidebook. Although much of what was set forth in the original guidebook was helpful to Area ONAP and Headquarters GE staff, not enough guidance was provided in certain areas. As a result, a number of significant changes have been made to this guidebook, especially during the recent years.

This current version of the guidebook incorporates all previous formal revisions that were made, and also includes new revisions or additions in a number of key areas, some of which have already been implemented:

- The Overall Performance Assessment Process has been removed from the original Grants Evaluation Guidebook because it is no longer used by most Area ONAPs;
- The title of Chapter 2 has been changed to the Reports Review Process to include guidance on the review of reports that ONAP recipients are required to submit to ONAP, which include:

    - The Annual Performance Report (APR) under the Indian Housing Block Grant (IHBG) program;
    - The Annual Status and Evaluation Report (ASER) under the Indian Community Development Block Grant (ICDBG) program;
    - Semi-Annual Financial and Status Report for the Rural Housing and Economic Development (RHED) program;
    - Federal Financial Report (SF 425); and
    - The Section 3 Summary Report, HUD-60002, for the IHBG, ICDBG, and Resident Opportunities and Self-Sufficiency (ROSS) programs.

- The Audit Review Process (Chapter 3) has been revised to provide significantly more guidance, especially in regards to audits conducted by HUD's Office of the Inspector General (OIG);
- The Risk Assessment Process (Chapter 4) was significantly changed, from a staff intensive process that consumed a substantial amount of time to one that is largely automated and extracts data from ONAP's Performance Tracking Database (PTD) to generate risk assessment scores;
- The Monitoring Process (Chapter 5) has been expanded to include additional guidance to help ensure more uniformity in the Area ONAP implementation of this function, as well as the replacement of the Monitoring Checklist with separate, topical, comprehensive Monitoring Plans; and,

- Chapter 6 has been significantly expanded in scope.

This guidebook is intended to provide general processing requirements, guideline procedures, and tools for GE staff. It is not intended to answer all questions that may arise, and it may be necessary for each Area ONAP to develop and implement more detailed procedures within these general requirements and guidelines to reflect and take into consideration its staffing levels and patterns. It is expected that, as staff experience grows and tools are refined, this guidebook will continue to be expanded, refined, and modified to reflect such considerations.

Guidebook Organization

The guidebook is organized into the following chapters:

Introduction – The Introduction provides information on how the GE Guidebook was developed and has evolved, gives an overview of the purpose of the GE Guidebook, and provides information on resources that are available to the Area ONAPs.

1. **ONAP History and Organization** – This chapter provides a brief history of ONAP and how it has evolved and a description of the current ONAP organizational structure.

2. **Reports Review Process** – This chapter provides Area ONAPs with the step-by-step process for reviewing and accepting or rejecting APRs (IHBG) and ASERs (ICDBG) and provides guidance on GE's role in regards to the Federal Financial Reports, and Section 3 Summary Reports.

3. **Audit Review Process** – This chapter covers the step-by-step process Area ONAPs will follow when reviewing audits performed by Independent Public Accountants when HUD is or is not the cognizant or oversight agency, as well as audits issued by the OIG.

4. **Risk Assessment Process and Monitoring Schedule Preparation** – This chapter explains the process Area ONAPs are to follow when assessing risk to its recipients and provides the guidelines for developing an annual monitoring schedule.

5. **Monitoring Process** – This chapter explains ONAP's, the recipient's, and the beneficiary's responsibilities for monitoring; provides Area ONAPs with the step-by-step process when conducting both on-site and remote monitoring reviews; and provides guidelines for developing monitoring reports.

6. **Enforcement Process** – This chapter provides Area ONAPs with the step-by-step process to follow when proposing enforcement actions against recipients for violations of program requirements.

Appendix

a. ONAP Organizational Chart
b. Glossary of Abbreviations
c. Map of Area ONAP Offices

Grants Evaluation Resources on SharePoint

In an effort to facilitate information sharing and coordination among the Area Offices and Headquarters, ONAP created a website that serves as a central repository for GE resources, many of which are referenced in the guidebook. The GE SharePoint site is rich in resources to assist ONAP staff in all aspects of the GE process. The site is evolving constantly as existing resources are revised and new resources are added.

GE staff are encouraged to bookmark the following website address for easy access: http://hudsharepoint.hud.gov/sites/DASNAP/OGE/default.aspx. Any GE staff that have not been granted access to the GE SharePoint site only have to request access by following the instructions on the webpage. GE staff wishing to post documents or announcements on the site should contact the Headquarters OGE Director.

The GE SharePoint site consists of three primary components: Document Library, Favorite Links, and Events/Announcements. The Document Library is on the left-hand side of the page, Favorite Links is on the right, and Events/Announcements are in the middle of the page.

Documents Library. This component contains the tools and model letters to be used when performing many of the GE duties. Since the model letters contain all the appropriate statutory and regulatory citations needed and are updated frequently, GE Specialists should always access the most current version of the model letters in SharePoint. Once the GE Specialist opens the desired model letter in SharePoint, he/she should file it to his/her local G or J Drive before making any changes to the letter. This step is important to prevent inadvertently revising the model letter for others. Adapt the letter by (1) filling in the necessary information whenever underlined italicized text is found, and (2) deleting any italicized text that does not apply to the situation.

Favorite Links. This component provides GE staff with information on monitoring schedules and reports and official ONAP documentation.

Events/Announcements. This component serves as a bulletin board for upcoming events and announcements related to grants evaluation.

The GE SharePoint site will continue to grow and evolve and GE staff are encouraged to rely on the site extensively to ensure access to the best and latest GE resources.

Chapter 1: ONAP History and Organization

1.1 ONAP History

In 1975-76, six offices were established by HUD to administer those HUD programs that were of direct benefit to Native American communities. They were designated as Offices of Indian Programs (OIP). In 1984, HUD further established the Office of Indian Housing as a part of the HUD Headquarters Office of Public Housing, which then became the Office of Public and Indian Housing (PIH). In 1992, OIP's name was changed to the Office of Native American Programs (ONAP). Those programs that principally benefited Native American communities were consolidated in this office whether or not the programs were traditionally under the purview of PIH. For example, the Indian Community Development Block Grant program was transferred from HUD's Office of Community Planning and Development to ONAP. The six OIP field offices were organizationally removed from the direct authority of the various Regional Administrators, re-named to Area ONAPs, and placed under the authority of the ONAP Deputy Assistant Secretary (DAS). See Appendix C in the GE Guidebook Appendix for a map of the Area ONAPs and their jurisdictions. ONAP provides assistance to approximately 565 federally-recognized tribes and Alaska Native villages, as well as Native American and Native Hawaiian families and individuals. ONAP undertakes this mission by administering federal programs that provide housing and community development assistance to ONAP recipients.

The enactment of the Native American Housing Assistance and Self-Determination Act (NAHASDA) in 1996 (P.L. 104-330, 25 U.S.C. 4101 – 4112) combined with the government-to-government relationship established between ONAP and Indian tribes made it a matter of necessity that ONAP change its organizational structure and ways of doing business to be able to continue to provide value to its clients and to effectively meet its newly mandated responsibilities. Regulations to implement NAHASDA are developed through negotiated rule-making between HUD and Indian tribes.

Under NAHASDA, IHBG funding is provided to Indian tribes or their tribally designated housing entities (TDHEs) through a national formula. Prior to the enactment of NAHASDA, HUD housing assistance was delivered under the provisions of the 1937 Housing Act via a competitive discretionary funding process. Indian housing authorities submitted applications for housing assistance to the appropriate Area ONAP where these applications were rated, ranked, and approved or not approved. In contrast, under NAHASDA, assistance for affordable housing activities is provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to Indian tribes or their TDHEs.

1.2 ONAP Organization

The ONAP DAS leads the program and reports directly to the Assistant Secretary for PIH. The DAS has overall responsibility for planning, programming, and successfully executing Indian housing and grant programs that are administered by all ONAP staff. This includes providing advice and support to the Assistant Secretary for PIH and other PIH offices on federal Indian housing policy, legislative, regulatory, and program development issues for ONAP programs. The Headquarters Office is comprised of staff supporting the DAS' role. This staff includes the Director of Field Operations, (through whom the Area ONAP Administrators report, including the Native Hawaiian Program Specialist based in Honolulu, Hawaii), the Director of Headquarters Operations, the Director of the Office of Grants Evaluation (OGE), the Director of the Office of Grants Management (OGM), and the Director of the Office of Loan Guarantee. The organizational chart in the Appendix summarizes ONAP's organizational structure.

One of ONAP's key goals is to gain consistency across the six Area ONAPs in the implementation of the programs it administers. To ensure successful management of ONAP's programs, efficient and effective relationships with all parties is a necessity. Program implementation procedures cut across functional, organizational, and geographic boundaries.

Area ONAP Administrators are responsible for the successful overall execution and implementation of the policies and programs in their respective offices and jurisdictions. Therefore, Area ONAP GE and GM staffs report to and work under the direction of the Area ONAP Administrator. In addition, the Area ONAP GE and GM staffs collaborate with each other and their respective Headquarters Office staff to administer the program.

1.2.1 Headquarters Office of Grants Evaluation

Currently, the OGE Director is located in Washington, DC and staff for this office are located either in DC or Denver, Colorado.

OGE is responsible for:

- Developing and disseminating policy instructions for GE functional areas
- Providing overall program oversight
- Coordinating development and implementation of the national monitoring plan
- Facilitating cooperation and coordination among Area ONAP GE Divisions
- Evaluating the performance of Area ONAPs
- Providing direct advice and counsel to the ONAP DAS on GE issues and concerns
- Coordinating with OGM on issues of mutual concern and responsibility
- Supporting the development and management of information systems
- Developing program evaluation reports for Congress

1.2.2 Area ONAP Grants Evaluation Division

The Area ONAP GE Division Directors manage the GE Divisions in their respective Area ONAPs. The GE Division evaluates and monitors each recipient's programs through the review

of annual reports (APRs and ASERs), independent audits, and remote and on-site monitoring reviews. As necessary and required, GE staff initiate and manage enforcement actions for noncompliant recipient performance, as well as providing focused technical assistance.

The overall objective of the GE staff is to assist recipients in meeting the recipients' program goals in compliance with specific program statutory and regulatory requirements. To meet this objective, each GE staff have the following responsibilities:

- Ensuring that programs are implemented in a timely manner in compliance with all applicable requirements
- Identifying instances and trends that indicate superior, satisfactory, or deficient performance
- Developing and implementing actions to reinforce, improve, correct, or supplement recipient performance, as appropriate
- Developing and recommending enforcement actions, as appropriate to address recipient noncompliance with statutory and regulatory requirements
- Identifying technical assistance needs and providing pro-active support in the development of recipient program management capacity
- Coordinating with each of the other GE Divisions through OGE to help ensure uniformity in the application of GE requirements, procedures and processes
- Working with the GM Division within their offices to ensure that oversight, technical assistance, and training is targeted where the need is greatest and to assure that consistent information is conveyed to recipients
- Coordinating activities with OGE to maintain national information systems

Ultimately, ONAP's ability to attain its established and mandated goals is determined by the overall success of Indian communities in effectively meeting their housing and community development needs in a manner consistent with the requirements of the following programs:

- IHBG, including the Section 184 and Title VI programs
- ICDBG
- Resident Opportunities and Self Sufficiency (ROSS)
- Rural Housing and Economic Development, now known as the Rural Innovation Fund (RHED/RIF)
- Indian HOME*
- Indian Housing Drug Elimination*
- Emergency Shelter Grants*
- Economic Development/Supportive Services*
- Open grants from the Housing Act of 1937*

* Programs are no longer available for funding but some grants have funds remaining and/or on-going activities.

Effective monitoring and oversight by ONAP also helps ensure that the programs are implemented in a manner consistent with the intent of Congress.

1.2.3 Headquarters Office of Grants Management

The OGM Director is located in Washington, DC and staff are located either in Washington, DC or Denver, CO. OGM is responsible for:

- Developing guidance, program notices, regulations, and policy for applicable programs administered by ONAP
- Providing oversight and management of programs
- Providing direct advice and counsel to the ONAP DAS on GM issues and concerns
- Coordinating with OGE on issues of mutual concern and responsibility
- Facilitating cooperation and coordination among Area ONAP GM Divisions

1.2.4 Area ONAP Grants Management Division

The GM Division Director manages the GM Division in each Area ONAP. The GM Division is responsible for the following activities:

- Managing the IHBG program, including the following:
  - Reviewing Indian Housing Plans (IHPs) submitted by recipients for compliance with established statutes, regulations, and policies
  - Tracking grant conditions
  - Reviewing appeals and requests for waivers
  - Reviewing recipient formula data
  - Administering and monitoring grant closeouts in accordance with IHBG program requirements

- Managing the ICDBG program, including the following:
  - Reviewing grant applications submitted by recipients
  - Providing training on Notices of Funding Availability (NOFAs)
  - Rating and ranking ICDBG applications
  - Tracking conditions on grants
  - Reviewing appeals and requests for waivers
  - Administering and monitoring grant closeouts in accordance with ICDBG program requirements

- Managing the ROSS and RHED/RIF programs, including the following:
  - Conducting required activities for open and active grants
  - Administering and monitoring grant closeouts in accordance with each program's requirements, including programs that are no longer funded.

- Coordinating with the GE Division to provide ongoing training and technical assistance to grantees on program-related issues.

- Assisting grantees in resolving program or administrative problems and addressing issues by receiving and addressing complaints and processing requests for information.

1.3 Relationship between GE Staff and GM Staff in an Area ONAP

The Area ONAP GE and GM Divisions have different responsibilities but share an important objective: "To help recipients meet their program objectives in compliance with program requirements." A prerequisite for success in attaining this objective is close coordination and cooperation between the two divisions. The Area ONAP GE staff do not have the responsibility or the authority to monitor or review the work performed by GM staff in the office and vice-versa. As in every workplace, there will be differences of opinion regarding the methods employed or decisions made by other segments of the organization. Through communication, differences can be aired and solutions found. If resolution cannot be reached between staff, then the issues are referred to the Area ONAP Division Directors.

The areas of overlap between the functions of GE and GM staff are numerous. When overlap exists, each division depends upon the actions of the other to complete its duties successfully. Significant degrees of cooperation and communication are necessary and expected between GE and GM staff. Communication protocols vary depending on the responsibilities of the GE and GM staff in a particular area and the level of coordination required. Some Area ONAPs have found that effective communication and coordination is facilitated by establishing written, agreed upon, operating procedures or protocols to cover areas of office operation in which responsibilities of the GE and GM Divisions overlap, supplement, or complement each other.

Chapter 2:

Reports Review Process

This chapter provides ONAP staff with guidelines for processing Annual Performance Reports (APR) under the Indian Housing Block Grant (IHBG) program, Annual Status and Evaluation Reports (ASER) under the Indian Community Development Block Grant (ICDBG) program, and Federal Financial Reports and Section 3 Summary Reports under both programs.

NOTE: The responsibility for processing ASERs can rest with either the Grants Management (GM) or Grants Evaluation (GE) division. The decision to assign responsibility is with the Area ONAP Administrator and is factored primarily on staffing and workload. In some Area ONAPs, the GM staff assumed responsibility for processing ASERs during the recent past years. In those Area ONAPs where the GE Division is responsible for reviewing the ASER, the GE Specialist should follow the processing steps included below.

This chapter includes the following sections:

2.1: APR & ASER Review Tools and Model Letters

2.2: Objectives and Overview of the APR Review Process

2.3: APR Review Process Steps

2.4: Objectives and Overview of the ASER Review Process

2.5: ASER Review Process Steps

2.6: Other Reports Required by the Recipient

2.1 APR & ASER Review Tools and Model Letters

Documents and folders in this chapter that are *italicized* and highlighted in red are hyperlinked to the GE SharePoint site. If using an electronic version of the chapter, place the cursor on the word and right-click to open the hyperlink.

The review tools and model letters used in the APR and ASER review processes should be used to remind recipients of their reporting requirements and develop ONAP's response to the APR or ASER. The APR review tools and model letters are available in the *APR Review Documents* folder on SharePoint and the ASER review tools and model letters are available in the *ASER Documents* folder.

2.2 Objectives and Overview of the APR Review Process

The requirement to prepare and submit an APR (HUD-52737) to ONAP is defined in Section 404(a) of NAHASDA that states,

"For each fiscal year, each recipient shall—

1. *review the progress it has made during such fiscal year in carrying out the Indian housing plan (or plans) for the Indian tribes for which it administers grant amounts; and*
2. *submit a report to the Secretary (in a form acceptable to the Secretary) describing the conclusions of the review."*

The APR review process is a part of HUD's oversight responsibility, as outlined in the NAHASDA regulations at 24 CFR § 1000.520 and presented below.

"What are the purposes of HUD review?
At least annually, HUD will review each recipient's performance to determine whether the recipient:

1. *Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;*
2. *Has complied with the IHP of the grant beneficiary; and*
3. *Whether the performance reports of the recipient are accurate."*

2.2.1 APR submission

The report for the IHBG program is the APR and it is due to ONAP within 90 days following the Program Year End. Each IHBG recipient is to be sent an *APR Audit and Section 3 Report Reminder Letter* 15 days prior to the recipient's Program Year End. Effective January 2, 2013, according to 24 CFR § 1000.10, the tribal program year means the fiscal year of the IHBG recipient.

2.2.2 Extension requests

If requested, an Area ONAP may grant one extension, for a maximum period of 30 days when warranted by the circumstances of the delay. The extension request must be submitted prior to the APR due date. The *APR Extension Letter* may be used as a model. If the circumstances do not warrant an extension in the APR due date, use the *APR Extension Denial Letter* as a model.

A request for a second extension should be forwarded for consideration to the OGE Director and the Area ONAP must include a recommendation supporting or opposing the request. Second extensions are only granted for emergencies and unusual circumstances, such as natural disasters and unexpected staff turnover.

2.2.3 Recipient noncompliance

A recipient's failure to submit an APR is a performance deficiency and the GE Specialist should follow the enforcement process described in Chapter 6.

2.2.4 Interface between APR and IHP reviews

The APR describes the recipient's progress in accomplishing the IHP activities and programs. In contrast to the review of an IHP, the purpose of the APR review is not to establish recipient compliance with statutory requirements but to provide ONAP with information regarding the recipient's accomplishments in comparison to the IHP.

Review responsibilities include the following.

- Determining if the APR was submitted in a timely manner
- Determining if it included sufficient information to review the recipient's progress in carrying out the IHP
- Providing recommendations on the recipient's plans and on the APR to assist the recipient in improving affordable housing delivery
- Providing comments to the recipient regarding its IHBG performance, based on review of the information included in the APR

2.3 APR Review Process Steps

After receipt of the APR, ONAP has 60 days to review the report and, if applicable, develop recommendations for the recipient to improve performance, as described at 24 CFR § 1000.521. The APR review process is divided into three (3) stages, with slightly different objectives. The first stage of the APR review process is to determine if the APR contains the required sections to determine it is statutorily compliant. The second stage is an initial review of the APR utilizing the APR Review Work papers to determine if additional information is required to complete the review. The GE Specialist should also determine if the recipient is required to submit an audit during this stage of the review. If an audit is required and not submitted the GE Specialist must initiate the enforcement through the issuance of the Audit LOW. During stage three, the GE Specialist also develops constructive suggestions for the recipient to improve its operations and streamline delivery of its affordable housing services.

The GE staff should use the *APR Review Work Papers* to conduct a sequential and comprehensive APR review. The work papers cover all sections of the APR and the questions/issues are extracted directly from this chapter.

The Area Office has the flexibility to determine which steps of the review process must be completed to support the GE Specialist's conclusions and recommendations.

2.3.1 APR Submission

IHBG recipients may submit an APR in hard copy, on CD, thumb drive, by fax, or as an attachment by electronic mail. The GE Specialist (or assigned staff) completes initial check-in and completeness screening for each APR. If an APR arrives in separate components (i.e., APR is submitted before the signed Cover Page), the receipt date is the date a substantially complete APR is received. In other words, the APR receipt date should be the date the APR is determined to be statutorily complete and contains sufficient information to commence the review. The receipt date is recorded in the performance tracking database (PTD), and the APR is forwarded to the assigned GE Specialist.

The necessary data from the APR must be entered into the PTD within 30 days of receipt. At a minimum, the following data must be entered:
Section 3: Program Descriptions
Section 5: Budgets, Sources and Uses of Funding
Section 11: Inspections
Section 12: Audits

2.3.2 Stage One – APR receipt and initial review to determine statutory and regulatory compliance

The assigned GE staff should use the APR Receipt and Initial Review section of the *APR Review Work Papers* to verify that the APR complies with statutory and regulatory reporting requirements. The assigned staff should make this determination within 7 working days of initial receipt of the APR.

Determine if the APR is sufficiently complete in order to acknowledge receipt of the report and indicate it has been accepted for review. If the APR is not sufficiently complete, the GE staff should contact the recipient by telephone or email requesting the needed information. In addition, the GE staff should prepare and send an *APR Information Request Letter* that identifies the missing information needed to complete the APR review. The request should identify what information is critical to the APR review (without such information the APR will be rejected) and what information would lead to a more complete and informative APR. The GE Division Director has the discretion to adjust the response time in the Information Request Letter. All requests for additional information should be logged into the PTD.

- If the recipient fails to provide the requested information within the time specified in the letter, the APR should be rejected (See section 2.3.5).
- Only in rare instances is an APR considered too incomplete for review and processing. In no instance is the 60-day review process halted or "the clock stopped" to await additional data from a recipient.

- Section 1 (Cover Page). Ensure that a signed copy of the cover page has been received. Signed cover pages submitted by fax are acceptable as are electronic APRs with e-signatures. An electronic APR that is not signed but is sent as an attachment to an email from the recipient's authorized representative is considered signed and acceptable.

- Determine if the statutory requirements of the APR have been submitted. Section 404(b) of NAHASDA provides that *"Each report under this section for a fiscal year shall –*
    - *describe the use of grant amounts provided to the recipient for such fiscal year;*
    - *assess the relationship of such use to the planned activities identified in the Indian housing plan of the grant beneficiary; and*
    - *indicate the programmatic accomplishments of the recipient.*
- Section 404(d) further requires that the recipient provide an opportunity for public comment on the APR **prior** to its submission to HUD. The APR should include a summary of the comments received. Failure to make the APR available publicly prior to submission may result in the APR being rejected because public availability is a statutory requirement. A resubmitted APR requires public comment if significant changes were made such as new table data or new activities. There is no need for public comment on a resubmitted APR when only technical corrections were made.
- The statutory information is normally contained in the following sections of the APR:
    - Section 3 (Program Descriptions), Lines 1.8, 1.9, and 1.10 for each program that received IHBG funds during the reporting period;
    - Section 5 (Budgets), Line 2 (Sources of Funds) and Line 3 (Uses of Funds);
    - Section 11 (Inspections);
    - Section 12 (Audits); and
    - Section 13 (Public Accountability).

2.3.3 Confirm receipt of APR

Once the assigned GE staff determines the APR is statutorily compliant, the *APR Receipt Letter* should be prepared to inform the recipient of the date the APR was received and that additional information or clarification may be requested during the 60-day APR review period. The letter also should provide the recipient the date by which to expect ONAP's response to the APR.

If the Area ONAP has previously issued a *Past Due Notice/Letter of Warning* (LOW) to the recipient indicating that the APR had not been submitted, the *APR Receipt Letter* should include language referencing the issuance of the LOW and informing the recipient that the Line of Credit Control System (LOCCS) edits are now removed. The GE Specialist should send this letter by fax or regular mail within a week of APR receipt.

Continue to Stage Two of the review if the recipient has provided a statutorily complaint APR.

2.3.4 Stage Two - Determine if the APR is substantially complete to review and evaluate the APR

Within 25 days of receipt, the GE Specialist should begin the review of the APR using the *APR Review Work Papers*. The review should determine whether additional information is required to complete the review.

The necessary data from the APR must be entered into the PTD within 30 days of receipt. At a minimum, the following data must be entered:

- Section 3: Program Descriptions
- Section 5: Budgets, Sources and Uses of Funding
- Section 11: Inspections
- Section 12: Audits

The GE Specialist is responsible for conducting the APR review and initiating and tracking all correspondence with the recipient and drafting the report that summarizes the results of the review during stage three, as discussed below in Section 2.3.6. The GE Division Director may assign a Lead GE Specialist or a GE Specialist to perform a quality review of the APR report.

IHP Amendment Needed

If the review indicates that an IHP amendment is included with the APR or a new program has been added during the APR reporting period, the APR review should stop because the corresponding IHP must be amended and found in compliance. The GE Specialist should adapt the *APR Receipt and IHP Amendment Notification Letter* to notify the recipient that the APR has been received; an IHP amendment is required; and, if the amendment is determined compliant, the recipient will have 30 days to resubmit the APR for review.

It is important to note that an IHP amendment is not needed if, during the APR reporting period, the recipient reduced expenditures on the operation and maintenance of 1937 Act housing units. In the abstract, it makes no sense to require an amendment because it would not change what has occurred already. Instead, the GE Specialist will inform the recipient in the *APR Review Letter* that, to be compliant with the IHBG requirements at 24 CFR § 1000.232, the recipient should have submitted an IHP amendment during the program year when reducing funding for 1937 Housing Act units. The letter states that in

the future, the recipient should fully expend funds allocated for the operation and maintenance of 1937 Housing Act units or submit an IHP amendment for reduced funding prior to the end of the 12-month program year. As part of its onsite monitoring, ONAP will verify that the recipient's 1937 Housing Act units are suitably maintained.

If the recipient submits an amendment after being notified, the GM Specialist will inform the GM and GE Directors that an amendment has been received, and GM will determine whether the IHP amendment is in compliance. GM will act on amended IHP's within 30 or 60 days depending on the nature of the revision. Amendments that involve model activities or non-low income families will be reviewed within 60 days, all other amendments will be reviewed within 30 days.

If the amendment is determined to be compliant, GM informs the recipient by letter and provides instructions to the recipient to resubmit the APR within 30 days. If the amendment is noncompliant, the letter will provide instructions for resubmission of the amendment and warn the recipient that failure to submit an amendment that ONAP determines to be compliant will cause the initiation of the enforcement process. The GM Specialist will provide a copy of the letter to the GM and GE Directors.

If the recipient fails for a second time to submit a compliant amendment within the time provided in GM's letter, the GM Specialist will inform the GM and GE Directors. At this point, the APR is rejected and the GE Specialist should adapt the *APR Rejection Letter and LOW* for the delinquent APR. The LOW will provide the recipient an opportunity for a meeting to discuss the performance deficiency and the possibility of entering into a Voluntary Compliance Agreement (VCA) with a schedule to correct the deficiency. If the recipient does not want to enter into a VCA or if the Area ONAP does not think a VCA is desirable, the GE Specialist should continue the enforcement process.

The 60-day APR review period begins after the recipient submits a compliant amendment **and** a complete APR. The GE Specialist will review the revised APR for completeness and send an APR receipt letter notifying the recipient of the 60-day review period.

2.3.5 Rejecting an APR

The APR should be rejected if the recipient does not provide sufficient information to be statutorily compliant or to determine the recipient's progress in carrying out the IHP activities.

The reasons for rejecting an APR are as follows:

- Not all programs in the IHP of record are included in the APR
- No report on self monitoring
- No inspection data
- No public comment before APR submitted to HUD

Care and judgment must be exercised when determining if an APR should be rejected. For example, a recipient who has made no progress and expended no funds may submit a narrative explanation of why no progress has been made and no funds have been expended. Such a document would meet the statutory intent by providing sufficient information for ONAP to determine progress; and the APR should be considered acceptable, in spite of specific components of the APR being missing.

An APR should not be rejected for missing information if the recipient has met the statutory requirements of Sections 403 (b) and 404(b) of NAHASDA to describe the grant fund use in relationship to the IHP activities and programs and the recipient's IHBG accomplishments (See section 2.3.2). Likewise an APR should not be rejected if a review of the APR reveals statutory or regulatory noncompliance. If an APR review identifies a possible statutory or regulatory violation, the GE Specialist may recommend to the GE Director that a remote monitoring review be conducted; and if the results confirm a violation, the draft and final monitoring reporting process is used to document the violation(s). (See Chapter 5).

The Area ONAP should respond to a recipient whose APR has been rejected in the same manner as if the APR had not been submitted (See section 6.2.2 of the Enforcement Chapter).

