

## CHAPTER 2

### MANAGEMENT OF MONITORING ACTIVITIES

- 2-1 APPLICABILITY. This chapter on management of monitoring is applicable to all programs and functions listed in Section 1-3 of Chapter 1 of this Handbook.
- 2-2 THE MONITORING FRAMEWORK. HUD policies require that monitoring be risk-based to maximize available resources. As described in Section 7-3 of Handbook 1840.1 (Rev-3), *Departmental Management Control Program*, risk-based monitoring is used to target attention to program activities and participants that represent the greatest risk and susceptibility to fraud, waste and mismanagement. The guidance in this Handbook is designed to identify and address specific monitoring deficiencies previously identified by the GAO and HUD's Office of Inspector General (OIG) that included: inadequate monitoring policies/procedures or failure to follow established policies/procedures, and inadequate documentation or information systems that did not provide accurate, reliable or timely monitoring information. HUD OIG issued similar findings for the TA Program<sup>1</sup>, which the framework in this Handbook addresses.
- 2-3 USE OF RISK ANALYSIS. CPD (for non-TA Programs) has developed an annual risk analysis process, established via CPD Notice and written protocols issued to the Field. Each program participant's past performance is analyzed and compared against the performance of all other formula and competitive program participants and programs. This method ranks program participants in descending order, from highest to lowest risk. Three categories are used: high, medium, and low risk. The risk analysis results are recorded within CPD's Grants Management Process (GMP) module of the Disaster Recovery Grant Management (DRGR) System.

On September 12, 2023, HUD published *Notice CPD-23-08 Implementing Risk Analyses for Monitoring Community Planning and Development Grants Programs in FY 2024*. This Notice provides a consistent methodology for conducting risk analyses for CPD formula and competitive grantees and establishes monitoring priorities within available resources. This Notice expanded the risk analysis process to include the Housing Trust Fund Program.

On October 7, 2022, HUD published Notice "*CPD-22-11 Implementing Risk Analyses for Monitoring Community Planning and Development Grant Programs in FY 2023*." This Notice reflects an annual assessment period and provides policy guidance for fiscal years 2023 and beyond, until superseded by further guidance.

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<sup>1</sup> 2018-PH-0003: <https://www.hudoig.gov/reports-publications/report/hud-did-not-have-adequate-oversight-its-community-compass-technical>

CPD's Risk Analysis guidance was previously updated in Notice "CPD-22-04 *Implementing Risk Analysis for Monitoring Community Planning and Development Grant Programs in FY 2022*," published February 10, 2022. This Notice reflected an updated risk analysis methodology designed to identify risk, streamline the process, and enhance consistency across reviews. This Notice expanded the risk analysis process to include CARES Act funding for four programs, as well as the Recovery Housing Program (RHP). Additionally, the Neighborhood Stabilization Programs (NSP-1, NSP-2, and NSP-3) remain combined. The Community Development Block Grant-Disaster Recovery (CDBG-DR) program remains in this Notice.

A separate notice is issued by CPD's Technical Assistance Division (TAD) on the biennial risk analysis process for the TA Program <sup>2</sup>, and the same method and categories (high, medium, and low) for ranking program participants applies. TAD will record results in its central, electronic folder within TAD, until CPD's GMP module of the DRGR System can fully accommodate the TA Program risk assessment process.

The Handbook chapters and exhibits are designed to conduct compliance monitoring based upon risk analysis results. All monitoring is based on CPD's risk analysis process, unless specifically excepted and noted in individual program chapters in this Handbook.

- 2-4 FIELD OFFICE MONITORING PLANS. Annually, CPD establishes monitoring goals, which identify the number of monitorings each Field Office is required to conduct during the fiscal year. CPD monitoring goals are assigned based on factors including staffing levels, competing workload demands, and the amount of time available for staff to conduct monitoring, based on risk analysis completion. Field Offices develop annual Monitoring Plans, identifying the formula and competitive grantees and grant programs selected for monitoring during the fiscal year. Monitoring Plans are developed in accordance with the effective CPD Risk Notice, risk analysis results, and the annual monitoring protocols issued to the Field.
- 2-5 PREPARING FOR MONITORING. Successful monitoring depends both on effective use of time and knowledgeable reviewers. Chapter-specific information is provided to facilitate monitoring efforts. CPD reviewers are responsible for conducting monitoring in accordance with Risk Analysis results, the Chapter and Exhibit instructions contained in this Handbook, and CPD's annual monitoring protocols.

