
CHAPTER 6. HOW TO MONITOR STATE'S CIVIL RIGHTS PERFORMANCE

6-1. OVERVIEW

This chapter establishes procedures and guidelines for monitoring the State's performance in carrying out civil rights requirements in the CDBG program. The chapter also sets out actions that FHEO staff may take when monitoring reveals deficient performance.

6-2. WHAT IS MONITORING

- a. Defined. Monitoring is a continuous process of reviewing a grantee's performance. Monitoring uses all available data in making judgments about performance and, where necessary, results in remedial actions by the State to correct identified deficiencies.
- b. Objectives. Monitoring is the primary means by which HUD:
 - (1) carries out its statutory responsibility to review annually the State's performance pursuant to Section 104 (d) of the Housing and Community Development Act of 1974, as amended. With respect to civil rights requirements, FHEO staff determine whether the State has:
 - (a) carried out its certifications to comply with Title I/Section 104(d) and 109, Title VI, Title VIII, and other applicable civil rights and equal opportunity laws; and
 - (b) made reviews of the funded units of general local government to determine whether they have carried out activities and certifications in accordance with the civil rights requirements.
 - (2) assists States to improve their performance and capacity to meet civil rights requirements. As part of the monitoring process, FHEO staff:

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- (6-2b.) (a) identify at an early stage, actual or potential problems States or local government recipients have in meeting civil rights requirements an:),

(b) help States and local government recipients avoid more serious deficiencies by giving technical assistance to rectify emerging problems in administering or implementing the program.

(3) keeps well-informed about the effectiveness of the State CDBG program. FHEO staff stays informed about the extent to which the State CDBG program serves units of local general government in a way which meets civil rights requirements and objectives.

6-3. MONITORING PRIORITIES FOR FHEO STAFF

a. Civil Rights Authorities. FHEO staff must review a State's performance under all applicable civil rights and equal opportunity statutes, executive orders and regulations. Non-discrimination and equal opportunity requirements under these laws cover many aspects of the State's administrative responsibilities (see Appendix 3). Priority shall be given to the following areas:

- (1) Benefits - under Title VI and Section 109,
- (2) Fair Housing - under Title VIII, Executive Order 11063 and Section 104 (b) (the certification to affirmatively further fair housing); and
- (3) Any civil rights concern identified by the Assistant Secretary for FHEO as a priority during the fiscal year.

b. State Responsibilities. FHEO staff shall give priority to examining:

- (1) Records maintained by the State and recordkeeping requirements the State has established for its local government recipients; and
- (2) State review of local government recipients' civil rights performance.

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6-4. HOW TO MANAGE MONITORING ACTIVITY

a. Negotiated Approach. The HUD staff meets annually with States to negotiate a plan and schedule for HUD to carry out its review responsibilities. CPD has the lead responsibility for the negotiations; however, as part of this negotiation process, FHEO and CPD staffs should discuss:

- (1) areas to be monitored on each visit;
 - (2) dates FHEO staff will go on the review (Note: if unusual circumstances prevent a review during the time established through negotiation, coordinate rescheduled visit with CPD; and
 - (3) status of actions from last review.
- b. Planning Considerations in Use of Resources. Prior to HUD's negotiations with States, FHEO staff should consider the following in order to make effective use of available resources - staff, time, money:
- (1) where possible, make travel serve multiple purposes, such as monitoring two or more CDBG grants made to the State or monitoring more than one CDBG grantee (for example, an Entitlement city's program and a State program);
 - (2) workload as determined by projected schedules for submission of pre-award documents in connection with community development and housing programs;
 - (3) travel funds available for monitoring and other FHEO activities;
 - (4) schedule of Compliance Division, Regional Office of FHEO, for conducting civil rights compliance reviews; and
 - (5) estimated FHEO staff and time required to complete the full monitoring process (includes both in-house reviews and on-site visits).

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- (6-4.) c. Frequency of Reviews. FHEO staff shall conduct periodic reviews of the State's performance. Use a variety of methods, as set forth in paragraph 6-5, at various times during the fiscal year. FHEO staff shall visit each State at least once each fiscal year.
- (1) Schedule reviews to reflect the State's cycle of fund distribution and program implementation for the program year under review.
 - (a) distribution of funds to local governments;
 - (b) initiation of local implementation of activities;
 - (c) State review of recipients' performance; and

- (d) State submission of the annual performance and evaluation report.
- (2) Frequency of reviews vary by State, based on such factors as:
 - (a) previous monitoring conclusions;
 - (b) number of years the State has implemented the State CDBG program;
 - (c) demographic characteristics of the State and the non-entitlement communities receiving CDBG funds;
 - (d) State's history on civil rights matters; and
 - (e) history of local government recipients in implementing civil rights requirements in HUD-administered CDBG and housing programs.
- (3) The number of visits must be consistent with the negotiated monitoring strategy.