2.3.6. Stage 3 - Preparation and Issuance of the APR Report

The APR review tasks are intended to help the GE Specialist identify performance deficiencies. The GE Specialist should identify each deficiency so that the deficiencies can be incorporated in the letter to the recipient. REMINDER: An APR may not be rejected for performance deficiencies.

A. Assessment of the APR

Use the *APR Review Work Papers* to assess the APR. The Work Papers provide all the questions and issues needed to conduct a comprehensive and defensible review.

In order to ensure data quality in the APR's Sources of Funding, Uses of Funding and Inspections tables, the GE Specialist is **required** to use the *APR Export Import Template* currently available on the PTD. This analytic tool and its instructions can be found in the Performance Measures module of the PTD. The *APR Export and Import* spreadsheet saves the GE Specialist considerable APR review time while ensuring an accurate review. Identify any cells in the spreadsheets that are colored a dark pink because these cells indicate a data discrepancy that requires your attention.

B. Summarizing the APR review

The APR review process requires that the GE Specialist record comments and recommendations on each recipient's performance deficiencies and best practices. Although not required, the GE Specialist may use the *APR Comments and Recommendations* form to summarize the results and recommendations from the *APR Review Work Papers* and the overall review of the APR. The

structure of the form conforms exactly to the structure of the APR, and the GE Specialist should answer the appropriate questions and edit the document by selecting the sample text that most closely matches the GE Specialist's observations and conclusions. The completion of the form enables the GE Specialist to prepare the final documents of the APR review process.

Before finalizing conclusions, the GE Specialist should input the data from the APR into the PTD utilizing the *APR Export Import Template*.

At the conclusion of the APR review process, the GE Specialist should have sufficient information and confidence to document that the APR is acceptable. If the results of the *APR Comments and Recommendations Form* indicate that the APR is acceptable and no comments are offered, the GE Specialist should adapt the first and last pages of the *APR Review Letter* to inform the recipient. If, on the other hand, the APR is considered acceptable and the GE Specialist desires to add comments for improving recipient performance, the GE Specialist should adapt the *APR Review Letter* to inform the recipient that the APR is acceptable and offer comments for improving performance.

2.4 Objectives and Overview of the ASER Review Process

Title I of the Housing and Community Development Act of 1974 (Act), as amended states,

"Each grantee shall submit to the Secretary, at a time determined by the Secretary, a performance and evaluation report, concerning the use of funds made available under section 106, together with an assessment by the grantee of the relationship of such use to the objectives identified . . . The grantee's report shall indicate its programmatic accomplishments, the nature of reasons for changes in the grantee's program objectives, indications of how the grantee would change its programs as a result of its experiences, and an evaluation of the extent to which its funds were used for activities that benefited low- and moderate-income persons."

The ICDBG regulations at 24 CFR §1003.506 instruct recipients that the narrative report is to address progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The regulations also require that a minority business report be submitted by October 10th describing minority business contract and subcontract activity during the year.

2.4.1 ASER submission

In order to meet Congressional reporting requirements, program regulations require a recipient to submit an ASER. The ASER is due 45 days after the end of the Federal fiscal year and at grant closeout. The Area ONAP should send each ICDBG recipient an *ICDBG Reporting Requirements Reminder Letter* 60 days before the end of the Federal fiscal year and when the project is about complete.

The ASER review responsibilities are delegated by the Area ONAP Administrator. Either the GM or GE Division can assume responsibility for processing ASERs. If the GE Division is responsible for processing the ASER, the following steps are taken.

2.4.2 Extension requests

An ICDBG grantee may request in writing an extension in the submission date of the ASER, as long as the request is submitted to the Area ONAP prior to the established ASER due date. If requested, the Area ONAP may grant one extension, for a maximum period of 30 days, when warranted by the circumstances of the delay. The model *ASER Extension Letter* may be used.

2.4.3 Recipient noncompliance

A recipient's failure to submit an ASER is a performance deficiency, and the procedure to be followed is stated in Chapter 6.

2.5 ASER Review Process Steps

Once the GE Division receives the ASER, the GE Specialist or Program Assistant prepares and sends a letter to the recipient acknowledging receipt of the ASER. The letter indicates the date the ASER was received and the anticipated date the ASER review will be complete. The model *ASER Receipt Letter* may be used.

The GE Specialist or Program Assistant records receipt of the ASER in the PTD.

2.5.1 Determine if ASER content is complete and accurate

The ASER is reviewed to determine whether it contains sufficient information to evaluate the recipient's progress in implementing the ICDBG goals and objectives. It is important to note that a final ASER must include the quantified outputs and outcomes for the activities as described in the ICDBG application.

Only in rare instances is an ASER considered too incomplete for review. If the ASER is considered too incomplete for ONAP to determine the recipient's progress, the GE Specialist should reject the ASER. If it is rejected, the GE Specialist should record the rejection in the PTD and prepare an *LOW Late ASER* letter.

If the GE Specialist determines there is missing data, has questions about information provided, etc., the specialist should contact the grantee by telephone requesting the needed information to avoid delays in processing. The request must be confirmed with a letter sent by fax or by regular mail. The GE Specialist should record the request for additional information in the PTD and may use the *ASER Receipt and Information Request Letter* may be used as a model.

2.5.2 Conduct ASER review

The GE Specialist or Program Assistant are responsible for conducting the ASER review and initiating and tracking all correspondence with the recipient and drafting the report that summarizes the results of the review. The *ASER Review Questions* form should be used for a consistent and structured approach. The level of information supplied by the recipient must be sufficient to evaluate the recipient's progress on the grant. The ASER review process requires that the GE Specialist record comments on each of the recipient's performance deficiencies and best practices.

At the conclusion of the ASER review, the GE Specialist should send a letter to the grantee summarizing the results of the review. The GE Specialist may adapt the *ASER Acceptance or Recommendations Letter* for this purpose. To assure that GM is aware of any issues identified during the ASER review, the GE Specialist should include GM in the distribution of the letter. The GE Specialist discusses any major concerns with the appropriate GM Specialist prior to completing the draft letter and document the discussion on the ASER checklist.

The following documentation should be retained for the file:

- ASER review letter
- ASER acceptance or exceptions letter
- LOCCS history printouts by grant
- SF-425 Federal Financial Report
- Latest Implementation Schedule
- Emails between specialist and recipient/GM staff

2.6 Other Reports Required from the Recipient

Recipients are required to submit additional reports to HUD including the Federal Financial Reports (SF-425) and Section 3 Summary Reports (HUD-60002). While GE Specialists are not responsible for reviewing these reports, they are included in the Guidebook for informational purposes.

2.6.1 Federal Financial Report

Effective October 1, 2009, the SF-425 replaced the Federal Cash Transactions Report (HUD-272-I and SF-272) and the Financial Status Report (SF-269 and SF-269A). See Notice PIH 2009- 46 (HA) for further information on the reporting requirement. Although the information a recipient submits is minimal, the SF-425 can be used to disclose potential problems in the accounting of a recipient's funds under the IHBG, ICDBG, Resident Opportunities and Self-Sufficiency (ROSS), and/or Rural Housing and Economic Development/Rural Innovation Fund (RHED/RIF) program.

Each recipient of Federal financial assistance must account for the funds received and disbursed and submit the SF-425 to their Area ONAP quarterly, semi-annually, or annually, depending on the grant type and applicable program requirements. The form must be submitted within 30 days after the end of the reporting period. Under the IHBG and ICDBG programs, the SF-425 is due on a quarterly basis. A recipient of RHED/RIF funds submits the SF-425 annually following the date of Grant Agreement execution, as required by 24 CFR § 85.40(b)(2) or 24 CFR § 84.51(a). A recipient of a 2007 and prior ROSS grant submits the SF-425 semi-annually, and for 2008 and beyond the SF-425 is due annually.

In addition, an ICDBG recipient submits the SF-425 within 90 days of project closeout, as stipulated by 24 CFR § 1003.508(b)(1). A recipient of ROSS funds submits the SF-425 by July 30 and January 31 of each year and within 120 days of project closeout, as required by 24 CFR § 964 and the NOFA that corresponds with the grant award.

GM staff has the primary responsibility for review of the SF-425. GM staff correspond with the recipient regarding any aspect of the review and notifies GE staff in the event problems or concerns are identified. The information provided in the SF-425 is considered a component of the risk assessment process conducted by GE staff.

Correspondence between ONAP staff should be conducted via email or memoranda to assure that files are appropriately documented. Correspondence between ONAP staff and the recipient should be documented in the files.

2.6.2 Section 3 summary report

Section 3 of the Housing and Urban Development Act of 1968, as amended, mandates that HUD ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135.

A recipient of Section 3 covered assistance submits one copy of its Section 3 Summary Report (HUD-60002) to the HUD Headquarters Office of Fair Housing and Equal Opportunity (OFHEO). Where the program providing assistance requires an annual performance report (such as IHBG and ICDBG), this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion.

Since a recipient submits its HUD-60002 directly to OFHEO, ONAP is not required to review the report. If an Area ONAP receives a completed HUD-60002 from a recipient, the Area ONAP should forward the form to OFHEO for review and processing.

Chapter 3:

Audit Review Process

This chapter provides GE staff with guidelines for reviewing IPA audits and for tracking necessary corrective actions by HUD recipients in response to IPA audits and OIG audits.

This chapter includes the following sections:

3.1: Audit Review Tools and Model Letters

3.2: Objectives and Overview of the Audit Review Process

3.3: IPA Audits of Recipients

3.4: Audits of Recipients When Not Required by OMB Circular A-133

3.5: IPA Audits of Subrecipients

3.6: OIG Audits of Recipients

3.1 Audit Review Tools and Model and Sample Letters

The review tools and model and sample letters used in the audit review process are posted in the Documents Library on the GE page in the SharePoint website under Audit Review Documents and should be used to develop ONAP's response to the audit review. See the *Introduction* to this GE Guidebook for further instructions on the use of these tools and letters.

Documents and folders in this chapter that are *italicized* and highlighted in red are hyperlinked to the GE SharePoint site. If using an electronic version of the chapter, place the cursor on the word and right-click to open the hyperlink.

The following tools and model letters for conducting audit reviews are available in the *Audit Review Documents* section of the Documents library on SharePoint. Note: The American Recovery and Reinvestment Act (ARRA) tool entitled, "*Audits for Grants Funded Under ARRA*", explains the audit requirements specific to ARRA, and therefore, is temporary.

Audit Review Tools	*Audit Model/Sample Letters*
Audit Review Checklist	*Model Letter - CAP Request*
Audits for Grants Funded Under ARRA	*Model Letter - Management Decision*
	Model Letter - Referral to Other Agencies
	Model Letter - Request for Auditor's Working Papers

3.2 Objectives and Overview of the Audit Review Process

Audits provide useful information about a recipient's financial position, use of its resources, internal controls, and compliance with HUD regulations. Findings identified in the audits and the recipient's actions to resolve findings provide information for the risk assessment and on-site monitoring strategies.

The GE Specialist has two primary roles in the audit review process:

- Review IPA audits (commonly referred to as A-133 audits) to ensure that the reports are in compliance with Office of Management and Budget (OMB) Circular A-133 requirements .
- Identify findings that require ONAP tracking and monitoring to ensure that the recipient initiates corrective actions and resolves the findings.

3.2.1 Audit types

The types of audits that the Area ONAPs are responsible for are:

- IPA audits of ONAP recipients conducted in compliance with the Single Audit Act (SAA) (http://hudatwork.hud.gov/po/f/audit/singleaudit.cfm) and OMB Circular A-133 (http://www.whitehouse.gov/omb/grants_circulars.) Audits of recipients when an OMB Circular A-133 audit is not required because the recipient expended Federal funds less than the Circular A-133 threshold (currently set at $500,000), and
- OIG audits.

The following sections explain the types of audits and describe the audit review processes. A synopsis of audit types and GE Specialist responsibilities is presented below. For further discussion on cognizant and oversight agencies, see Section 3.3.1, below.

Type of Audit	*Responsible Agency*	*Actions*
Independent Public Accountant	ONAP is the Cognizant or Oversight Agency	Conduct a review to ensure that the auditor complied with the requirements of OMB Circular A-133. Conduct a review of the CAP for completeness. It shall provide the name(s) of the contact person(s) responsible for the corrective action, the correction action planned, and the anticipated completion date. Input auditor's findings relating to HUD programs to the PTD and monitor progress on necessary corrective actions. Input Schedule of Expenditures of Federal Awards (SEFA), expenditure amounts to PTD and determine if grant amounts drawn agree with APR or ASER.
Independent Public Accountant	Other Federal Agency is Cognizant or Oversight	Input auditor's findings relating to HUD programs and any assigned crosscutting findings to the PTD and monitor progress on necessary corrective actions. Conduct a review of the CAP for completeness. It shall provide the name(s) of the contact person(s) responsible for the corrective action, the correction action planned, and the anticipated completion date.
Audits of Recipients When Not Required by OMB Circular A-133	Area ONAP	Conduct a review to ensure that the auditor complied with the requirements of OMB Circular A-133. Conduct a review of the CAP for completeness. It shall provide the name(s) of the contact person(s) responsible for the corrective action, the correction action planned, and the anticipated completion date. Input auditor's findings relating to HUD programs to the PTD and monitor progress on necessary corrective actions. Input Schedule of Expenditures of Federal Awards (SEFA), expenditure amounts to PTD and determine if grant amounts drawn agree with APR or ASER.
HUD OIG		Input auditor's findings to the PTD, monitor progress on necessary corrective actions, and track findings through the Audit Resolution and Corrective Action Tracking System (ARCATS).

3.2.2 Audit tracking

There are two systems that are used for tracking audits: the PTD and the Audit Resolution and Corrective Action Tracking System (ARCATS). For more information on ARCATS, see Section 3.5.1.

IPA Audits

If the PTD does not automatically generate the date that the next IPA audit is due to the Federal Audit Clearinghouse (FAC), then the GE Specialist or Program Assistant must create a new record for the next audit once the grant has been awarded. OMB Circular A-133 states that the audit is due 30 days after the recipient receives the audit or 9 months after the end of the audit period, whichever is earlier. Because ONAP would not know when the recipient will be receiving the audit, the date that the GE Specialist should enter in the PTD would be 9 months after the end of the recipient's fiscal year. This will assist the GE Specialist in determining if the audit was delinquent and whether to proceed with enforcement actions. This also will help the GE Director with scheduling and assignments. Following is a chart that shows the latest date that audits are to be submitted to the FAC (9 months after the end of the audit period).

Fiscal Year End	***Audit Due to FAC***
March 31	December 31 of the same year
June 30	March 31 of the next year
September 30	June 30 of the next year
December 31	September 30 of the next year

The GE Specialist should track all audit findings pertaining to ONAP programs in the PTD, as well as resolution of those findings. Once the audit has been accepted by the FAC, the GE Specialist or Program Assistant can access the FAC database by following the instructions below to determine which findings should be included in the PTD. However, the GE Specialist should then verify in the audit itself that there are no other findings pertaining to ONAP programs that were not identified on the Data Collection Form loaded in the FAC database.

1. Access the FAC website at http://harvester.census.gov/sac/dissem/asp/incompleteEntity.asp

2. Enter the Employee Identification Number (EIN) for results specific to that auditee. In many cases, the EIN will be the same number as the Taxpayer Identification Number (TIN) for the recipient in LOCCS. However, if it is not and the EIN is unknown, enter the recipient name. It should be noted, though, that other entity names may be displayed and the recipient's name on the audit may be different than what is identified in LOCCS. For example, in LOCCS, TIN 99-0143318 is identified as the Pilot Point Traditional Council; whereas, EIN 99-0143318 in the FAC database is identified as the Pilot Point Tribal Council..

3. Click on "View Results of Audit Status Entity Search".

4. Click on the auditee name for the applicable Fiscal Year Ended (FYE) date (or audit period end date, if different). The Data Collection Form will be displayed for that audit for that particular FYE.

5. Scroll to Part III, #8, to see if the auditor identified any prior or current findings are related to HUD funding. HUD is identified as #14.

6. Continue to Part III, #9, which lists the amount of funds expended during that audit period and any findings included in the report for each program. Columns (a) and (b) list each agency's programs by Catalog of Federal Domestic Assistance (CFDA) number. (See below for a list of ONAP CFDA numbers.). Column (d) will identify the Federal program (funding source). If any HUD funding is being used in conjunction with other Federal agency funding, the findings related to HUD funding will be shown.

7. Part III, #10, column (b) will identify the finding numbers related to the Federal program.

The CFDA numbers for all ONAP programs are identified as follows (note that some of the programs below are not included in this GE Guidebook):

ICDBG	14.862
IHBG	14.867
ROSS – Service Coordinators	14.870
ROSS – Family Self-Sufficiency	14.877
RHED (Rural Innovation Fund)	14.263
NHHBG	14.873
Section 184A	14.874
Section 184	14.865
Title VI	14.869

OIG Audits

The GE Specialist or Program Assistant will enter into the PTD the date the Area ONAP receives an OIG audit. The exception would be OIG audits issued to Headquarters. These audits are still managed through memoranda. These audits will be addressed to the Action Official in the Area ONAP and will be received by regular mail or accessed on the OIG web page at http://www.hud.gov/offices/oig/reports/auditreports.cfm. The Action Official, which is usually the Area ONAP Administrator, is the local official accountable for tracking required corrective actions and closing OIG findings.

For OIG audits, currently, the OIG is using ARCATS to document progress on OIG audits. The Action Official is required to enter data into ARCATS to track and document progress on resolving findings. The system allows users at HUD Headquarters, Area ONAPs, and OIG to input and update data, as authorized, and to produce reports summarizing the data.

OIG audits will have a unique identifying number assigned when the Area ONAP receives it. This number should be used in the PTD and in all correspondence related to the report.

The GE Specialist or Program Assistant should enter OIG audit findings in the PTD so the findings and their resolutions can be tracked on an ongoing basis.

3.3 IPA Audits of Recipients

The IPA audit is the primary source of data on a recipient's financial position and internal controls. The definitions of terms used in this section can be found in OMB Circular A-133, § __.105.

For all ONAP programs, the recipient must comply with the Single Audit Act (SAA) and OMB Circular A-133. A non-Federal entity that expends $500,000 or more in Federal funds in a fiscal year must submit an annual audit that complies with OMB Circular A-133.

It is important to identify the recipient of the program funds in order to determine who is required to submit an audit. OMB Circular A-133 defines a recipient as a "non-Federal entity that expends Federal funds received directly from a Federal awarding agency to carry out a Federal program." It also provides a definition for a subrecipient, which is, "a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program". NAHASDA Section 405(a) states, "An entity designated by an Indian tribe as a housing entity shall be treated, for purposes of chapter 75 of title 31, United States Code, as a non-Federal entity that is subject to the audit requirements that apply to non-Federal entities under that chapter." Therefore, Tribes, TDHEs, and subrecipients would be required to submit an audit if they meet the OMB audit threshold, currently at $500,000..

If the TDHE is the recipient of IHBG funds, it is required to submit a separate audit of its financial statements and the Federal awards; it cannot be covered under the Tribe's audit. If a Tribal housing department administers the IHBG program, it is a department of the Tribe and must be included in the Tribe's audit. If the recipient (Tribe or TDHE) has a separate entity administering the program, or a part of it, under a subrecipient agreement, the subrecipient must submit a separate audit. For subrecipients, the recipient is considered the "pass-through entity". The TDHE would never be considered a subrecipient of its beneficiary Tribe; however, there may be instances where a TDHE is a subrecipient of another Tribe.

Recipients are responsible to procure their required IPA audits and submit the IPA audit reporting package to the FAC. (See Section 3.3.2 on the specific reporting requirements.) The FAC will conduct a completeness review and post all complete and accepted IPA audits to its Image Management System (IMS) database. GE staff may download copies of audits that have been stored in the IMS database. For more information on IMS, see Section 3.3.6.2.

The costs of IPA audits are eligible program costs. If a recipient is not subject to the SAA due to the total amount of Federal fund expenditures being less than $500,000 during its audit period but elects to retain a periodic financial review, the cost of such a review is also eligible program expenditure under the IHBG program (24 CFR § 1000.546). Although ONAP cannot require the financial review be submitted with the APR, ONAP can request it. See Section 3.4 for further discussion when a recipient is not required to conduct an audit.

While conducting a monitoring review, if the Area ONAP identifies a finding in a recipient's financial management system and requires that the recipient have an IPA's or CPA's certification that the recipient's system is in compliance with NAHASDA requirements, the cost of that certification would be an eligible program cost.

3.3.1 Cognizant and/or oversight agencies

Recipients expending more that $50 million in a fiscal year in Federal awards shall have a cognizant agency for audit. OMB determines who the cognizant agency is for a particular recipient. The designated cognizant agency for audit shall be the Federal awarding agency that provides the greatest amount of direct funding to the recipient, unless OMB assigns a specific cognizant agency for audit. A listing of current cognizant agency assignments is in the *Federal Cognizant Agency for Audit List* at http://harvester.census.gov/fac/dissem/asp/reports.asp

If a recipient does not have an assigned cognizant agency, it will have an oversight agency. The oversight agency is the Federal agency that provides the greatest amount of direct funding to a recipient. If there is no direct funding, the Federal agency that awarded the greatest amount of indirect awards is assigned oversight responsibility. Oversight agencies are identified by the FAC in the online database based on the expenditures reported in the year of the audit.

If HUD is designated as the cognizant or oversight agency for an audit of a Tribe or TDHE, it is more than likely that the majority of HUD programs identified are those administered by ONAP. Therefore, for the purposes of this Guidebook, ONAP will be referred to as the cognizant or oversight agency.

3.3.1.1 When ONAP is the cognizant or oversight agency

When ONAP is the cognizant or oversight agency, the GE Specialist must conduct an OMB Circular A-133 compliance review of the IPA audit. Therefore, OMB Circular A-133 states that ONAP, as the cognizant or oversight agency, is responsible for performing the functions below.

- Ensuring that the audit submission requirements are met.

- Providing technical audit advice and serving as a liaison to auditees and auditors. This would include reminding recipients of the submission requirements and the need to contract with an auditor as soon after their fiscal year ends as possible. .
- Processing audit submission extensions. (See Section 3.3.3 for more information on extension requests.)
- Conducting quality control reviews of selected IPA audits and providing the results in an acceptance letter to other interested organizations.
- Advising the auditor and, where appropriate, the recipient of any deficiencies found in the audits that require corrective action by the auditor.
- Coordinating, as practical, audits or reviews in addition to the IPA audit, so that additional audits build upon the IPA audit. (Note: if other audits have been conducted or monitoring reviews performed on the recipient, the GE Specialist should utilize these reports when reviewing the IPA audit.)
- Coordinating Management Decisions for audit findings that affect the programs of more than one Federal agency coordinating the audit resolution and reporting responsibilities among auditors to achieve the most cost-effective audit.

In addition to the responsibilities specified in OMB Circular A-133, the GE Specialist should be performing the following processes:

- If the recipient has been approved for investments, determining if there are any unresolved significant and material audit findings and exceptions. (See PIH Notice 2010-33 on investments at http://www.hud.gov/offices/pih/publications/notices/10/pih2010-32.pdf.) If there are unresolved findings, informing the GM Specialist about the findings in order to determine whether the recipient's investment authority should be revoked.
- Working with recipients to make sure appropriate corrective action plans are developed and implemented to address areas of highest risk for programs as identified in the FAC report.
- Issuing a Management Decision Letter to the recipient on any open findings related to ONAP programs within 6 months of receipt of the audit (as required under A-133 §.__405(d)) . Samples may be found in SharePoint and there is a model *Management Decision Letter*.
- Ensuring that the recipient addresses open audit findings related to ONAP grants.

3.3.1.2 When ONAP is NOT the cognizant or oversight agency

Whether or not the cognizant or oversight agency notifies ONAP that the audit meets the requirements of OMB Circular A-133 or contacts ONAP to coordinate a Management Decision on any findings, the Area ONAP, as the Federal awarding agency, is responsible for the actions below (A-133 §.__400(c)).

- Ensuring that the audit submission requirements are met.

- Issuing a Management Decision Letter to the recipient on any open findings related to ONAP programs within 6 months of receipt of the audit.
- Ensuring that the recipient addresses open audit findings related to ONAP grants.
- Ensuring that the recipient addresses any crosscutting findings assigned to ONAP by the cognizant or oversight agency.

3.3.2 Audit submission requirements

All ONAP programs discussed in this Guidebook are subject to the SAA and OMB Circular A-133. OMB Circular A-133 §___.320(a) and (d) requires that the auditee submit a completed Data Collection Form (SF-SAC) and a complete reporting package to the FAC within 30 days after receipt of the auditor's report or 9 months after the end of the audit period, whichever is earliest. For audits with fiscal periods ending on or after January 1, 2008, auditees are to make the submission electronically to http://harvester.census.gov/fac/collect/ddeindex.html. For prior year audits, paper submissions should be sent to:

Federal Audit Clearinghouse
1201 E. 10th St.
Jeffersonville, IN 47132

The cognizant or oversight agency may agree in advance to extend the submission period (see Section 3.3.3, below).

A reporting package includes:

- the financial statements;
- a Schedule of Expenditures of Federal Awards;
- auditor's opinions on the fair presentation of the financial statements and Schedule of Expenditures of Federal Awards;
- auditor's report on internal control and compliance pertaining to financial reporting;
- auditor's report on internal control and opinion on compliance pertaining to major programs;
- an auditor's schedule of findings and questioned costs;
- if applicable, auditee's corrective action plans (CAP); and
- Summary Schedule of Prior Audit Findings, which includes planned and completed corrective actions. If there are no prior audit findings for Federal awards, the Summary Schedule of Prior Audit Findings is not required.

In addition to ensuring that the reporting package is complete, the FAC will also:

- Make audits electronically available to Federal agencies,
- Maintain a database of completed audits,
- Maintain a database of OMB data collection forms,
- Provide appropriate information to Federal agencies, and
- Follow up with recipients that have not submitted the required data collection forms and reporting packages.

The audit submission requirements for the ONAP programs are discussed below.

IHBG Program

With the passage of the revised IHBG regulations on December 3, 2012 (effective January 2, 2013), 24 CFR § 1000.548 now instructs, "A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted to the appropriate HUD ONAP area office at the same time it is submitted to the Federal Audit Clearinghouse pursuant to OMB Circular A-133."

ICDBG Program

The ICDBG program at 24 CFR § 1003.501, requires that recipients that meet the audit threshold for a fiscal year have an audit conducted under OMB Circular A-133 (note that while the ICDBG regulations cite OMB Circular A-128, A-133 has replaced that circular). Under the ICDBG regulations, there is no requirement that the recipient submit the audit to ONAP. However, A-133 § .__320(f) says that if a Federal agency requests a copy of the audit, the recipient shall submit it. A GE Specialist may request an audit from an ICDBG recipient by adapting the model *ICDBG Reporting Requirements Reminder Letter* on SharePoint.

RHED and ROSS Programs

Under RHED and ROSS, recipients are required to comply with the SAA and OMB Circular A-133 requirements, as cited in 24 CFR § 85.26. As with ICDBG, there are no requirements under these programs to submit the audit to ONAP, unless ONAP requests the audit. A GE Specialist may request an audit from an RHED recipient by adapting the model *RHED Reports Reminder Letter* on SharePoint.

3.3.3 Audit extension requests

Recipients of HUD funds may request an extension in submitting to the FAC an audit prepared by an independent public accountant. However, in accordance with OMB Circular A-133 §___.320(a), the request is made to the cognizant or oversight agency in advance of the due date. HUD's National Single Audit Coordinator and ONAP have implemented specific requirements for successful audit extensions (*Audit Extension Requirements*). Audit extension requests that do not meet the requirements below should not be considered by the Area ONAP. In these instances, the Area ONAP should either inform the recipient that the extension is not justified or assist the recipient in submitting an acceptable extension request, if feasible. The Area ONAP will review the extension

request to ensure the requirements below are met. **Please note that, during FYs 2009 through FY 2011, no extension requests will be granted per OMB Memorandum M-10-14 and since that time HUD's National Single Audit Coordinator has determined that the moratorium on audit extensions will continue for the foreseeable future.** See *Audits for Grants Funded Under ARRA*.

- **HUD must be the recipient's cognizant or oversight agency.** If an Area ONAP receives an audit extension request where HUD is not the cognizant or oversight agency, notify the recipient of the error as soon as possible.