For purposes of this Handbook, pre-monitoring preparation includes:

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<sup>2</sup> See the current TA Program Risk Notice:  
[https://www.hud.gov/program\\_offices/comm\\_planning/cpdta/guidance](https://www.hud.gov/program_offices/comm_planning/cpdta/guidance).

A. Individual Monitoring Strategy. Whether monitoring is conducted remotely, on-site, or utilizing the hybrid method, the development of an individual, written monitoring strategy is needed to define the scope and focus the monitoring efforts. The Field Office incorporates the risk areas identified during the risk analysis process into the grantee's individual monitoring strategy. The strategy identifies:

1. the programs/technical areas to be reviewed, including a brief discussion of the high-risk factor(s) identified through the risk analysis process;
2. the CPD Monitoring Handbook Exhibits that are selected based upon the areas of risk identified by grantee and program;
3. data or information to be submitted by the program participant prior to monitoring (if any);
4. the names of any participant staff members who will need to be consulted during the monitoring;
5. anticipated HUD reviewers who will conduct the monitoring (e.g., CPD Representatives, Financial Analyst, and, if participating, any Specialists);
6. clearly defined areas of responsibilities for each reviewer (to avoid duplication), if more than one staff person will be conducting the monitoring;
7. whether the monitoring will be conducted on-site, remotely, or utilizing the hybrid method, including identification of the factors considered when determining the method to be used;
8. a schedule for carrying out the monitoring tasks and the anticipated time frames; and
9. required resources (e.g., travel funds, if on-site; time needed, if remote).

The individual monitoring strategy must be documented via the Work Plan Module in GMP-R.<sup>3</sup> Timely and concise written documentation is an important tool for management use in assessing planned actions against accomplishments.

B. Pre-Monitoring Preparation. HUD reviewers are responsible for being thoroughly familiar with the Federal program to be monitored and knowledgeable of the entity or entities to be monitored. Such comprehension is crucial for making the most of scarce time and resources and effectively determining compliance and accomplishments, especially given program complexities. It also enables the reviewer to make objective, consistent, and constructive observations and provide technical assistance or develop recommendations to improve program performance.

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<sup>3</sup> For the TA Program, the central folder in TAD is documented until GMP is available for use.

This preparation process involves:

1. understanding the governing statutes, regulations, and official guidance;
2. reviewing and analyzing participant reports, available data, Field Office files, audits and financial information, previous monitoring reports and issues;
3. consulting with the grantee regarding the monitoring process, the monitoring method (on-site, remote, or hybrid), the monitoring schedule, and documentation that must be submitted in advance or made available during the monitoring; and
4. obtaining other relevant information from knowledgeable Field Office staff.

This preparatory work may result in revisions to the individual monitoring strategy, either with respect to areas to be covered, estimated time frames, and/or staff resources needed/participant staff to be consulted.

2-6 COORDINATION. Certain chapters of this Handbook contain instructions and Exhibits for reviews of technical areas: Citizen Participation, Environment, Fair Housing and Equal Opportunity (FHEO), Labor, Lead Hazards, Relocation, Flood Insurance, and Section 3. Monitoring reviews of areas outside of the purview of the CPD Representative (Environment, FHEO, Labor, Lead Hazards, and Relocation) are to follow the guidance contained within the applicable chapter with respect to decision-making authority, coordination, and follow-up. Additionally, monitoring of the TA Program may include both the CPD Representative/Government Technical Representative, along with the persons from HUD-delegated organizations.

2-7 CONDUCTING THE MONITORING. All CPD monitoring consists of the following elements:

- A. Notification to the Program Participant. After the monitoring strategy has been developed, CPD communicates with the program participant to establish a date (whether on-site or remote) for monitoring. Once a date has been set for monitoring, CPD will send a formal written letter to the program participant. Unless there are extenuating circumstances, CPD will send the letter at least two calendar weeks prior to conducting the monitoring. The letter should discuss the monitoring schedule, identify the areas to be reviewed, and the names and titles of the HUD reviewers conducting the monitoring. It should also request that the necessary participant staff be available during the monitoring. For on-site monitoring, the letter should confirm the need for any required services (e.g., conference rooms, telephones, computers, access to electronic recordkeeping systems). For either on-site or remote monitoring, the letter should identify specific information to be submitted by the program participant, the timeframe for submission, and the appropriate method for transmitting documentation..