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6-5. MONITORING METHODS AND PROCEDURES.

Use a variety of methods throughout a single fiscal year to assess State performance in meeting civil rights and equal opportunity requirements.

a. In-house Review of Information.

- (1) Purposes - to:
 - (a) prepare for a monitoring visit. Determine which administrative practices of the State to examine and which civil rights requirements to focus upon during a visit; and
 - (b) determine the acceptability of the civil rights certifications.
- (2) State Profile. A "profile" of the State may supplement reports from the State and any State records reviewed on-site. Compile historical and socio-economic information that can be useful in making judgments about performance. A profile may include, but need not be limited to:
 - (a) population by racial/ethnic and gender categories;

- (b) unemployment rates by race, ethnic group, gender;
- (c) history of State participation in HUD programs (e.g., 701 Comprehensive Planning Assistance Program, Section 8 State Housing Finance Development Agency Set-aside program);
- (d) name of State Human Rights Commission and other Statewide associations concerned with issues affecting minorities, women and handicapped persons;
- (e) information indicating problems at the State and/or local government levels relating to civil rights implementation (for example: court suits, complaints compliance review findings, subject and status of civil rights-related conditions, requests for specific assurances set on local government grants previously administered by HUD under the Small Cities CDBG Program); and
- (f) years of participation and grant amounts received under State CDBG program.

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- (6-5a.) (3) In addition to the above, examine the following documents:
- (a) the final statement of community development objectives and method of fund distribution.
 - (b) the annual performance and evaluation reports, if any;
 - (c) a copy of any formal agreements between the State and local government recipients, if any;
 - (d) a copy of the State's handbooks or written program guidelines, if any; and
 - (e) administrative record of prior FHEO monitoring reviews, including:
 - 1. results of previous monitoring reviews; and
 - 2. documentation of technical assistance previously given by FHEO staff.
- (4) After the in-house review, update the administrative record. The record should include:

- (a) FHEO areas examined;
 - (b) source documents reviewed;
 - (c) concerns and problems identified;
 - (d) conclusions, where a visit is not planned or in a specific area that will not be examined during a visit; and
 - (e) follow-up actions and recommendations, if any.
- b. On-Site Visits. Ordinarily an on-site visit is necessary to get data which is current and comprehensive and to get a full understanding of how the State is administering Federal civil rights requirements.
- (1) Preparation for Visit to the State. Review information available in-house and meet with CPD staff as necessary to become familiar with the current status of the State's program.

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- (6-5b.) (2) Focus on State Administration. Direct attention to the methods of administration used by the State to manage the CDBG program. A monitoring visit normally would not include an examination of program implementation at the local government level. Conclusions from a monitoring visit are based primarily upon interviews with State officials and staff and an examination of records and documentation available at State agencies administering CDBG program.
- (3) Visits to Local Government Recipients.
- (a) When. FHEO staff may visit a local government recipient when:
 - 1. the records at the State level show significant civil rights and equal opportunity problems with respect to a particular recipient;
 - 2. the records at the State level are not sufficient to demonstrate that the State has adequately reviewed recipient civil rights performance; or
 - 3. the State requests that FHEO staff visit a local government recipient to assist the State in its

monitoring and technical assistance efforts.

- (b) Procedures. Before visiting a locality, the FHEO Division/POD Director must consult with the HUD Office Manager/Regional Administrator and CPD Division Director. Prior to visiting a locality, FHEO Division Director shall, in coordination with CPD Director and the Field Office Manager:
1. offer the State an opportunity to provide additional information or otherwise demonstrate adequate performance, and where necessary, to take appropriate remedial actions to resolve findings of recipient nonconformance with civil rights and equal opportunity requirements;
 2. inform the Regional Office of FHEO, and FHEO/Headquarters. Provide the Regional Office of FHEO and FHEO/Headquarters with a copy of current monitoring conclusions and documentation of efforts to

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- (6-5b.) resolve the apparent deficiencies working with the State. FHEO/Headquarters will consult with CPD/Headquarters. The Offices for FHEO and CPD must concur with plans for a monitoring visit to a local government recipient.
3. notify the State of the intent to visit the locality and invite the State to participate in this review with HUD staff.
- c. Monitoring Letters. Send the State a letter reporting the results of a monitoring visit. When a team visit is made, a single letter which includes FHEO staff comments is sent to the State.
- (1) Tone. The tone of the letter shall be positive and recognize strengths in the State's performance and areas where significant improvement was shown as well as areas of deficiency. Present conclusions in a clear and concise manner.
 - (2) Content. Prepare a letter, or memorandum as appropriate, that:
 - (a) states the purpose of the visit;

