

CHAPTER 9. ANNUAL PERFORMANCE REVIEW

- 9-1 PURPOSE. Section 104(e)(1) of the Housing and Community Development Act of 1974, as amended, requires HUD to annually perform the reviews and audits that are necessary to determine whether each entitlement grant recipient has;
- A. Carried out its activities and its housing assistance plan in a timely manner;
- Note: Since the housing assistance plan has been superseded by the comprehensive housing affordability strategy, timeliness only applies to CDBG activities.
- B. Carried out its activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws; and
 - C. A continuing capacity to carry out activities in a timely manner.

The purpose of the Annual Performance Review is to pull together and summarize the information gathered both in-house and on-site throughout the year so that the above determinations may be made within the full context of the grantee's performance. Funding recommendations and decisions regarding the grant for the next year are then based on those determinations.

- 9-2 TIMING. The Annual Performance Review should be completed prior to the date the final statement is expected to be received. However, for grantees with problems which may require limiting the availability of funds, the Annual Performance Review should be completed and recommendations forwarded to Headquarters at least 45 days prior to the start of the next program year. CPD is responsible for coordinating input from Fair Housing and Equal Opportunity, Counsel, and other Field Office units as determined by the authorized official. In Field Offices with a large number of grantees on the same program year cycle, it may not be possible to complete each Annual Performance Review prior to submission of the grantee's final statement. However, the review must be completed before the grant is awarded. In such cases, the Field Office should establish a schedule

where Annual Performance Reviews for grantees known to have performance or compliance problems are initiated first.

- 9-3 AREAS TO BE REVIEWED. The areas listed below are to be

considered in the annual review of performance for entitlement grantees. The review should be a joint effort among CPD Representatives and appropriate specialists throughout the office. While not all of the subjects below are appropriate to each grantee, those that are appropriate must be considered. Regulatory and/or statutory citations are included to assist you in locating the compliance requirements for each of the areas to be considered.

- A. Eligibility at 570.201 through 570.207
- B. Compliance with National objectives at 570.200(a)(2) and 570.208
- C. Citizen Participation at 570.301(b) and section 104(a)(3) of the Act
- D. Rehabilitation
 - 1. Management and productivity at OMB Circular A-87
 - 2. Escrow accounts at 570.511
 - 3. Lump sum drawdown at 570.513
 - 4. Lead based paint at 570.608
- E. Grant Administration
 - 1. Financial Management Systems at 85.20
 - 2. Allowable Costs at 85.22 and OMB Circular A-87
 - 3. Program Income at 570.504
 - 4. Procurement at 85.36
 - 5. Equipment Management at 85.32
 - 6. Subrecipient Management
 - Agreements at 570.503
 - Monitoring at 85.40(a)
 - Compliance with OMB Circulars A-110 and A-122
- F. Other Applicable Laws
 - 1. Fair Housing and Equal Opportunity at 570.601-602, 570.607 and 570-904
 - 2. Labor Standards at 570.603
 - 3. Environment at 570.604
 - 4. National Flood Insurance at 570.605
 - 5. Relocation, displacement and acquisition at 570.606
 - 6. One-for-one replacement at 570.606(c)(1)

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- G. Comprehensive Housing Affordability Strategy Performance
- H. Timeliness at 570.902. Exhibit 9-1 describes the steps to follow to determine whether the grantee has met the timeliness performance criteria.
- I. Overall Benefit to Low and Moderate Income Persons at

570.200(a)(3)

- J. Public service cap at 570.201(e)(2)
- K. Planning and administrative cost cap at 570.200(g)
- L. Completeness and Timeliness of Submissions at 570.302, 570.306, and 570.507

9-4 BASIS FOR CONCLUSIONS/RECOMMENDATIONS

- A. The results of the Grantee Performance Report Reviews and on-site monitoring visits provide the primary data sources for making a recommendation regarding future funding for the grantee. However, audit reports, correspondence, litigation and citizen comments are other sources of information regarding grantee performance which may need to be considered.
- B. It is important to remember that recommendations for actions which require Headquarters approval must be based on deficiencies in meeting applicable program requirements for which sanctions or other corrective actions are authorized. Once findings are closed there is no basis for imposing sanctions or requiring other corrective actions in connection with the applicable deficiency.
- C. An entitlement grantee shall be considered in compliance with civil rights laws and regulations, if the following conditions accrue:
 - 1. There is no pending civil rights suit against the grantee instituted by the Department of Justice;
 - 2. There is no outstanding finding of non-compliance with civil rights statutes, Executive orders or regulations as a result of formal administrative hearings, or Secretarial charge issued under the Fair Housing Act, unless the grantee is operating

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under a compliance agreement designed to correct the areas of non-compliance.

- 3. The grantee's performance in fulfilling its certification to affirmatively further fair housing has been found to be acceptable.

9-5 ACTIONS REQUIRED

- A. Fill in Form HUD-40013, CDBG Annual Performance Summary, in accordance with the instructions on the

form. A copy of the form is included as Exhibit 9-2.

- B. Attach a completed CDBG Finding Summary Sheet, Form HUD-40013A, for each finding resulting from in-house or on-site monitoring since the last Annual Performance Review was completed. If any of the findings are from an audit, either attach a completed Finding Summary Sheet or a copy of all correspondence between HUD and the grantee concerning the finding. A copy of the form is included in Chapter 2 as exhibit 2-2.
- C. If there are major issues and serious findings which should be brought to the attention of top management, prepare a brief cover memorandum for the Office Manager or Regional Administrator summarizing the issues or problems, the data sources reviewed and facts considered, and the status of actions to address or resolve the issues or findings. The memorandum should also identify any problems/issues which need to be addressed during the next on-site monitoring visit. The memorandum shall reach one of the following conclusions:
 - 1. There are no significant performance deficiencies which require further action prior to awarding additional funds.
 - 2. There are performance deficiencies which require additional information or assurances to be included concerning one or more of the required certifications prior to grant award. Additional information or assurances may be appropriate in situations where the grantee has been notified of the, deficiency but has not yet responded or has not submitted information which satisfactorily addresses the performance deficiency. The grantee must be notified in writing of the specific

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requirements which must be met in order for such additional information or assurances to be acceptable.