- B. Entrance Conference. An entrance conference is conducted, to include the HUD Reviewer and all applicable program participant staff. The entrance conference reflects the first day of the monitoring review timeframe. The purpose of the entrance conference is to:
1. explain how the monitoring will be conducted;
  2. identify/confirm key program participant staff who will assist during the monitoring;
  3. set up or confirm meeting or interview times (including any clients who may be interviewed) and, if applicable, schedule physical inspections; and
  4. verify the programs/activities to be reviewed and, if on-site, how access to files and work areas will be granted (some programs files can be sensitive; some work areas can be hazardous)
- C. The Assessment Process. The “real work” of monitoring entails file review and interviews to verify and document compliance and performance. This can include physical inspections if monitoring is conducted on-site. For monitoring conducted remotely, the use of timestamped photos and videos and/or live video may be used to verify physical assets and their condition.
1. Evaluate! The Exhibit questions are designed to assess and document compliance with program requirements based upon:
    - a. program and project file reviews and review of policies and procedures, including using both automated and manual data and reports submitted to HUD by the program participant; and
    - b. interviews with program participant staff, contractors, subrecipients, and clients to clarify and determine the accuracy of the information, assess level of satisfaction with the provision of services or the “end products,” and document performance.

The questions within the exhibits in this Handbook are designed to yield consistent, discrete responses. Although this approach can take more time up-front, it produces higher quality reviews that provide a better picture of a program participant's HUD-assisted grant program for supervisory staff, future CPD Representatives for the program participant, and others who have a need to review the program participant's performance or HUD's monitoring efforts. The responses to each question provide important documentation for HUD's administrative record.

Because it is unlikely that the HUD reviewer will be able to monitor all of a program participant's HUD-assisted activities, projects and/or functions, or even review activities in a specific area spanning a participant's entire program year, sampling is generally expected to form the basis for drawing conclusions about the program participant's performance. Many

of the chapters in this Handbook instruct the reviewer on the sampling procedures to be followed for that chapter.

For non-random samples, HUD reviewers should consider selecting areas with unresolved problems identified in previous monitoring, any new types of activities being undertaken, and/or the extent that any activities are considered high risk. Any sample review or spot-check of program participant records that raises questions concerning compliance with program requirements or the accuracy of the data indicates the need for further follow-up by the HUD reviewer. For non-random and random samples that are not statistically valid, monitoring conclusions should be limited to the selected sample. For statistically valid random samples, HUD reviewers can generalize results to the program participant's activities or program as a whole, as applicable.

Use a common-sense approach and engage in a thorough evaluation of data and other information to draw defensible and supportable conclusions. Always keep in mind that the main objective of monitoring is to assist program participants in carrying out their program responsibilities. Ask yourself, “Is the program purpose being accomplished? Are the program beneficiaries being served as intended? Are program requirements being met?”

2. Communicate! Throughout the monitoring, maintain an on-going dialogue with the program participant staff. Such communication keeps the participant informed as to how the monitoring is progressing, enables discussions of any problem areas encountered, and provides the participant an opportunity to make “on-the-spot” adjustments or corrections or present additional information to help the HUD reviewer. It also minimizes the potential for surprising the participant when the exit conference is held, as well as when the monitoring results are formally communicated in writing.
3. Document! The responses to the exhibit questions in this Handbook form the basis for monitoring conclusions and represent the administrative record, as supplemented by program participant records copied or reviewed during the monitoring. All exhibit questions must be clearly answered (both the “Yes/No/N/A” box and the “Describe Basis for Conclusion” text box). For example, an N/A response could indicate either that the question did not apply, or the reviewer was unable to answer it (outside the scope of the review, unexpected problems in other areas, etc.).

The “Describe Basis for Conclusion” text box needs to succinctly but explicitly explain and support the response to the question and the HUD Reviewers determination of compliance or noncompliance with the requirement under review. The “Basis for Conclusion” should allow a

third-party reviewer to replicate the HUD Reviewer's determination, and reference specific supporting documentation and details, such as document titles, document page numbers, invoice numbers, dollar amounts, dates, incomes and applicable income limits, family size, sales price, etc.