- (b) names FHEO staff who visited the State;
- (c) identifies areas reviewed by FHEO staff;
- (d) cites appropriate section of regulations at 24 CFR 570 for civil rights areas. Examined;
- (e) summarizes monitoring conclusions, both positive and negative;
- (f) requests information, by a specific time, on how the State plans to remedy any deficiency found or ensure that it does not occur again;
- (g) if appropriate, offers technical assistance or indicates that technical assistance was provided on site; and
- (h) offers advice regarding management or other issues not related to a requirement but which can facilitate State performance under the certification. (Advice must be clearly labeled as such. Note that advice is an optional element of letter.)

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- (6-5c.) (3) Negative Conclusion. Where monitoring reveals a performance deficiency, in addition to the items listed above, the letter shall:
- (a) describe findings/observations that indicate deficiency;
 - (b) specify type of findings (paragraph 6-10);
 - (c) cite applicable law or regulation;
 - (d) request information, by a specific time, on how the State intends to remedy the deficiency or ensure that it does not occur again; and
 - (e) give the State a chance to present any information it thinks is relevant to the finding.
- (4) Concurrence. Give CPD staff the opportunity to concur on all letters to the State prepared by FHEO as a result of a monitoring visit. FHEO staff should have the opportunity to concur on all letters prepared by CPD staff which address FHEO issues, including instances where FHEO staff did not visit the State (e.g., limited review by CPD staff).

- d. Limited Review by CPD Staff. When, as part of the negotiated monitoring strategy, FHEO staff do not plan to visit a State, the Director, FHEO may request that a CPD representative conduct a limited review of civil rights and equal opportunity requirements. This situation is most likely to occur when CPD plans to conduct more frequent reviews (e.g., twice during the fiscal year) than FHEO staff (e.g., once during the fiscal year).
- (1) The focus of the limited review by CPD staff is to examine the State's records to determine:
 - (a) whether the State has reviewed recipient performance under the civil rights certifications;
 - (b) whether the State keeps required civil rights records;
 - (c) whether the State's recordkeeping requirements for recipients include required civil rights data and information; and
 - (d) while not required by HUD, any specific civil rights reporting requirements which the State has established for recipients.
 - (2) Where the CPD reviewer believes that civil rights related problems exist, the CPD representative shall tell the State during the visit what the issues are, that the issues will be discussed with FHEO staff, and that all monitoring

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- (6-5d.) conclusions will be documented in a letter to the State. The Director of FHEO Division/POD shall concur on final judgments regarding a State's civil rights performance based on data collected during the limited review. The FHEO/POD Director should concur and receive a copy of any subsequent monitoring letter that originates in the CPD Division.
- (3) Use the information gathered from the limited review to focus areas for examination during FHEO on-site visit and to identify technical assistance needs of the State.
- 6-6. HOW TO MONITOR A STATE'S COMPLIANCE WITH CIVIL RIGHTS RECORDKEEPING REQUIREMENTS.
- a. Examine a State's records to determine whether the records maintained at the State level and the recordkeeping requirements established for recipients induce all records as set forth in HUD regulations at:
 - (1) 24 CFR Section 1.6(b) which governs implementation of

title VI;

- (2) 24 CFR Section 107.30 which governs implementation of Executive Order 11063; and
 - (3) 24 CFR Part 570 Subpart I which governs the State CDBG program and requires that records be sufficient for HUD to determine whether the State has carried out its certifications in accordance with the civil rights requirements.
- b. HUD has not developed detailed recordkeeping requirements under 24 CFR Part 570. However, the following are examples of records which would provide HUD with sufficient information to determine whether the State is carrying out its civil rights certifications in the State CDBG program. Records that show:
- (1) the State's process, which has been communicated to recipients, for review of recipient performance of all applicable civil rights requirements;
 - (2) the State's method for selecting recipients for review;
 - (3) information on the procedures and systems that the State uses for determining the adequacy of civil rights performance. The methodology may consist of a variety of approaches, e.g., a summary of the factual basis upon which each determination rests, or a quantitative standard used to make determinations;

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- (4) what items the State has reviewed in making its determinations;
- (5) summary data, by activity, on benefit by race, ethnicity, gender of head of household and, where applicable, benefits by handicapped persons;
- (6) the manner in which the State has handled complaints of discrimination involving the State CDBG program including a record of each complaint received, how and when it was referred to HUD, and, the State's response to any civil rights complaint investigations conducted by HUD in connection with the State's CDBG program;
- (7) the State's actions to affirmatively further fair housing, including funds allocated, if any, for these actions;

- (8) that the results of the review of a recipient civil rights performance, particularly negative findings, were communicated to recipients; and
- (9) that negative findings were tracked and successfully resolved.