- **Audit extension requests are to be submitted prior to the audit due date.** Extension requests should be received by ONAP at least 2 weeks prior to the established audit due date. The auditor will know (and the recipient should also know) well in advance of the submission deadline whether the auditor is going to have the audit completed in order to meet that deadline. Only under **very unusual** circumstances will HUD accept an extension request after the deadline has expired.

- **Requests are to come from the recipient, not the auditor.** The recipient should make the request in a letter, not an email. Also, the letter should be on the recipient's letterhead and signed by the Executive Director or head of the organization, rather than the Finance Director, etc.

- **The letter should include the following information:** the recipient's FYE (for which the audit extension is requested), the amount of time requested for the extension, the proposed deadline date for audit submission, and an explanation why the extension is needed. Extensions will only be granted for "good cause". An auditor's inability to complete the audit on time due to poor planning is not usually considered "good cause."

Second extension requests will only be granted under unusual circumstances, usually for reasons beyond the recipient's control.

After the Area ONAP receives the extension request and verifies that it complies with the requirements above, it is preferred that the extension request letter be scanned and emailed as an attachment to the HQ OGE; otherwise, the letter may be faxed. In the email transmitting the request or on the fax cover sheet, the Area ONAP should state that approval is recommended.

After its review, OGE will email the extension request to HUD's National Single Audit Coordinator, with the Area ONAP's favorable recommendation. The Coordinator will send the recipient a letter by regular mail, granting the request. Also, the Coordinator will send an electronic copy of the letter to OGE, and that email will be forwarded to the Area ONAP.

It should be noted that if the Area ONAP makes a finding in a Final Monitoring Report (FMR) (see Chapter 5 on the Monitoring Process) that the recipient did not comply with the audit submission requirements under OMB Circular A-133 and provides a target date to submit the audit as the Recommended Corrective Action (RCA), this RCA should not be construed as providing an audit extension to the recipient. Rather, ONAP still has the right to, and should, require that the recipient submit the audit to the FAC and the Area ONAP. This does not change the fact that the recipient has already violated the submission requirements under OMB Circular A-133. A late submission of the audit could be future justification that the recipient lacks administrative capacity.

3.3.4 Remedies for noncompliance with audit submission requirements

IHBG -- The recipient is not in compliance with the SAA, OMB Circular A-133, and 24 CFR §§ 1000.544 and 1000.548.

While OMB Circular A-133 § __.225 indicates the sanctions to use in cases of continued inability or unwillingness to have an OMB Circular A-133 audit conducted, HUD shall impose the remedies under the IHBG program pursuant to 24 CFR § 1000.532.

If a recipient does not submit the latest audit (or the GE Specialist is unable to obtain it from the FAC IMS database), compliant with the SAA, to the FAC and ONAP , the GE Specialist should follow the enforcement procedures described in Chapter 6.

ICDBG – The recipient is not in compliance with the SAA and OMB Circular A-133, and 24 CFR § 1003.501

As with the IHBG program, if an ICDBG recipient does not submit the audit to the FAC, as required by the above citations, HUD will impose the remedies outlined in the ICDBG regulations at 24 CFR § 1003.703 rather than those found in OMB Circular A-133. The GE Specialist should follow the enforcement procedures described in Chapter 6.

RHED & ROSS – The recipient is not in compliance with the SAA and OMB Circular A-133, and 24 CFR §§ 85.26 or 84.26

If a recipient of RHED or ROSS funds does not submit the audit to the FAC, as required by the above citations, HUD will impose the remedies outlined in OMB Circular A-133 § __ .225. The GE Specialist should follow the enforcement procedures described in Chapter 6.

3.3.5 Audit review reference documents

Audit review reference documents may be found at the following Internet addresses:

- OMB Circular A-133 and the Compliance Supplements for current and past years: http://www.whitehouse.gov/omb/grants_circulars.

- Form SF-SAC, Data Collection Form for Reporting on Single Audits: http://harvester.census.gov/fac/collect/formoptions.html.
- Government Auditing Standards issued by the Comptroller General of the United States: http://www.gao.gov/yellowbook.

3.3.6 IPA audit review process

The GE Director shall designate the person responsible for the OMB Circular A-133 compliance reviews of IPA audits. The audit reviews may be part of each GE Specialist's duties or may be assigned to specific individual(s) with particular audit knowledge. In the sections below, it is assumed that the GE Specialist is the assigned IPA audit reviewer.

3.3.6.1 Auditor opinions

The audit should include the auditor's opinion on the presentation of financial statements and on compliance for the major Federal awards programs. There are four different opinions the auditor may issue; and in some instances, there may be a combination of opinions, as follows:

UNMODIFIED OPINION. An unmodified opinion states that the financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP). However, in some instances, the standard unmodified report may be changed without affecting the unmodified opinion issued on the financial statements.

MODIFIED OPINION. Modified audit opinions are given for two reasons. The first is scope limitation, which means that the auditor doesn't have access to enough information, or to relevant information. The second is in the circumstance that there is a departure from GAAP, which may be the result of either an accident or negligence on the part of the client being audited.

ADVERSE OPINION. When issuing an adverse opinion, the auditor concludes that the financial statements do not present the entity's financial position, results of operations, and cash flows in conformity with GAAP. This type of opinion is only issued when the financial statements contain very material departures from GAAP.

DISCLAIMER OF OPINION. A disclaimer of opinion is issued when the auditor is unable to form an opinion on an entity's financial statements. A disclaimer may be issued in cases when: (1) the auditor is not independent with respect to the entity under audit, (2) a material scope limitation exists, or (3) a significant uncertainty exists.

Although an audit with a disclaimer or adverse opinion would satisfy the submission requirements of the SAA and OMB Circular A-133, the opinion is basically stating there are issues within the grantee's operation that will require immediate attention or possibly a supplemental audit. Because there is a wide range of circumstances, there is not a "one size fits all" Management Decision for adverse/disclaimed opinions. See Section 3.3.6.7 on the Management Decision for further information. For example, a Tribe (in which ONAP is not the

oversight agency) may be given an adverse opinion on their financial statements due to an enterprise or component unit of the Tribe, such as a tribal casino, not being presented in the financials; however, the Tribe was issued an modified opinion on compliance of major Federal awards programs. In this instance, it would not require that ONAP issue a Management Decision letter that would question costs for HUD funds or require that HUD funds be re-audited. When ONAP is not the oversight agency, ONAP will generally address the findings that pertain specifically to HUD funding.

However, on the other end of the spectrum, a TDHE (for which ONAP is the oversight agency) may be issued a disclaimer of an opinion due to inadequate financial records/lack of internal controls and may be issued an adverse opinion on compliance for major Federal awards programs. In this instance, the Area ONAP would issue a Management Decision that would address the deficiencies specifically. The Management Decision may require the recipient get its financial records in place and request the financial records be audited again through a supplemental audit. Should the recipient not get its financial records in order, ONAP may question all HUD expenditures; and ultimately, the questioned costs may be disallowed, after following the enforcement process. If the costs are disallowed, the recipient will have to repay its program with non-Federal funds.

If an audit has either an adverse or disclaimer of an opinion, the GE Specialist shall write corrective actions that require the recipient to take action that will correct the deficiency. Each situation will be different depending upon the reason the auditor issued an adverse or disclaimer of opinion. The GE Specialist should seek additional guidance from the GE Director when the audit opinion is adverse or disclaimed and it is not clear as to what action the Area ONAP will need to take. The Area ONAP may also want to consider the auditee's capacity for administering ONAP programs if there is an adverse or disclaimer of opinion in the audit.

3.3.6.2 IPA audit review: ONAP is cognizant or oversight agency

As stated in Section 3.3.2, the FAC will post the audit information and status to its website. This can be found at http://harvester.census.gov/sac/dissem/accessoptions.html. If ONAP does not receive a copy of the audit from the recipient, it may be downloaded from the IMS database. Note: The FAC IMS images all statewide submissions beginning in FYE 2001, as well as all accepted audits beginning in 2008. Each Area ONAP should have at least one GE Specialist that can access IMS and download audits.

OMB Circular A-133 §___515(b) authorizes ONAP to request copies of auditor's working papers. The easiest way to obtain the working papers would be to ask the recipient to request a copy in the auditor contract. When a concern is noted or a review is expected by the GE Specialist, ask that a paragraph be added to the contract stating auditor's papers should be sent to the ONAP office at the conclusion of the audit.

When ONAP is the cognizant or oversight agency (OMB Circular A-133, Subpart C, § ___.320(h)), the GE Specialist should answer all questions in the section "ONAP is Oversight Agency" in the *Audit Review Checklist*. Utilizing the checklist will aid the GE Specialist in determining the audit's compliance with the SAA and OMB Circular A-133.

The GE Specialist answers each audit review question in the *Checklist* and enters observations in the "Notes and Comments" field. The GE Specialist should use the *Checklist* to note if the audit is compliant, to summarize the rationale for this determination, to list audit findings, and to note if the auditee has lost administrative capacity.

The GE Specialist is responsible for determining whether the recipient has met all the requirements in OMB Circular A-133, as the "auditee", and whether the auditor has met the requirements they must comply with when conducting the audit. If the auditor's working papers were not requested in the audit contract, they may be requested during a review. If it is noted that the auditor refers to other documents that are not a part of the audit but may be pertinent, the Area ONAP may request those documents from the recipient using *Model Letter - Request for Auditor's Working Papers*. When an audit does not meet the requirements of the SAA and OMB Circular A-133 and the GE Specialist cannot resolve the issue, the audit must be rejected. A sample audit rejection letter is available in SharePoint. Examples of situations that would result in rejecting an audit are as follows:

- Audit performed by an auditor not licensed in compliance with OMB Circular A-133 §___.105 and in Generally Accepted Government Auditing Standards (GAGAS or the "Yellow Book") § 3.44
- Audit performed by an auditor who is on the Debarred or Excluded Parties list, which can be accessed at https://www.epls.gov/ or
- Audit is incomplete or not in compliance with the SAA and OMB Circular A-133 and the deficiency cannot be resolved. See Section 3.3.6.7 for additional information.

ONAP's review of audits may reveal a need for an in-depth review of an auditor's work. The GE Division is not responsible for conducting quality assessments of the IPA's audit work papers. HUD's Real Estate Assessment Center (REAC) is the office responsible for quality assessment reviews of IPA audits. REAC will review audit work papers in addition to the audit itself. If an Area ONAP believes that an auditor's work may be substandard, a recommendation should be made to the Headquarters OGE to refer the auditor to REAC. The Area ONAP GE Division will provide copies of audits and correspondence to REAC, as requested, and will assist REAC staff by providing information on programs and recipients, as needed.

3.3.6.3 IPA audit review: ONAP is NOT the cognizant or oversight agency

If ONAP is not the cognizant or oversight agency, the GE Specialist should use the *Audit Review Checklist* as the guide for reviewing the IPA audit; however, the GE Specialist will only answer specific questions on the checklist which are identified as "HUD is Not Oversight." If the Area ONAP has not received the cognizant or oversight agency acceptance letter, the GE Specialist shall contact the recipient to obtain a copy of the acceptance letter. If the recipient has not received notification from the cognizant or oversight agency and the audit has been posted to the

FAC database, the GE Specialist should continue to process the audit and review the CAP for findings relating to ONAP grants.

3.3.6.4 Indications of problems

The GE Specialist needs to be attentive for indications of noncompliance with HUD program regulations and weaknesses in the recipient's operations. In addition to the auditor's findings, indications of problems may be in the auditor's written opinion, notes to the financial statements, required supplemental information, or letters to management. Often these areas will contain information relating to weaknesses, irregularities, or instances of noncompliance in the recipient's operations.

Weaknesses or questionable practices provide opportunities for many types of abuse to occur. If uncorrected, the chances for fraud, waste, or mismanagement increase. At times, information about possible problems is obvious, but most often the GE Specialist must analyze the accounts and/or accompanying schedules. The GE Specialist may detect additional warning signs that a problem exists or that further analysis is necessary. Since certain warning signs will not be applicable to all ONAP programs, the GE Specialist must exercise judgment when making an analysis. The analysis may indicate problems such as those below:

- Reports with modified or adverse opinions, or disclaimer of opinion
- Weaknesses in internal, administrative, or accounting controls
- Poor or improper procurement practices or procedures
- Costs questioned because of a lack of documentation
- Inadequate accounting records
- Unusual or significant changes in assets or liabilities
- Large accounts receivable balances
- Negative cash flow
- Unusual expenses or payments to identity-of-interest firms or related parties

The GE Specialist shall obtain an explanation or request the auditor's working papers (allowed under OMB Circular A-133 §___.515(b)) if there is any discrepancy from the auditor and/or the recipient. This request can be made in the *Model Letter - Management Decision*, the *Model Letter - Request for Auditor's Working Papers* or by phone. It is recommended that the GE Specialist request the recipient to add the request for future working papers be sent to ONAP in their next audit contract. It is important to determine whether questionable items, balances, transactions, or procedures are appropriate and within program regulations and requirements. Discrepancies may occur in situations where an auditor is unfamiliar with ONAP programs and may not report departures from regulations and requirements appropriately. The GE Specialist also verifies to ensure that the auditor is (or works for) a certified public accountant. Occasionally, recipients try to conceal problems by engaging an unqualified auditor. If the GE Specialist is concerned about the integrity of the auditor or auditing firm, then these issues should be discussed with the GE Director for possible referral to REAC for a quality assurance review. See Section 3.3.6.2 for additional information.

If the GE Specialist believes that an additional audit should be conducted, then a recommendation should be made to the GE Director, who will inform the recipient. The recipient's cost for commissioning an additional audit requested by ONAP is an allowable expense. Care must be taken in the planning and performance of additional audits so as to build upon work performed by other auditors. (OMB Circular A-133, Subpart B, §§ __.215(a) and .215(b)).

3.3.6.5 Recipient's corrective action plan (CAP)

Recipients are required to submit a CAP that will address all findings cited in the audit (OMB Circular A-133, Subpart C, §__.320(c)(4)). If the recipient did not agree with the audit findings or believes corrective action is not required, then the recipient's CAP should cite the reasons. The GE Specialist shall review the recipient's CAP to determine whether the corrective actions are appropriate and responsive to the audit findings, as required by OMB Circular A-133, Subpart C, § __.315(c). [NOTE: A recipient's response to a finding included in the finding detail (OMB Circular A-133, Subpart E, §__.510 (b) (8)) generally does not include all of the information required to be in a CAP.]

If the recipient's CAP is inadequate or if a CAP is not submitted with the audit, the GE Specialist should adapt the *Model Letter - CAP Request* template to request a CAP that is responsive to all findings. The GE Specialist should refer to the findings using the same identifiers and descriptions entered into the PTD and provide suggestions for an acceptable CAP. Recipients must submit a responsive CAP within 30 days of receiving the CAP request letter. For this reason, the letter must be sent via Certified Mail.

3.3.6.6 IPA audit compliance

ONAP will review audits to determine if the auditor has met SAA and OMB Circular A-133 requirements. If not, ONAP shall return the audit back to the recipient, notifying the recipient that the audit is not in compliance, referencing the citation that was violated, and requesting that the audit be corrected accordingly and resubmitted. If the deadlines established in OMB Circular A-133 and 24 CFR § 1000.548 for submission of the audit have expired, the audit will be considered delinquent.

One of the requirements, which is found at OMB Circular A-133, § __.510(b)(2), is that the auditor is to include in the finding "the criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation." If the auditor does not include the citations, it is in violation of § __.510(b)(2).

If corrective actions are not initiated or not sufficient, ONAP will notify the auditor and the recipient. If ONAP is the cognizant or oversight agency, ONAP will notify the affected Federal funding agencies and propose recommendations for follow-up action. Likewise, when the audit meets the OMB Circular A-133 requirements, ONAP will notify the recipient and other Federal funding agencies of that fact. The Federal agency

audit contact information can be found in the compliance information of OMB Circular A-133. The website for the contact information is: http://www.whitehouse.gov/omb/grants_circulars.

If the audit is in compliance and the CAP is responsive to the findings, the GE Specialist prepares the *Model Letter - Management Decision* for the GE Director's signature that confirms compliance and acknowledges acceptance of the audit. The GE Specialist may prepare a separate CAP Acceptance Letter. However, to manage time more efficiently, the GE Specialist also has the option to prepare the management decision letter and forego preparing the CAP acceptance letter.

3.3.6.7 Management Decision

ONAP, whether as the cognizant or oversight agency or as the Federal awarding agency, is responsible for issuing Management Decisions on audit findings related to ONAP programs within 6 months after receipt of the IPA audit (OMB Circular A-133, Subpart D, § __.400(a)(b), or (c)). The Management Decision outlines the corrective actions that the recipient must take (OMB Circular A-133, Subpart D, § __405). Refer to Section 3.3.6.2 on auditor opinions for further information.

The GE Specialist may adapt the *Model Letter - Management Decision* template located in SharePoint to list all audit findings (finding numbers and descriptions), identify required corrective actions, and identify target dates in which to resolve the finding. When establishing target dates, the GE Specialist must consider the complexity of the required corrective actions and whether the actions include revising policies and procedures, which may require additional time. The goal is for the recipient to resolve all findings within 1 year. The GE Specialist is responsible for ensuring that recipients implement appropriate and timely corrective action. The GE Director reviews, revises if necessary, and signs the management decision letter.

Addressing Prior Year Audit Findings – If the current audit does not include the status of a prior year audit finding, nor is the finding repeated in the current year audit as a finding, the GE Specialist should assume that this finding has been resolved and closed by the auditor.

If a prior year finding is repeated in the subsequent year's audit, then ONAP should close the prior year finding in the PTD, and monitor this finding under the current year's audit.

If ONAP is the cognizant or oversight agency and the audit identifies findings that affect more than one program, ONAP will coordinate the Management Decision process by assigning the crosscutting findings to one of the other Federal agencies or to ONAP and informing other applicable Federal funding agencies of that assignment.

As with monitoring findings, IPA audit findings should be carefully considered in the design of the monitoring strategy for a recipient so that ONAP resources (staff time and travel) are allocated effectively.

If the GE Specialist determines that the audit discloses a serious problem with the recipient's administrative capacity, the Area ONAP management team should develop specific plans for intervention.

3.3.6.8 Monitoring recipient progress

The GE Specialist or Program Assistant shall record all ONAP related findings, corrective actions, Management Decisions, and target dates in the PTD. The GE Specialist shall monitor and document the recipient's progress in implementing corrective actions and keep the GM Specialist informed in case technical assistance is required to assist the recipient in resolving the findings. The GE Specialist or Program Assistant shall update the PTD with status updates and finding resolution dates.

The GE Specialist is responsible for tracking findings that directly relate to HUD grants, crosscutting findings that have been assigned to ONAP by the cognizant or oversight agency, and corrective actions planned by the recipient.

3.3.6.9 Resolution and closure of audit findings

Once ONAP has received sufficient documentation to verify the recipient has taken the corrective actions required in the CAP for the finding(s), ONAP will send a letter notifying the recipient that the finding(s) has been resolved. However, the finding(s) will not be considered closed until ONAP has received the subsequent year's audit that shows the auditor has closed the finding(s). If the recipient does not meet the audit requirement threshold for the next two audit periods, the finding(s) that ONAP has determined to be resolved will be considered closed.

There may be situations when the auditor should not have closed a finding(s) or should have closed a finding(s), and the actions the GE Specialist should take are described below.

If the Area ONAP has not received sufficient documentation from the recipient to verify that the corrective actions required by the CAP have been taken, yet the auditor has closed the finding, the GE Specialist should contact the auditor to discuss the issue and identify those corrective actions that remain to be completed. The auditor may elect to revise the audit to show that the finding(s) remains open or the auditor may be able to provide additional documentation that all corrective actions have been completed. If the auditor redefines the finding(s) as open, the GE Specialist should update the PTD to show that the finding(s) as open, and review the subsequent audit to determine if the finding(s) was closed.

If the auditor did not close a finding(s) that ONAP considers resolved because all the corrective actions in the CAP have been completed, the GE Specialist should contact the auditor and explain the reason(s) why the finding(s) should have been closed. It may be necessary to provide documentation to the auditor as justification that all corrective

actions in the CAP have been completed. When the auditor then closes the finding(s), the GE Specialist should update the PTD to show that the finding(s) is closed.

3.3.6.10 Recipient noncompliance

If the recipient does not submit sufficient documentation to verify it has taken the actions required in the CAP for the finding(s) by the target date, the GE Specialist shall discuss the circumstances with the GE Director. At that time, the GE Specialist should initiate enforcement actions in accordance with 24 CFR Parts 85, 1000, or 1003. The GE Specialist should follow the enforcement procedures described in Chapter 6 of the Guidebook.

3.4 Audit of Recipient When Not Required by OMB Circular A-133

If the recipient does not expend $500,000 or more in federal funds during an audit period, an OMB Circular audit is not required. However, the recipient may elect to have an audit conducted of its entire operation or an audit of the IHBG program. As stated in Section 3.3, this is an eligible program expenditure under the IHBG program. The recipient should not submit a copy of this audit to the FAC. If the recipient does not automatically submit a copy of the audit to the Area ONAP once completed, the GE Specialist should request that it be submitted to ONAP. The GE Specialist would follow the same process for this type of audit as if this were one where ONAP is the cognizant or oversight agency. The audit and any ONAP related findings would be tracked in the PTD and a Management Decision would be issued.

3.5 IPA Audits of Subrecipients

If a recipient has entered into an agreement with a subrecipient to administer all or part of its IHBG program, the subrecipient is subject to the A-133 requirements, as well, per A-133 §___.200(a). Therefore, if the subrecipient expends $500,000 or more of combined federal funds in a fiscal year, it must also submit an audit to the FAC. The recipient is considered a “pass-through entity”, per the definition in A-133 §___.105 with the responsibilities given in A-133 §___.400(d). Since one of the responsibilities is to review the audit and issue a management decision to the subrecipient, ONAP is not required to do anything with the audit. However, when conducting monitoring, the GE Specialist should ensure that the recipient is complying with its responsibilities as the “pass-through entity.”

3.6 OIG Audits of Recipients

An OIG audit is typically triggered by a report of misuse or abuse of Federal funds. It may also be triggered by unresolved IPA audit findings or ONAP monitoring findings. These audits can either be external or internal audits. External audits focus on the records and performance of ONAP recipients. Internal audits are independent, in-house reviews and examinations of ONAP programs, operations, and management controls. Since

internal audits are typically issued to HQ ONAP, only external audits will be addressed in this chapter.

The external audits that the OIG conducts determine whether: a recipient is in compliance with the terms of its grants; grant funds have been used appropriately; locally adopted policies are being observed; and operations are proper, efficient, and economical.

The OIG is an independent entity that is responsible directly to the HUD Secretary and to Congress. HUD policies governing OIG audits are found in HUD Handbook 2000.06, Rev. 3, Audit Management System (AMS). The AMS Handbook can be found at http://www.hud.gov/offices/adm/hudclips/handbooks/cfoh/20006.

HQ OGE maintains an OIG Audit Tracking Log that lists all the OIG audits (external and internal), the findings and recommendations, target dates discussed in the AMS Handbook, and the status of the audits. This tracking log can be found in SharePoint.

3.6.1 Audit Resolution and Corrective Action Tracking System (ARCATS)

ARCATS is a Lotus Notes database and HUD's official system designed to track HUD's audit resolution process and the status of corrective actions prescribed by OIG and Government Accountability Office (GAO) audits. This process involves tracking, controlling, and reporting on the status of audit findings, recommendations, and Management Decisions. The data recorded in the system is available for designated HUD staff members and is used by the Inspector General in the semiannual report to Congress. Data from OIG and GAO audits recorded in ARCATS include the items below.

- Identification of the Action Office (Area ONAP)
- Identification of the Action Official
- Description of the audit's findings and recommendations
- Classification of each recommendation made by the audit:
    - Due date for each required action, such as Management Decision and resolution
    - Strategy to resolve each recommendation
    - Cost data for each recommendation

3.6.2 OIG audit review process

The process to be followed for OIG audits is fully explained in *ONAP Program Guidance 2008-04 (http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/126/2008-04%20OIG%20Audit%20Process.pdf)* and in the AMS Handbook 2000.06 Rev 3, http://www.hud.gov/offices/adm/hudclips/handbooks/cfoh/20006. (Please note that Program Guidance 2008-04 (ONAP) is in the process of being rewritten.) While the Action Official is ultimately responsible for ensuring that the process is followed, deadlines are met, and findings

are closed, the GE Specialist generally will handle the day-to-day monitoring and recipient support activities required to resolve OIG findings.

The GE Specialist or Program Assistant shall enter the OIG audit findings and recommendations in the PTD to reflect the results of the OIG audit. Each OIG audit finding and recommendation has been assigned a unique identifier. The GE Specialist should use these identifiers when entering them into the PTD or when describing a specific finding in correspondence with the recipient and the OIG.

3.6.3 Draft audit

Once the Area ONAP receives the draft audit, the Action Official shall forward a copy of it to HQ OGE. The Action Official has approximately 2 weeks to submit comments to OIG on the draft audit. The Action Official is to send the draft memorandum with those comments to the HQ OGE to obtain the DAS' concurrence. Therefore, it is important to allow enough time for this process in order to meet the 2 week deadline.

3.6.4 Request recipient's CAP

The GE Specialist must contact the recipient within 15 calendar days after the final OIG audit is issued to request a written description of its CAP for addressing the findings contained in the audit. The letter to the recipient should list all OIG audit findings and recommendations and request that the recipient respond in writing within 45 calendar days after the final audit issuance date. The letter is signed by the Action Official and shall be sent Certified Mail.

3.6.5 Develop Management Decision

After the Area ONAP has received the recipient's CAP, the Action Official is to evaluate the findings and recommendations included in the audit and issue a Management Decision concerning its response to such findings and recommendations. The requirement is to reach Management Decision within 120 calendar days after the audit issuance date. (Program Guidance 2008-04 instructs the Area ONAP to have a draft Management Decision to HQ within 80 days.)

A Management Decision consists of the elements below.

- Recommendation: Restate the recommendation to ensure the Management Decision includes all elements of the recommendation.
- Current status: Describe progress to date and any shortcomings or problems.
- Planned task: If recommended actions are not complete, describe the tasks that will lead to completion; descriptions should include who will take the action and how ONAP will monitor progress.
- Document submission: Describe the documentation that is required to be submitted by the recipient to verify the recommended actions have been taken.

- Final action target date: If the recommended actions are not complete, provide a target date for final action.

Refer to Appendix 2 of the AMS Handbook for sample memoranda and procedures for developing Management Decisions.

The GE Specialist will draft the Management Decision, and the Action Official will forward it to HQ OGE in order to obtain the DAS' concurrence. Once the DAS has concurred, the Action Official will send the Management Decision to the issuing District Inspector General for Audit (DIGA). The Management Decision is reached when the DIGA concurs with the Action Official's recommended actions. Therefore, it is important to allow enough time for this process in order to meet the 120-day deadline. If the Action Official and the DIGA cannot reach agreement on a Management Decision within 120 days of the audit issue date, then the Management Decision is referred to the Assistant Secretary for PIH and to Headquarters OIG. Refer to Appendix 5 of the AMS Handbook 2000.06 Rev-3 at http://www.hud.gov/offices/adm/hudclips/handbooks/cfoh/20006/.

Management Decisions must be entered into ARCATS by the 180th day of audit issue.

3.6.6 Status reports

The Action Official must send a status report, via email, covering each recommendation to the issuing DIGA 60 days after the report is issued and 30 days thereafter until the recommendation has a Management Decision. If ONAP disagrees with the OIG on findings or other issues related to the audit, this should be stated in the 60-day status report. A status report should include both actions taken by the recipient and actions taken by ONAP. See Appendix 6 of the AMS Handbook for sample status reports at http://www.hud.gov/offices/adm/hudclips/handbooks/cfoh/20006/.

3.6.7 Track corrective actions

The GE Specialist shall track and document all recipient corrective actions outlined in the Management Decision using the PTD. Corrective actions should be completed not more than 1 year from the date the Management Decision was reached. If the corrective actions cannot be completed by the target date agreed to in the Management Decision, the Action Official is to request an extension, via email, to the Audit Liaison Officer, along with justification for the request. The Audit Liaison Officer can grant an extension up to the 1-year deadline from Management Decision. A copy of the email should be sent to HQ OGE. If the agreed-to target date is already 1 year from the date the Management Decision was reached, the Audit Liaison Officer will have to refer the extension request to the OIG.