Keep in mind that people unfamiliar with the program participant, or the program/area being monitored, assess CPD monitoring efforts (e.g., staff from HUD's OIG or GAO). Field Office changes may also result in reassignment of program participants to different HUD staff. Therefore, monitoring conclusions must be clear to persons unfamiliar with the participant, program or technical area. Documentation requirements for the entire monitoring process are discussed in Section 2-14 below.

- D. Exit Conference. At the end of the monitoring review, HUD reviewers conduct an exit conference with the appropriate participant officials or staff to discuss preliminary conclusions. The exit conference signifies the end of the monitoring review and must be conducted within 15 business days of the monitoring start date (i.e., the monitoring entrance conference). In part, this serves to confirm the accuracy and completeness of the information used to form the basis for the monitoring conclusions. It may also highlight areas of disagreement between HUD and the participant. The HUD reviewer is responsible for using the "Monitoring Summary Form" (see Exhibit 2-1 in this Chapter), not only to prepare for the exit conference by clearly and concisely summarizing the conclusions, but also to document the issues discussed at the exit conference, the date and time of the meeting, and the names and titles of the attendees. To the extent that a program participant signifies disagreement, the basis for any objections should be noted. These summarizations are used to develop the monitoring letter, which is discussed in Section 2-10 below.
- E. Supervisory Oversight. While it is recognized that restricted travel resources limit the number of staff able to conduct on-site monitoring visits, it is recommended that supervisors periodically accompany their staff, particularly when staff are new or inexperienced, or where travel expenses are minimal (e.g., the entity being monitored is within the local travel area of the Field Office). The purpose of this is to allow supervisors to assess the quality of their staffs' work more adequately beyond the normal in-house functions of file reviews, analyses, and discussions. Accompanying staff would provide supervisors an opportunity to observe how a review is being conducted and how on-the-spot judgments are being made when HUD reviewers select and assess files and interview program participant staff.

## 2-8 MONITORING CONCLUSIONS.

- A. Decision Categories. As a result of monitoring, HUD may reach one or more conclusions that:
  - 1. performance was adequate or exemplary

2. there were significant achievements
3. there were concerns that need to be brought to the attention of the program participant
4. technical assistance was provided or is needed
5. there were findings that require corrective actions

All conclusions – positive or negative - must be supported, defensible, and adequately documented.

B. Findings and Concerns. Where deficiencies are identified, the following procedures apply:

1. Findings. Where an identified deficiency results in a finding, the finding must include the **condition, criteria, cause, effect**, and proposed **corrective action**. Program participants must be given an opportunity to respond to the finding and provide additional information demonstrating compliance before HUD requires the program participant to undertake corrective action (See Section 2-10, *The Monitoring Letter*, for additional information).
  - a. The **condition** describes what was wrong or what the problem was.
  - b. The **criteria** cite the specific regulatory or statutory requirements that were not met (including both the crosscutting regulatory citation and the program citation, when applicable).  
[Note: if the crosscutting regulatory citation is applicable and applies to fair housing and civil rights requirements, the criteria shall specify that FHEO is the office with jurisdiction to make findings of noncompliance with such requirements]
  - c. The **cause** explains why the condition occurred.
  - d. The **effect** describes what happened because of the condition or what could happen.
  - e. The **corrective action** identifies the action(s) needed to resolve the problem and, unless inapplicable or there are extenuating circumstances, should include the time frame by which the participant is to respond.
2. Concerns. Monitoring concerns brought to the program participant's attention must include the **condition, cause, and effect**. The HUD reviewer should suggest or recommend actions that the program participant can take to address a concern, based on sound management principles or other guidelines. However, corrective actions are not *required* for concerns and the program participant is not required to respond.



## 2-9 SANCTIONS.

- A. The Process. Identified monitoring deficiencies that rise to the level of a “finding” must be addressed. Responsibility rests both with the HUD reviewer and the entity being monitored. The HUD reviewer must validate that there is sufficient documented information and/or evidence to support a finding of noncompliance (see Section 2-13). The entity being monitored has a responsibility to determine, or assist the HUD reviewer in determining, the reason why a requirement was violated, or provide evidence of compliance.

