

CHAPTER 7. PROGRAM MONITORING

7-1 INTRODUCTION.

Program monitoring will be performed at three levels - local HUD State and Area Offices, Designated Offices and Headquarters. HUD will conduct compliance monitoring in accordance with the HFA's own or approved procedures for origination, underwriting, processing, servicing, management and disposition procedures as well as compliance with HUD regulations and guidelines.

Monitoring will be performed on a remote and on-site basis primarily consisting of post-endorsement compliance reviews. Periodic on-site monitoring to determine overall compliance with program requirements will be performed primarily by Designated Offices. Local HUD Office and/or Headquarters personnel may participate in these reviews.

Headquarters' primary responsibility will be overall program evaluation and the review of documentation pertaining to continued compliance of the HFA with program eligibility requirements, including monitoring of the dedicated account, where applicable, and other financial requirements.

7-2 ORIENTATION MEETING. Within 30 days after Headquarters approves an HFA's application to participate in the risk sharing programs, the Designated Office should schedule and conduct an orientation meeting with the HFA.

- A. The meeting should be scheduled at the Designated Office. It should be conducted to elicit two-way exchanges between HFA and HUD officials as to the expectations of the HFA and the Department under the pilot program. It should review program requirements, responsibilities of the HFA, local HUD Office, Designated Office and Headquarters, and how and for what purpose monitoring activities will be conducted. This meeting should also be an opportunity for the HFA to describe its processing, underwriting and servicing procedures to familiarize the Designated Office with the basis for future monitoring.
- B. It should be attended by principal HFA staff and HUD staff responsible for remote and on-site monitoring. Both development and asset management disciplines should be represented.

7-3 HFA SUBMISSIONS AND INFORMATION.

- A. PROJECT INFORMATION - THROUGH FINAL ENDORSEMENT. Remote monitoring will be based on documentation contained in project closing dockets, including underwriting and other project information entered by the HFA onto the information diskette submitted with the docket at initial and final endorsement (or construction start for new construction and substantial

rehabilitation projects without insured advances). The type of information to be submitted by the HFA on the diskette is listed in Appendix 11. HUD will provide

HFAs with the actual format and instructions for reporting by diskette.

- B. PROJECT INFORMATION - AFTER FINAL ENDORSEMENT. Project management and servicing data must be submitted by the HFA according to the requirements of paragraph 7-6C.
- C. HFA INFORMATION. HFAs must submit annual audited financial statements to HUD Headquarters (Office of Insured Multifamily Housing Development) and the Designated Office. In addition, the HFA must submit to Headquarters:
 - 1. The semi-annual report on its portfolio insured under Section 542(c) required by 24 CFR Section 266.115(d)(2). This report must include the original mortgage amount and outstanding principal balance for all projects underwritten, the status of all projects (current, in default, workout, foreclosure, etc.) and, if applicable, the date(s) bankruptcy was filed and the date(s) the HFA requested dismissal;
 - 2. An annual certification that there has been no basic change in organization, business activities, financial status or other information submitted with its application for approval (or if changes, the nature of those changes) and that the HFA complied with all eligibility requirements during the past year;
 - 3. Any change(s) to its standards and procedures, loan terms and conditions before implementation of such change(s), providing copies of any such change within 5 business days after it has been approved by the HFA. For Level II HFAs, Headquarters must review proposed changes and provide its written approval to the HFA before the HFA can implement the change(s).
 - 4. Other information necessary to ensure compliance with program requirements and performance of the HFA in meeting program objectives.

7-4 INCREASES IN UNITS.

- A. AFTER ISSUANCE OF FIRM APPROVAL LETTER. Upon submission of the closing docket, an HFA may require additional units. When the data diskette is loaded into the Risk-Sharing data system and the number of units is different from the Firm Approval Letter, an exception report will be generated. The local HUD Office should immediately adjust or correct the units

reserved for the project. Unless the additional required units exceed the HFA's set-aside, no further action relative to the number of units on the part of the local HUD Office is needed. However, if there is an increase in the mortgage amount, additional credit subsidy must be allocated to the projects in accordance with outstanding instructions.