3.6.8 Closing OIG audit findings

When a corrective action is completed, the GE Specialist will prepare the certification package for the Action Official. The certification package consists of a Final Action Certification, a copy of the Management Decision, and appropriate back up documents to support the closure of the finding(s). A copy of the Final Action Certification can be found in Appendix 3 of the AMS Handbook. The Action Official or designee will upload the certification package into ARCATS. At the same time, the Action Official shall notify the Audit Liaison Officer via email of this action, copying HQ/OGE.

For a list of the Audit Liaison Officers see http://hudatwork.hud.gov/po/f/audit/finmgmt3.cfm.

3.6.9 Recipient noncompliance

If the recipient does not satisfactorily address the audit findings within the 1-year timeframe, the GE Specialist shall follow the enforcement process described in Chapter 6 of the Guidebook.

Chapter 4: Risk Assessment Process and Monitoring Schedule Preparation

This chapter provides ONAP staff with information and direction on the risk assessment process to be used in developing Area ONAPs' monitoring schedules. This process applies primarily to the IHBG and ICDBG programs. Section 4.4.2 discusses the RHED/RIF and ROSS programs.

This chapter includes the following sections:

4.1: Objectives and Overview of the Risk Assessment Process

4.2: Risk Rating Approach

4.3: Risk Assessment Tools

4.4: Calculating Risk Assessment Scores

4.5: Draft Area ONAP Monitoring Schedule

4.6: National Monitoring Schedule

4.1 Objectives and Overview of the Risk Assessment Process

The objective of the risk-based monitoring decision-making process is to allocate a larger share of monitoring resources to those grant recipients posing the greater risk to program missions. To be in compliance with the Departmental Management Control Program Handbook (Handbook 1840.1 Rev-3), ONAP must maximize the use of available resources by incorporating risk management concepts and strategies in carrying out program oversight responsibilities. The criteria included in the risk assessment process shall be: (a) risk exposure to the Department; (b) the likelihood that a program participant has failed or refuses to comply with program requirements; and/or (c) that the participant has performed unacceptably.

The risk assessment method of evaluating recipients is based on four assumptions:

- Recipients vary in their administrative capacity to undertake and manage their grants.
- Recipients have a higher risk of failure where the management capacity is weakest.
- Recipients that score higher on the risk assessment may have a greater probability of failure.
- ONAP resources (time and travel funds) should be allocated to monitoring those recipients at highest risk.

4.2 Risk Rating Approach

Each fiscal year, Area ONAPs use the information in the Performance Tracking Database (PTD) to evaluate and analyze the level of risk of each recipient.

All Area ONAPs perform annual risk assessment**s** at the same time of the year, so that the results are available for the preparation of monitoring schedules for the subsequent fiscal year. To allow sufficient time to develop a monitoring plan for the Area ONAP and a National Monitoring Schedule, the risk assessment module should be run each year during the month of July. The risk assessment module in the PTD is used to perform most of the necessary computations and calculations for the IHBG and ICDBG programs.

Also, if a particular recipient has been awarded a ROSS or RHED/RIF grant, the Area ONAP may have to input the grant number and factor in the grant award amounts manually. The Database Administrator of each Area ONAP is available to provide assistance to the respective GE staff.

Once the PTD risk assessment module is run, the Area ONAP GE Specialist uses the risk assessment scores and considers the following factors when identifying the proposed recipients for monitoring in the next federal fiscal year:

- Self-Monitoring Mutual Agreements (see section 4.4.1),
- Travel dollars,
- Staff availability,
- Last monitoring visit (see section 4.4.4), and
- Potential administrative capacity or noncompliance issues based on information received by ONAP staff.

4.3 Risk Assessment Tools

Annually, the GE Director in each Area ONAP uses the risk assessment module in the PTD to conduct that year's risk assessment. The annual risk assessment measures:

- The level of risk exposure to the Department (Risk Factors 1-2). The more grant funds that are involved the larger the problem appears in the eyes of the public;
- The frequency of an assessment of each recipient (Risk Factor 3);
- Elements of each program participant's past performance as proxies for the recipient's future performance (Risk Factors 4-9); and
- The extent to which the recipient has complied with regulatory and statutory requirements in the past (Risk Factors 10-12).

Currently, there are 12 factors that make up the risk assessment module. By using information already in the PTD, the risk assessment module attempts to produce a system that is objective and eliminates GE staff time in researching the factor values. In order for the risk assessment to be accurate, the information in the PTD must be up-to-date. Ensure all data entry has been completed before running the risk assessment. It is also important to identify the correct year in the PTD for the risk assessment, which is the calendar year in which the assessment is run.

Risk Factor	Explanation	Points Assigned
1. Annual Grant Amount	Average of previous 3 years of grant funds (do not use current year). The total includes both open and closed grants.	Less than $500,000……...0 $500,000 to $1,000,000……..10 $1,000,001 to $3,000,000……...35 $3,000,001 to $5,000,000……...40 $5,000,001 to $15,000,000…….45 $15,000,001 to $25,000,000……...50 Greater than $25,000,000……...60
2. Disbursed amounts - all open grants	Uses current year and previous two years of IHBG, ICDBG and RHED disbursements from LOCCS.	Less than $500,000……...0 $500,000 to $3,000,000……..15 $3,000,001 to $5,000,000……...20 $5,000,001 to $15,000,000…….30 $15,000,001 to $25,000,000……...40 Greater than $25,000,000……...50
3. Months since last on-site Monitoring	The number of months since GE completed on-site review. Calculated from date of last on-site visit. Monitoring reviews in progress and remote reviews are not included in this calculation. If no monitoring record = 70 pts.	0 to 23……...0 24 to 35……...15 36 to 48……...25 49 to 59……...40 60 or more……...70 No monitoring record…….70
4. Delinquent IPA audits	Number of months audit is overdue at time of the risk assessment. Award grantees with no audit record or no audit required 25 points	0……0 1 to 3…….5 4 to 6……...10 7 to 12…….15 13 or more……...25 No audit record……...25 No A-133 Required…….……25

5. Open audit findings	Number of OMB Circular A-133 or Inspector General audit findings open a year or more from date report. Excludes findings resolved by ONAP, but not closed by the auditor. Finding must be related to HUD, i.e., HUD findings;	0……0 1……2 2……..10 3……..15 4 or more…….20
6. Conclusions of auditor	Opinions of the auditor on Federal Award and the Financial Statements on the most recent and previous two audit years report even if the issue causing the opinion has been corrected. If one of the opinion fields are blank, the PTD assigns 0 points for that opinion. The Date Review Complete field cannot be blank. If the PTD cannot find an audit report meeting these conditions it returns an assessment of "No Data". The PTD assigns 0 points for "No Data". The risk assessment calculations should be reviewed for those assessments that are reported as "No Data" for this factor. If it is due to a data entry error, it should be corrected and the risk assessment should be run again.	0 Points Each: An **unmodified** or **unqualified opinion** means that the auditor has no reservation as to the fairness of presentation of the financial statements, and their conformity with generally accepted accounting principles 5 Points Each: A **modified** or **qualified opinion** means that 'except for' something the financial statements fairly present the financial position and operating results of the entity. 15 Points Each: An **adverse opinion** means that the financial statements do not present fairly the financial position, results of operation, or changes in financial position or are not in conformity with generally accepted accounting principles. 15 Points Each: A **disclaimer of opinion** is rendered by the auditor when insufficient competent evidential matter exists to form an opinion.
7. Open monitoring findings	Number of open monitoring findings open more than one year from date of final report issued at time of risk assessment.	0.....0 1…….……...5 2…….…….10 3…….….15 4 or more…….20

8. Delinquent APRs or ASERs	Number of months any such report is overdue at time of risk assessment. Delinquency will be calculated based on any extension recorded in the PTD.	0……0 1 to 3…….5 4 to 6…….,...…...10 7 or more…….20
9. Status of Corrective Action Plan (CAP)	Has the completion target date of the CAP elapsed?	N/A (no records found)…….0 CAP has not Elapsed…….0 CAP has Elapsed…….25
10. Recipient Self-Monitoring	Does the recipient have an open monitoring finding for inadequate self-monitoring? (This is recorded in the PTD on the summary tab of the monitoring log, and must be consistent with the status of the self-monitoring finding itself.)	N/A (no records found)……0 No Open Self-Monitoring Finding...0 Open Self-Monitoring Finding…...10
11. Inspection of 1937 Act units	Are all 1937 Act units inspected annually?	More inspected than total……....0 All inspected……...……...…...0 No 1937 Act Units……0 Not all inspected…….15
12. Preservation of 1937 Act units	Are 1937 Act units being maintained?	Percentage of 1937 Act units found to be in standard condition when inspected 90 - 100%.....0 <90 - 80%.....10 <80 - 70%.....15 <70%.....20

Periodically, revisions are made to the factors and factor weights in the PTD risk assessment module. All revisions to this module are approved by the ONAP Director of Grants Evaluation.

4.4 Calculating Risk Assessment Scores

4.4.1 Using the Performance Tracking Database

This module has been designed to be run once a year and provides a basis for the Risk Assessment Factors report due to the Office of Grants Evaluation (OGE) each year.

When run, the system will mine the database and determine an assessment for each Risk Factor which can be calculated. It then looks up the score assigned to the assessment. The procedure

looks at a lot of data and takes 15 - 20 minutes to run. Details of the computation for each factor are contained in the Help File which is accessible from the PTD Main Menu. After opening the Help File, two columns are shown on the left. Select the Index tab and scroll down to Risk Assessment Factors.

The risk assessment module contains two sets of queries that produce a comparable risk results for all grant recipients. One set produces the risk results for grant recipients that have received an average of $500,000 or more in the past three years (as determined by the calculation of Risk Factor 1). A second set of queries will produce the risk results for grant recipients that received an average of less than $500,000 during the past three years (also determined by the calculation of Risk Factor 1). The Area ONAP is to include in their monitoring selection, grant recipients who have received an average of less than $500,000 during the past three years, as well as, those grant recipients who received an average of more than $500,000. Therefore, each set of queries is to be used to determine which grant recipients are to be monitored.

The results of the module are displayed for each FFY in six queries in the PTD.

RA Detail
RA_Detail_Less_Than_500K
RA Overview
RA Overview_Less_Than_500K
RA_Totals
RA_Totals_Less_Than_500K

These can be located by clicking on the Queries key on the Main Menu and then the Risk Assessment tab on top of the screen. The RA Detail query shows the value of the assessment the system calculated for each Risk Factor. It shows the grant recipients, date the risk assessment was calculated, the scores by each factor, and the total scores. You should use this query to spot check the results. The second query, RA Overview, shows the grant recipients, scores by each factor and total scores. This display has the same information as the one above except the format of the display is a pivot of the previous file. It also displays the results and is used by the OGE. The third query, RA Totals, shows only the grant recipients and their respective total score. It is designed to facilitate manually entering values for factors 6, 9, and 10. To enter values for these factors, consult the PTD Database Administrator in your office. You should use the Data Quality query to enter any subjective factors, and use the other queries to check the data.

You do **not** need to send any queries to the OGE as they are available in Headquarters' Rollup database.

4.4.2 Self-Monitoring Mutual Agreements

In an effort to promote effective self-monitoring in accordance with Section 403(b) of NAHASDA and the IHBG regulations at 24 CFR § 1000.502(a), ONAP offers recipients the opportunity to enter into Self-Monitoring Mutual Agreements (SMMAs). SMMAs are for recipients that have well-established systems, are interested in improving their self-monitoring efforts, and accept the terms of the SMMA. The benefit of entering into such an SMMA is

ONAP's pledge to conduct on-site monitoring of the recipient less frequently. For more information, see Program Guidances 2007-08 at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/codetalk/nahasda/guidance and 2007-01 (ONAP) at http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/120/2007-01%20Self%20Monitoring%20Mutual%20Agreements.pdf.

Once the risk assessment has been run, any SMMAs executed by the Area ONAP must be taken into account when preparing the annual monitoring schedule. The terms of the SMMA dictate the minimum time that must elapse between ONAP monitoring visits unless there has been a change in circumstances. Each SMMA identifies those circumstances when an SMMA should be terminated or monitoring should occur outside of the agreed-upon schedule.

4.4.3 RHED/RIF and ROSS Risk Assessments

If the RHED/RIF or ROSS recipient is a non-profit entity and does not receive IHBG and/or ICDBG funds, the PTD would not include those recipients. Therefore GE staff can perform a more informal type of risk assessment. The factors could include an average of the amounts of the grants awarded over the last 3 years, any complaints the Area ONAP has received, and any problems the Area ONAP is aware of. In order to conserve monitoring resources, these recipients should only be monitored if they are physically located in an area where a monitoring review is scheduled for an IHBG and/or ICDBG recipient.

4.4.4 Recipients Recommended for Monitoring

Based on the risk rating the GE Director develops the recommended list of recipients that should be monitored during the next fiscal year. The primary determinate is the risk assessment scores of those recipients receiving $500,000 or more (based on Risk Factor 1). However, the GE Director should consider the following criteria (with the exception of those recipients under an SMMA) to finalize the monitoring schedule:

- Those recipients that receive in excess of $10 million annually are monitored on site each year (unless there were no significant findings during the last visit and the recipient receives a risk score of 70 or less under ONAP's risk assessment process – in which case, the recipient is monitored at least once every three years).

- Those recipients that receive between $500,000 and $10 million annually are monitored on site every three years (unless there were no significant findings during the last visit and the recipient receives a risk score of 70 or less – in which case, the recipient is monitored at least once every five years).

- Those recipients that receive less than $500,000 annually are placed in a separate risk assessment pool and a risk assessment run is done separately. The results of this run are presented in corresponding risk assessment queries but identified as Less_Than_500K. Based on available resources, the GE Director may select a limited number of recipients for monitoring from this pool.

The GE Specialist assigned to the recipient selected for monitoring can recommend whether this will be accomplished on site or conducted remotely. On-site monitoring is preferred when the risk assessment identifies several areas where the recipient may be at risk of noncompliance. Remote monitoring is used most often in cases where specific areas of operation appear weak or demonstrate risk. For instance, a recipient with high risk in the area of procurement could be a candidate for a remote monitoring review in that area only provided that all other areas of operation are adequate. Remote monitoring also can be used in instances where a shortage of available resources impacts the number of on-site monitoring review trips.

4.4.5 Recommend Technical Assistance, if Applicable

The GE Specialist should review the assessment notes and comments, as well as the conclusions for each factor, to develop recommendations for technical assistance, if applicable. These recommendations should be provided to the GE Director, who assembles all recommendations and provides the information to the GM Director for appropriate action.

4.4.6 Review Results

The GE Director reviews the conclusions of each risk assessment to ensure that all appropriate and necessary comments and documentation have been provided, to validate the ratings, and to discuss both technical assistance and monitoring recommendations. Taking into consideration the staffing resources available to the Area ONAP, the GE Director finalizes the recommended monitoring schedule. The GE Director should document the reasoning for deviations from the risk assessment.

It is recommended that, to the extent practicable, 10 percent of the recipients proposed for onsite monitoring receive less than $500,000 in IHBG funds annually. This is a guideline, not a requirement.

4.5 Draft Area ONAP Monitoring Schedule

In general, scheduling is usually impacted by the following factors:

- Harsh weather and remote locations of the recipients;
- Shortages of resources, both staffing and travel funds; and
- Other workload responsibilities.

Beyond these primary considerations, the GE Director should schedule monitoring of higher risk recipients earlier in the year. Remote monitoring reviews can be scheduled during periods when

travel is difficult or travel funds are not yet available. The Administrator should resolve any difficulties (differences in approach, anticipated resource shortages) at this time. These meetings and actions should be accomplished during the month of August.

The draft monitoring schedule includes:

- Identification of the recipients proposed for monitoring,
- Risk assessment scores,
- Quarter of the fiscal year in which the monitoring is scheduled,
- Travel and personnel resources needed, and
- Explanatory comments.

The GE Director transmits the monitoring schedule electronically to OGE.

4.6 National Monitoring Schedule

OGE reviews the draft Area ONAP monitoring schedules and develops the national monitoring schedule based on those submitted. Any changes recommended by the OGE Director are discussed with the appropriate Area ONAP GE Director and/or Administrator. After the total amount of travel funds available for the fiscal year is known, adjustments to the monitoring plans may be necessary. If this is the case, the changes are made with discussion and input between the OGE Director and the Area ONAP GE Directors. Any subsequent changes to the plan necessitated by mandated or unplanned Area ONAP resource reallocation or other factors are forwarded by the Area ONAP GE Director (through the Area ONAP Administrator) to the OGE Director.

Once the national monitoring schedule has been established, it is posted on the GE SharePoint site and made available to recipients and the general public on ONAP's web page. Usually, this is done at least one month prior to the start of the next fiscal year.

Updates to the national monitoring schedule are disseminated by OGE to the Area ONAPs, recipients, and the general public by using the same procedure for posting the original schedule.

Chapter 5: Monitoring Process

This chapter provides ONAP staff with standards and guidance for monitoring and reporting on HUD-funded programs. The chapter includes the following sections:

5.1: Monitoring Plans, Resources, and Templates

5.2: Objectives and Overview of the Monitoring Process

5.3: Recipient Monitoring Strategy

5.4: On-Site Monitoring

5.5: Remote Monitoring

5.6: Draft and Final Monitoring Reports

5.7: Official Monitoring File

5.8: Tracking Findings

5.9: Area ONAP Significant Issues List

5.1 Monitoring Plans, Resources, and Templates

Documents and folders in this chapter that are *italicized* and highlighted in red are hyperlinked to the GE SharePoint site. If using an electronic version of the chapter, place the cursor on the word and right-click to open the hyperlink. The hyperlinked Monitoring Plans are located in the *Monitoring Plans* folder in the Documents section of SharePoint; and the model letters, monitoring tools, and report templates are located in the *Model Monitoring Letters and Reports* folder.

Monitoring Plans

There is a Monitoring Plan for each area of the review. The GE Specialist must use the Monitoring Plans when conducting their review. Each Monitoring Plan is considered a "living" document in that it may be revised and updated based on actual experience during on-site or remote monitoring reviews. It is essential for the GE Specialist to use the current versions of the Plans so that each monitoring review is conducted consistently and reflects the latest approaches to determining a recipient's capacity, capability, compliance, and performance. The GE Specialist should always use the Monitoring Plans posted on the GE SharePoint site.

1. *GENERAL INSTRUCTIONS to Monitoring Plans*	2. *Admissions and Occupancy Monitoring Plan and Appendices*
3. *ARRA Monitoring Plans*	4. *Organization and Structure Monitoring Plan*
5. *APR and IHP Compliance Monitoring Plan*	6. *Other Programs Monitoring Plans ICDBG ROSS RHED/RIF*
7. *Environmental Monitoring Plan*	8. *Procurement and Contract Administration Monitoring Plan*
Financial and Fiscal Management Monitoring Plan and Appendices	*Relocation and Real Property Acquisition Monitoring Plan*
Labor Standards Monitoring Plan	*Section 504 Accessibility Monitoring Plan*
Lead-Based Paint Monitoring Plan	*Self-Monitoring Monitoring Plan*
Maintenance and Inspection Monitoring Plan	*Subrecipient Agreements Monitoring Plan*

Monitoring Resources

- ONAP Monitoring Reports (Final Monitoring Reports are posted at *Favorite Links* on SharePoint)
- Monitoring Log (Area ONAP Performance Tracking Database (PTD))
- *Monitoring IHP Certifications*

Monitoring Templates

- *Monitoring Strategy Worksheet*
- *On-Site Visit Notification Letter*
- *Remote Monitoirng Notification Letter*
- *Draft Monitoring Report Format - IHBG*
- *Draft Monitoring Report Format - ICDBG*
- *Questioned Costs Calculator*
- *Transmittal Letter Draft Monitoring Report*
- *Transmittal Letter Final Monitoring Report*

5.2 Objectives and Overview of the Monitoring Process

Monitoring is the means by which ONAP fulfills its public trust responsibilities. It is an integral management control technique and a U.S. Government Accountability Office standard. It is an ongoing process that assesses the quality of a recipient's performance over a period of time. Monitoring provides information about recipients that is critical for making informed judgments about program effectiveness and management efficiency and compliance with applicable laws and regulations. It also helps in identifying instances of fraud, waste, and abuse. Monitoring is the principal means by which HUD:

- Ensures that programs are carried out efficiently, effectively, and in compliance with applicable laws and regulations;
- Assists recipients in improving performance, developing or increasing capacity, and augmenting its management and technical skills;
- Stays abreast of the efficacy of ONAP-administered programs within the communities these programs serve;
- Identifies, validates, and/or refines technical assistance needs, as defined in the risk assessment process;
- Collects data from recipients that helps HUD assess recipient risk;
- Initiates HUD actions that reinforce, improve, supplement, and correct recipient performance; and
- Identifies and analyzes patterns of recipient activity that indicate superior, satisfactory, and deficient performance, which then can be used to improve HUD programs and increase overall recipient success rates.

The policies and guidance in this chapter are designed to be consistent with HUD's monitoring policies, as defined in the *Departmental Management Control Program* Handbook 1840.1 Rev-3 (primarily Chapters 2 and 7) and the *HUD Monitoring Desk Guide: Policies and Procedures for Program Oversight.* The HUD Monitoring Desk Guide is available at: http://hudatwork.hud.gov/mgmtbudget/deskguide.pdf.

5.2.1 Grant programs covered

This chapter applies to monitoring the programs listed below.

- Indian Housing Block Grant (IHBG)
- Indian Community Development Block Grant (ICDBG)
- Resident Opportunities and Self Sufficiency (ROSS)
- Rural Housing and Economic Development, as of FY 2010 known as the Rural Innovation Fund (RHED/RIF)
- Transitional programs that remain from the U.S. Housing Act of 1937

The monitoring process guidelines are based on the monitoring standards and procedures that govern each program. However, unless the non-IHBG programs' (e.g., ICDBG, ROSS, RHED/RIF) regulations say differently, ONAP's policy is to follow the same monitoring process for those programs as that for the IHBG program. In those instances where the program regulations for non-IHBG programs establish actions or requirements that differ from those found in 24 CFR Part 1000, the actions and requirements are specifically noted in this chapter. For additional information on the IHBG monitoring process, consult 24 CFR §§ 1000.501-.503 and 1000.522-.528,

5.2.2 Recipient's and beneficiary tribe's monitoring responsibilities

IHBG recipients may be tribes or tribally designated housing entities (TDHEs). If the recipient is a TDHE, the Tribe is considered the grant beneficiary (NAHASDA Sec. 4(7)). Under 24 CFR § 1000.502(b), the Tribe is responsible for monitoring the TDHE for programmatic and compliance requirements of the IHP and NAHASDA. Recipients of IHBG funding; whether the TDHE or Tribe, are responsible for monitoring its grant activities and progress under the IHP and its subrecipients, if applicable, to ensure compliance with applicable federal requirements. Recipient self-monitoring should include an evaluation of its performance and progress (see 24 CFR § 1000.502). The NAHASDA Indian Housing Block Grant Recipient Self-Monitoring Compliance Assessment Guidebook (2007) is available at *SM Guidebook Final 2007* on SharePoint and also is on the ONAP website for the recipients' use. In addition to the Self-Monitoring Guidebook, recipient monitoring plans are available for the recipients' use on the ONAP website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/oversight

The TDHE is required to submit to the Tribe periodic progress reports, the annual self-monitoring assessment, the APR, and audit reports. Note: Although encouraged, recipient self-monitoring is not a regulatory requirement for non-IHBG programs.

Self-Monitoring Mutual Agreements (SMMA)

In an effort to promote effective self-monitoring, ONAP offers recipients the opportunity to enter into SMMAs. These SMMAs are intended for recipients that have well-established systems, are interested in improving its self-monitoring efforts, and willing to accept the terms of the SMMA. The benefit of entering into such an SMMA is ONAP's pledge to conduct on-site monitoring of the recipient less frequently.

While each SMMA is specific to the recipient's circumstances, some examples of reduced monitoring may be:

- A recipient receives approximately $50 million annually and has received a risk score of 75. Under the current business process, ONAP would monitor the recipient every year. However, as agreed in the SMMA, ONAP monitors the recipient every 2 years.

- A recipient receives approximately $100,000 annually and has received a risk score of 90. Under the current business process and based on the random sample, ONAP would monitor the recipient not less than every 3 years. However, as agreed in the SMMA, ONAP monitors the recipient not more than every 5 years.

To determine whether a recipient is a good candidate for an SMMA, the recipient must have the administrative capacity to manage its IHBG program, as described in 24 CFR § 1000.6. The recipient is required to submit its self-monitoring plan and/or policy to the Area ONAP, as well as a copy of its latest self-monitoring assessment conducted and the results of the assessment. The assessment must identify any programmatic concerns (which could be considered statutory and/or regulatory violations), if any, and the corrective actions the recipient will take to resolve the concerns, as specified in 24 CFR § 1000.508.

To be considered for an SMMA, an independent assessor must have conducted the assessment. If the recipient is a TDHE, the independent assessor may be an individual within the tribal government who has familiarity with internal audit concepts, such as personnel affiliated with the internal audit group, the treasurer's office, or tribal administrator's office. Tribal recipients may retain the services of an independent auditor to conduct self-monitoring activities. Additionally, the recipient may employ the services of another tribe or TDHE to conduct the assessment. ONAP tests the recipient's self-monitoring process to ensure it is in place and is working effectively.

A sample SMMA and several samples of tribal self-monitoring assessments are available on SharePoint in the *Self-Monitoring* folder.

Subrecipient Monitoring

Within the IHBG and ICDBG programs, subrecipients may be a private or public non-profit agency, authority or organization, or under limited circumstances (see 24 CFR § 1003.204), for-profit entities that have a contract, memorandum of agreement, or memorandum of understanding with the recipient to undertake eligible activities. Recipients are required to monitor all its subrecipients to ensure compliance with written contracts or memoranda.

5.2.3 ONAP monitoring: on-site and remote

Monitoring may be conducted on-site or remotely. On-site monitoring enables GE Specialists to collect documentation for review, interview relevant staff to discuss the recipient's documentation and performance, and conduct inspections of HUD-funded projects. Remote monitoring is conducted at the Area ONAP office and entails reviewing documentation already in the office and/or submitted by the recipient. Remote monitoring is preferred when the recipient is rated as low risk, the Area ONAP has limited travel funds to perform on-site monitoring, and/or monitoring is focused on specific performance concerns.

5.3 Recipient Monitoring Strategy

A recipient monitoring strategy is the detailed written plan created by a GE Specialist for monitoring a specific recipient used when the review is not a full scale review of all program review areas. Given the limited frequency that most recipients are monitored, it is imperative that monitoring is well planned and executed. The *Monitoring Strategy Worksheet* (or an equivalent document) should be completed by the GE Specialist, signed by the members of the monitoring team, and concurred by the GE Division Director. If GM staff has not been part of the development of the recipient monitoring strategy, then they should have an opportunity to comment on the strategy.

The Area ONAP is not required to include every functional area (procurement, labor standards, environmental review, etc.) in a recipient monitoring strategy, unless the Area ONAP has reason to believe that the recipient's performance is deficient in all functional areas. The strategy may focus on limited functional areas in those instances when the recipient receives a modest annual IHBG allocation, the Area ONAP has limited staff available to conduct the review, and the Area ONAP desires to sequence or cycle the functional areas over time.

The Area ONAP may elect to sequence the monitoring of functional areas over time for those recipients that are monitored every 1 to 2 years. For example, the monitoring strategy in one year could concentrate on financial management and internal controls and procurement and contract administration; and in the second year, the monitoring strategy could focus on Indian preference and labor standards.

In determining the recipient monitoring strategy, it is important to remember that the review must cover no more than the recipient's current program year and the two prior program years.

The GE Division Director is responsible for approving the recipient monitoring strategy.

5.3.1 Assemble and review relevant tools

The GE Specialist refers to the risk assessment module, the monitoring log, and the Monitoring Plans when creating a monitoring strategy.

Risk Assessment Module

Use the risk assessment module on the Area ONAP PTD to review the issues identified during the risk assessment. Pay particular attention to the "Assessment Notes" for each high risk factor score.

Monitoring Log

Use the monitoring log on the Area ONAP PTD to review findings from previous monitoring activities.