6-7. HOW TO MONITOR A STATE'S REVIEW OF RECIPIENTS' CIVIL RIGHTS PERFORMANCE. Examine State procedures for monitoring recipients' performance, conclusions concerning recipients' compliance with applicable civil rights laws and requirements; and actions taken to correct deficiencies when found.

a. What are FHEO Issues.

- (1) whether the State examined recipient performance in meeting requirements under each applicable civil rights and equal opportunity law and regulation (see Chapter 2). Where CDBG funded activities caused displacement of residents or businesses; determine whether the State examined:
 - (a) impact of displacement on minorities, female headed households and minority and women-owned businesses;

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- (6-7a.) (b) whether minority and female headed households were relocated in a nondiscriminatory manner and in a way that gave them a choice of relocating within their own neighborhood and other neighborhoods consistent with the recipients' responsibility to affirmatively further fair housing.
 - (2) whether the State examined the recipients' civil rights records required by Federal law or regulations; and
 - (3) the procedures and systems the State used for determining the adequacy of the recipients' performance including actions to correct deficiencies found by the State.
 - b. While HUD does not prescribe the form of the State documentation examples of types of documentation that may be available as part of a State's documentation of its review of recipients, include:
 - (1) State monitoring checklists;
 - (2) State monitoring reports;

- (3) recipient reports to the State;
 - (4) correspondence regarding recipient performance with respect to civil rights requirements, including any actions necessary to correct identified problems; and
 - (5) records of technical assistance given to recipients.
- c. Documentation that demonstrates State's performance with respect to reviewing recipients. Such documentation may not be confined to a single file or record, particularly with respect to procedures. Where the process is not documented, FHEO staff shall interview appropriate State agency staff and examine documents which show the results of the process. For example, criteria for selecting recipients for on-site review may not be recorded in a "Procedures Manual" but criteria described in an oral interview can be verified against records of recipients visited.
- d. FHEO Conclusions. Seek additional information or clarification from the State when monitoring reveals that:
- (1) the State has not reviewed the civil rights performance of any recipients;

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- (2) the State has not reviewed recipient performance with respect to one or more areas of civil rights performance (e.g., affirmatively furthering fair housing, recipient agency employment);
- (3) the State determinations regarding recipient performance are clearly inconsistent with the provisions of civil rights laws or other requirements; or
- (4) the State has taken insufficient or inappropriate action(s) to remedy civil rights deficiencies which the State has found through its review.

6-8. HOW TO MONITOR A STATE'S PERFORMANCE UNDER THE CIVIL RIGHTS CERTIFICATIONS.

- a. Overview. This section discusses how records and information should be examined to assess State performance with respect to civil rights areas governed by the State's certifications.

Conclusions about a grantee's performance are based upon the civil rights laws and regulations as well as Title I and its

governing regulation at 24 CFR Part 570 Subpart I. For each civil rights area, examine specific actions by the State in carrying out its administrative policies, procedures, and practices, and determine whether the State has met the requirement of the certifications. This section enumerates the administrative functions and civil rights areas to be reviewed by FHEO staff. For each function listed, the section sets forth examples of civil rights issues and suggestions of documents to review. Also guidance is provided with respect to monitoring conclusions.

- (1) The State may implement a particular requirement in a variety of ways. The "test" in each instance is:
 - (a) the result of the activity, including the groups that receive the benefits provided; and
 - (b) the effect of methods used at the State and local level to determine what benefits will be provided and the manner in which they are to be provided.

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- (2) Review the policies and practices that affect the delivery of services and benefits and the participation of persons in funded projects and activities. Participation includes the opportunity to participate as trainees, employees and providers of supplies, equipment and construction or other services (business enterprises) in connection with the administration of the CDBG program or the implementation of CDBG - funded activities.
- b. Civil Rights Areas. Review performance in the following civil rights areas. Refer to Appendix 3 for a listing of laws which apply to each area.
- (1) Benefits, Services and Methods of Administration
 - (2) Fair Housing (Nondiscrimination and Affirmatively Furthering)
 - (3) Nondiscrimination in Agency Employment
 - (4) Nondiscrimination in Program-Generated Employment
 - (5) Business Opportunities - Minority, Women, and businesses locally owned or located

(6) Employment and Training

c. State Policies for the CDBG Program. There is no requirement to develop written policies regarding civil rights. However, be aware of any policies which might promote equal opportunity limit opportunities to receive benefits because of race, color, national origin, sex, handicapped status, or age.