- B. REQUEST FOR ADDITIONAL ALLOCATION/SET-ASIDE. Increases in the allocation or set-aside may be required as a result of a closing docket submission that includes additional units over and above the Firm Approval Letter amount or that results from a direct request from the HFA to increase its allocation or set-aside.
1. The local HUD Office may increase the allocation in any amount up to the amount in the set-aside at any time after notifying the Designated Office that maintains the set-aside.
 2. Requests for additional units in an amount that exceeds the number of units in the approved set-aside must be made in writing by the HFA to the Designated Office which will, in turn, request units from Headquarters. All determinations by Headquarters to increase or decrease an HFA set-aside will be made with written notification from the Designated Office via an Addendum to the Risk-Sharing Agreement.
- C. ADDENDUM TO RSA. Any changes in the allocation or set-aside must be immediately reflected in the data system and incorporated by addendum into the Risk-Sharing Agreement by the Designated Office. Such addendum will serve as notification to the HFA that their request has been approved.

7-5 LOCAL HUD OFFICE RESPONSIBILITIES

Local HUD Offices will make certain determinations before final endorsement of the mortgage instrument. All other HFA monitoring will be done by the Designated Office. Local Office monitoring responsibilities relative to review of insured advances and cost certification are covered in paragraph 6-2D. The Environmental Officer in the Local HUD Office is responsible for any in-depth monitoring required of Responsible Entities performing environmental reviews of projects subject to HFA Risk-Sharing as well as other HUD programs (see paragraph 7-6.B.3.).

7-6 DESIGNATED OFFICE RESPONSIBILITIES

- A. PIPELINE REVIEWS. The Designated Office is responsible for monitoring each HFA's progress toward closing on projects for which a Firm Approval Letter has been issued as well as

progress on using unit set-asides.

1. Upon notification by Headquarters, Designated Offices will survey the HFAs to determine the number of projects in their current pipeline and estimated date for submission for HUD-retained review determinations and endorsement. The survey must also include an estimate of the number of units and mortgage amount. This survey will assist Headquarters in reallocating units as described in paragraph 2-4I.
2. Headquarters will notify the Local HUD Offices and the Designated Offices of any changes to set-asides under this paragraph and will enter any such changes into the data system. This system will keep track of unit allocations as projects are approved.

B. MONITORING OF RESPONSIBLE ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. Monitoring and training of Responsible Entities (RE) performing environmental reviews on Risk-Sharing projects shall be conducted in accordance with 24 CFR 58.77(d).

1. HUD shall review HFAs' project records for compliance with any special environmental conditions of the Responsible Entity's (RE) environmental review.
2. HUD shall also review project files and conduct limited monitoring of the RE's environmental review for compliance with Part 58, including review of the environmental review record and Request for Release of Funds and Certification form HUD-7015.15.
 - a. Chapter 9 of Handbook 6509.2 REV-4, Community Planning and Development Monitoring Handbook, contains checklists and guidance which may be used in performing the limited environmental review.
 - b. The HUD Environmental Officer is available to provide technical advice, training and monitoring support.
 - c. Copies of all checklists and information obtained from the environmental review shall be provided to the HUD Environmental Officer.
3. In addition, at least once every three years, HUD's Environmental Officer intends to conduct in-depth monitoring of REs to evaluate compliance with Part 58 under all HUD programs subject to assumption authority. Housing staff should notify the HUD Environmental Officer and request an in-

depth monitoring of the procedures used and the environmental review methods applied whenever:

- a. The RE or the HFA has a known history of repeated deficiencies and inadequate compliance with 24 CFR 58;
- b. The RE or the HFA is faced with such problems as environmental litigation, adverse findings from a prior monitoring visit, complaints or local controversy regarding a project, or criticism from other Federal or State agencies; or
- c. Objections to the release of funds have been received.