Monitoring Plans

The *GENERAL INSTRUCTIONS to Monitoring Plans* assist the GE Specialist in conducting the monitoring reviews by providing an overview of the monitoring plans and monitoring instructions, including sampling techniques.

The Monitoring Plans are the GE Specialist's primary guides for planning and conducting on-site and remote monitoring. As indicated previously, the GE Specialist must use the Monitoring Plans when conducting the review to determine what data to collect, what questions to ask, and what evidence to gather. A careful review of the Plans helps the GE Specialist gauge the type of monitoring needed to explore fully those issues identified during the risk assessment. Therefore, the GE Specialist may not be using every Plan or every topic/question in a plan to conduct an on-site or remote monitoring review.

When reviewing the ICDBG, RHED /RIF, and ROSS programs, the GE Specialist uses the *Other Programs Monitoring Plan* for that part of the review that is specific to the program requirements, as well as, those plans that pertain to applicable review areas, i.e., Procurement and Contract Administration Monitoring Plan, Environmental Monitoring Plan, etc.

5.3.2 Create customized monitoring plans

The Monitoring Plans are designed to provide the GE Specialist with a comprehensive list of all the possible topics that might be covered in a recipient monitoring strategy. The GE Specialist should, in general, stay within this list of monitoring areas to help ONAP ensure consistency in its monitoring activities.

Because not every Monitoring Plan is relevant to every recipient and not every question within a plan must be asked to gather the information needed about a recipient, the GE Specialist needs to select the appropriate Monitoring Plans and the appropriate topics and questions necessary for a specific recipient.

The GE Specialist can customize a Monitoring Plan by highlighting those topics and questions that will be used for the specific monitoring strategy. Another approach to creating a customized Monitoring Plan is to delete the topics and questions that are not applicable to a recipient. The GE Division Director determines how the monitoring strategy documents are prepared in the Area ONAP.

5.3.3 Staff the recipient monitoring strategy

The GE Division Director must identify the types of skills and number of people needed to conduct the monitoring for each recipient. For example, if the most serious issues identified in the recipient monitoring strategy were related to financial management and internal controls, the GE Division Director would plan to include those ONAP staff with a solid background in this field on the monitoring team. The GE Division Director identifies a GE Specialist to serve as the

Monitoring Team Lead and primary point of contact for the monitoring team. All members of the monitoring team should be identified on the Monitoring Strategy Worksheet.

5.3.4 Review and approve the recipient monitoring strategy

The GE Division Director is responsible for ensuring that each recipient's monitoring strategy focuses on the recipient's higher risk practices and activities and that it is consistent with the Area ONAP monitoring schedule (see Chapter 4 for a description of the monitoring schedule). This review and approval process may occur during development of the strategy by the GE Specialist or after the GE Specialist has developed the strategy. The monitoring strategy becomes part of the Area ONAP's official monitoring file and should be distributed to each member of the monitoring team and to GM.

5.4 On-Site Monitoring

The primary purpose of an on-site monitoring visit is to collect information about a recipient's performance and capabilities that cannot be ascertained from the documents normally submitted to HUD. ONAP uses the information gathered during the on-site visit to develop a more complete picture of how effectively the recipient is managing the grant funds, implementing its IHPs, and providing assistance to the intended program beneficiaries.

5.4.1 Schedule on-site visit

The GE Specialist usually contacts the recipient by phone or email to establish a mutually convenient date for the on-site visit. When possible, select dates when all key players can be present for the entrance and exit conferences and all who need to be interviewed are available.

5.4.2 Notify recipient of planned on-site visit

The GE Specialist sends a letter notifying the recipient and beneficiary tribe(s) of an upcoming on-site visit at least 30 days before the scheduled visit (24 CFR § 1000.522). Prior written notice is not required in emergency situations or when advance notification may not be feasible. When such exceptions occur, the GE Division Director should inform OGE.

The GE Specialist may use the *On-Site Visit Notification Letter* as a template. A notification letter should always include the following elements:

- Monitoring purposes
- Grant(s) to be monitored
- Name of GE Specialist and other ONAP staff conducting the on-site visit
- Listing of monitoring areas
- Dates of arrival and of the entrance and exit conferences
- Specific individuals who should be invited to the entrance and exit conferences, including representatives of the beneficiary tribe(s)
- A request that recipient staff and program records be available and accessible during the visit

5.4.3 Assemble and review documents

The GE Specialist should collect and review the documents below prior to the on-site visit.

- Annual Performance Reports (APR) or other grant program reports
- Indian Housing Plans (IHP) or grant applications
- Audits
- Line of Credit Control System (LOCCS) drawdown records
- Previous monitoring report
- Environmental review documents
- Correspondence
- Public comment records

If documents are missing from the Area ONAP files, then the GE Specialist should request the documents from the recipient or from other sources, as appropriate.

5.4.4 Discuss recipient with Grants Management

The GE Specialist should discuss the recipient with GM staff members who have relevant knowledge of the recipient's performance and capabilities. This can be done by including GM staff in the development of the monitoring strategy and/or as part of the on-site monitoring team. The GE Specialist should probe for specific examples and evidence and must document those discussions by taking careful notes of the GM meeting date(s), staff involved, and issues covered. This documentation could play an important role in justifying monitoring decisions and other ONAP actions.

5.4.5 Conduct on-site visit

Entrance Conference

On arrival, the GE Specialist should convene an entrance conference to do the following:

- Request all attendees to sign-in;
- Introduce and explain the role of all HUD staff in attendance;
- Discuss the focus of the monitoring;
- Outline any assistance needed;
- Explain the role of all parties, including the beneficiary tribe(s), in the monitoring visit; and

- Review logistics of the visit and agree on a schedule for meetings with recipient staff.

Data Collection

The GE Specialist conducts interviews, examines documents, and observes activities. Those methods are used to collect data that answer the questions selected from the Monitoring Plans. As the data are collected, the GE Specialist notes in the relevant Monitoring Plans any observations, findings and recommended corrective actions, questioned costs, concerns and suggestions for improvement, and documents copied for review. The GE Specialist should provide as much detail as possible because the Monitoring Plans serve as primary documentation of the on-site visit.

The IHP includes certifications whereby the recipient attests that IHBG requirements are in place; and the on-site visit enables the GE Specialist to verify the existence of these requirements. The certifications require insurance coverage and policies describing rent and homebuyer payments, eligibility, admissions, occupancy, and management and maintenance. For further information on reviewing the certification requirements, see *Monitoring IHP Certifications*.

Preliminary Analysis and Conclusions: Deficiencies

The term **deficiencies** refers to any findings or concerns related to recipient or subrecipient performance.

A **finding** is a statement, supported by documented evidence, of recipient noncompliance with any statutory or regulatory requirement and occurred during the records retention period per 24 CFR 1000.552. ONAP must formally report all findings and track and document all recipient corrective actions. A **questioned cost** is an ineligible expense incurred by the recipient or subrecipient that is tied to a finding of noncompliance. If a questioned cost is not resolved adequately, it becomes a disallowed cost that must be repaid by the recipient or subrecipient.

A **concern** is a statement that identifies problems that could potentially elevate to a finding if left unaddressed; or identifies a problem that occurred outside of the records retention period, which would have been reported as a finding Concerns suggesting the expansion of the scope of review must be discussed with the GE Director. Whenever possible, the GE Specialist should identify concerns early and suggest changes in practice that the recipient could implement to improve its performance.

Whenever the GE Specialist finds statutory or regulatory noncompliance with NAHASDA and/or 24 CFR Part 1000, ONAP must review the specific circumstances to determine whether the noncompliance is substantial. The following text, extracted from 24 CFR § 1000.534, states:

"Noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its planned activities as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk of waste, fraud, or abuse."

For example, a single instance of noncompliance, such one incorrect invoice, does not represent substantial noncompliance; however, multiple incorrect invoices adding up to a material amount of funds would represent substantial noncompliance. This example of substantial noncompliance shows that the recipient lacks adequate internal controls resulting in a practice that puts the IHBG funds at risk for waste, fraud, or abuse.

In all cases where the GE Specialist believes that a deficiency appears to represent substantial noncompliance, the GE Division Director should be consulted immediately. Ultimately, the Assistant Secretary for Public and Indian Housing makes the determination of substantial noncompliance based on evidence submitted by the Area ONAP.

Monitoring the ICDBG program is regulated by 24 CFR § 1003.700 and is the basis for determining whether the grantee has:

(1) complied with the requirements of the Act, 24 CFR Part 1003, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of Title I of the Act;

(2) carried out its activities substantially as described in its application(s);

(3) made substantial progress in carrying out its approved program; or

(4) shown the continuing capacity to carry out its approved activities in a timely manner.

Preliminary Recommendations

The GE Specialist's recommendations fall into the following three categories:

Technical assistance is an appropriate recommendation when the GE Division Director concludes that the deficiencies are due to weak administrative and/or technical capacity. In such cases, the GE Specialist must brief the GM Division Director and staff, who define and provide the necessary technical assistance.

GE intervention is appropriate when an immediate remedial action on the part of the recipient will resolve the deficiency. For example, if a GE Specialist finds no documentation for the rejection of several competitive bids in a major procurement but then learns through discussions with recipient staff that there were valid reasons for the rejections, the GE Specialist could recommend that the recipient create the necessary documentation, and thus, resolve the

deficiency. In instances such as this, the deficiency was corrected before the review was completed; therefore, the deficiency should not be considered a finding or a concern.

Enforcement action may be initiated when the GE Division Director finds apparent substantial noncompliance that represents a willful pattern or practice. In such cases, the ONAP Administrator may convene an Enforcement Panel to verify apparent substantial noncompliance and, if warranted, to recommend to OGE that an enforcement action be initiated.

The GE Specialist provides the Enforcement Panel with all supporting documentation needed for its deliberations. The following chart summarizes the actions that are appropriate for each type of deficiency.

Deficiency	***ONAP Actions***
Concerns	➢ Suggest remedial actions
Findings of Technical Noncompliance (including apparent substantial noncompliance)	➢ Document finding ➢ Identify questioned costs, if applicable ➢ Recommend specific corrective actions ➢ Offer technical assistance
Findings of Willful Noncompliance (including apparent substantial noncompliance)	➢ Document finding ➢ Identify questioned costs, if applicable ➢ Convene an Enforcement Panel

Conduct Wrap-Up Meeting

The Monitoring Team Lead should conduct a wrap up meeting with those who attended the entrance conference. The purpose of the meeting is to thank the recipient staff for their assistance during the visit, answer any questions, and describe next steps. The wrap up meeting should also include a discussion regarding the potential need to request additional documentation that is not readily available while on site in order to complete the review.

The Team Lead will also explain that the Area ONAP will prepare and issue a draft monitoring report 60 days after completion of the review and that the TDHE and/or Tribe, as appropriate, will have 60 days after receipt of the report to comment on the draft report and may, upon written notification to HUD, exercise the right to take an additional 30 days to complete its review and comment on the draft report.

5.5 Request for Additional Information

Within 2 weeks of the review teams return to the office, a decision regarding whether additional information is needed to complete the review should be made. A request for additional

information letter should be sent to the recipient describing the additional items needed and allowing the recipient 30 days to produce the required documents.

5.6 Exit Conference

After the issuance and receipt of the draft monitoring report (DMR), the Monitoring Team Lead should contact the recipient as soon as possible to schedule an exit conference. All those invited to the entrance conference should be invited to the exit conference. The GE Specialist should request and record the names of those in attendance at the recipient as well as any ONAP staff participating by conference call. The attendance list should be referenced in the FMR and filed in the monitoring file for future reference, if necessary. The exit conference may be held telephonically or on site depending upon the availability of travel funds.

The exit teleconference provides the recipient with the opportunity to ask questions and/or request clarification regarding the review, findings, questioned costs, recommended corrective actions, and concerns. In this teleconference the GE Specialist can explain the remaining process for the issuance of the FMR and the timeframes to resolve findings.

At the exit conference the Team Lead should explain the recipient's right to respond to the draft within 60 days or to notify the ONAP in writing of its intent to exercise its right to an additional 30 days. The recipient should be informed that the ONAP will not issue the final monitoring report (FMR) until the recipients response period has expired and that target due dates will be identified in the FMR for any remaining findings after response to the DMR.

5.7 Remote Monitoring

The GE Specialist conducts remote monitoring by reviewing documentation already on hand and/or by requesting documents from the recipient specific to issues that led to the decision to conduct a remote review, e.g. audit findings or complaints. Most of the steps involved parallel on-site monitoring. For example, before conducting a remote monitoring, the GE Specialist will:

- Create a draft recipient monitoring strategy;
- Discuss the recipient with GM staff and adjusts the strategy as needed;
- Receive approval of the recipient monitoring strategy from the GE Division Director;
- Create customized Monitoring Plans;
- Notify the recipient that a remote review will be conducted; and
- Request needed documentation from the recipient to complete the remote review.

As with on-site monitoring, ONAP must inform the recipient that remote monitoring will be conducted and identify the staff who will conduct the remote monitoring, the program(s) to be monitored, the monitoring areas, and documents needed from the recipient in order to conduct the review. The GE Specialist should adapt the model *Remote Monitoring Notification Letter* for these purposes.

Remote monitoring requires the GE Specialist to identify and review documents or other information that can be obtained without an on-site visit and to focus on specific recipient

activities viewed as high risk. The GE Specialist is to use the appropriate Monitoring Plans when conducting the remote review. The GE Specialist analyzes the documents provided, identifies deficiencies and questioned costs, and recommended corrective actions. The GE Specialist creates a draft and a final monitoring report, following the process described below.

5.8 Draft and Final Monitoring Reports

The monitoring report is an objective assessment of recipient performance that highlights both the strengths and weaknesses in the recipient's practices and programs. In addition to identifying findings, recommended corrective actions, and questioned costs, the report may identify concerns and offer suggestions to improve program performance. The GE Monitoring Team Lead is responsible for coordinating a draft report and a final report for each recipient monitored, with input from the other monitoring team members. (For IHBG, see 24 CFR Part 1000 Subpart F.) All final monitoring reports are available on SharePoint in the *ONAP Monitoring Reports* folder.

5.8.1 Create draft monitoring report (DMR)

After returning from the on-site visit the Area ONAP must complete its review of information collected on site. The completion of the review is not necessarily defined as the last day of the on-site visit as staff may need time to analyze data or wait for additional information to be provided by the recipient. When additional information is requested after the on-site visit the recipient is given no more than 30 days to produce the additional documentation. The determination that the review is complete should occur no later than 60 days from the last day on site. The Area ONAP should not use the entire 60 days if the review can be completed earlier. The GE Director is responsible for establishing the date of the completion of the review. Adequate time must be allowed for a thorough review of the additional submitted documentation. If circumstances warrant, the Area ONAP GE Director may request from OGE an extension for completing the review. After the review is completed, the Area ONAP has 60 days to issue the draft report, as required by 24 CFR § 1000.528. Since the 60-day period to issue the draft report is a regulatory requirement, no extensions can be granted.

The monitoring report is issued with a cover letter to the recipient and beneficiary(ies), from the GE Division Director. This approach provides a recipient with an avenue for appeal to the Area ONAP Administrator if the recipient objects to the GE Division's findings and/or recommended corrective actions.

5.8.2 Multiple program reviews

If a recipient administers more than one ONAP program (i.e., IHBG and ICDBG), it is often more advantageous to conduct a review of all the programs during the on-site visit. Each program review should be counted as an on-site visit. For example, if the IHBG and ICDBG programs are monitored, the PTD will count two visits. The draft monitoring report should contain the results of the review for each program monitored, but in separate sections of the report, with the IHBG portion being discussed first. If a finding or concern pertains to more than one program, then the same finding/concern should be included under all program sections that

the finding or concern pertains to and should be identified separately in the monitoring log in the Area ONAP's PTD. Each program reviewed will be entered as a separate iteration in the PTD monitoring log.

5.8.3 Content

To prepare the draft monitoring reports, the GE Specialist uses the *Draft Monitoring Report Format IHBG* or the *Draft Monitoring Report Format - ICDBG* template available on SharePoint. The use of the SharePoint drafts will assist in the use of the correct regulatory citations for the IHBG program (24 CFR Part 1000) and for the ICDBG program (24 CFR Part 1003).

Each DMR should include the information below:

- Grants reviewed;
- Areas Monitored:
- Identification of the ONAP review team members;
- Recipient staff who participated in the review;
- Significant accomplishments by the recipient;
- A description of the monitoring method (on-site or remote) used, the material reviewed and interviews conducted;
- A description of all findings, associated questioned costs (if applicable), and recommended corrective actions to close the findings;
- The target date(s) for addressing the finding(s). The target date in the draft report should be identified as the number of calendar days subsequent to the recipient's receipt of the final report;
- A description of concerns and suggestions on how the recipient may address the concerns; and
- The statutory and regulatory requirements of the IHBG and/or ICDBG program attached as a reference.

NOTE: The format for the DMR and FMR changed in early 2013 and staff should reference the *Monitoring Model Letters and Reports* in SharePoint.

5.8.4 Effective language

The DMR and FMR should be written clearly and using plain English. The language should be focused and specific, avoiding broad general statements. When possible, use a positive tone. Review the language carefully and re-write as necessary to assure that the language is effective and that all assertions of fact are supported by documentation.

5.8.5 Significant accomplishments

The draft report should include a section describing the significant accomplishments the recipient has taken that are positive and support the purpose of the program(s) monitored. These accomplishments could include activities where the recipient is doing a commendable job or has

shown significant improvement. In almost every instance, there is something positive that can be said about a recipient and its programs. The significant accomplishments section can be enhanced with photographs of projects (housing and/or community facilities that are completed or under development) that are funded in whole or in part with funds from the program(s) monitored. Photographs of poorly maintained housing units and facilities should not be included in the report; however, these photographs should be maintained as documentation of substandard or dangerous conditions which may be needed in an administrative hearing as part of the enforcement process.

5.8.6 Finding elements

HUD's Monitoring Desk Guide recommends that a finding contain the elements described below:

- Area Monitored: Identify the monitoring area; i.e., Environmental Review, Financial and Fiscal Management, etc.
- Finding: Identify a finding by using an abbreviation of the program involved (IHBG, ICDBG) followed by a number. Provide a brief description of the finding.
- Condition: Explain what the review revealed.
- Criteria: Identify the statutory and/or regulatory citation(s) and requirement(s) that were not met.
- Cause/Effect: Describe why the condition occurred and what happened because of the condition.
- Questioned Costs: Identify actual or estimated questioned costs. See below for more details.
- Recommended Corrective Action(s): For each RCA, assign a number and provide a description of the corrective action that the recipient must take and also specify the documentation that must be submitted to close the RCA. See below for more details.
- Target Date: Identify the date for addressing the finding. See below for more details.

5.8.7 Concern elements

HUD's Monitoring Desk Guide recommends that a concern contain the same elements as a finding, with the exception of Criteria, Questioned Costs, and Target Date. Instead of an RCA, a concern should include Suggested Action(s). Identify a concern by using an abbreviation of the program involved (IHBG, ICDBG) followed by a number. For each suggested action, assign a number and provide a description of the action the recipient should take to address the concern.

5.8.8 Recommended Corrective Actions

Each finding must have at least one RCA. Each RCA must describe what the recipient has to submit to satisfy that RCA. After the issuance of the DMR, the recipient has the opportunity to propose alternative corrective actions; and the Area ONAP must agree to any viable alternative corrective action if it will successfully address the finding. When preparing the FMR, the GE Specialist should replace the recommended corrective actions with the agreed upon alternative corrective actions. Effective recommended or alternative corrective actions must specify the steps the recipient has to take and the documentation needed to address the finding. The more specific the actions and documentation needed, the greater the likelihood that the recipient will address the finding successfully.

It is essential to number each RCA and not to provide a bulleted listing or a paragraph with multiple actions. A numbered RCA makes it easier for the recipient to comprehend what must be done and for the GE Specialist to track an RCA as open or closed.

5.8.9 Target dates

Since the exact release date of the final report is unknown, it is not possible to establish a calendar date in the DMR. Therefore, the target date in the DMR should be identified as the number of calendar days subsequent to the recipient's receipt of the final report. For example, the DMR sets the target date for completion as '90 days after receipt of the FMR.' However, the FMR would translate the number of days identified in the DMR to a calendar date. For simplicity, the date can be extended to the end of the month. For example, if 90 days is calculated at June 17, the target date for completion should be June 30.

The fewer the target dates in a draft or final report, the easier it is for the recipient and GE Specialist to track recipient progress. All target dues dates for all findings should begin with no fewer than 90 days and no more than 120 days **with the exception of a finding for failure to maintain insurance which should be limited to 30 days due to the potential risk**. When possible, the longest date for response should be used for all findings. For example, the Area ONAP may want to give the recipient 120 days to address ten findings; however, four of the findings could be addressed in 90 days. The FMR would use the 120 day target date for all findings.

5.8.10 Questioned costs

It is important to identify any actual or estimated questioned costs in the DMR report for two reasons: 1) to highlight the severity of a finding and the consequences of the recipient's failure to address it; and 2) to have an actual amount of questioned costs if the recipient fails to close the finding and enforcement is initiated. When issuing the *Imposition of Remedies*, the questioned costs will become disallowed and the letter will have to state an actual amount that will be required to be repaid. Therefore, the actual amount of questioned costs is required throughout the enforcement process. The GE Specialist should use the *Questioned Costs Calculator* to determine the amount of questioned costs for each finding and the total questioned costs. This Excel workbook has three pages—one based on IHBG-eligible activities, one based on

monitoring areas, and another to identify questioned costs by findings. The GE Specialist may use any type of calculator depending on the types of questioned costs involved.

The amount of questioned costs should be based on actual, documented expenditures for ineligible activities that are identified during on-site or remote monitoring. For example, if questioned costs are documented in a sample of records (i.e., a sample of procurement contracts, tenant files, work orders, etc.), the amount of questioned costs must be limited to the sample and not be extrapolated to include all other un-sampled records. If the sample reveals numerous questioned costs, it is advisable to expand the sample to document additional questioned costs rather than assuming that all un-sampled records contain questioned costs. However, **questioned costs are limited to those incurred during the records retention period in accordance with 24 CFR 1000.552.**

The GE Division Director shall review and concur on the DMR before it is sent to the recipient. If the DMR contains questioned costs the Associate Regional Counsel must also concur on the DMR. Otherwise, requiring Associate Regional Counsel concurrence on each or any DMR is at the discretion of the Area ONAP Administrator. Depending on area ONAP policy review and concurrence may include the Administrator and/or GM Division Director. However, the GE Division Director ultimately decides on the content of the DMR. Once issued, a copy of the DMR must be provided to the GM Division Director and, if required by local office policy, to the Field Office Director.

5.8.11 Recipient comments on DMR

To transmit the DMR to the recipient, the GE Specialist should use the *Transmittal Letter Draft Monitoring Report* template. The transmittal letter includes the information below.

- The date(s) of the on-site visit or remote monitoring; and identification of the program(s) monitored.
- A request that the recipient review the draft report and submit any comments and additional information within 60 days of receipt and language that upon written notification to HUD, the recipient may exercise the right to take an additional 30 days to complete its review and comment to the draft report.
- An explanation that:
    - HUD will review and incorporate in the FMR any comments and/or additional information submitted;
    - HUD will revise the DMR, as warranted, before issuing the final report.
- Notice that HUD will issue the FMR within 30 days of the end of the recipient comment period.
- The name and telephone number of the GE Specialist if the recipient has any questions or comments.

The DMR is sent by Certified Mail to the recipient and by regular mail to the beneficiary tribe(s), if applicable. The date the recipient receives the DMR is the date the 60-day comment period begins. The receipt date can be confirmed once the Certified Mail receipt is received by the Area ONAP or by visiting http://www.usps.com/shipping/trackandconfirm.htm and entering the Certified Mail tracking number in the appropriate field. If using this approach, print a copy of

the website's confirmation that the DMR has been received. Regardless of the approach used, it is critical for the GE Specialist to retain a copy of the receipt confirmation. A DMR should only be distributed to the general public in response to a Freedom of Information Act request **and only after the FMR has been issued** to the recipient.

The recipient may request an additional extension of time to respond to the DMR prior to the end of the 60 day and additional 30 day comment period. If the extension request is for 30 days or less, the ONAP Administrator may approve the request. Any extension requests that exceed the 30 days (or a subsequent request for an additional extension) should have the concurrence of the OGE Director. All extensions requests, approvals and denials must be in writing but may be transmitted by email.

5.9 Prepare FMR

HUD will not issue the FMR until the recipient comment period has expired, even if comments are received prior to the end of the comment period. In accordance with section 405 of NAHASDA, the **FMR must be issued within 30 days of the end of the recipient comment period.** Revisions to the draft findings or recommended corrective actions should be made only when the Area ONAP receives documentation substantiating a recipient's contention that a finding or recommended corrective action should be revised or deleted. An Area ONAP has the authority to revise target dates for closing the findings based on the comments and/or additional information received. The sections below describe the actions the GE Specialist takes to create an FMR.

5.9.1 Rename DMR

On the first page change the page footer from "Draft Monitoring Report" to "Final Monitoring Report." Include a paragraph identifying the persons in attendance at the exit conference.

5.9.2 No comments and/or additional information received

If the Area ONAP does not receive comments and/or additional documentation within the recipient's 60-day comment period, all deficiencies cited in the DMR appear in the FMR. In these instances, the GE Specialist need make no substantive changes to the draft in preparing the FMR.

5.9.3 Comments and/or additional information received

If the recipient submits comments and/or additional documentation within the comment period, the GE Specialist will take the comments and/or additional documentation into consideration when preparing the FMR. The GE Specialist should revise the DMR only if the recipient submits convincing comments and documentation. The GE Specialist should discuss any revisions to the DMR with the GE Division Director before completing the FMR.

The GE Specialist should verify whether the additional information is sufficient to address the finding(s) and/or recommended corrective action(s). Contact the recipient if clarification is

needed. Additional information may be requested if it is done within the recipient's response period.

If sufficient documentation is submitted to resolve a finding, the GE Specialist will redefine the finding and/or recommended corrective action as resolved in the FMR by revising the DMR text to annotate that the finding and/or recommended corrective actions has been resolved, identify the documentation submitted that addressed the former finding and/or recommended corrective action, and delete all references to the finding and/or recommended corrective action.

If the DMR identified a finding that had associated questioned costs, the GE Specialist should determine whether the information submitted would change the amount of questioned costs. In some cases, the amount of questioned costs could be decreased if the information submitted resolves the finding and/or recommended corrective actions or if the documentation supports some of the costs. In other cases, the amount could be increased if the information submitted indicates additional ineligible expenses. If the amount of questioned costs is changed from the DMR, the FMR should provide an explanation for the increase or decrease.

If the additional information was not sufficient to address the finding(s) or recommended corrective action(s), the GE Specialist will describe the recipient's response" immediately after the narrative or the program area reviewed and include an explanation why the additional information is not sufficient to resolve the recommended corrective actions or close the finding. The original RCAs will describe the documentation needed to close the finding or recommended corrective action. If appropriate, and depending on the quality of the submission, the GE Specialist should establish a new target date to address the recommended corrective action(s).

Unlike the target dates in the DMR, all target dates in an FMR monitoring report should be expressed as a calendar date (utilizing the end of the month in which due). Converting the target dates to calendar dates in the FMR makes it easier for the recipient to track when a RCA is due and for the GE Specialist to track the recommended corrective actions.

Depending on the area ONAP, the FMR may go through the same review and concurrence process as the DMR before issuance. Regional Field Counsel shall review and concur on the FMR if the recipient commented or objected to the scope of the review or the scope of any questioned costs. The GE Division Director ultimately decides on the content of the FMR.

5.9.4 Issuance of the FMR

The GE Specialist should use the *Transmittal Letter Final Monitoring Report* template to issue the FMR. The transmittal letter includes the information below:

- The recipient notification of additional days to comment on the DMR and any additional request for extension of the recipient comment period;
- Acknowledgment recipient's comments and/or additional documentation, if applicable; and,
- The name and telephone number of the GE Specialist to contact regarding questions.

The FMR is sent by Certified Mail to the recipient and by regular mail to the beneficiary tribe(s), if applicable. Receipt of the FMR can be confirmed, as described in Section 5.8.11.

5.9.5 FMR availability

Once the FMR has been received by the recipient, a copy of the Transmittal Letter and FMR should be posted in SharePoint at *ONAP Monitoring Reports* using the common naming format found at the site. This site is used by OGE to provide a copy of the FMR upon request.

