

## CHAPTER 8. PERFORMANCE REVIEWS AND SANCTIONS

## 8-1 PERFORMANCE REVIEWS.

- A. General. The FONAP will review the performance of each Indian tribe in carrying out its responsibilities under 24 CFR part 92 whenever determined necessary by the FONAP, but at least annually. In conducting performance reviews, the FONAP will rely primarily on information obtained from the Indian tribe's records and reports, findings from on-site monitoring, audit reports, and information generated from the LOCCS System. Where applicable, the FONAP may also consider relevant information pertaining to an Indian tribe's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of 24 CFR part 92 will be conducted as necessary, with or without prior notice to the Indian tribe. Comprehensive performance reviews under the standards in paragraph (B), below, will be conducted after prior notice to the Indian tribe.
- B. Standards for comprehensive performance review. An Indian tribe's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the Indian tribe:
  - 1. Has committed the HOME funds in the United States Treasury account as required by 24 CFR 92.640 and expended the funds in the United States Treasury account as required by 24 CFR 92.640, and
  - 2. Has met the requirements of 24 CFR part 92, particularly eligible activities and affordability.

## 8-2 CORRECTIVE AND REMEDIAL ACTIONS.

- A. General. The FONAP will use the procedures in this sec. 92.651 in conducting the performance review as provided in 24 CFR 92.650 and in taking corrective and remedial actions.
- B. Performance review.
  - 1. If the FONAP determines preliminarily that the Indian tribe has not met a requirement of 24 CFR part 92, the Indian tribe will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by the FONAP (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

- 2. If the Indian tribe fails to demonstrate to the FONAP's satisfaction that it has met the requirement, the FONAP will

take corrective or remedial action in accordance with Sec. 92.651 or 24 CFR 92.652.

3. Corrective and remedial actions. Corrective or remedial actions for a performance deficiency (failure to meet a provision of 24 CFR part 92) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.
  - a. The FONAP may instruct the Indian tribe to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:
    - (1) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
    - (2) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
    - (3) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;
    - (4) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;
    - (5) Reimbursing its HOME account in any amount not used in accordance with the requirements of 24 CFR part 92; and
    - (6) Suspending disbursement of HOME funds for affected activities.
  - b. The FONAP may also
    - (1) Change the method of payment from an advance to reimbursement basis; and
    - (2) Take other remedies that may be legally available.

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#### 8-3 NOTICE AND OPPORTUNITY FOR A HEARING: SANCTIONS.

- A. If the FONAP finds after reasonable notice and opportunity for hearing that an Indian tribe has failed to comply with any provision of 24 CFR part 92 and until the FONAP is satisfied that there is no longer any such failure to comply:

1. The FONAP shall reduce the funds in the Indian tribe's HOME account by the amount of any expenditures that were not in accordance with the requirements of 24 CFR part 92; and
2. The FONAP may do one or more of the following:
  - a. Prevent withdrawals from the Indian tribe's HOME account for activities affected by the failure to comply; or
  - b. Prohibit the Indian tribe from competing for HOME funds under 24 CFR 92.604; provided, however, that the FONAP may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of sec. 92.652, pending such hearing and a final decision, to the extent the FONAP determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.