C. REMOTE MONITORING. Monitoring will be performed by Designated Offices primarily on a post-endorsement basis. Patterns detected by the Designated Office that must be avoided or corrected by the HFA in future processing must be brought to the attention of the HFA in writing. Failure to make modifications or agree to take corrective actions, or to accomplish such modifications or corrective actions, within a time period specified by the Designated Office, may be basis for sanctions against the HFA.

1. Sources. Remote monitoring by the Designated Office will consist of reviewing: a) project underwriting information files provided by the HFA by diskette with the closing docket (as input into the data system by the Local HUD Office); b) project management and servicing information submitted to the Designated Office after the project reaches the management stage; and c) other information contained in the closing docket relative to compliance with underwriting standards and procedures, including the Request for Release of Funds and Certification documenting compliance with environmental obligations in accordance with Part 58.
2. Number of Projects/Files to be Reviewed. Not all projects/files need be reviewed for each HFA. However, a random sample of sufficient projects/files must be reviewed for each HFA to determine whether there is a pattern of deviations or noncompliance. In no event, however, should less than 20-25 percent of the projects/files of an HFA be reviewed; more files should be reviewed if practices or patterns inconsistent with program requirements are detected.
3. Contents of Reviews:
 - a. Project Data Files - Development. The

Designated Office will review the project data submitted by the HFA (as input into the data system by the Local HUD Office) to determine whether the HFA's underwriting assumptions and conclusions, based on the HFA's procedures incorporated by reference into the Risk- Sharing Agreement, are reasonable. This review will include loan-to-value ratios, debt service coverage ratios, financing costs and similar data elements.

- b. Risk Share. The Designated Office will also determine whether the HFA processed in accord with its own procedures or, for projects processed under Level II, the procedures approved by HUD, and whether the risk- share apportionment is consistent with Level I or Level II requirements.
- c. Management, Servicing and Disposition. The Designated Office is responsible for monitoring all management, servicing and disposition activities of the HFA to ascertain that the HFA complies with its procedures and requirements, or for projects processed under Level II, the procedures and requirements approved by HUD.
 - (1) The HFA must submit copies of all physical inspection reports and, for projects not in safe and sanitary condition, summaries of actions required, with target dates, to resolve issues.
 - (2) The HFA must also analyze project annual audited financial statements and provide HUD with summaries of any unresolved findings resulting from such audits including a summary of corrective actions planned, with target dates.
- d. Personnel. The HFA will advise the Designated Office of any changes in its principal personnel (i.e., chief underwriter and chief of loan management, servicing and disposition) and of the names (with specimen signatures) of individuals authorized to commit the HFA under Section 542(c). These names must be incorporated by addendum to the Risk-Sharing Agreement, a copy of which must be sent to the HFA, local HUD Office and Headquarters.

D. ON-SITE MONITORING. To meet the statutory reporting requirements of Congress for the pilot program, the

Designated Office will also schedule periodic (but not less than annually) and as-needed on-site reviews. The basis for these reviews will be the trends determined through remote monitoring and elements that do not lend themselves to remote reviews. If the performance of the HFA has been less than satisfactory or marginally satisfactory, the Designated Office may determine if more frequent reviews are warranted. Representatives of the local HUD Office and Headquarters may participate in the on-site review.

On-site monitoring will involve but not be limited to:

1. Development Staff Responsibilities. The review of HFA activities from origination through closing are subject to monitoring, including but not limited to:
 - a. review of how the HFA complies with its own, or HUD-approved, procedures for project underwriting, and that only procedures incorporated by reference into the Risk-Sharing Agreement are actually used by the HFA;
 - b. review of the adequacy of the HFA's market determinations including its finding of no adverse impact on existing or proposed Federally insured or assisted projects in the area;
 - c. review of the HFA's project records for compliance with any special environmental conditions of the Responsible Entity's (RE) environmental review. HUD staff shall also conduct limited monitoring of the RE's environmental review for compliance with Part 58, including review of the environmental review record and Request for Release of Funds and Certification form HUD-7015.15. Refer to CPD Handbook 6509.2 REV-4 (Community Planning and Development Monitoring Handbook) for checklists and guidance in performing the limited environmental review. Copies of all checklists and information obtained from the environmental review shall be provided to the HUD Environmental Officer.
 - d. construction administration procedures, including inspections (including compliance with lead-based paint requirements), labor standards and prevailing wage compliance, assurance of completion requirements and latent defect escrows;
 - e. insurance of advances and cost certification procedures to determine whether advances were