5.10 Official Monitoring File

The assigned GE Specialist is responsible for maintaining the official monitoring file for each recipient. The file should include the items below;

- Recipient monitoring strategy;
- On-site visit notification letter;
- Entrance and exit conference meeting notes and attendees;
- Information/additional documentation request letter(s), if applicable
- Monitoring Plans completed by GE staff during the review;
- DMR and Certified Mail receipt;
- Documentation submitted in response to Draft Monitoring Report; and
- FMR and Certified Mail receipt

5.11 Tracking Findings

All findings and target dates for corrective actions from the FMR shall be entered into the monitoring log in the Area ONAP's PTD by the staff assigned for PTD data entry. The GE Specialist is responsible for tracking the recipient's response to the recommended actions according to the target dates cited in the FMR. The basic task associated with follow-up monitoring is to review documentation submitted by the recipient to verify that the documentation is adequate to address the recommended corrective actions and that the recipient is responding within required target due dates. To facilitate tracking of the status of open monitoring findings, a cover sheet may be kept in the front of the file showing the status of open and closed findings.

5.12 Confirm Compliance

When the GE Specialist receives documentation in response to a finding, the GES shall review the documentation to verify if it is adequate to address the recommended corrective and/or finding. The GE Specialist will draft a status of finding(s) letter indicating to the recipient that the specific recommended corrective action and/or finding has been resolved satisfactorily or whether the documentation is insufficient to resolve the RCA or finding. The letter also should

provide an overall status report on all the recommended corrective actions in the final monitoring report, citing actions taken and completed, and restating any remaining findings still to be resolved with the target dates and incorporate any revised due dates from extension requests. The GE Specialist should not extend a target date unless the recipient requests an extension and the recipient needs a reasonable amount of additional time to address the finding. If enforcement has been initiated against the recipient, the GE Division Director should consult with OGE before considering a target date extension.

5.13 Refer Issues of Noncompliance

All issues of apparent substantial noncompliance that represent a willful pattern or practice are referred to GE Division Director by the GE Specialist, who reviews the evidence of noncompliance and, if warranted, recommends that OGE initiate enforcement. (See Chapter 6 for a detailed description of the enforcement process.)

5.14 Update the Monitoring Log

The assigned GE Specialist for data entry updates the monitoring log by entering status updates and dates of findings closure from the status letters. The GE Specialist should retain all documented evidence of compliance and noncompliance for future reference and potential enforcement action.

It is critical that the PTD *monitoring log* be accurate and up-to-date in order to track the status of the findings, identify trends in performance deficiencies, and for potential enforcement actions. It is everyone's responsibility to review reports for data inconsistencies and to follow up in making corrections. The Program Assistant (or other staff as assigned) maintains the PTD *monitoring log* for the GE Division Director, and the GE Specialist must provide input for this summary of all monitoring activities.

5.15 Significant Issues

Once a month, each GE Division Director updates the Area ONAP significant issues portion of the Monthly Activity Report, which provides a selective summary of open issues and actions taken over the previous month. The significant issues potion serves as a progress report on recipients whose activities are under scrutiny. The GE Division Director submits the Area ONAP significant issues list to the HQ Director of Field Operations by the end of the first week of each month. The significant issues portion of the Monthly Activity Report enables the DAS, other Headquarters staff, and the Area ONAPs to stay abreast of noteworthy performance problems that may attract media and/or Congressional inquiries.

Chapter 6: Enforcement Process

This chapter provides ONAP staff with procedures to follow when a recipient fails to take action to address noncompliance with HUD requirements. It includes the following sections:

6.1: Enforcement Resources, Model Letters, and Sample Letters

6.2: Objectives and Overview of the Enforcement Process

6.3: Enforcement Actions

6.4: Process for Imposing Remedies

6.5: Administrative Hearing Process

6.6: Confirmation of Compliance and Removal of Remedies

6.7: LOCCS Actions

6.8: Funds Recaptured or Repaid

6.9: High Risk Determinations

6.10: Limited Denials of Participation, Debarments, and Suspensions[1]

6.1 Enforcement Resources, Model Letters, and Sample Letters

Documents and folders in this chapter that are *italicized* and highlighted in red are hyperlinked to the Grants Evaluation (GE) SharePoint site. If using an electronic version of the chapter, place the cursor on the word and right-click to open the hyperlink.

Enforcement Resources

- Enforcement Log (Area ONAP Performance Tracking Database (PTD))
- Notice PIH 2011.21 or any subsequent notice of the same title (Line of Credit Control System/Voice Response System (LOCCS/VRS) for the Indian Housing Block Grant Program)

[1] Section 6.10 includes a discussion of actions that may be taken under the provisions of 2 CFR Parts 180 and 2424 (Government Debarment and Suspension). However, since these actions (in other than very extraordinary circumstances) would be specifically directed at individuals for malfeasance or misfeasance and not at recipients of assistance (tribes, TDHEs), they are treated as a separate class of remedies. Therefore, the discussion in this chapter, unless specifically indicated, only addresses policies and procedures for failure to address identified areas of noncompliance.

(http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/regs/notices)

- Program Guidance No. 2002-01 (ONAP) – High Risk Determination: http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/32/02-01%20(ONAP)%20High%20Risk%20Guidance.pdf
- Program Guidance No. 2001-07 - Use of 24 CFR Part 85.12 "High Risk" Determination: http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/176/2001-07%20High%20Risk%20Determination.pdf

Model Letters

The Office of Grants Evaluation (OGE) developed "model" Letters of Warning (LOW), Notices of Intent to Impose Remedies/Offer of Informal Meeting (NOI), and Imposition of Remedies (IOR) letters that the Area ONAPs can adapt for delinquent audits, APRs, ASERS, and Federal Financial Reports (SF-425); and for open monitoring findings. The model letters are considered templates and should be followed closely. However, there may be instances where the model letter language does not fit the specific circumstances or additional language needs to be included. These modifications should only be minor. The "model" letters are posted in the *Model Enforcement Letters* folder on SharePoint.

Sample Letters for Open Monitoring and Audit Findings

The SharePoint site has "sample" LOWs, NOIs, and IORs that Area ONAPs can use as guides for drafting letters when monitoring and audit findings and other deficiencies are involved. Because circumstances vary in these types of enforcement actions, in no way should "sample" letters be considered templates; these are actual letters that have been issued. The samples are intended only to provide the GE Specialist with an example of how an LOW may be written and provide the language that must be included in the letter in order to meet the intent of the law. **The GE Specialist should note that the sample letters should be modified according to the specific circumstances.** For example, there may be other deficiencies or other regulations that should be cited than those contained in the sample letter. The GE Specialist must take care when using a sample letter as a writing guide to ensure that the draft letter is factually correct and includes all known performance deficiencies. The "sample" enforcement letters are posted in the *Sample Enforcement Letters for Findings, Etc.* folder on SharePoint.

Model VCAs and Sample VAs

An Area ONAP may agree with a recipient to enter into a Voluntary Compliance Agreement (VCA) prior to the issuance of an NOI. Likewise, after issuing an NOI but prior to issuing an IOR and if an Area ONAP never entered into a VCA with the recipient for the same performance deficiencies, HUD may enter into a Voluntary Agreement (VA) with a recipient. The model VCA documents and sample VA documents are posted in the *Voluntary Compliance Agreements and Voluntary Agreements* folder on SharePoint.

6.2 Objectives and Overview of the Enforcement Process

The enforcement process is one of HUD's methods for achieving compliance with statutory and regulatory requirements and protecting against fraud, waste, and mismanagement. HUD's other enforcement actions include referral to the U.S. Attorney General or to HUD's Office of Inspector General (OIG) for auditing assistance or if criminal activity is suspected. There are two basic reasons for imposing remedies:

- to address the willful failure of a recipient to correct noncompliance with statutory or regulatory requirements identified by HUD monitoring and oversight (see 24 CFR § 1000.530 for the IHBG program and 24 CFR § 1003.701 for the ICDBG program); and

- to address or correct noncompliance because the recipient lacks the administrative capacity to do so. See Section 6.3.1 for more information on administrative capacity.

In other words, HUD may impose remedies if a recipient does not or cannot cure the performance deficiency(s) in a timely manner. As established in the August 4, 2011, Federal Register Notice of Revocation and Redelegation of Authority for Indian and Alaska Native Programs (FR-5545-D-01), only the Assistant Secretary for Public and Indian Housing (A/S) can impose and remove remedies. This means that only the A/S can sign NOIs, VAs, VA extension approvals/denials, IORs, Settlement Agreements that may occur during the administrative hearing process, and letters discontinuing enforcement and removing remedies.

For the IHBG program, HUD may impose remedies described in 24 CFR §§ 1000.532, depending on the nature of the noncompliance – non-substantial or substantial. The declaration of substantial noncompliance under 24 CFR § 1000.534 can only be made by the A/S. See Section 6.3, for further discussion on substantial noncompliance. Also, in lieu of, or in addition to such remedies, HUD may refer the matter to the U.S. Attorney General, as discussed in 24 CFR § 1000.532(e). It is recommended these referrals only be made in unusual circumstances when more typical remedies are unavailable or inappropriate.

For the ICDBG program, HUD may impose remedies described in 24 CFR §§ 1003.702 or 1003.703. There are two distinctions between the remedies:

- If a review of the grantee's performance reveals that the grantee has (1) not complied with the ICDBG requirements, or (2) not carried out its activities substantially as described in its application, or (3) not made substantial progress in carrying out its approved program, the remedies available in 24 CFR § 1003.702 may be taken. Prior to the imposition of remedies, at least one of the corrective or remedial actions in 24 CFR § 1003.701(b) must be taken and only then if the grantee has not made an appropriate and timely response.

- Remedies in 24 CFR § 1003.703 are used for other performance problems, such as noncompliance with reporting requirements. HUD may also refer the matter to the U.S. Attorney General with a recommendation that a civil action be instituted, as discussed in

24 CFR § 1003.703(b). In most cases, a referral would be made when there are no current ICDBG funds remaining or to recapture disallowed costs.

The GE Specialist should follow the process outlined in the following sections for the IHBG program when pursuing enforcement under the ICDBG program. If a recipient has performance deficiencies in both its IHBG and ICDBG programs, the enforcement actions should be kept separate because the programs have different statutory and regulatory requirements and enforcement remedies. This approach simplifies the enforcement process by making it easier for ONAP and the recipient to track the resolution of performance deficiencies and avoid potential confusion between the programs. In these instances, the Area ONAP should prepare separate LOWs, NOIs, and IORs for IHBG and ICDBG performance deficiencies. However, it is permissible to combine IHBG and ICDBG performance deficiencies in VCAs and VAs.

For the Rural Housing and Economic Development/Rural Innovation Fund (RHED/RIF) or Resident Opportunities and Self Sufficiency (ROSS) programs, there are no regulations developed which specifically address enforcement; however, the grant agreement for these programs identifies enforcement procedures that HUD uses once it determines the grantee to be in default with the grant agreement and related statutes and regulations. The grant agreement for these programs includes the requirements that must be followed by the grantee in administering the program and HUD in enforcing it. For the RHED/RIF and ROSS programs, the provisions of the grant agreement or 24 CFR §§ 85.43 or 84.62 (Enforcement), as appropriate, are expected to be implemented in a manner consistent with the intent of the grant agreement.

For delinquent reports under the RHED/RIF programs, the Area ONAP will only issue an LOW (and VCA, if applicable) to the recipient. Prior to the NOI, the Area ONAP is to transmit a copy of the LOW (and VCA, if applicable) to HUD's Office of Rural Housing and Economic Development for further action. The model LOWs and transmittal memo are available in the *Letters of Warning* folder on SharePoint.

For noncompliance with the ROSS grant agreement and related requirements, the Area ONAP issues a letter that: (1) notifies the grantee that HUD has determined the grantee to be in default with program requirements, (2) identifies the corrective action(s) needed, and (3) provides an opportunity to appeal the default determination or corrective action(s). See Sub Article H of the ROSS grant agreement for more information; and contact OGE for assistance, if necessary.

Other Actions: Under the very limited circumstances described below in Section 6.3, the Area ONAP can make a "high risk" determination under the provisions of 24 CFR § 85.12 and impose risk-specific conditions or restrictions on future grants. This may be the most appropriate enforcement action to use for an IHBG or ICDBG recipient that fails to take appropriate and timely action to address a finding of noncompliance. An Area ONAP Administrator may take the action without A/S approval.

When a recipient has not complied substantially with any of the regulations or statutes that govern the IHBG and/or ICDBG programs, the Area ONAP should pursue enforcement actions. Typical areas of noncompliance would be failure to correct monitoring and/or audit findings, and failure to meet reporting requirements.

Enforcement Package

Adequate documentation is the foundation of the enforcement process and must be maintained in each recipient's file in the event that it is necessary to take enforcement actions against a recipient. The key to effectively imposing remedies is for the documentation to be timely, thorough, and accurate. In general, grants evaluation processes are intended to help the GE Specialist detect and document deficiencies early so that the recipient has ample opportunity to correct them. However, if the recipient fails to take appropriate corrective actions in a timely manner, ONAP relies on the documentation to explain and justify its enforcement actions and to support legal actions through the hearing process (if necessary).

If enforcement is necessary, most of this documentation becomes the enforcement package. The Area ONAP Enforcement Panel, OGE, and HUD's Program Enforcement Division (PED) within the Office of General Counsel (OGC) need a complete copy of the enforcement package in order to conduct the enforcement process. A complete enforcement package should include:

- chronology of pertinent actions/documents (i.e., Administrative Log);
- copies of all communication to and from the recipient related to the deficiency(s), including any letters, phone message transcripts, faxes, and email transmissions;
- copies of ICDBG grant application(s) and award letter(s), if applicable;
- copies of pertinent IHP(s), if applicable;
- additional documentation for open monitoring findings:
    - on-site monitoring notification letter;
    - Draft Monitoring Report and Certified Mail returned/signed receipt;
    - information request letter(s) to complete the monitoring review;
    - response(s) to information requests letter(s);
    - Final Monitoring Report and Certified Mail returned/signed receipt;
    - Monitoring Report Tracking Log from the PTD;
    - copies of letters, fax cover sheets, emails that the recipient used to transmit documentation to address the monitoring findings;
- additional documentation for open audit finding(s):
    - copies of pertinent audit(s);
    - Audit Tracking Log from the PTD;
    - copies of letters, fax cover sheets, emails that the recipient used to transmit documentation to address the audit findings;
- additional documentation for delinquent APR(s):
    - APR Tracking Log and Checklist from the PTD;

    - the APR, if the Area ONAP rejects it at any time, along with the rejection letter (see Chapter 2 – Reports Review Process, for a description of rejecting an APR);
- additional documentation for delinquent audit(s):
    - Audit Tracking Log from the PTD;
    - screen view from the Federal Audit Clearinghouse documenting audit delinquency;
- LOW(s) pertaining to the deficiency(s) and Certified Mail returned/signed receipt(s) or USPS tracking sheet verifying the LOW was delivered;
- VCA, if applicable, and Certified Mail returned/signed receipt or USPS tracking sheet verifying the VCA was delivered;
- third-party observations (i.e., complaints from tribal members, contractors, etc. that relate to the deficiency(s); or other information from independent sources that support the noncompliance);
- description of training or technical assistance offered and provided to the recipient in regards to the deficiency(s);
- summary of Enforcement Panel recommendations; and
- Enforcement Log from the PTD

Once the Area ONAP has made the decision to take enforcement actions, the GE Specialist or other Area ONAP staff should scan the documents and email the package to OGE for posting on SharePoint. The Area ONAP should make certain that all scanned documents are complete and legible.

Note: It is not necessary to include in the enforcement package a recipient's IHPs and/or APRs unless the information contained in the document(s) is pertinent to the enforcement action. The same is true of any other documentation, including documentation submitted by the recipient to address open monitoring and/or audit findings. However, this documentation will be necessary should the recipient request an administrative hearing. See Section 6.5 for a description of the administrative hearing process.

After the NOI has been issued, subsequent documentation will need to be added to the enforcement package if proceeding with the enforcement action. These documents are:

- signed and dated NOI and Certified Mail returned/signed receipt;
- notes or minutes of the informal meeting, if one was held; and
- any subsequent documentation that occurred in relation to the deficiency(s)

6.2.1 Various HUD roles in the enforcement process

GE Specialist

In coordination with the GE Division Director, the GE Specialist makes the recommendation of actions required to address recipient failure to take corrective actions, including engaging the Enforcement Panel, OGE, and PED.

The GE Specialist assembles all available documentation that supports a recipient's area(s) of noncompliance. This becomes the enforcement package (see Section 6.2 for items to be included in an enforcement package). In addition, the GE Specialist prepares recommendations of remedies to be taken for consideration by the Enforcement Panel. For IHBG, the GE Specialist must also provide documentation that the noncompliance meets the regulatory requirements for substantial noncompliance (24 CFR § 1000.534). Upon request, the GE Specialist provides copies of the enforcement package to Panel members.

The GE Specialist is responsible for drafting LOWs, VCAs, NOIs, VAs, IORs, and letters discontinuing enforcement and removing remedies using as guides the model or sample documents on SharePoint.

GE Division Director

The GE Division Director convenes an Enforcement Panel and serves as the Panel facilitator. The GE Division Director, or designee, should prepare a summary of the decisions and recommendations made by the Panel. The GE Division Director should also ensure that there is consistency between the enforcement actions taken among recipients. However, the Administrator makes the final decision on the disposition of the case within the Area ONAP based upon input from the entire Panel.

Prior to forwarding an enforcement package to OGE, the GE Division Director is responsible for ensuring that the enforcement package is complete and includes all documentation relevant to the deficiency(s).

Enforcement Panel

The Enforcement Panel is necessary to ensure that <u>all</u> deficiencies are discussed and that <u>all</u> deficiencies are addressed in one IHBG or ICDBG enforcement action. Members of the Enforcement Panel should include the ONAP Administrator, Field Office of Counsel (Field Counsel), GE Division Director, Grants Management (GM) Division Director, and the GE and GM Specialists working with the recipient being discussed. It may also include, as appropriate, other Area ONAP staff and representatives from OGE and the Office of Loan Guarantee (OLG). OLG's role would be to provide information on the recipient's Title VI and/or Section 184 program, advise the Enforcement Panel on the potential impact that an enforcement action could have on the recipient's program(s), and answer any questions the panel may have. OLG is not expected to assist in the decision of whether or not to pursue enforcement. Additional members of an Enforcement Panel could include OIG and OGC.

NOTE: Some offices may not establish a formal Enforcement Panel, especially if the deficiency is straightforward (e.g., overdue audit, overdue APR). However, if the deficiency is complex, the area ONAP should go through some type of assessment process, even if informal, to reach an opinion on whether the deficiency meets the definition of substantial as defined at 24 CFR 1000.534 and/or whether to consider offering the possibility of a VCA to the recipient.

Once deficiencies have been identified, the Enforcement Panel may convene to discuss whether the Area ONAP should enter into a VCA with the recipient. If the Area ONAP decides not to enter into a VCA or executes a VCA and the recipient does not comply with the terms of the agreement, the Panel should reconvene to discuss the issuance of an NOI. The Panel would again convene if subsequent enforcement actions are necessary, such as entering into a VA (if the performance deficiencies were not included in a VCA) and issuing an IOR.

The Enforcement Panel reviews the evidence to ensure that the Area ONAP has taken the steps required in 24 CFR Subpart F, Recipient Monitoring, Oversight and Accountability; to determine if the recommended actions to be taken by the Area ONAP are appropriate, given the substance of the noncompliance identified; and whether sufficient and effective technical assistance was offered and provided. The GE Specialist may be asked to collect additional documentation before the Panel makes its decision. While additional evidence is being gathered, the Panel may discuss other findings where sufficient documentation already exists.

The Panel may review any information provided by the recipient to determine if it has adequately addressed the noncompliance by taking the corrective or remedial actions requested by the Area ONAP. However, it is the GE Division Director's responsibility to ensure that findings were appropriately closed or that the documentation submitted was insufficient to close the findings. The Panel also could determine that even though an action taken by a recipient to address the noncompliance was not what was recommended, it may be adequate. If it is determined that the recipient has taken adequate actions, the Panel recommends that the GE Division Director transmit a determination of compliance to the recipient. If the Panel does not make such a determination, the Panel proceeds to the next step.

For the IHBG program, the Panel reviews the documentation assembled by the GE Specialist to determine if the performance problem would meet the regulatory requirements for substantial noncompliance (24 CFR § 1000.534) (see Section 6.3, below).

In order to recommend the appropriate action to be taken to address the recipient's failure to adequately address a finding of noncompliance, the Panel reviews the enforcement package as provided by the GE Specialist and interviews the GE Specialist in an attempt to ascertain the cause(s). It may be determined that the most appropriate step to be taken would be the recommendation of additional corrective actions and/or the delivery of additional technical assistance, rather than enforcement.

If the Panel determines that failure to adequately address a compliance problem is due to the recipient's lack of administrative capacity, it is possible that the most appropriate action is for the Area ONAP or a third party to provide technical assistance, rather than to impose remedies. See Section 6.3.1, below, which further explains administrative capacity. However, if a recipient's

ineffective administrative capacity exposes HUD funds to substantial risk of fraud, waste, or mismanagement, the Panel should recommend enforcement actions.

Imposing remedies is a serious matter that can have significant impact on the recipient, the beneficiary tribe (if a TDHE is the recipient), its constituents, and ONAP resources. Recommended actions by the Area ONAP must be consistent with those taken in similar situations within the Area ONAP's jurisdiction. Before such an action is taken, it is essential that both the GE and GM Divisions and the Administrator provide input to the decision and are aware of written and/or verbal commitments Area ONAP staff may have made, i.e., a commitment to provide technical assistance. If remedies are imposed, this communication between the divisions is also essential so everyone knows what their role is in the process.

NOTES: 1) In cases where the recipient noncompliance represents a possible criminal violation, the GE Division Director must consult the local OIG. If OIG representatives participate in Panel deliberations, then no additional consultation with the OIG may be needed. 2) The GE Division Director has the discretion to decide whether it is necessary to convene an Enforcement Panel if he/she is assured that the only deficiency is a delinquent report. However, if one is not held, the GE Specialist should send a copy of the draft VCA, NOI, VA or IOR to the Enforcement Panel members at the same time it is sent to OGE, in order to keep them informed of the matter.

Field Office of Counsel

The Field Counsel serves as support and provides legal and programmatic advice to the Area ONAP in initiating enforcement actions and may also assist the GE Specialist in drafting the enforcement letters, VCAs, and VAs. Field Counsel can also have direct contact with the PED during the process for clarification of the issues.

OGE

The role of OGE is to establish policy and procedures and to oversee the enforcement process. OGE staff act as a liaison between the Area ONAP and PED. OGE is responsible for reviewing all proposed enforcement actions for consistency among Area ONAPs, tracking the status of all enforcement actions, and reviewing final actions prior to approval by the A/S. As noted above, under all grant programs administered by ONAP, authority to impose and to remove remedies has been reserved by the A/S.

OGE is responsible for ensuring that enforcement packages and draft letters are complete prior to sending to the PED. OGE is also responsible for tracking the progress of the enforcement action through the review and approval process and maintaining nationwide *Enforcement Tracking Logs* that are posted on SharePoint. This includes reviewing the Area ONAP's Enforcement Logs maintained in the PTD and entering appropriate data into the nationwide Enforcement Tracking Log.

OGE obtains the appropriate concurrences and the A/S's signature on the NOIs, VAs, IORs, letters discontinuing enforcement and removing remedies, and any other enforcement letters that require the A/S's signature. Once the A/S signs these letters, OGE mails the original letter to the

recipient, emails a copy to the Area ONAP and the PED, and posts a copy in the enforcement package on SharePoint.

PED

The primary function of the PED in enforcement actions is to represent ONAP in administrative or judicial proceedings and to ensure the actions taken by ONAP are legally supportable and appropriately documented. The PED supports all Area ONAPs and OGE by providing legal advice and guidance on enforcement strategies; however, it does not provide program advice. The PED serves as HUD counsel for administrative hearings under 24 CFR Part 26 and when it is necessary to refer potential civil actions to the U.S. Attorney General for filing in Federal courts. Since any enforcement action may result in litigation, the PED reviews all relevant documents before substantial noncompliance is declared under IHBG or before any remedies are imposed upon a recipient's grant programs under 24 CFR §§ 1000.532 (IHBG), 1003.703 (ICDBG), or 85.43 if administered by the tribe and 84.62 if administered by a non-profit organization (RHED/RIF and ROSS).

The Area ONAP and/or the Field Counsel may rely on the PED's expertise throughout the enforcement process. If, in the opinion of the PED, the actions proposed or the documentation developed would not be upheld in an administrative or judicial proceeding, the PED provides advice and assistance to the Area ONAP, Field Counsel, and OGE as to what actions or documentation are appropriate.

The PED reviews the draft NOIs, VAs, and IORs; and if the actions proposed are appropriate and the statutory/regulatory citations are correct, the PED returns the document to OGE with its concurrence and any suggested changes.

6.2.2 Certified Mail and receipt confirmation

It is required that LOWs, VCAs, NOIs, VAs, and IORs be sent by Certified Mail – Return Receipt Requested. Using Certified Mail is important because the receipt date is used to calculate the date by which the recipient is expected to respond. All the model and sample enforcement letters stipulate that the recipient must respond to the letter within a specified number of days after the receipt of the letter, and the GE Specialist uses the Certified Mail receipt date to start the clock. The GE Specialist can track and verify receipt of a letter by using the U.S. Postal Service website at http://www.usps.com/shipping/trackandconfirm.htm.

In those rare instances when a recipient does not accept or retrieve a letter sent by Certified Mail, the GE Specialist should fax the letter and send it as an email attachment to the recipient. It is critical that the fax number and email address be correctly tied to the letter's addressee. The date that the letter was faxed and emailed successfully becomes the date that the clock begins. In this situation, the PED has approved this alternative approach to delivering letters in lieu of Certified Mail as long as the Area ONAP is certain that the recipient's fax number and email address are accurate. It is important for the Area ONAP to email a copy of the fax and email transmission to OGE for posting to the enforcement package on SharePoint.

When calculating the days that a response is required from the recipient, the GE Specialist is to base it on calendar days. The GE Specialist can access the following website for easy calculation: http://www.timeanddate.com/date/dateadd.html.

6.3 Enforcement Actions

The following actions are based on the regulatory and statutory provisions of the IHBG program. However, for the sake of consistency, ONAP will follow the same process for enforcement actions for the ICDBG, RHED/RIF, and ROSS programs unless those programs specifically say otherwise.

IHBG. The provisions at 24 CFR Part 1000, Subpart F should be followed to address recipient performance deficiencies. Remedies imposed under 24 CFR § 1000.532 can affect a recipient's current and future year's grant(s). For more detailed information on the IHBG enforcement process, consult 24 CFR §§ 1000.530-.542. The remedies at 24 CFR §§ 1000.532 include provisions to:

- adjust, reduce, or withdraw future grant amounts;
- terminate or reduce payments to the recipient under an existing grant;
- limit the availability of payments for existing grants;
- provide a replacement TDHE;
- refer the matter to the U.S. Attorney General; and/or
- other appropriate actions in accordance with reviews and audits.

To implement an action listed under 24 CFR §§ 1000.532, it is necessary that a declaration of substantial noncompliance be made, as defined in 24 CFR § 1000.534. A noncompliance is substantial if it:

- has a material effect on the recipient meeting its planned activities, as described in its IHP;
- represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial[2];
- involves the obligation of a material amount of NAHASDA funds budgeted for a material activity; or

[2] An example of this would be non-submittal of the SF-425, Federal Financial Report. One delinquent SF-425 would not constitute substantial noncompliance; however, three consecutive delinquencies have been determined to be the threshold for a pattern of non-reporting, based on advice from the OGC and policy. Each quarterly reporting period, LOCCS will generate a letter if an SF-425 is not recorded as received. The letter contains appropriate notification to the recipient for enforcement purposes. It has been determined that the LOCCS-generated letter is sufficient for enforcement purposes and an Area Office should not issue an LOW until the third consecutive reporting delinquency.

- places the housing program at substantial risk of fraud, waste, or mismanagement.