(1) Examples of records that may indicate policies of the State relative to nondiscrimination or affirmative action are:

- (a) proposed and final statements;
- (b) an application package prepared by the State for completion by local government, if any;
- (c) documents setting out reporting requirements for local governments, if any;

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- (d) documents showing procedures for formulating policy; e.g., records of policy meetings; records of public hearings; records showing comments from local governments, citizens or community organizations regarding the State's policy and/or program; records showing the composition of advisory boards, if any; and
- (e) records showing public comments relative to the proposed statement of community development and housing objectives and any changes made by the State in response to these comments.

(2) Conclusions.

- (a) Make a finding where the policies indicate any preference, limitation or discrimination based on race, color, religion, sex, national origin, age or handicap status in any aspect of program administration or implementation. Where the purpose of an action is to overcome prior discriminatory practice or usage, the State may establish policy or take action to ameliorate an imbalance in services, facilities or other benefits to a geographic area or specific group or persons.

- (b) Where the State has written statements regarding compliance with civil rights requirements, determine that the statements are technically accurate, including the:
1. actions prohibited (e.g., under Title VI) or required (e.g., under Section 104); and
 2. coverage of groups (e.g., Title VI: race, color, national origin; Section 109: race, color, sex, national origin).
- (c) FHEO staff may suggest only, not require, civil rights policies where you believe they will facilitate a better understanding of civil rights laws among State agency staff and recipients.

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- (6-8.) d. Method of Fund Distribution. The method of distributing funds may affect the type and level of benefits to certain classes or residents (by race, handicapped status, etc.) and may be used affirmatively to promote civil rights objectives in the CDBG program.
- (1) When reviewing the method of fund distribution, examine:
 - (a) set-asides for special activities (e.g., economic development, planning);
 - (b) special allotments based on the population or type of local government (e.g., counties, larger cities, smaller cities);
 - (c) selection process, i.e. whether grants awarded based on a formula or through competition; and
 - (d) selection factors and rating criteria (e.g., number of jobs to lower income persons; amount of local match).
 - (2) Examples of civil rights issues are whether the method for distributing funds:
 - (a) appears to exclude jurisdictions where a specific group protected by civil rights laws reside; for instance, where a criteria for a minimum population tends to exclude localities where residents are predominantly minority;

- (b) includes selection criteria which recognizes outstanding performance in equal opportunity; for example, local government enforcement of fair housing laws (not required); and
 - (c) includes targeting of funds in a way that facilitates equal opportunity objectives; e.g., economic development projects that are likely to produce jobs for lower-income project area residents (not required);
- (3) Examples of records that may describe or otherwise provide information about the method of distributing funds are:
- (a) a description of the State's method for selecting localities and activities to fund;

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- (b) a description of the State's selection factors and rating criteria, if any;
 - (c) a copy of the standard application form used by local governments, if any;
 - (d) the names of localities that applied for funds;
 - (e) the names of localities funded and the amount of funds received; and
 - (f) records showing types of activities funded.
- (4) Conclusions. In most instances, it is not likely that FHEO staff would make a finding where there is indication of possible discrimination, refer to Compliance Division, Regional Office of FHEO. Where there is a concern, FHEO staff may assist the State in establishing procedures which promote civil rights compliance in the State Program. See paragraph 6-10 for further guidance in handling deficient performance.

e. Employment.

- (1) Monitor compliance with certifications to laws and regulations which prohibit employment discrimination, on the basis of race, color, national origin, sex, or handicap, in any agency which administers a program or activity funded in whole or in part with State CDBG funds.

- (2) What agencies are examined. Monitor employment patterns in those organizational units within State agencies which meet one or more of the following criteria:
- (a) Use CDBG monies to pay staff salaries or other administrative expenses (e.g., purchase of supplies and equipment or payment of rent for space).
 - (b) Use State funds to pay staff salaries or other administrative expenses to match CDBG funds.
 - (c) Make decisions regarding the allocation or use of CDBG money, such as the selection of local governments to receive funds or individual projects to be funded within local governments (e.g., use of set-aside funds).

