
CHAPTER 11. RESOLVING DETERMINATIONS OF APPARENTLY
UNSATISFACTORY PERFORMANCE

11-1. INTRODUCTION.

- a. The substantive reviews described in this Handbook are undertaken to determine, pursuant to 24 CFR 570.909, whether:
- (1) the program complies with the Act and the CDBG regulations;
 - (2) the recipient has made substantial progress in carrying out its approved program;
 - (3) the program carried out conforms with the approved application; and
 - (4) the recipient has a continuing capacity to carry out the approved program.

For convenience in describing the general procedures to be used to resolve findings resulting from those reviews, all such findings are referred to in this Chapter as "determinations of apparently unsatisfactory performance."

- b. Upon completion of the review of the GPR and any required on-site monitoring, as described below, the conclusions about the grantee's performance should be conveyed to the locality in writing. The letter should clearly summarize the nature of the apparent problems identified. The letter should request that the grantee respond indicating what remedial actions it plans to take. Where the problem is severe, the grantee should also be warned that the failure to improve the program will likely lead to more serious action and potentially the reduction of the affected annual grant(s) pursuant to 24 CFR 570.910 (b) (3), "Corrective and remedial actions."
- c. It should also be made clear to the grantee that our objective is the implementation of their approved projects and activities in a timely and efficient manner, consistent with the approved application and applicable laws. It is not our intention to distort local priorities by forcing the grantee to reallocate funds to other projects. Nor should the grantee disregard prudent management and quality control practices. This type of response can lead to a wasteful use of funds. It is also likely to result in only short-term improvements. Furthermore, such a response does not address basic problems which may exist in the grantee's project development and implementation systems.
- d. In describing the nature of the apparent performance problems, the

Area Office should avoid mandating specific solutions. While possible solutions may be suggested, the grantee should be allowed to respond to each problem with any reasonable solution of its own choice.

- e. It is also useful and appropriate for the Area Office to point out problem areas where technical assistance may help to improve the administration of the program. Nevertheless, the grantee should be advised that it bears full responsibility for the administration of its program and the resolution of deficiencies encountered.
- f. It is important to assure that significant problems are brought to the attention of the Mayor and other persons in leadership positions (e.g. manager, administrator, etc.). Direct contact with the Mayor (or chief elected official) is particularly encouraged.

11-2. COMPLETION OF GPR REVIEWS. When the Area Office has completed the substantive reviews of the GPR, Chapters 3 through 10 of this Handbook, the Community Planning and Development Representative shall complete the following:

- a. New Determinations. For each GPR determination of apparently unsatisfactory performance is being made by the Area Office for the first time, the review record shall summarize the determination and provide the basis for the determination.
 - b. Confirmation of Previous Determinations.
 - (1) For each GPR determination of apparently unsatisfactory performance that confirms previous deficiencies identified in earlier monitoring visits, audits or GPR reviews, the CPD Representative shall follow step (2) or (3) below and summarize in the review record the deficiencies and any corrective actions taken.
 - (2) In those instances where the Area Office and grantee had previously identified performance deficiencies and had established corrective or remedial actions to satisfy such deficiencies and the grantee has been making satisfactory progress in carrying out the specified corrective actions, the Area Office shall notify the grantee of the GPR review determinations made pursuant to the reviews in this Handbook and note in the notification that appropriate corrective actions are being undertaken in a satisfactory manner. While the Area Office should continue to schedule and conduct monitoring visits to assess the grantee's progress in carrying out specified corrective actions, it should consider the issue resolved for purposes of the GPR review.
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- (3) In those instances where the Area Office and grantee have not established corrective actions to satisfy previously identified deficiencies or if the Area Office has determined that the grantee's progress in carrying out previously specified corrective actions has not been satisfactory, the Area Office shall follow the steps outlined below.

11-3. NOTIFICATION TO THE GRANTEE.

a. Monitoring Scheduled Within 45 days of the Completion of the GPR Review.