consistent with construction progress, whether the loan remained in balance by comparing actual disbursements against a project completion schedule, and whether disbursements were supported by bills and/or receipts;

- f. the HFA's procedures and implementation of the quality control plan submitted with its application for participation in the 542(c) program (and/or any amendments), and for monitoring the performance of any outside contractors;
- g. verification that appraisals are performed by Certified General Appraisers, licensed in the State in which the property is located, and that all appraisal functions are completed in accord with the Uniform Standards of Professional Appraisal Practice; and
- h. verification that loan origination records are properly maintained and that loan processing decisions are made by personnel identified in the Risk-Sharing Agreement.

2. Asset Management Staff Responsibilities. The HFA shall be responsible for, among other things, monitoring and determining the compliance of the project owner to assure that the project is maintained in a safe, sanitary, and financially stable condition. The Designated Office will monitor the performance of the HFA to determine its compliance with applicable HUD regulations, the provisions of the Risk-Sharing Agreement between HUD and the HFA, and other guidelines issued by HUD. The Designated Office should determine, among other things, that the HFA is:

- a. Complying with its own procedures for project management, loan servicing and property disposition (including foreclosure and acquisition of defaulted properties), and that only procedures incorporated by reference into the Risk-Sharing Agreement are actually used by the HFA;
- b. Complying with applicable regulations and guidelines, the Risk Sharing Agreement, subsidy contracts and other legal agreements between HUD and the HFA.
- c. Monitoring the performance of the owner and management agent.
- d. Enforcing the provisions of the Regulatory Agreement which is executed between the

mortgagor and the HFA including the affordability requirements of the program and affirmative fair housing marketing and other equal opportunity requirements;

- e. Performing the required annual physical inspections.
- f. Performing the required review of the projects' annual audited financial statement.
- g. Providing HUD with an annual audited financial statement of the HFA in accordance with the requirements of 24 CFR 44, Non-Federal Government Audit Requirements.
- h. Retaining mortgage loan origination documents, and loan servicing documents, mortgage default and claim records in compliance with instructions in this Handbook.

The Designated Office should review the HFA's policies, procedures, and organizational structure to determine if the appropriate mechanisms are in place to provide adequate management oversight of the project owner and management agent. The Designated Office must determine the adequacy of the HFA's response in resolving corrective actions noted on physical inspection reports and/or reviews of annual audited financial statements.

7-7 HEADQUARTERS RESPONSIBILITIES

- A. REMOTE MONITORING. Headquarters, Office of Insured Multifamily Housing Development, will remotely monitor continued eligibility of the HFA for participation in the program. Staff may also participate with Designated Office personnel in on-site monitoring reviews.
- B. ITEMS TO BE MONITORED. Items subject to remote review by Headquarters include:
 - 1. HFA's annual audited financial statement;
 - 2. maintenance of "top-tier" and "A" ratings, as appropriate;
 - 3. establishment and/or maintenance of dedicated accounts (where required pursuant to paragraph 2-2B) in a financial institution acceptable to HUD;
 - 4. updates from Moody's and Standard and Poor's as to pending and actual significant financial or portfolio problems;
 - 5. compliance with the HFA's investment policies and

overall business and financial practices;

6. annual certification that there was no basic change in organization, business activities, financial status or other information submitted with its application for approval (or if changes, the nature of those changes) and that the HFA complied with all eligibility requirements during the past year;
7. the HFA semi-annual report on its portfolio insured under Section 542(c) including the original mortgage amount and outstanding principal balance for all projects underwritten, the status of all projects (current, in default, workout, foreclosure, etc.) and, if applicable, the date(s) bankruptcy was filed and the date(s) the HFA requested dismissal.
8. default ratio consistent with the default ratio for the HFA's entire multifamily portfolio and the default ratio for Section 542(c) program overall;
9. proper billings for proper remittance and collection of MIP; and
10. claims process, including issuance of debentures by the HFA.