A key ingredient of effective monitoring is the ability to identify the root cause(s) of any identified deficiencies, whether the problem is an isolated occurrence or systemic. Such knowledge leads to the development of optimal corrective actions. Keep in mind that there may be any number of acceptable solutions to resolve a deficiency. Ideally, the program participant should agree with HUD’s assessment of the cause and offer a workable solution or plan for corrective action. In some cases, the HUD reviewer may need to determine appropriate action if compliance is not possible, i.e., do we want money recovered, a grant reduced, limited or terminated? Contemplation of those or other serious corrective actions triggers the need for the Field Office or TA Program staff to contact the appropriate Headquarters program/technical office to ensure that HUD follows the appropriate procedural requirements. In addition, suspected instances of fraud or misconduct should be immediately referred to the Office of the Inspector General for further investigation.

- B. Exhibit Structure. The questions contained within the exhibits in this Handbook have been set up to assist the HUD reviewer in correctly identifying deficiencies that rise to the level of a “finding.” With the exception of the exhibits in Chapter 22 and questions that address civil rights-related requirements, each exhibit contains a “Note” under the heading advising the reviewer that certain questions contain, as a parenthetical below the question, statutory or regulatory citations and/or contract/agreement references. A negative response (“No”) by the HUD reviewer to any such question indicates noncompliance that constitutes a “finding.” Including the basis for the requirement enables the entity being monitored to specifically reference the program requirement at issue. That entity is not precluded from self-assessing during the monitoring to determine if it has additional information or supporting documentation that would cause the HUD reviewer to form a different conclusion.

CPD cannot make findings for civil rights-related requirements in Chapter 22 and in other Exhibits because that authority was delegated to HUD’s Office of Fair Housing and Equal Opportunity. Accordingly, questions that address civil rights-related requirements where problems are identified should be treated as issues to be noted and brought to FHEO’s attention for follow-up in accordance with the protocols established in Chapter 22.

Understanding the cause of a finding serves to outline the action or actions needed to resolve the violation(s). To assist the HUD reviewer in developing corrective actions for findings of noncompliance, Exhibit 2-2 of this Chapter provides a “sanctions table” by program or technical area. HUD’s discretion for resolving deficiencies lies within these parameters. An important and fundamental principle of the monitoring process is that HUD is *required to make findings* when there is evidence that a statute, regulation or requirement has been violated, but it retains *discretion in identifying appropriate corrective action(s)* to resolve deficiencies. An equally fundamental principle is that program participants have due process rights to contest findings.

- 2-10 THE MONITORING LETTER. Within 60 days after completion of monitoring (the exit conference), HUD sends written correspondence to the program participant describing the results – in sufficient detail to clearly describe the areas that were covered and the basis for the conclusions. Each monitoring letter is to include:
- A. the program, project, or entity monitored
  - B. the dates of the monitoring
  - C. the name(s) and title(s) of the HUD reviewers who performed the monitoring review
  - D. a listing of the program/project/activity areas reviewed (which, in most cases, will reflect the areas outlined in the notification letter to the participant)
  - E. if applicable, a brief explanation of the reasons why an area specified in the notification letter was not monitored or other schedule deviations (e.g., time constraints, unanticipated problems arising in another area)
  - F. monitoring conclusions (pursuant to Section 2-8.A of this Chapter)
  - G. if applicable, clearly labeled findings and concerns (described pursuant to the requirements of Section 2-8.B of this Chapter)
  - H. if there are findings, an opportunity for the program participant to submit additional information regarding the finding and to demonstrate, within a time prescribed by HUD, that the participant has, in fact, complied with the requirements
  - I. response time frames, if needed
  - J. an explanation that, if the program participant is unsuccessful in contesting the finding or submits additional information that is unsatisfactory to HUD, HUD will require the program participant to undertake corrective action within the identified time frames
  - K. if applicable, identification of fair housing and other civil rights-related issues that are being referred to the Office of Fair Housing and Equal Opportunity for follow-up
  - L. an offer of technical assistance, if needed, or a description of technical assistance provided during the monitoring

Because HUD strives to work collaboratively with the entities it funds, generally, the tone of the monitoring letter should be positive, in recognition of our common goal to carry out HUD's programs responsibly and effectively. Include significant accomplishments or positive changes to establish and maintain productive relationships and to recognize the dedication and commitment of the program participant staff to our program missions. However, the monitoring letter should **not** include general statements that the program participant "complied with all applicable rules and regulations." Such broad general statements can negate HUD's ability to apply sanctions, if deemed necessary at a later date. Monitoring reviews cover selected programs or technical areas and, oftentimes, are based on a particular sample. Monitoring conclusions, therefore, should be qualified, i.e., "based upon the materials reviewed and the staff interviews, the activity/area was found to be in compliance with (specify requirements)."

