

§ 570.493

§ 570.493 HUD's reviews and audits.

(a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

(1) Whether the state has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its action plan under part 91 of this title;

(2) Whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and

(3) Whether the state has made reviews and audits of the units of general local government required by § 570.492.

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state. A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

[57 FR 53397, Nov. 9, 1992, as amended at 61 FR 54922, Oct. 22, 1996]

§ 570.494 Timely distribution of funds by states.

(a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15

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months of the state signing its grant agreement with HUD; and

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

§ 570.495 Reviews and audits response.

(a) If HUD's review and audit under § 570.493 results in a negative determination, or if HUD otherwise determines that a state or unit of general local government has failed to comply with any requirement of this subpart, the state will be given an opportunity to contest the finding and will be requested to submit a plan for corrective action. If the state is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the state's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

(1) Issue a letter of warning that advises the State of the deficiency and puts the state on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Advise the state that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;

(3) Advise the state to suspend or terminate disbursement of funds for a deficient activity or grant;

(4) Advise the state to reimburse its grant in any amounts improperly expended;

(5) Change the method of payment to the state from an advance basis to a reimbursement basis;

(6) Based on the state's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the state. When the use of funds is conditioned, HUD shall

specify the reasons for the conditions and the actions necessary to satisfy the conditions.

(b)(1) Whenever HUD determines that a state or unit of general local government which is a recipient of CDBG funds has failed to comply with section 109 of the Act (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:

- (i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;
- (ii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-7);
- (iii) Exercise the powers and functions provided for in § 570.496; or
- (iv) Take such other action as may be provided by law.

(2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of section 109 of the Act, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.496 Remedies for noncompliance; opportunity for hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in § 570.495 has been taken, and only then if the State or unit of general local government has not made an appropriate or timely response.

(b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart,

until HUD is satisfied that there is no longer failure to comply, HUD shall:

- (i) Terminate payments to the state;
- (ii) Reduce payments for current or future grants to the state by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;
- (iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply;
- (iv) Based on the state's failure to comply with a requirement of this subpart (other than the state's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon appropriate corrective action by the state specified by HUD; or

(v) With respect to a CDBG grant awarded by the state to a unit of general local government, withhold, reduce, or withdraw the grant, require the state to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.

(2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.

(c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the state or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the CDBG funds