- 3. The grantee has not taken adequate voluntary actions to remedy identified deficiencies and the matter should be referred to the Assistant Secretary for CPD. Paragraph 9-8 provides further information on procedures to be followed in such cases.

9-6 REQUESTS FOR ADDITIONAL INFORMATION OR ASSURANCES.

- A. The performance review may result in a determination

that the grantee must submit further information or assurances (in addition to the standard certifications) before submitting its final statement. Additional assurances should not be requested unless it has been determined that the grantee's certification cannot be accepted. A determination to impose such a requirement and the basis for the determination should be reviewed by the Counsel and approved by the authorized official. Section 570.304(a)(3) of the Regulations provides further guidance in this area.

- B. If the authorized official decides not to concur in the staff recommendation, he/she shall document the grantee file to show that the staff recommendation was considered and to explain the reason(s) for not following the staff recommendation. In this type of instance, it is recommended that the authorized official seek advice of the Field Counsel to assure that there is sufficient documentation to demonstrate that the decision is defensible and not arbitrary.
- C. If the determination to request additional information or assurances is approved, the grantee should be notified as soon as possible. The letter should explain the basis for the request and the specific nature of the assurance or information required. A copy of each such notification should be sent to the Entitlement Communities Division.
- D. If the grantee does not agree to submit additional information or assurances or the information is not acceptable, the matter should be referred to Headquarters.

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9-7 INFORMATION ON PERFORMANCE OR COMPLIANCE DEFICIENCIES RECEIVED AFTER COMPLETION OF THE ANNUAL PERFORMANCE REVIEW

If new information regarding a grantee's performance or compliance is received after completion of the Annual Performance Review, but before the grant is made, it should be reviewed promptly and where necessary, used to update the conclusions reached in the Annual Performance Review.

9-8 PERFORMANCE DEFICIENCIES WHICH REQUIRE REFERRAL TO HEADQUARTERS

- A. If as a result of the Annual Performance Review the Field Office determines that additional funds should not be awarded without reduction or a restriction on their use because the grantee has not taken adequate voluntary actions to meet a program requirement after proper notification and adequate opportunity to contest

the validity of the finding(s) with the Field Office, the matter shall be referred by the authorized official to the Assistant Secretary for Community Planning and Development following the procedures in Chapter 8.

- B. In some instances, a recommendation may already have been made to Headquarters to sanction the grantee. If the Field Office has not been advised of the final determination with respect to a prior recommendation, Headquarters should be consulted before continuing.

9-9 ADMINISTRATIVE RECORD AND PERFORMANCE DOCUMENTATION. The following documentation should be assembled to support the final recommendation of the authorized official:

- A. Cover memorandum with recommendation concerning the awarding of additional funds for the signature or concurrence of the Office Manager or Regional Administrator.
- B. A copy of the Annual Performance Summary, Form HUD-40013.
- C. A copy of the Finding Summary Sheets, Form HUD-40013A, with the current status of all findings resulting from on-site or in-house monitoring since the last Annual Performance Review was completed.
- D. Evidence that Fair Housing and Equal Opportunity, Counsel, and other Field Office units as determined by

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the authorized official were provided the opportunity for input into the final conclusions and recommendations.

- E. A written summary from Counsel indicating if there is pending or threatened litigation or the potential for litigation involving the grantee's CDBG activities.
- F. If the matter was referred to Headquarters for possible action, a copy of all information submitted to Headquarters.
- G. If the authorized official determined that a grant should be made without requesting additional information or assurances or referral to Headquarters, even though staff recommended such action, the documentation in the grantee file must show that he/she considered the staff recommendation and explain the reason(s) for not following the staff recommendation.

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DETERMINING COMPLIANCE WITH TIMELINESS CRITERIA

A grantee will be considered to be carrying out its CDBG assisted activities in a timely manner if it meets both of the following tests:

- A. 1.5 Standard. Apply the performance criterion at 24 CFR 570.902 (a) (1) (i) by using up-to-date information as of 60 days prior to the end of the grantee's current program year to determine if the amount of undisbursed entitlement grant funds in the grantee's line of credit is more than 1.5 times the entitlement grant amount for its current program year, as follows:

Undisbursed Entitlement Funds in Line of Credit	DIVIDED BY	Amount of Last Entitlement Grant Awarded
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EQUALS

Equivalent Years of Undisbursed Entitlement Funds

(Note: In any case where it is known that the grantee has a substantial amount of program income currently on hand, such as from the repayment of a float loan, determine the amount of such program income and include it with the amount of funds in the letter of credit for the purpose of making the above calculation. Program income in revolving loan funds should not be included for this purpose.)

- B. 50 Percent Standard. In addition to the 1.5 test, the regulations at 24 CFR 570.902(a)(1) describe a second timeliness performance criterion. This criterion, which is only applicable for entitlement grantees that have received at least two consecutive entitlement grants, focuses on whether the amount of entitlement grant funds disbursed from the grantee's letter of credit during the previous 12 months is at least equal to 50 percent of the entitlement grant for its current program year. This calculation shall be made as follows using up-to-date information as of 60 days prior to the end of the grantee's current program year:

Amount of Entitlement Funds Disbursed During Last 12 Months	DIVIDED BY	Amount of Last Entitlement Grant Awarded
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x 100% = Percent Disbursed During Last 12 Months