Additionally, the monitoring letter should not include any personally identifiable information ("PII") regarding assisted individuals. PII includes any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.<sup>4</sup> OMB guidance requires that agencies minimize the use of PII.<sup>5</sup> Therefore, it is inappropriate to include PII in these letters.

## 2-11 REQUIRED CONCURRENCES.

A. Supervisor or Designee. Prior to sending the monitoring letter to the program participant, the HUD reviewer's supervisor, or authorized designee, concurs on the monitoring letter after evaluating the supporting documentation to assure that the conclusions are clearly supportable by the exhibits, working papers and materials generated during the monitoring. While recognizing that this review can be time-intensive, it is integral to the monitoring process and serves to:

1. enable the supervisor or designee to assess the quality and accuracy of the monitoring
2. allow Field Offices to track consistency in handling monitoring findings across their geographic area as well as for a program participant (especially if reviewers have changed)

<sup>4</sup> See OMB Memorandum M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information* (January 3, 2017), available at [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2017/m-17-12\\_0.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2017/m-17-12_0.pdf).

<sup>5</sup> See OMB Circular A-130, *Managing Information as a Strategic Resource* (July 28, 2016), directing agencies to minimize the collection and use of PII. For additional information, see the Fair Information Practice Principles in Appendix II of OMB Circular A-130 ([https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/circulars/A130/a130revised.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A130/a130revised.pdf)).

3. confirm that performance problems are properly detected and the selected corrective actions are appropriate to remedy noncompliance
4. provide a quality assurance mechanism that monitoring reviewers are making appropriate, supportable judgments and drawing sound conclusions such that the program participant has a clear understanding of HUD's evaluation of its performance during a specific time period

Supervisory concurrence is also required for follow-up correspondence.

- B. Other Technical Areas. Where monitoring includes the technical areas of Environment, FHEO, Labor, Lead Hazards, Relocation, or Flood Insurance, the chapter instructions for making findings, follow-up, review and concurrence in these areas are to be followed.
- C. Office of General Counsel. Office of General Counsel concurrence is needed when potential litigation is indicated or when litigation has begun.
- D. Headquarters. When sanctions for serious findings are under consideration (e.g., grant reduction, adjustment, recapture or withdrawal), the Field Office must contact the appropriate Headquarters program office for assistance. Program office staff are responsible for involving Headquarters program counsel in such instances.

## 2-12 CLOSING FINDINGS.

- A. General. Follow-up by HUD reviewers with the program participant serves two purposes:
  1. it provides an opportunity to evaluate the effectiveness of our monitoring efforts in maintaining or improving participant performance; and
  2. it enables us to determine that required corrective actions are implemented.

GAO considers the monitoring process to be completed only after action has been taken that: (1) corrects identified deficiencies; (2) produces improvements; or (3) demonstrates that the findings and recommendations do not warrant management action (see GAO-14-704G, *Standards for Internal Control in the Federal Government*, Principle 17. "Evaluate Issues and Remediate Deficiencies," at <http://www.gao.gov/assets/670/665712.pdf>).

- B. Follow-Up. All follow-up actions must be documented and communicated to program participants. Target dates are assigned when corrective actions are required and relayed to the participant in the monitoring letter.

1. If, within 30 days after the date of the monitoring report, the program participant has not responded to the opportunity to contest the finding or to provide additional information demonstrating to HUD's satisfaction that the requirement has been met, the program participant is expected to undertake the specified corrective and remedial actions.
2. In the event that a target date has not been met - and the program participant has not alerted the Field Office as to the reasons prior to the date (and, if appropriate and agreed-upon, established a new date) - the HUD reviewer is to follow-up either by telephone or email, with a reminder. Either form of contact must be documented. When requesting a status update by letter to the program participant, where appropriate, notify the participant of the possible consequences (under the applicable program requirements) of a failure to comply.
3. Where the program participant is unresponsive or uncooperative, the HUD reviewer or Field Office is to contact the Headquarters program office(s) for guidance on carrying out progressive sanctions.
4. When the program participant notifies HUD that the corrective actions have been implemented, the appropriate staff are to review the submitted information within 15 working days. Regardless of whether the response is acceptable (and/or sufficient to close a monitoring finding) or inadequate, a letter is to be sent to the program participant within 30 calendar days of receipt of its submission. The correspondence will either: inform the participant that a finding has been closed; acknowledge any interim actions that have been taken and reaffirm an existing date; or state that additional information/action is needed and establish a new target date to resolve the deficiency. When determining whether it is reasonable or appropriate to establish new target dates, consider the program participant's good faith efforts as well as any extenuating circumstances beyond the participant's control that impact timely and effective resolution.