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- (3) What organizational elements within State agencies are monitored. All organizational units as described above in the same line of delegation of authority or of functional responsibility are covered, except those immediately directed by an elected official.
- (4) Examples of aspects of employment that can be examined are:
- (a) the number of persons, by individual racial/ethnic and gender categories, newly hired in permanent full-time positions;
 - (b) the number of persons, by individual racial/ethnic and gender categories, permanently employed in full-time positions;
 - (c) whether minorities and females are excluded from any job categories; and
 - (d) whether the State has developed and carried out procedures and requirements for ensuring that to the greatest extent feasible, in connection with CDBG-funded activities, training and jobs are given to lower income residents of the local government recipients.
- (5) What documents to review:

- (a) reports or records which show for each administering agency, persons newly hired for permanent, full-time positions, by race/ethnic category, gender, salary ranges and job category;
- (b) reports or records which show for each administering agency, and organizational element, person employed in permanent full-time positions by race/ethnic category, gender, salary ranges and job category. Such documentation includes the most recent "State and Local Government Employment Report" (Form EEO-4).
- (c) any documents which show the State's policies and practices with respect to recruitment, hiring, promotions and other personnel actions.

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(6-8e.) (6) Conclusions.

- (a) First considering such factors as the representation of minority groups and women in the labor market area and the population. Second, determine whether there is a long standing pattern of exclusion or low representation. FHEO staff may ask the State for additional information where the data shows little or no representation of one or more minority groups, or women, in:
 - 1. the workforce of a particular administering agency, taken as a whole;
 - 2. the employees found in one or more job categories as shown on Form EEO-4; or
 - 3. one or more salary levels (particularly middle and upper levels) as shown on the Form EEO-4.
- (b) Based on any supplemental information provided:
 - 1. note concern and suggest voluntary affirmative steps;
 - 2. make a finding and request corrective action; and/or
 - 3. refer the issue to the Compliance Division, Regional Office FHEO, for possible compliance action.

f. Procurement Policies and Practices. The State must adopt appropriate procedures and requirements to assure good faith efforts toward the statutory directive, that to the greatest extent feasible, contracts for work in connection with CDBG-funded projects are awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

- (1) Determine whether the State has adopted such procedures and requirements and whether the State has reviewed recipients for compliance with such procedures and requirements.

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(6-8f). (2) Examples of documents to review are:

- (a) any State model contracts for use by local government recipients; and
 - (b) any records showing the results of State review of recipients for compliance with State procedures and requirements.
- (3) Conclusions. Seek additional information where the State has not developed procedures and requirements for meeting the statutory directive of Section 3 relative to the award of contracts.

g. Actions to Affirmatively Further Fair Housing.

- (1) What are FHEO issues. Determine that the State has:
 - (a) acted to affirmatively further fair housing in the administration of the CDBG program in nonentitlement areas or to otherwise further fair housing in the State.
 - (b) with respect to recipients, established appropriate recordkeeping requirements and reviewed performance under the recipients' certifications.
- (2) What records to examine.
 - (a) any records showing selection factors relating to fair housing activities used by the State in making grant awards;
 - (b) any records showing State participation in voluntary fair housing programs, such as educational conferences

conducted for and with housing industry representatives (real estate brokers, mortgage lending institutions, landlords);

- (c) any records showing State participation in a New Horizons Housing Opportunity Program; and
 - (d) any other records, showing fair housing activities.
- (3) Follow-up by FHEO Staff.
- (a) Seek additional information where the State has not taken action to affirmatively further fair housing in its own administration or among the recipients. The

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- (6-8.) State may undertake activities in conjunction with recipients, the public, or housing industry groups to meet this requirement.
- (b) Where you find that actions taken by the State would not result in affirmatively furthering fair housing, suggest alternative strategies and implementation activities for the State's consideration.
- h. Handling Complaints. The State may receive complaints, directly or as referred by HUD, regarding: its policies; program administration; or a recipient's implementation of a funded activity at the local level. Examine how the State has handled civil rights complaints it has received. Determine whether complaints relating to civil rights requirements are being forwarded to HUD Regional Office of FHEO for disposition.
- (1) Records that may be examined include:
 - (a) copies of complaints if any; and
 - (b) records that track the disposition of complaints received, if any.
 - (2) Where FHEO staff concludes that the State has not forwarded civil rights complaints appropriately, give the State written guidance, and other assistance as necessary, regarding the correct manner for handling such complaints. Target the State's handling of complaints for subsequent on-site monitoring by FHEO staff or for limited review by CPD staff.

6-9. OTHER ADMINISTRATIVE PRACTICES.

In carrying out its responsibilities for overall administration of the CDBG program, the State carries out administrative functions in addition to those described in paragraph 6-8. While these functions are not explicitly required by Title I or other applicable laws, the State's practices and procedures in the following area can negatively impact or promote the achievement of civil rights requirements and objectives. If FHEO staff chooses to comment on any of the following practices, in most instances, any recommendation for improvement would be considered a "concern" rather than a "finding" (see paragraph 6-10 e).