- (1) When the Area Office has scheduled a monitoring visit of the grantee, pursuant to the instructions contained in the Community Planning and Development Monitoring Handbook, HUD 6509.2 REV-2, paragraph 2-3., within 45 days of the completion of the GPR reviews, the Area Office shall include in the scope of its monitoring visit those areas identified in the GPR reviews as showing apparently unsatisfactory performance.
- (2) During the monitoring visit, the HUD monitor(s) shall monitor each indicator of apparently unsatisfactory performance to:
- (a) verify the original source data presented by the grantee in the GPR;
 - (b) test the validity of the Area Office's determination of apparently unsatisfactory performance; and
 - (c) determine what corrective actions, if any, the grantee has initiated on its own to remedy the causes of apparently unsatisfactory performance.
- (3) When the monitor prepares the post visit monitoring letter to the grantee, pursuant to 6509.2 REV-2 paragraph 2-11., the letter shall include (in addition to any on-site monitoring findings or results) the following with respect to the GPR review determinations:
- (a) an initial notification to the grantee of all of the performance deficiencies found in the GPR;
 - (b) whether the monitoring visit confirmed, modified, or resolved the initial GPR review deficiencies;
 - (c) a summary of any corrective actions the grantee may have already initiated to resolve the cited GPR

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deficiencies; and

- (d) any instructions to the grantee for responding to the GPR deficiencies and the monitoring findings.

Note that any initial GPR deficiencies which were confirmed through monitoring should be tracked according to the CPD Monitoring Handbook 6509.2 REV-2.

- b. Monitoring Not Scheduled Within 45 days of the Completion of the GPR Review. When the Area Office has not scheduled a monitoring visit of the grantee within 45 days of the completion of the GPR reviews, the Area Office shall notify the grantee by letter within 60 days of receipt of the GPR of all GPR determinations of apparently unsatisfactory performance and the basis for each determination. The grantee shall be required to respond to each GPR determination of apparently unsatisfactory performance within 30 days of receipt of that letter. The grantee should be directed to respond as outlined in paragraph 11-4. below.

11-4. GRANTEE'S RESPONSE TO NOTIFICATION OF APPARENTLY UNSATISFACTORY PERFORMANCE. The grantee should be instructed to respond to the Area Office's notification of deficiencies as follows:

- a. Grantee Agrees With the GPR Determination. If the grantee agrees with one or more of the deficiencies, it should respond with:
 - (1) a description of the corrective actions the grantee has taken or will take to remedy the cited deficiency;
 - (2) milestones and timetables to be met in carrying out the corrective actions specified in (1) above.
- b. Grantee Disagrees With GPR Determination. If the grantee disagrees with one or more of the GPR determinations of apparently unsatisfactory performance, the grantee should respond with the following for each determination it disagrees with:
 - (1) an assessment of the deficiency which provides additional facts or data which refutes or mitigates the GPR deficiency; or
 - (2) any additional explanation which rebuts or puts into a different context the Area Office's determination of apparently unsatisfactory performance.

11-5. GRANTEE AGREED WITH GPR DETERMINATION.

- a. Area Office's Review of Grantee's Response. If the grantee agreed with one or more of the Area Office's determinations of apparently unsatisfactory performance, the Area Office shall review the grantee's assessment of each problem, and its proposed corrective actions, milestones, and timetables to determine if:
 - (1) The proposed corrective actions are appropriate to remedy the deficiency and whether or not the actions are sufficient to ensure that similar deficiencies will not occur in the future.
 - (2) The milestones provided are measurable; and
 - (3) The timetable for meeting the milestones are reasonable.
- b. Area Office and Grantee Agree on Corrective Actions. For those GPR deficiencies where the Area Office agrees with the grantee's proposed corrective or remedial actions, milestones, and timetables, the Area Office shall inform the grantee to proceed with such actions. The Area Office shall also inform the grantee of any additional reports required to assess progress in carrying out the required actions along with applicable submission dates.
- c. Area Office Disagrees With Grantee's Corrective Actions. For those GPR deficiencies where the Area Office disagrees with the grantee's proposed corrective or remedial actions, milestones, or timetables, the Area Office shall provide the grantee with an explanation of the particular points of disagreement and shall provide the grantee with the Area Office's recommended corrective or remedial actions, milestones, or timetables as appropriate. The Area Office should be open to additional negotiation with the grantee concerning the recommended actions. However, the grantee should begin implementation of corrective actions immediately. The Area Office shall also specify any additional follow-up reporting requirements and timetables it deems appropriate.