## 2-13 BUILDING AN ADMINISTRATIVE RECORD.

- A. The Basis for the Need. An Administrative Record includes all documents considered, either directly or indirectly, by the Department in reaching a final decision on an issue. Documents can include completed exhibits, contracts, forms, agreements, internal memoranda and notes, correspondence, email, electronic submissions, and any other document considered by the decision-maker or his or her staff in reaching the decision. It can be used by HUD to take enforcement actions (e.g., to reduce or terminate a program participant's financial assistance) or to defend HUD's decision if HUD is sued. Once a

final agency action has been taken, the Administrative Record cannot be supplemented with subsequent documents.

It is critical that HUD has a sufficient administrative record that supports its decisions so that HUD can defend itself against appeals of the decision. In CPD programs that provide the participant an opportunity for a hearing before an administrative law judge before HUD can reduce or terminate the grant, HUD must have the evidence to support the determination that the program participant failed to substantially comply with the program requirement. The Administrative Record provides the primary evidence.

- B. How to Make It Work for You. Making the Administrative Record work for you and improve your ability to perform your job is mostly common sense. First, all basic documents should be readily available (and you should be familiar with their contents) and in their original condition (i.e., avoid handwritten notes on original documents, correspondence, memoranda to the file). Second, write correspondence with the realization that it can be used either for or against HUD in litigation. Therefore, any written correspondence “stands on its own,” whether you initiate it or are replying to a submission from the participant (or outside of the Department). It should be understandable to a third party reading it for the first time months or years later.

Correspondence containing administrative decisions requires special attention. When HUD makes a finding, a request for corrective action is being transmitted, or CPD is saying “no” to a request, the Department’s letter conveying the decision or action needs to show our understanding of the nature of the issue and explain our reasons. Adverse actions must cite the authority, e.g., the applicable regulation, or statutory provision. Avoid characterizations or personal opinions in written correspondence, whether letters, emails, or internal memorandums. Answer all correspondence within a reasonable amount of time after you receive it. Demands or requests that we make of our program participants must be reasonable and it must be possible to complete required actions within the time allotted. Retain all attachments to incoming or outgoing correspondence. All dates, signatures, and concurrences should be clearly legible. These actions will help protect HUD against allegations of arbitrary and capricious conduct.

Return telephone calls you receive. When you take notes of such calls, include the date of the call, the names of the people who participated in the call, and the substance of the conversations. For non-documentary materials, such as pictures, videotapes, recordings of interviews, etc., identify each item as to date, place, and names or narrators (if applicable).

- C. Errors to Avoid. To the extent that compliance issues arise with a program participant that result in litigation, CPD reviewers must ensure that

administrative records are complete, well-documented, and clear to be understood by a reasonable person. Sometimes poor documentation is fixable and other times it is not. Here are some examples of poor documentation:

1. Letters from HUD that deny a request but do not explain the basis for the denial or cite the wrong authority
2. Letters from HUD containing unreasonable requests, either in time or action
3. Unfulfilled promises by HUD
4. Letters that demonstrate HUD's lack of understanding of what a participant was asking for or proposing
5. Actions taken by HUD that do not follow our own procedures, including inconsistencies in making findings
6. Letters that do not stand on their own (i.e., are not understandable to a third party reading them for the first-time months or years later)
7. Missing or illegible documents
8. Letters that clear findings without stipulations or verification of compliance or declare a program participant to be in compliance with all program requirements

- D. Potential Consequences. Remember that almost all documents in HUD files must be disclosed in litigation if the program participant requests it. Therefore, when you create any kind of document, particularly internal memos, avoid conclusions, predictions, or inferences - they can harm the Department in litigation. Note that email messages are retained in back-up systems for three years after you delete them and, in most cases, must be disclosed in litigation. Voice mail messages are generally retained for 45 days. Avoid the temptation to take shortcuts! All monitoring conclusions must be supported. If you are scrupulous in maintaining an administrative record with the possibility of litigation in mind, it will pay off in the end.