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- (6-9.) a. Organizational Structure. Examine the State's organizational structure for administering the CDBG Program and determine whether the structure facilitates or obstructs the State's capacity for implementing civil rights requirements.
- (1) What are FHEO Issues. Examples of civil rights related concerns are:
 - (a) clear assignment of staff responsibilities for civil rights; is there a clear assignment, and awareness by others, of what person(s) have responsibility for administering civil rights requirements, employment, contracting, reviewing recipients' performance and other administrative functions?
 - (b) knowledge of staff responsible for ensuring civil rights; does the designated staff have the knowledge and ability to carry out the assigned civil rights responsibilities in a competent manner?
 - (2) What documents to review. Following are examples of records that, while not required, may be available as part of a State's documentation of its program administration:
 - (a) Documents that describe the responsibilities of persons designated as "equal opportunity staff" or staff who carry out equal opportunity functions as a secondary responsibility.
 - (b) Documents that illustrate the type of activities performed by persons with such responsibilities, e.g., workshops conducted, correspondence to recipients providing guidance regarding civil rights requirements in contracting.

(3) Follow-up by FHEO staff.

(a) Identify any weaknesses in the organizational structure which appear to be directly related to weakness in other areas of performance. Also name the specific deficiencies in program administration associated with the organizational structure. An example is the absence of an Equal Opportunity Officer where monitoring reveals inconsistent civil rights reviews of recipients by program representatives.

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(6-9).

(b) Where weaknesses in this aspect of the program are evident but do not apparently reflect upon other areas of performance, FHEO staff may suggest that the State consider strengthening its organizational capacity to assure:

1. clear lines of responsibility in the area of civil rights; and
2. an understanding of civil rights requirements among State agency staff to whom local government staff look for assistance in civil rights areas.

b. Technical Assistance. As administrator of the CDBG programs the State may provide technical assistance to recipients about civil rights requirements.

(1) What are FHEO issues. Review available records to determine whether the State:

(a) advised recipients of the applicable Federal civil rights and equal opportunity laws and requirements; and

(b) sponsored or conducted training and/or provided written guidance to recipients regarding civil rights requirements.

(2) What documents to review. Examples of records that may indicate actions and accomplishments of the State in providing technical assistance to recipients, include the following:

(a) agenda from workshops or conferences for recipients;

(b) minutes from meetings with recipients;

- (c) records of State technical assistance visits to localities;
- (d) correspondence or other records which show the civil rights areas in which assistance was given; and
- (e) training and other materials prepared by the State for distribution to local government recipients.

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6-10. HANDLING PERFORMANCE DEFICIENCIES

- a. The approach to developing solutions to identified performance deficiencies recognizes both the State's discretion in administering the program and HUD's responsibility for assuring that the State is in compliance with statutory and regulatory requirements. In every instance give the State an opportunity for coming up with a solution. FHEO staff shall consider the State's judgment on how it has complied with civil rights requirements.
- b. This paragraph describes four types of performance observations, outlines steps that are appropriate to address each type and lists available remedies and corrective actions. FHEO staff shall cite appropriate section of the regulation in 24 CFR Part 570 for all negative conclusions made.

Other than conclusions of satisfactory or outstanding performance, HUD staff may have one of four types of observations about performance:

- (1) Deficient performance
 - (2) Possible deficient performance
 - (3) Eventual deficient performance
 - (4) Advisory concern
- c. Deficient Performance.
 - (1) Characteristics :
 - (a) involves a failure to meet specific, identifiable statutory or regulatory requirements;
 - (b) the issue is clear cut to HUD; and

(c) no additional information is needed.

(2) Examples of deficient performance are:

(a) Failure by the State to review the civil rights performance of any recipients by a visit, reports or any other manner;

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(b) Failure by the State to act to affirmatively further fair housing; and

(c) Failure by the State to have available a summary of racial and ethnic data showing the extent to which members of minority groups are beneficiaries.

(3) Appropriate HUD Actions

(a) Consult with the Regional Office of FHEO and Headquarters/FHEO. FHEO Headquarters will consult with CPD Headquarters.

(b) Prepare a draft letter to the State which:

1. summarizes the results of the review;
2. cites specific requirements that the State has not met;
3. requests information on how the State intends to remedy the deficiency or ensure that it does not occur again; and

(c) Request the Regional Office to concur on the letter and send copies of the letter to both the Regional Office and Headquarters. FHEO staff make certain that a copy of the letter is sent to the Regional Office of FHEO and Headquarters.

(d) Following receipt of the State's response, consult with the Regional Office and Headquarters to determine the appropriate remedial actions, if any, pursuant to 24 CFR 570.499 (see subparagraph 6-10f).

d. Possible deficient performance.