11-6. GRANTEE DISAGREED WITH GPR DETERMINATION.

- a. Area Office's Review of Grantee's Response.
 - (1) If the grantee disagreed with one or more of the determinations of apparently unsatisfactory performance, the Area Office should review the grantee's response to determine if there continues to be a basis for the

original determination of apparently unsatisfactory performance. The Area Office should exercise reasonable judgement when reviewing the response, but should not accept substantially new information which is at

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variance with the information in the original GPR without independent verification.

- (2) Independent verification may be accomplished through additional analysis of information available in the Area Office or through on-site monitoring of the grantee.
- b. Area Office Agrees With Grantee's Response. For those deficiencies which the grantee originally disagreed with and which the grantee provided evidence satisfactory to the Area Office resolving the GPR deficiencies, the Area Office shall inform the grantee that the GPR review deficiency is considered resolved; or where the evidence modifies the breadth or substance of the original GPR review deficiency, the Area Office should provide the grantee with the Area Office's recommended corrective or remedial actions, milestones, or timetables as appropriate. The Area Office shall also specify any additional follow-up reporting requirements and timetables for submission it deems appropriate.
 - c. Area Office Disagrees With Grantee's Response.
 - (1) For those GPR deficiencies which the grantee originally disagreed with and the grantee did not provide satisfactory evidence resolving or substantially modifying the basis for the deficiency, the Area Office shall inform the grantee that the findings of apparently unsatisfactory performance has not been resolved. The Area Office shall inform the grantee of the next step(s) the Area Office intends to take to verify the original determination.
 - (2) If the Area Office has been able to reach an independent verification of the validity of the original GPR determination and, the Area Office has not been able to reach a conclusion of whether or not there is still a determination of apparently unsatisfactory performance, the Area Office shall inform the grantee of the results of that review and request the grantee to respond with a description of the corrective actions the grantee will take to remedy the cited deficiencies, together with appropriate milestones and timetables. The Area Office shall also specify any additional follow-up reporting requirements and timetables it deems appropriate.

APPARENT LACK OF SATISFACTORY PERFORMANCE.

- a. When a grantee has disagreed with the Area Office's determination of apparently unsatisfactory performance, and the Area Office is not able to independently verify the grantee's rebuttal with in-house

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information, the Area Office shall monitor the grantee on-site to:

- (1) validate the facts and circumstances of the GPR determination; and
- (2) verify any information the grantee has provided in rebuttal to the GPR determination.

- b. The Area Office shall inform the grantee of the results of the on-site monitoring and follow the procedures in paragraph 11-5. above depending upon the conclusions reached.

11-8. FOLLOW-UP TO VERIFY PROGRESS AND EFFECTIVENESS IN CARRYING OUT CORRECTIVE ACTIONS.

- a. After a grantee has initiated corrective actions to resolve outstanding GPR determinations of apparently unsatisfactory performance, the Area Office shall follow-up through any special reports required and/or on-site monitoring to verify whether the grantee is undertaking the corrective actions in a timely manner and whether such actions are resolving the performance deficiencies and ensuring that such deficiencies will not occur in the future.
- b. The Area Office shall inform the grantee of any additional corrective actions which are required based upon the results of any such follow-up evaluations.

11-9. REMEDIAL ACTIONS NOT TAKEN. If after proper notification and verification, pursuant to 24 CFR 570.909, deficiencies remain, and the Area Office concludes that appropriate remedial actions are not being undertaken, sanctions commensurate with the, deficiencies should be taken pursuant to 24 CFR 570.910(b).

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