Once an IOR has been issued and if the recipient requests an administrative hearing in accordance with 24 CFR § 1000.540, remedies imposed under 24 CFR §§ 1000.532 are not effective until 15 days after the hearing has been held and the Administrative Law Judge has issued a decision in HUD's favor.

Under the authority of 24 CFR § 1000.532(a)(3), HUD can limit the availability of payments[3] to programs, projects, or activities not affected by the noncompliance prior to conducting an administrative hearing if the noncompliance would result in a continued unlawful expenditure of funds. However, if HUD takes this action, NAHASDA stipulates that the administrative hearing must be conducted within 60 days of the date of the IOR, which would not be feasible. Therefore, ONAP will not impose this remedy unless the recipient has waived its hearing rights under a VA.

ICDBG. The remedies HUD may impose are contained in 24 CFR §§ 1003.702 and 1003.703. Under § 1003.702, HUD may reduce or withdraw grants if the recipient has not carried out its activities substantially as described in its ICDBG application or made substantial progress in carrying out its approved program, per § 1003.700(a)(2) and (3). Funds already expended on eligible approved activities cannot be recaptured under this remedy. Under 24 CFR § 1003.703, HUD may:

- terminate grants;
- reduce grants by an amount which was not expended in accordance with Part 1003;
- limit the availability of funds to projects or activities not affected by failure to comply with Part 1003;
- revoke the line of credit in whole or in part (putting a manual suspension on the account until a more serious remedy is imposed)[4]; or
- refer the matter to the U.S. Attorney General.

It should be noted that while there is a requirement under ICDBG that the recipient submit quarterly Federal Financial Reports (SF-425), unlike the IHBG program, HUD would not take enforcement actions under the ICDBG program based solely on delinquent SF-425s since LOCCS automatically suspends ICDBGs when the SF-425s are not submitted.

ROSS. The grant agreement for the ROSS program instructs that if HUD makes a determination that the recipient is in default, HUD is authorized to take enforcement actions after giving the

[3] It is important to note that imposing a remedy is different from placing a LOCCS edit on a recipient's grant due to the issuance of an LOW. A remedy is the result of the enforcement process and the current grant can be limited, suspended, terminated, and/or future funds adjusted; whereas, an edit requires ONAP review of supporting documentation prior to approving the payment request.

[4] HUD may revoke the recipient's line of credit in whole or in part at any time after notifying the recipient, if HUD determines that the recipient will continue to expend funds for activities affected by the noncompliance.

recipient the opportunity to demonstrate that it is not in default and after implementing appropriate remedial action. If the recipient does not take the required remedial actions or the actions are not effective in correcting or preventing further default, HUD may change the recipient's payment method, suspend authority to make draw downs, reduce the grant, terminate the grant, take action with respect to future HUD or Federal grant awards, require reimbursement, and take other legally-available remedies.

RHED/RIF. The grant agreement for the RHED/RIF program instructs that the administrative requirements of 24 CFR Part 85 or Part 84 for nonprofits are to be followed. Remedies are authorized at 24 CFR §§ 85.43 and 84.62, "Enforcement." Under §§ 85.43 and 84.62, if a recipient or subrecipient materially fails to comply with any term of an award, HUD may temporarily withhold cash payments, disallow all or part of the cost of the activity or action, wholly or partly suspend or terminate the current award, withhold further awards for the program, or take other legally-available remedies.

6.3.1 Administrative Capacity

The regulations at 24 CFR § 1000.6 state that "IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement."

All NOFA-based grants require a recipient's continuing capacity to carry out the approved activities. For example, the ICDBG NOFA includes Factor 1 (Capacity of the Applicant) that consists of two categories of administrative capacity: (1) managerial, technical, and administrative capability, and (2) past performance. The assumption is that an awarded grantee has the administrative capacity necessary to implement the activities until proven otherwise. If a lack of administrative capacity is documented after grant award, HUD may determine that the grantee is in default and take appropriate action.

If the Area ONAP determines that a recipient lacks the capacity to administer its IHBG program, the recipient should be initially notified of this determination in the LOW. If the LOW states that the recipient lacks administrative capacity, the assertion must also be included in the NOI, if it still is applicable. A determination that the recipient lacks administrative capacity should not be based solely upon the deficiencies identified in the NOI but should include other issues to justify the determination. Examples of this may be reports being consistently submitted late, a recipient's checks having been stolen, total staff turnover, etc. The NOI must describe the specific actions the recipient must take to demonstrate regained administrative capacity, such as receiving training in the area(s) where the recipient's operations are weak.

6.4 Process for Imposing Remedies

The process for imposing remedies for most areas of noncompliance under the IHBG program (24 CFR Part 1000, Subpart F) is summarized below. It is HUD policy that the enforcement process for the ICDBG program (24 CFR Part 1003, Subpart H) is modeled after the IHBG

enforcement process. See Section 6.2 for information on RHED/RIF and ROSS enforcement procedures. This, and subsequent sections, pertain only to the IHBG and ICDBG programs.

6.4.1 Letter of Warning

If the Area ONAP has identified an area(s) of noncompliance under the IHBG program, either based on a monitoring review conducted, delinquent report(s), or other documented evidence, HUD is required to take at least one of the corrective or remedial actions listed in 24 CFR § 1000.530(a) prior to imposing enforcement actions. One of the actions listed is to issue the grant recipient an LOW. ONAP has established the policy that an LOW is to be issued in all cases. The LOW:

- advises the recipient of the deficiency(s);
- describes the corrective actions to be taken;
- informs the recipient that a LOCCS edit has been placed on current and future grants, if applicable;
- if a LOCCS edit is placed on grants, identifies the supporting documentation that must be submitted for Area ONAP review before funds are disbursed;
- establishes a date for corrective actions;
- notifies the recipient that more serious actions may be taken if the deficiency(s) is not corrected or is repeated; and
- offers the opportunity for an informal meeting.

As discussed in Section 6.1 of this chapter, there are model and sample LOWs for the various deficiencies that are available for the GE Specialist to use when preparing the LOW. The GE Division Director or Administrator signs the LOW, and it must be sent by Certified Mail because the letter provides a specific response period based on the letter's receipt date.

The LOW for notifies the recipient that a LOCCS edit has been placed on its IHBG(s) and that it is necessary for the Area ONAP to review all LOCCS payment requests before funds can be disbursed.[5] The Area ONAP reviews the documentation to verify that the funds requested are for eligible activities, and that the activities are in compliance with statutory and regulatory requirements. The LOCCS edit applies to current and future IHBGs and continues until the performance deficiency(s) is resolved. The sample LOWs have the same LOCCS edit language as the model letters.

As explained in Section 6.3, the GE Specialist would issue an LOW for non-submittal of the Federal Financial Report (SF-425) after three consecutive reports were delinquent. Also, it should be noted that under the ICDBG program, when a Federal Financial Report (SF-425) is not submitted by the recipient, LOCCS automatically puts a suspension on the grant(s) affected until the report is received.

[5] See Section 6.7 (LOCCS Actions) for information on LOCCS edits.

There is no regulatory requirement for the amount of time the recipient is to be given to respond to the LOW. In most instances when the LOW involves open monitoring and/or audit findings, it is recommended that the recipient be given 30 days to address the findings. There may be instances, however, where a lesser or greater amount of time is preferred. For delinquent reporting, 15 days is usually sufficient.

6.4.2 Voluntary Compliance Agreements

If a recipient is making a good faith effort to address IHBG and/or ICDBG performance deficiencies but needs a reasonable amount of time to correct the deficiencies, the Area ONAP may agree to delay an enforcement action. If this occurs prior to the NOI, the Area ONAP may decide to enter into a VCA with the recipient. The VCA can include different types of deficiencies, whether they are unresolved findings and/or delinquent reports.[6]

A VCA identifies the actions that the recipient must take, the deadlines for those actions, the actions HUD will take if the recipient adheres, and the consequences if the recipient fails to adhere to the terms of the agreement. In furtherance of HUD's delegation of authority dated August 4, 2011, a VCA will be signed by the Area ONAP Administrator.

Prior to drafting a VCA, the Area ONAP should meet with the recipient to discuss the performance deficiencies and come to an agreement on the specific actions the recipient must take, along with a schedule with milestone dates for addressing the performance deficiencies. It is recommended that the Area ONAP minimize the number of milestone dates to facilitate easier tracking of the recipient's compliance with the agreement.

To prepare a VCA, the GE Specialist should adapt the *Model VCA* that provides a standardized structure and has been approved by the PED. The model VCA is geared to the IHBG program but can be adapted for deficiencies under the ICDBG program. The Area ONAP may deviate from the model VCA format to accommodate unusual circumstances; however, it is recommended that any deviation be kept to a minimum. Once drafted, the GE Specialist should email the draft agreement to OGE for a completeness and accuracy review.

The GE Specialist can use the *Model Letter Requesting VCA Signature* to transmit the VCA to the recipient for their signature. The GE Division Director signs the transmittal letter. The PED has determined that ONAP can accept signed VCAs that the recipient sends as attachments to an email or fax. However, the Area ONAP should retain a copy of the VCA with the original HUD signatures in the recipient's folder.

Upon receipt of the recipient-signed agreement, the GE Specialist should adapt the *Model Letter Transmitting a VCA* for signature by the Area ONAP Administrator. Once the Area ONAP Administrator signs the VCA, the GE Specialist should send the fully executed agreement to the recipient by Certified Mail. The GE Division Director is to track the recipient's progress in meeting the terms of the agreement and determine if and when the terms of the agreement have been fulfilled.

[6] See Program Guidance 2011-05 for more information on VCAs.

Since the Area ONAP issues VCAs, OGE is not responsible for monitoring compliance with the agreement's conditions. It is not necessary to provide OGE with a copy of a fully-executed VCA, transmittal letter, and Certified Mail receipt unless the recipient breaches the VCA and the Area ONAP decides to proceed with an NOI. If that occurs, these documents would be required components of the Enforcement Package that the Area ONAP emails to OGE.

If the terms of the agreement have been fulfilled, the GE Specialist should adapt the *Model VCA Completion Letter* for signature by the Area ONAP Administrator. In limited circumstances, a VCA deadline may be extended if approved by the Area ONAP Administrator.
The GE Specialist is to inform the recipient of a VCA extension approval or denial in a letter signed by the Area ONAP Administrator.

If the recipient fails to meet any of the deadlines in the agreement, the GE Specialist should prepare an NOI for OGE review, PED concurrence, and signature by the A/S. At the same time, the GE Specialist should assemble and email to OGE the enforcement package (see Section 6.2 for a list of documents that should be included in the enforcement package).

6.4.3 Notification of Intent to Impose Remedies

The GE Specialist drafts an NOI if the recipient does not adequately respond to the LOW or failed to comply with a VCA and the Enforcement Panel recommends going forward with enforcement. This letter notifies the recipient of the actions HUD intends to take and offers the recipient an opportunity to discuss the deficiency(s) during an informal meeting with the Area ONAP. It is recommended that the GE Specialist seek the assistance of the Field Counsel in drafting the letter. Model NOIs for each type of delinquent report are available in the *Model Enforcement Letters* folder on SharePoint and sample NOIs for monitoring and/or audit findings are available in the *Sample Enforcement Letters for Findings, Etc.* folder on SharePoint. **The GE Specialist should note that the model or sample letter should be modified according to the specific circumstances**.

Prior to drafting an NOI, the GE Specialist should review the PTD to make certain that all deficiencies will be included in this enforcement action and that the Area ONAP has issued an LOW for these deficiencies. For example, if a recipient has open monitoring and/or audit findings, the GE Specialist should verify that the recipient is current in the submission of its APRs, audits, and SF-425s. If an LOW has not been issued for a deficiency, one should be issued immediately and then included in the NOI if the deficiency is not cured in the time allowed in the LOW.[7]

The NOI should identify all of the potential remedies that are appropriate to the noncompliance issues. Section 6.3 discusses the remedies that are available to HUD under the different programs.

[7] The Area ONAP may forward a draft NOI to OGE even if the time allowed in the LOW has not expired, but this must be identified as such on the transmission email.

Simply put, the NOI "tells the story" of events leading up to the enforcement action, as well as informs the recipient of the potential remedies that HUD intends to take if the recipient fails to correct the performance deficiency(s). The NOI should describe in chronological order all the major actions that lead up to the NOI; and all assertions of fact must be documented in the enforcement package.

When describing in the NOI the receipt of documentation from the recipient, the NOI should identify the date the recipient submitted the documentation, rather than when it was received by the Area ONAP. In most circumstances, this would be the date on any cover letter or email from the recipient. The rationale for this approach is that the recipient should not be faulted for delays caused by the postal carrier or the Area ONAP.

In the instances when an NOI involves monitoring findings, the findings, statutory and/or regulatory citations, and recommended corrective actions should be extracted directly from the Final Monitoring Report and included with the NOI as Enclosure A. See the *Model NOI Enclosure for Findings and Recommended Corrective Actions* template in the *Sample Enforcement Letters for Findings, Etc.* folder on SharePoint. If the findings involve questioned costs, the NOI should include a section that describes the basis and amount of questioned costs. If there are numerous questioned costs, the GE Specialist should list and describe the questioned costs using the *Model NOI Enclosure for Questioned Costs* template in the *Sample Enforcement Letters for Findings, Etc.* folder on SharePoint. If it is determined that the recipient lacks administrative capacity, the NOI should include a section that describes specific examples of administrative incapacity and specifies actions the recipient must take to demonstrate regained capacity. See Section 6.3.1 for more information on administrative capacity.

Referral to OGE and PED

While the NOI is being drafted, the GE Specialist also prepares the enforcement package for submission to OGE. See Section 6.2 for a list of documents that constitute an enforcement package. The Area ONAP GE staff is encouraged to discuss the proposed enforcement actions with OGE during this time to ensure the package is complete and is consistent with actions taken against other recipients. The Field Counsel may also be in contact with the PED for any preliminary advice or guidance. The GE Specialist emails a Word version of the NOI to the OGE Director, who assigns it to a Headquarters GE Specialist to review for consistency and completeness. Once the enforcement action is assigned, all subsequent contact can be made directly with the assigned GE Specialist, unless directed otherwise. OGE will contact the Area ONAP to request the documents needed for a complete Enforcement Package. See Section 6.2 for a listing of typical Enforcement Package documents. During the review, OGE may contact the Area ONAP with questions or requests regarding the NOI. OGE posts the enforcement package in the *Enforcement Packages* folder on SharePoint. The file is located in the Area ONAP's folder and has the recipient's name and performance deficiency(s) in the title. Once OGE completes its review of the NOI and the enforcement package, it informs the PED that the NOI is ready for PED review and concurrence.

During its review of the NOI, the PED may pose questions to OGE; and in some instances, OGE may contact the Area ONAP for clarification and/or additional documentation. OGE finalizes

the NOI, making corrections where needed, and ensuring it is in the proper format. Once the PED concurs on the letter, OGE emails the NOI to the Area ONAP for review and concurrence. The Area ONAP should concur on the NOI as quickly as possible. If all appropriate staff are not available to concur, the GE Division Director or Area ONAP Administrator's concurrence will suffice. The Area ONAP notifies OGE by email when it concurs. OGE updates the NOI's concurrence block to note Area ONAP concurrence and continues the concurrence and signature process at HQ. Once signed by the A/S, OGE sends the letter to the recipient by Certified Mail and emails copies of the signed NOI to the PED and Area ONAP. After OGE receives the signed Certified Mail receipt, OGE will post the NOI and a copy of the Certified Mail receipt on SharePoint and email a copy of the receipt to the Area ONAP for retention in the recipient's file.

Informal Meeting

Sections 1000.532(b) (IHBG) and 1003.702(a) (ICDBG) provide for the opportunity for an informal meeting between the recipient and the Area ONAP to resolve the deficiency(s) prior to the imposition of remedies. While the remedies at 24 CFR §§, 1003.701, and 85.43 do not require that HUD provide the opportunity for such an informal meeting, it is ONAP policy to do so. Therefore, the opportunity for an informal meeting should be included in every NOI.

The NOI should state how many days the recipient has to request an informal meeting. Since the regulations do not specify when the informal meeting is to be held, under most circumstances, 30 calendar days from the receipt date of the NOI is a reasonable time to give the recipient to request the meeting. If the Area ONAP determines that a lesser time period is appropriate due to the circumstances, it is recommended that it be not less than 20 days. The informal meeting should be scheduled for a time and location acceptable to both the recipient and the Area ONAP and may also be conducted by a conference call. During the meeting, the GE Specialist or designee should take notes or minutes of the proceedings, which should include:

- date and time of the meeting;
- list of those in attendance;
- issues discussed; and
- conclusions reached, including any deficiencies that are resolved or agreements that are made. There may be instances when a recipient brings additional documentation to address the deficiencies that could result in satisfaction of the requirement.

At the meeting, the parties should determine if the deficiencies can be resolved within a reasonable period of time. If so, the Area ONAP and recipient may agree to enter into a VA. However, if the deficiencies are not resolved during the informal meeting or cannot be resolved within a reasonable amount of time, the Area ONAP should proceed with enforcement; i.e., drafting an IOR.

After the informal meeting, the GE Specialist is to prepare a letter to the recipient, for the Administrator's signature, providing the recipient with the meeting notes or minutes. A copy of the notes or minutes should be emailed to OGE for posting to the enforcement package on

SharePoint. In some instances, the GE Specialist may want to meet with the Field Counsel to determine what steps should be taken next.

6.4.4 Voluntary Agreements

There may be instances after the NOI is issued but before issuing the IOR when the Area ONAP agrees to delay an enforcement action if the recipient is making progress in addressing the performance deficiency(s), agrees to follow an agreed-upon time schedule for correcting the deficiency(s), and agrees to waive its right to an administrative hearing. If this is the case, the Area ONAP should develop a VA that will be signed by the A/S and the recipient. The agreement delineates the actions that the recipient must take, the deadlines for those actions, the actions HUD will take if the recipient adheres to the VA, and the consequences if the recipient fails to adhere to the terms of the agreement. Every VA must include a clause whereby the recipient waives its right to an administrative hearing in exchange for HUD suspending enforcement while the VA is in force.

If the Area ONAP enters into a VCA with a recipient, barring unusual circumstances (e.g., new Executive Director or tribal leader, new Board of Directors, records recovered or recreated, etc.), a VA (subsequent to the issuance of an NOI) for the same performance deficiency(s) will not be available. To do so would unreasonably delay the enforcement process considering that the recipient already has had ample opportunity to address the deficiency(s).

The GE Specialist may draft the VA, using the sample VAs provided in the *Voluntary Compliance Agreements and Voluntary Agreements* folder on SharePoint as guides. The VA should include all remaining performance deficiencies identified in the NOI and any new deficiencies that have occurred subsequent to the issuance of the NOI. Once drafted, the GE Specialist emails the draft agreement to OGE for a completeness and accuracy review. OGE posts the draft VA on SharePoint and submits it to the PED for review. OGE emails the PED-approved VA to the Area ONAP for sending to the recipient for signature. The GE Specialist can adapt the *Model Letter Requesting VCA Signature* to transmit the VA to the recipient for their signature. The GE Division Director signs the transmittal letter. The PED has determined that ONAP can accept signed VAs that the recipient sends as attachments to an email or fax. However, the Area ONAP should retain a copy of the VA with the original HUD signature in the recipient's folder.

Upon receipt of the recipient-signed agreement, the GE Specialist should adapt the *Model Letter Transmitting a VCA* for signature by the A/S and send the package to OGE. Once the A/S has signed the VA and transmittal letter, OGE sends the fully-executed agreement to the recipient by Certified Mail, emails a copy to the Area ONAP and PED, and posts a copy in the enforcement package on SharePoint. The VA becomes effective on the date it is signed by the A/S. The GE Division Director is to track the recipient's progress in meeting the terms of the agreement and determine if and when the terms of the agreement have been fulfilled.

In limited circumstances, mainly those beyond the recipient's control, the agreement deadline may be extended; however, the extension request should be discussed with OGE before the extension is discussed with the recipient. The GE Specialist is to draft a letter to the recipient

approving or denying the extension request. This letter is to be approved by OGE and the PED and signed by the A/S.

If the recipient fails to meet any of the deadlines in the agreement, the GE Specialist should proceed swiftly to the next step in the enforcement process, which is the Imposition of Remedies.

6.4.5 Discontinuance of Enforcement Process

If the recipient submits the requested documentation after the NOI or VA is issued (but prior to the issuance of an IOR), the GE Specialist should prepare a letter notifying the recipient that HUD is discontinuing enforcement. A model letter *discontinuing enforcement* is available in the *Model Enforcement Letters* folder on SharePoint. Prior to forwarding the draft letter to OGE, the GE Division Director needs to ensure that all noncompliance issues identified in the NOI and conditions in the VA (if executed) have been adequately addressed.

After the letter discontinuing enforcement is prepared, the GE Specialist emails it to OGE for review and concurrence. Once approved, OGE emails the letter to the Area ONAP for review and the Area ONAP notifies OGE once it concurs on the letter. OGE then obtains HQ concurrence and the A/S's signature. The PED does not have to concur on this letter. Once signed, OGE sends the letter by regular mail to the recipient, emails a copy to the Area ONAP and PED, and posts a copy in the enforcement package on SharePoint.

6.4.6 Imposition of Remedies

If the recipient does not request an informal meeting or the informal meeting fails to resolve the deficiency(s), the GE Specialist, with Field Counsel assistance, prepares a draft IOR for the unresolved performance deficiency(s). This letter identifies the enforcement actions HUD is taking and provides notification of the right to an administrative hearing under 24 CFR § 1000.540, unless the recipient waived its right to a hearing by executing a VA. Model IORs for each type of delinquent reporting and for open monitoring findings are in the *Model Enforcement Letters* folder on SharePoint and sample IORs for monitoring and/or audit findings are available in the *Sample Enforcement Letters for Findings, Etc.* folder.

The GE Specialist should note that the model or sample letter should be modified according to the specific circumstances. For example, if a recipient's ineffective administrative capacity exposes HUD funds to substantial risk of fraud, waste, or mismanagement, this determination should have been mentioned in the NOI and needs to be restated in the IOR. See Section 6.3.1 for more information on administrative capacity. Another example may be that other regulations should be cited other than those contained in the sample letter.

An IOR should include a chronological description of actions that occurred subsequent to the issuance of the NOI, and VA, if applicable. This would include the results of an informal meeting, if one was held. For monitoring and/or audit findings, the IOR should include the date(s) the recipient submitted documentation to close a finding(s) and whether the documentation was sufficient to close the finding. If an NOI was issued for a delinquent APR,

audit, or SF-425 and the Area ONAP issued an LOW for a subsequently delinquent APR, audit, or SF-425, then the IOR may include that additional reporting deficiency without having to go through the NOI process.

The Area ONAP must keep in mind that it cannot recommend stricter or additional remedies than those proposed in the NOI. However, the IOR can contain language that warns the recipient that if the deficiency(s) is not resolved within a specified timeframe, HUD is authorized to impose more serious remedies (i.e., terminating existing grants) without another opportunity for an administrative hearing. (For an example of such language, see the model IORs for delinquent APRs, ASERs, audits, and SF-425s.) If the IOR states that future grants will be reduced to zero under 24 CFR § 1000.532, the letter must inform the recipient it has until the IHP due date to cure the deficiency(s) and repay any disallowed costs before the next grant is reduced to zero. This remedy will apply to each future grant until the deficiency(s) is resolved. If the specified timeframe expires and the deficiency(s) remains uncorrected, the Area ONAP should draft a letter detailing what additional remedies HUD is taking. The model *IOR Addendum - Imposing Additional Remedies (all programs)* letter is to be used when the original IOR included such a provision and is available in the *Model Enforcement Letters* folder on SharePoint.

If it is determined that the recipient must take actions in order to verify that it once again has the capacity to administer the program, it is important that the actions be appropriate for the performance deficiency(s) identified. This requires that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency(s) and what documentation would need to be submitted by the recipient in order to verify that the action had been taken, thus enabling the recipient to regain administrative capacity. If the NOI identified questioned costs, the IOR states that those costs are considered disallowed costs and specifies the amount that is to be repaid and returned to the formula (for the IHBG program) or to the U.S. Treasury.

Once the IOR is drafted, the GE Specialist emails it to OGE, along with any other correspondence that has occurred subsequent to the issuance of the NOI. This also becomes a part of the enforcement package. OGE reviews the draft IOR and may contact the Area ONAP for clarification. Once the review is completed, OGE forwards the draft IOR to the PED for review and concurrence.

During its review of the IOR, the PED may pose questions to OGE; and in some instances, OGE may contact the Area ONAP for clarification and/or additional documentation. OGE finalizes the letter, making corrections where needed, and ensures it is in the proper format. Once the PED concurs on the letter, OGE emails the IOR to the Area ONAP for review and concurrence. The Area ONAP notifies OGE by email when it concurs and OGE updates the letter's concurrence block to note Area ONAP concurrence. OGE continues the concurrence and signature process at HQ. Once signed by the A/S, OGE sends the original letter to the recipient by Certified Mail (with an enclosed copy of the NOI and VA, if appropriate), emails copies to the PED and Area ONAP, and posts a copy in the enforcement package on SharePoint. Upon receipt, OGE posts the Certified Mail receipt as signed by the recipient with the signed IOR and emails a copy of the receipt to the Area ONAP for retention in the recipient's file.

6.5 Administrative hearing process

Under the regulations at 24 CFR § 1000.532, HUD shall provide the recipient with the opportunity for a hearing no less than 30 days after receipt or the IOR prior to taking the proposed action. The hearing shall be held in accordance with §1000.540. The funds in question shall not reallocated under the provisions of § 1000.536, until 15 days after the hearing has been conducted and HUD has rendered a final decision. Recipients are provided the same opportunity for a hearing under the ICDBG program. The recipient submits a hearing request to the HUD Docket Clerk, which is located within the Office of General Counsel, PED.

If there is a request for a hearing, the PED manages the process with the assistance of the Area ONAP and OGE. If there is no request for a hearing or if the recipient waived its hearing rights through a VA, the remedies are imposed immediately, and the Area ONAP retains the management of the remedies. Unless the recipient waived its hearing rights through a VA, HUD cannot carry out any of the actions under § 1000.532(a) for the recipient's current or future grants (which includes terminate payments, reduce payments, limit the availability of payments, or provide a replacement TDHE) until the hearing request period lapses or the hearing process is concluded in HUD's favor.

A hearing is presided over by either an administrative law judge or a hearing officer under procedures specified in 24 CFR Part 26, Subpart A. The PED represents ONAP in the hearing process. Typical cases last for several months.

Recipients may retain legal representation during the enforcement process. Recipient attorneys are often involved in the administrative hearing process and when a voluntary or settlement agreement is negotiated between HUD and the recipient. According to Appendix B of 2 CFR Part 225 (formerly OMB Circular A-87), legal expenses required in the administration of Federal programs are allowable but legal expenses for prosecution of claims against the Federal Government are not. In other words, it is an eligible expense for a recipient to use IHBG or ICDBG funds to retain legal advice and representation prior to and during the enforcement process; however, a recipient may not use these funds to sue the Federal Government.

6.6 Confirmation of compliance and removal of remedies

After the IOR has been issued or a Settlement Agreement has been executed in connection with the hearing process, the recipient may submit documentation to verify that it has come into compliance with the program requirements. If this occurs, the GE Specialist prepares a letter for the A/S' signature that confirms compliance with corrective actions and removes the remedies. A model *Removing Remedies* letter is available in the *Model Enforcement Letters* folder on SharePoint. The letter follows the same ONAP concurrence and A/S signature process as described for the NOI and IOR, except that the PED does not have to concur on this letter. Prior to forwarding the draft letter to OGE, the GE Division Director must ensure that <u>all noncompliance issues identified in the IOR or Settlement Agreement have been adequately addressed.</u>

As appropriate, the GE Specialist updates the Monitoring Report Tracking Log, Audit Tracking Log, and Enforcement Log in the PTD with regular status reports and when compliance is confirmed and remedies removed.

6.7 LOCCS Actions

There are two different types of actions that may be taken in LOCCS against a recipient's grant(s), program area, and/or Tax ID Number: general edits and manual suspensions.