C. PROCESSING PROCEDURES. The HFA must notify Headquarters before implementing any change to its standards and procedures, loan terms and conditions and provide Headquarters with copies of any such change within 5 days after it has been approved by the HFA. Headquarters will review changes proposed by the HFAs proposing to approve Level II loans and provide its written approval to the HFA before the HFA can implement the change. All changes must be incorporated by reference in an addendum to the Risk-Sharing Agreement. Copies of the addendum must be sent to the HFA, local HUD Office and Designated Office.

D. COORDINATION WITH DESIGNATED OFFICES AND LOCAL HUD OFFICES. Headquarters will communicate on a continuing basis with Designated Offices and local HUD Offices regarding results of monitoring reviews. This will provide feedback concerning common deficiencies or problems that will result in appropriate changes to program policies and procedures.

7-8 NOTIFICATION OF DEVIATIONS AND NONCOMPLIANCE.

Deviations and noncompliance with program requirements will be communicated to the HFA in writing. The Office issuing the letter must thoroughly document all deviations and noncompliances and retain the documentation in its files. Copies of all such communications must be forwarded to

Headquarters. The HFA must respond to the notification within the time frame specified in the letter, but no later than 30 days after the date of the letter, as to how it has or proposes to resolve the issue.

If, through limited monitoring of environmental activities or by other means, Housing Staff becomes aware of any environmental deficiencies, the HUD Environmental Officer should be notified immediately and appropriate action taken. The Housing Development Director in consultation with the Environmental Officer may schedule in-depth environmental monitoring, require attendance by RE staff at HUD-sponsored or approved training, or suspend or terminate the RE's assumption of the environmental review responsibility.

7-9

SANCTIONS

The Department may impose sanctions for noncompliance with program requirements. The actions for which sanctions may be imposed are identified in Section 266.120 of the regulations. The types of sanctions are identified in Section 266.125. The Office imposing the sanction must thoroughly document the basis for the sanction and maintain the documentation in its files. The HFA has a right to an informal hearing on any sanction imposed.

A. DESIGNATED OFFICE

1. Notification Letter. Sanction may be imposed by the Director of Multifamily Housing (or Director of Housing in Offices with this position) or his/her designee. The letter imposing the sanction should be sent by registered mail, return receipt requested.
2. Informal Hearing. The HFA may request an informal hearing within 10 working days of the date it receives the letter imposing the sanction, and the informal hearing must be conducted within 10 working days of the Office's receipt of the HFA's request for an informal hearing.
3. Conduct of Hearing. The Director of Multifamily of the Designated Office (or Director of Housing in Offices with this position) or his/her designee will serve as the hearing officer. The hearing will be recorded and a transcript of the recording will be made available to the HFA at the HFA's request and expense.
4. Opinion. The hearing officer will render his/her opinion within 10 working days of the informal hearing. The decision of the hearing officer constitutes final HUD action.

B. HEADQUARTERS. Sanctions imposed by Headquarters will be handled through the Mortgagee Review Board (MRB) and

its procedures.

C. COORDINATION AND NOTIFICATION.

1. The Designated Office must inform the local HUD Office(s) in its jurisdiction and Headquarters, respectively, and Headquarters must inform the Designated Office and the local HUD Office(s) respectively, of any pending or imposed sanction action and provide those Offices with a copy of the sanction letter.
2. Headquarters will be responsible for coordinating actions taken by the MRB, whether or not MRB actions resulted from sanctions imposed under the 542(c) program.