(1) Characteristics

- (a) Involves a specific statutory or regulatory requirement.
- (b) The review raises a question of whether or not a violation has occurred; however, the issue is not clear cut; and
- (c) Additional information is needed.

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- (6-10d). (2) An example of possible deficient performance is a failure by the State to review civil rights performance on any monitoring visits to recipients. In this instance, you must determine whether the State has reviewed performance in any other manner - such as periodic reports from recipients.
- (3) Appropriate HUD Actions :
- (a) Informally discuss review results with the State to determine if a deficiency is present. If resolution is not possible, take the steps outlined in subparagraph (b), (c) and (d) below.
 - (b) Consult with the Regional Office of FHEO/Management Liaison Staff, and Headquarters/FHEO.
 - (c) Prepare a draft letter to the State which:
 - 1. summarizes the results of the review;
 - 2. cites specific requirements that the State may not have met; and
 - 3. requests information from the State to clarify whether or not there is a deficiency.
 - (d) Request the concurrence of the Regional Office and Headquarters. FHEO staff shall make certain that a copy of the letter is sent to the Regional Office of FHEO and Headquarters.
 - (e) After receipt of information from the State, dismiss as an issue of deficient performance or take steps outlined in subparagraph 6-10b(3)(d).

e. Eventual deficient performance.

- (1) Characteristics :

- (a) Involves a specific statutory or regulatory requirements; and
- (b) There is a question that involves a judgment on performance over a period of time.

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- (6-10d.) (c) An official State position may be needed.
 - (2) Appropriate HUD Actions
 - (a) Consult with the Regional Office of FHEO/Management Liaison staff and Headquarters/FHEO.
 - (b) Prepare a draft letter to the State which:
 - 1. summarizes the results of the review;
 - 2. cites the specific requirements violated; and
 - 3. notifies the State that actions must be taken in order to avoid a finding of deficient performance at a later date.
 - (c) During subsequent reviews, check to ensure that the State has taken appropriate actions to avoid or resolve any findings of eventual deficient performance.

f. Advisory Concern.

- (1) Do not make a finding where the issue of performance does not involve a statutory or regulatory requirement. Advisory concerns include issues which relate primary to:
 - (a) the public's view of the State program;
 - (b) State management; and
 - (c) ways to improve the State's program.
 - (2) Examples of advisory concerns are as follows:
 - (a) The State has written guidance for recipients for civil rights requirements in procurement and contracting; and
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- (b) The State has not designated a single individual as the Equal Opportunity Officer, responsible for management of all civil rights matters in the State program.
- (3) Appropriate HUD Actions
 - (a) Orally discuss concern with appropriate State staff.
 - (b) Depending on the nature of the issue, you may choose to include or omit concerns raised in the review when preparing the monitoring letter and whether to include suggestions or offer assistance in the letter.
 - (c) When an advisory concern is included in a monitoring letter, clearly label the comments as advice; you may offer technical assistance; do not require a response.
- g. Review of State's response to findings.
 - (1) Carefully review the State's response to your request for additional information with respect to your monitoring findings. To determine of the action taken or proposed by the State are appropriate. If the response is not satisfactory, contact the State and attempt to resolve.
 - (2) During subsequent reviews, check to make certain that the State has taken actions necessary to correct or remedy deficient performance.
 - (3) Where the State's response to findings is not sufficient or appropriate, discuss the necessity for and selection of additional actions by HUD with both the Regional Office of FHEO and FHEO/Headquarters. Coordinate your recommendations and discussions with CPD staff.
- h. Remedial and Corrective Actions when the response is insufficient or inadequate.

(6-10).

- (1) Actions available are outlined in the regulation at 570.499 and 570.499a. When a State's response to a notification and deficient performance does not satisfactorily resolve the findings, program sanctions may be taken as outlined in 24 CFR 570.499(b) through (g) and 570.499a. None of these actions should be taken until it is clear that corrective action cannot be achieved through conciliation; and full discussion has taken place with the Regional Office and Headquarters.
- (2) The actions specified in 570.499(e) and (f) and 570.499a are not delegated to the Field Office. Headquarters must initiate these actions.

(b) The above process does not preclude:

- (1) requests for additional information concerning the State's conformance with its certifications (prior consultation with FHEO/Headquarters required);
- (2) assistance by FHEO staff to States in correcting findings identified through civil rights compliance review; or
- (3) referral to the Regional Director of FHEO for appropriate compliance action.

i. Purpose of corrective and remedial actions are to:

- (1) prevent a continuation of the deficiency;
- (2) mitigate, to the extent possible, the adverse effects or consequences of the deficiency; or
- (3) prevent a recurrence of the deficiency.