General edits or "automatic review" flags may be set for a specific grant(s) or for the grant program, which would necessitate the review of all vouchers the recipient submits when accessing the Voice Response System for that grant(s). The Area ONAP staff person authorized to place such an edit in LOCCS would access LOCCS through the internet and choose "Update Review Thresholds" for an edit on a specific grant(s) or "Update Thresholds" for an edit on the program. If placing the edit on a specific grant(s), rather than changing the thresholds in this screen, the staff person will choose an "Auto Review". For all edits, the staff person should state the reason for the edits. The reason should not be vague but provide a clear, detailed explanation that justifies the edit. For example, it should not say, "per GE", or "LOW"; but rather, "LOW issued 10/12/11 for delinquent FYE 2010 audit".

For the IHBG program, Notice PIH 2011-21 or any subsequent notice of the same title (Line of Credit Control System/Voice Response System (LOCCS/VRS) for the Indian Housing Block Grant Program) is to be followed in placing general edits on grants. Under Section 5.d.iii of the Notice, it instructs Area ONAPs that an edit may be placed in LOCCS that requires a recipient to provide supporting documentation to the Area ONAP before funds are released to the recipient, <u>under certain circumstances</u>. Circumstances are limited to:

- failure to comply with environmental review requirements;
- failure to submit an acceptable APR;
- failure to submit an audit in accordance with 24 CFR §§ 1000.544 and 1000.548; and
- for documented concerns on the part of ONAP regarding the use of grant funds.

Anyone with review authority can approve a LOCCS payment or remove the edit. Therefore, it is important that all Area ONAP staff are instructed that the appropriate GE Specialist be consulted before approving a voucher in LOCCS.

Manual suspensions are much more restrictive. No payments from LOCCS are made if a manual suspension exists. If the recipient attempts to draw down funds, the system immediately informs the recipient that there is a suspension. Authorized LOCCS users can suspend payments either at the:

- LOCCS Tax ID Number (TIN) – all programs under that TIN are suspended (i.e., if the recipient administers IHBG, ICDBG, RHED/RIF, and ROSS, suspensions would cover all open grants under each of those programs);

- program area level – any open grants within that program are suspended; or

- grant area level – only the grant(s) identified are suspended.

However, the Area ONAP must be aware that Sec. 401(a) of NAHASDA is clear that HUD cannot affect a recipient's NAHASDA funds until HUD has followed the enforcement process, as described in 24 CFR Part 1000, Subpart F. Therefore, Area ONAPs should never place manual suspensions on recipient's TIN, program, or grants unless it has been through the entire Subpart F process. There is one exception and that is if the beneficiary tribe decides to dissolve its TDHE and either administers the program itself or identifies a new TDHE. (NOTE: This type of suspension would only remain effective until the appropriate paperwork has been completed to transfer the funds to the new entity. See Program Guidance 2005-05 – Actions to be Taken Upon Dissolution of Tribally Designated Housing Entities at http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/82/05-05%20Dissolution%20of%20TDHEs.pdf).

The person who sets a suspension must be the person to remove the suspension. To place and/or remove a suspension, the person placing the suspension would go into the "Business Partner" screen to suspend the TIN or the "Grant Detail" screen for the specific grant. As with edits, there has to be a clear, detailed explanation for the suspension described on the LOCCS screen.

The ICDBG program does not have the same restrictions for placing suspensions on a recipient's TIN or grant(s).

6.8 Funds Recaptured or Repaid

There are several instances where an IHBG or ICDBG recipient may return funds or HUD may recapture funds. If a review determines that a recipient has violated the regulations or statute, the Area ONAP may recommend or advise the recipient to reimburse its program; HUD may reduce or adjust a recipient's current and/or future funds through the enforcement process; or the recipient may be required to make a lump-sum or periodic payments, as stipulated in a settlement or other agreement. There is also the possibility that a recipient's funds may be adjusted due to a recalculation of its units in the formula. However, this is not discussed in this chapter since it is not done through the enforcement process. For the procedures for returning or transferring funds in the IHBG and ICDBG programs, refer to Program Guidance 2010-03 at http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/141/2010-03%20REVISED%20RETURNING%20FUNDS.pdf

A. Reimbursement of funds

When a recipient voluntarily repays funds or HUD has recommended or advised the recipient to reimburse its program account in the amount improperly expended, per 24 CFR §§ 1000.530(a)(5) (IHBG) or 1003.701(b)(5) (ICDBG), the funds are returned to the recipient's grant(s) in LOCCS. The funds returned to the grant(s) can subsequently be used by the recipient on eligible activities. However, the funds cannot go back into the recipient's grant(s) once an IOR has been issued. (See Sections B and C below for more information)

B. Lump-sum or periodic repayments

As explained in this Chapter, HUD can enter into various agreements with a recipient over noncompliance issues. Those agreements may stipulate that the recipient is required to pay back funds either in a lump-sum payment or based on a repayment schedule. Repayments must be made with non-federal funds. Agreements (VCAs, VAs and SAs) that involve repayments should include as an attachment the *Repayment Source Certification* so the recipient can attest that repayments will be made with non-federal funds and identify the repayment source(s). It will be very helpful to know the repayment source documentation for verification during onsite monitoring.

To determine where the funds will go to, it depends on the type of agreement and when it is executed. If a VCA or VA is executed, which is prior to the IOR, HUD can negotiate with the recipient on whether the funds will go back into the recipient's program account or to the IHBG formula, with the exception of money that was earned unlawfully (see below). Once the IOR is issued, funds repaid will not be made available in the recipient's Line of Credit for reuse[8], but instead are returned to the formula to be distributed in the next year's funding. If HUD enters into a Settlement Agreement with the recipient after the IOR has been issued, the funds will be returned to the formula.

However, when the recipient makes a payment to HUD because money was earned unlawfully, HUD must send the funds to the U.S. Treasury as Miscellaneous Receipts since there is no authority governing how HUD handles those funds. In those instances, when an enforcement action requests that a recipient return funds to Treasury, the Area ONAP should make certain to request that the recipient send a copy of the wire transfer to the Area ONAP. An example of an unlawful activity under IHBG would include earning interest beyond the 2-year investment period.

C. Funds adjusted, reduced, withdrawn, or terminated

For IHBG, the regulations at 24 CFR § 1000.536 state that when HUD adjusts, reduces, withdraws, or terminates IHBG funds under 24 CFR §§ 1000.532, HUD distributes the funds in accordance with the next NAHASDA formula allocation.

[8] The Fort Worth Accounting Center will temporarily deposit recaptured funds in the recipient's LOCCS account and the funds will returned to the formula fairly rapidly.

For ICDBG, HUD can take the following actions after an IOR is issued and the recipient has failed to cure the deficiencies:

- terminate the grant (24 CFR § 1003.703(a)(1));
- reduce the grant by the amount of disallowed costs (24 CFR § 1003.703(a)(2));
- limit the availability of funds to projects or activities not affected by the failure to comply; or
- at any time but after due notice,-revoke (suspend) the recipient's line of credit in whole or in part (24 CFR § 1003.703(a)(3)) if the action is necessary to preclude the further expenditure of funds for the activities affected.

It should be noted that if HUD revokes a recipient's line of credit under 1003.703(a)(3), it would only be done temporarily to prevent the recipient from drawing down funds and expending them unlawfully until the recipient has had the opportunity for a hearing. The funds would remain in LOCCS until the funds have been reduced or the grant terminated. When grant funds are reduced or terminated**,** the unexpended balances are returned to the U.S. Treasury.

D. GE and GM Coordination

Once the Assistant Secretary signs an IOR, a Voluntary Agreement, or a Settlement Agreement that requires funds to be recaptured, reimbursed, or offset in the formula, it is important for ONAP to affect the recipient's funding without delay and for GE and GM staff to cooperate to the maximum extent possible.

This process begins when OGE transmits the signed document to the Area ONAP Administrator and GE Division Director. If future funds are to be offset in the formula, the Office of Grants Management (OGM) Director will receive a copy of the document. In the email transmitting the document, OGE will describe if the recipient's funds are to be limited, suspended, terminated, and/or if future funds are to be adjusted.

The Area ONAP GE Division Director should collaborate with the Area ONAP GM Division Director to make certain that funds in the recipient's LOCCS account are limited, suspended, or terminated, as appropriate. When the recipient's future funds are to be offset in the formula, the OGM staff will reduce the recipient's next formula allocation based on the amount of disallowed costs identified in the IOR, Voluntary Agreement, or Settlement Agreement.

The Area ONAP GE Division Director should maintain documented evidence that funds have been recaptured, repaid, or offset. There may be instances when OGE requests documentation that a remedy has been imposed or the terms of a Voluntary Agreement or Settlement Agreement have been implemented. Evidence includes copies of wire transfers, checks, documents sent to Fort Worth Accounting, LOCCS reports, and/or formula allocation statements.

The Formula Center will not offset any amounts recaptured by GE. The Center will run the formula and only make adjustments for repayments associated with Formula Current Assisted Stock. When GE has negotiated a repayment agreement, once the annual formula amount has been determined and before executing that year's IHBG grant agreement, the Area ONAP should take the reduction and apply it to that year's grant amount. For example, if a recipient agreed to

repay $360,000 and the FY 2012 formula amount was $1,347,550, OGM would execute a FY 2012 grant agreement in the amount of $987,550.

6.9 High Risk Determinations

Under the IHBG program, the authority of 24 CFR § 85.12 to determine a recipient as "high risk" may only be invoked when the Area ONAP believes a recipient's deficient performance meets the requirements of 24 CFR § 85.12 (a) and that the performance problems:

- have only recently been discovered and the timely issuance of a grant award precludes the use of the enforcement process in Part 1000, Subpart F; or
- have been identified in a draft or Final Monitoring Report, but the recipient has not had adequate opportunity to implement corrective actions prior to the timely issuance of a grant award.

The use of the enforcement process discussed under Section 6.3 is the preferred approach. For further guidance on the use and restrictions of a high risk determination, see Program Guidance 2002-01 – Restrictions on the Use of § 85.12 "High Risk" Determination in the NAHASDA Program, at http://hudsharepoint.hud.gov/sites/apps/ONAPDOC/Lists/Archive/Attachments/32/02-01%20(ONAP)%20High%20Risk%20Guidance.pdf.

Under the ICDBG program, the Area ONAP can determine a grantee to be high risk during the enforcement process. If the grantee has not cured deficiency(s) identified in an NOI, the IOR should notify the grantee that it is considered high risk and future grant applications will be negatively affected until the grantee is no longer considered high risk.

Special conditions and/or restrictions can only be placed on the grant that is about to be awarded and usually should not be repeated for subsequent grants. These guidelines govern the IHBG, ICDBG, and unless otherwise specified, all programs ONAP administers. The Area ONAP may determine a recipient is high risk (and remove such designation) without going through the A/S or review by the PED; however, before taking such an action, the GE Specialist should get the concurrence of the Enforcement Panel, but at the very least, concurrence by the GE and GM Division Directors is necessary.

Not all of the possible special conditions listed in 24 CFR § 85.12(b) are available for the IHBG program, and some are only available with restrictions. Specifically, it is not possible to include a special condition which would withhold authority for a recipient to proceed to the next phase of a project until receipt of evidence of acceptable performance within a given funding period; the use of such a condition would conflict with the provisions of Section 401(a)(1)(C) of NAHASDA. This section of NAHASDA enables HUD to limit the availability of payments to programs, projects, or activities not affected by such failure to comply. The conflict with the statute would result because HUD can only limit funds through the Subpart F enforcement process.

The special conditions and/or restrictions that the Area ONAP may impose must be risk-specific and are limited to:

- **Additional project monitoring and payment on a reimbursement basis.** These conditions would include pre-review of supporting documentation before Area ONAP approval of a LOCCS draw.

- **Requiring additional, more detailed financial reports; requiring the recipient to obtain technical or management assistance; and establishing additional prior approvals.** (NOTE: These restrictions would be in conflict if the condition were linked to availability of payments under Section 401(a)(1)(C). If the recipient fails to comply with the special conditions, Subpart F enforcement procedures would be followed, rather than imposing an editor suspension of funds.)

6.9.1 Responsibilities in high risk determinations

GE Specialist

Prior to awarding a new grant, the GE Specialist gathers all relevant information and, in coordination with the GE Division Director, makes the recommendation to the Enforcement Panel of a "high risk" designation and the actions required to bring a recipient into compliance and remove the "high risk" designation. The special conditions and/or restrictions must correspond to the high-risk condition and be included in the award letter and grant agreement. This requires that the GE Specialist, with the Enforcement Panel's concurrence, determine the most appropriate way to address the deficiency(s) and what documentation would need to be submitted by the recipient in order to verify that the action(s) had been taken, thus, enabling the "high risk" designation to be removed.
The GE Specialist is responsible for keeping the appropriate GM Specialist informed throughout the process of the intended action. The GE Specialist must notify the recipient in writing, as early as possible, of the "high risk" designation and impending actions.
Also, when the next grant is awarded, the GM staff will include language in the award letter about the high risk determination and the special condition(s).

GE Division Director

The GE Division Director is responsible for ensuring that all "high risk" determinations meet the NAHASDA requirements of Section 401 and that the conditions imposed under 24 CFR § 85.12 do not conflict with those requirements.

6.10 Limited Denials of Participation, Debarments, and Suspensions

HUD may impose the administrative sanctions described below against participants in HUD programs, as that term is defined at 2 CFR Parts 180 and 2424. Such sanctions are imposed because a participant in HUD programs lacks "present responsibility," and it is not in the public interest for the Federal government to do business with such a participant.

A "Limited Denial of Participation" (LDP) is a sanction that goes into effect immediately upon being signed by the issuing official (Area ONAP Administrator). The LDP excludes a person or entity from participating in HUD program(s) under the jurisdiction of a specific Assistant Secretary, such as exclusion from all programs under the jurisdiction of the Assistant Secretary for Public and Indian Housing within the geographic boundaries of the Area ONAP, for a specific period, not to exceed 12 months.

A "Suspension" is a sanction that immediately excludes a person or entity from participating in Federal programs, government-wide, including all HUD programs, for a temporary period, pending resolution of any legal or debarment proceedings or for no more than 12 months. Suspensions may only be imposed when immediate action is necessary to protect the public interest or when there is an indictment or other evidence of an offense that could be the basis for a debarment. Suspension can lead to debarment.

A "Debarment" is a sanction that excludes a person or entity from participating in Federal programs, government-wide, including all HUD programs. Debarment generally may not exceed 3 years, but may be of longer duration in egregious cases.

The Area ONAP should contact the Field Counsel and HUD's Departmental Enforcement Center (DEC), as soon as possible (i.e., immediately after a monitoring visit), if it believes there are performance problems and that an LDP, suspension, or debarment would lead to improved performance. The DEC can issue a letter that warns of a potential LDP; and if such a letter is insufficient, the DEC can also issue the LDP, as well as a suspension or proposed debarment.

6.10.1 Responsibilities in LDPs, debarments, and suspensions

In order for an individual/entity to be sanctioned, HUD must connect that individual/entity to a specific violation for which HUD can impose sanctions under the sanction rules. The specific violations for which administrative sanctions may be imposed for debarments, suspensions, and LDPs are set forth in 2 CFR Parts 180 and 2424. Also, the individual/entity proposed for sanction must have a legal obligation to comply with the program rules HUD is alleging were violated.

GE Specialist

The GE Specialist is responsible for verifying that there is a factual basis for the sanction. There must also be a legal basis. Prior to initiating an LDP or referring a matter for debarment and/or suspension, it is recommended that the GE Specialist consult with Field Counsel to ensure that the action has a legal basis and that the proper procedures are followed.

GE Division Director

The GE Division Director must make referrals for suspensions and debarments through the Field Counsel's Office to the DEC for action. The GE Division Director should also advise OGE of any such actions taken.

Area ONAP Administrator

The Area ONAP Administrator signs and issues the LDP only after concurrence by the DEC. The Administrator, with the assistance of the DEC, also conducts the informal conference provided to a sanctioned party under the LDP process.

6.10.2 Sanctioned party hearing process

LDPs: If an LDP is issued, the sanctioned party has a right to an informal conference with the issuing official (the Area ONAP Administrator). If the informal conference does not produce a resolution of the matter, the sanctioned party has a right to an administrative hearing, per 2 CFR § 2424.1130.

If an Area ONAP is concerned that an individual to whom it has issued an LDP may try and become a participant in HUD programs in the jurisdiction of another Area ONAP, the issuing ONAP Administrator may wish to notify the other Area ONAP(s), which may issue an LDP based on the initial LDP. In accordance with 2 CFR § 2424.1110(c), "Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing." The Area ONAP Administrator also signs the letter notifying recipients and other interested parties.

Debarments and Suspensions: These actions also have appeal rights attached. A respondent appealing a suspension or proposed debarment is given an informal hearing before the debarring official or his/her designee, at which time, both HUD and the respondent may submit information supporting their positions. If the debarring official determines there are material facts in dispute, he/she may refer the matter to an administrative judge for an evidentiary hearing. For further information, see 2 CFR §§ 180.720-760 (suspension appeals) and §§ 180.815-885 (debarment appeals). In such a case, after the judge issues his/her factual findings, the debarring official determines whether a suspension and/or debarment is warranted. Where there are no material facts in dispute, the debarring official decides the case without referral to an administrative judge.

6.10.3 Formal publication of sanctions

HUD publishes a "Limited Denial of Participation List" on the Internet at http://portal.hud.gov/hudportal/HUD?src=/topics/limited_denials_of_participation. The list can be searched by the name of the affected party, or all entries can be viewed. The General Services

Administration publishes the list of suspended and debarred individuals and entities at http://epls.gov/, which is searchable by state and name of the affected party.

6.10.4 Notification to grantees and other interested parties

To ensure that IHBG and ICDBG recipients are aware of the parties that have been issued an LDP, debarment, or suspension, Area ONAPs may want to notify their recipients and other interested parties. There are model letters for *LDPs Debarments Suspensions* on SharePoint to assist the GE Specialist in preparing the notification letter. The Privacy Act precludes HUD staff from providing to recipients and others outside of HUD a copy of the final administrative sanction letter, unless the letter is requested under the Freedom of Information Act (FOIA).

The notification letter may not include more information about the individual and administrative sanction than what is published in the GSA Excluded Parties Listing System or the HUD-generated LDP List. This means that the factual and legal basis for the sanction may not be identified or discussed in the letter. The notification letter may identify the Federal programs from which the sanctioned party is precluded from participating, the length of time for which the sanction is in place, and the geographic area covered by the sanction.

The notification letter should not be provided to recipients and other entities until the LDP, debarment, or suspension is made public on either the GSA Excluded Parties Listing System or the HUD LDP List. The final determination letters themselves may only be released pursuant to a request under FOIA after all appeal periods have passed and providing that no other FOIA exemptions apply to withhold the release. The Area FOIA liaison makes the final decision on whether or not to release any document, including LDPs, debarments, and suspensions, with the concurrence of Field Counsel, where appropriate.

Appendix

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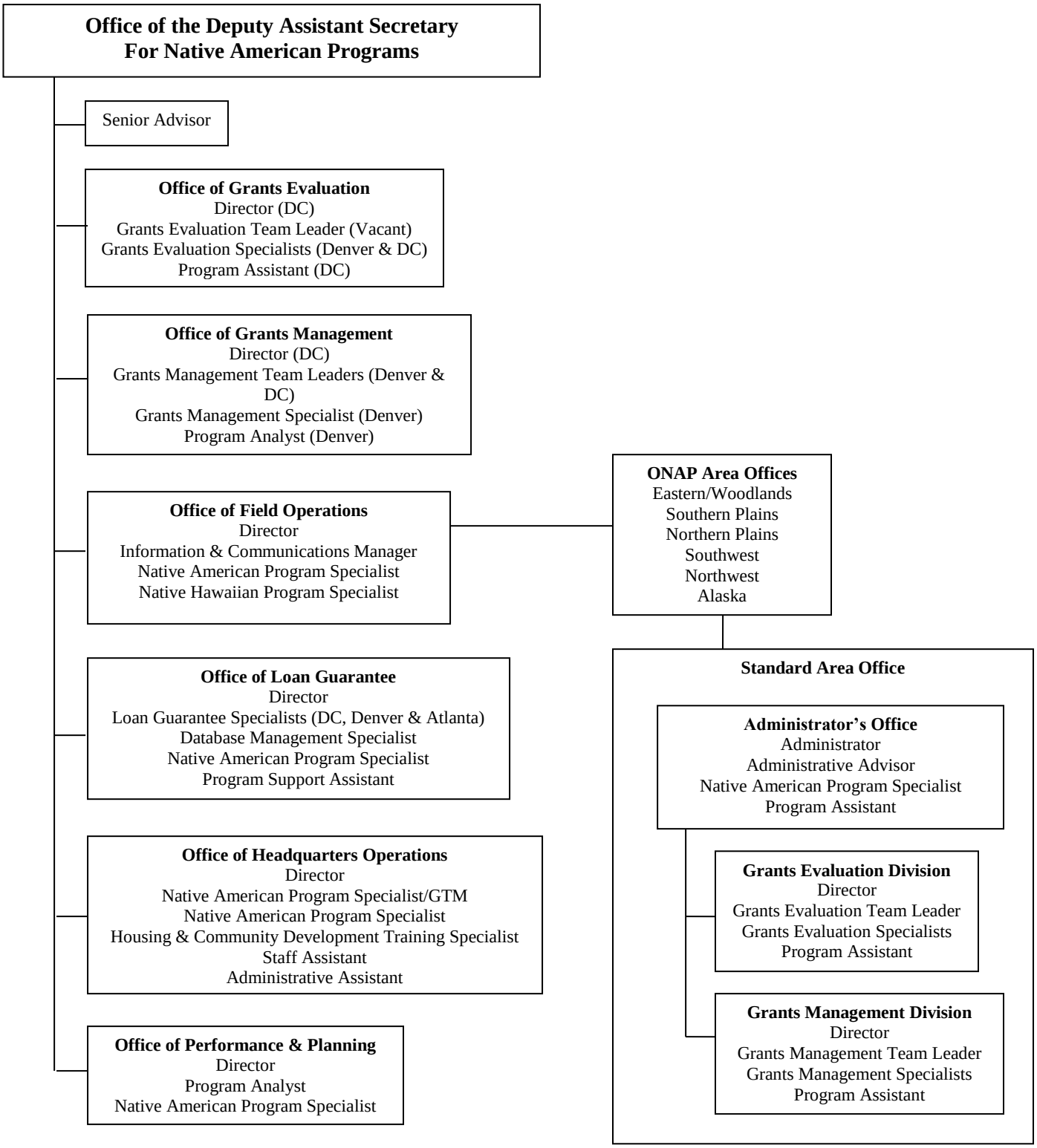
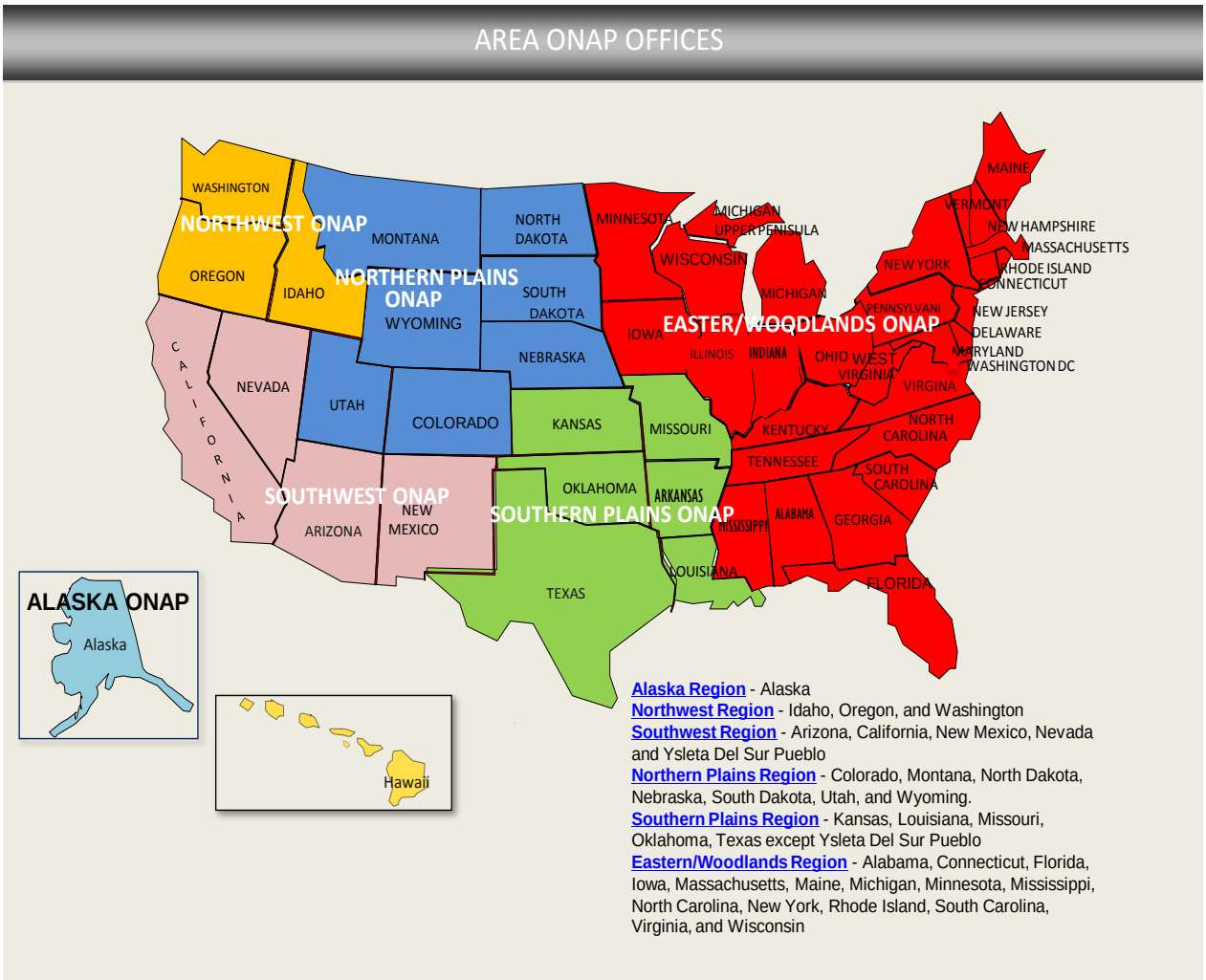
Appendix A: ONAP Organizational Chart



Appendix B: Glossary of Abbreviations

Abbreviation	***Meaning***
APR	Annual Performance Report
ARCATS	Audit Resolution and Corrective Action Tracking System
A/S	Assistant Secretary for Public and Indian Housing
ASER	Annual Status and Evaluation Report
CAP	Corrective Action Plan
CFR	Code of Federal Regulations
DAS	Deputy Assistant Secretary
DIGA	District Inspector General for Audit
FAC	Federal Audit Clearinghouse
FCAS	Formula Current Assisted Stock
FOIA	Freedom of Information Act
GAAP	Generally Accepted Accounting Principles
GAO	Government Accountability Office
GE	Grants Evaluation
GM	Grants Management
HQ OGE	Headquarters Office of Grants Evaluation
HUD	U.S. Department of Housing and Urban Development
ICDBG	Indian Community Development Block Grant
IHBG	Indian Housing Block Grant
IHP	Indian Housing Plan
IMS	Image Management System
IOR	Imposition of Remedies
IPA	Independent Public Accountant
LDP	Limited Denial of Participation
LOCCS	Line of Credit Control System
LOW	Letter of Warning
NAHASDA	Native American Housing Assistance and Self-Determination Act of 1996 (P.L. 104-330, 25 U.S.C. 4101 – 4112)
NOFA	Notice of Funding Availability
NOI	Notice of Intent to Impose Remedies
OFHEO	Office of Fair Housing and Equal Opportunity
OGC	Office of General Counsel
OGE	Office of Grants Evaluation
OGM	Office of Grants Management
OIG	Office of Inspector General
OMB	Office of Management and Budget
ONAP	Office of Native American Programs
PED	Program Enforcement Division
PIH	Office of Public and Indian Housing
PTD	Performance Tracking Database

REAC	Real Estate Assessment Center
RHED/RIF	Rural Housing and Economic Development. As of FY 2010, RHED became the Rural Innovation Fund.
ROSS	Resident Opportunities and Self Sufficiency
ROR	Removal of Remedies
SAA	Single Audit Act
SMMA	Self-Monitoring Mutual Agreement
TDHE	Tribally Designated Housing Entity
VA	Voluntary Agreement
VCA	Voluntary Compliance Agreement

Appendix C: Map of Area ONAP Offices