## 2-14 DOCUMENTATION.

- A. General. It is essential that each step of the monitoring process be adequately documented. Documenting preserves the valuable results, both positive and negative. All correspondence, documentation and working papers relating to the monitoring and conclusions are to be maintained in the official Field Office or Headquarters files. Where appropriate or required, information can be maintained in electronic form (e.g., GMP<sup>6</sup>, GDX).

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<sup>6</sup> For the TA Program, the central, electronic folder within TAD is used until GMP is available for use.

The cost to HUD of not maintaining such documentation is substantial and potentially embarrassing. This is especially true when a program participant has been carrying out similar activities or projects over a period of time and HUD reviewers have been reassigned or changed. Support documentation becomes extremely significant when HUD seeks to take enforcement actions that are challenged, as discussed in Section 2-13, above.

- B. Departmental Standards. HUD has established overall policies and requirements for records management in the following documents:
1. Handbook 2225.6, *HUD Records Disposition Schedules*: This Handbook contains disposition instructions for HUD records and non-record material.<sup>7</sup>
  2. A000.1G, *Files Management Guide*: This guide provides instructions on filing, maintaining, and retrieving HUD records.<sup>8</sup>
  3. Handbook 2228.1, *Records Disposition Management*: This Handbook addresses HUD's records disposition management program objectives, policies, and responsibilities.<sup>9</sup>
  4. Handbook 2229.1, *Records Disposition Scheduling for Automated Systems*: This Handbook provides guidelines for ADP system sponsors, assisted by the Office of Information Policies and Systems, for establishing retention periods for mainframe computer system files.<sup>10</sup>

Questions on any of the policies or procedures addressed in the above materials are to be directed to the Records Management Liaison Officers in the program areas.

- C. CPD Requirements. For all programs and functions listed in Section 1-3 of Chapter 1, documenting the monitoring process consists of electronic copies of:
1. the risk analysis process and results in accordance with the procedures established in the current Notice on "*Notice CPD-23-08 Implementing Risk Analyses for Monitoring Community Planning and Development Grants Programs in FY 2024*"<sup>11</sup>
  2. the annual monitoring plan
  3. the individual monitoring strategies

<sup>7</sup> See [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/admh/2225.6](https://www.hud.gov/program_offices/administration/hudclips/handbooks/admh/2225.6).

<sup>8</sup> See [https://www.hud.gov/program\\_offices/administration/hudclips/guidebooks/a000.1g](https://www.hud.gov/program_offices/administration/hudclips/guidebooks/a000.1g).

<sup>9</sup> See [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/admh/2228.1](https://www.hud.gov/program_offices/administration/hudclips/handbooks/admh/2228.1).

<sup>10</sup> See [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/admh/2229.1](https://www.hud.gov/program_offices/administration/hudclips/handbooks/admh/2229.1).

<sup>11</sup> See <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-08cpdn.pdf>



4. the notification letters to the program participants
5. the completed monitoring Exhibits with any support documentation obtained during the monitoring (e.g., contracts, budget forms, participant policies, work write-ups, etc.)
  - a. This documentation should be organized by exhibit and clearly labeled, indicating what they are and what part of the monitoring they support.
  - b. HUD reviewers who maintain their own “working files” may keep electronic copies of monitoring documentation, provided that any and all documents are maintained in the Field Office’s or Headquarters’ official electronic files and/or systems.
  - c. All Exhibits must include the reviewer’s name and the date that the form was completed.
6. the completed Exhibit 2-1, *Monitoring Summary Form*, with exit conference notes (as described in Section 2-7.D above)
7. the official monitoring letter to the program participant, containing the necessary dated signatures.
8. documentation relating to final resolution of identified deficiencies (including responses both to and from program participants and handled either by CPD or other HUD office(s))

It is recommended that supervisors periodically and randomly review the official monitoring files (in GMP, GDX, and other electronic official files, as applicable) to determine that proper documentation is in place.