

STATE OF OKLAHOMA
Community Development Block Grant
Disaster Recovery Program

Monitoring Handbook
And
Checklist Template

Oklahoma Department of Commerce
Community Development Services

Oklahoma Disaster Funds

Compliance Monitoring Handbook

Introduction

As part of the State's ongoing responsibilities for the administration of U.S. Department of Housing and Urban Development (HUD) federally funded programs, the Oklahoma Department of Commerce (ODOC) will conduct comprehensive monitoring reviews for all programs and activities that fall under the Federal Register Notice, Vol. 78, No. 241, December 16, 2013. The Federal Register Notice provides the regulatory framework established by HUD's State of Oklahoma's Disaster Recovery Program. The State of Oklahoma and its sub-recipients that receive CDBG-DR funds are required to comply with all HUD's rules and regulations concerning program performance and any rules and regulations unique to the Disaster Recovery legislation.

Oklahoma's Department of Commerce monitoring and compliance handbook and checklist provides a guide for areas of programmatic review and responsibilities relating to compliance which will enable the funding sub-recipients and the general public to understand the program, its objectives and methods to ensure success of the program. ODOC understands the importance and need for a compliance program that insures that all participants in the CDBG-DR program are adequately and responsibly carrying out their various ethical, legal, and fiduciary responsibilities in the administration of its programs and activities.

The State of Oklahoma as recipient of CDBG-DR funds is responsible for ensuring that the funds are used in accordance with all applicable program requirements. ODOC understands that the use of sub-recipients does not relieve the State of compliance responsibilities. The policies and procedures are consistent with those used by HUD to monitor state-administered and entitlement programs and are modified as appropriate to monitor specifics of the Disaster Recovery program. Reimbursement of expenditures will be disallowed if local governments cannot properly document the use of funds that do not address disaster-related needs or are clearly not for the greatest need. In such case, the local government receiving the funding would be required to refund the amount of the grant disallowed.

Applicability

The ODOC will be contracting out with Sub recipients to carry out project delivery activities. Due to the limited number of contracts, the ODOC staff will monitor all CDBG-DR contracts by performing daily desk monitoring and on-site monitoring review visits. This compliance manual applies to all federal and state requirements including but not limited to:

1. Citizen Participation
2. National Objectives
3. Eligible Activity
4. Procurement
5. Financial Management
6. Labor Standards
7. Acquisition and Relocation
8. Fair Housing and Equal Opportunity
9. Property Management
10. Lead Based Paint
11. Duplication of Benefits
12. Environmental Reviews

Objectives

HUD describes monitoring as integral management control techniques and a Government Accounting Office (“GAO”) standard. It is an on-going process that assesses the quality of a program over a period of time. Accordingly, the monitoring process shall provide ODOC information about sub-recipients that will be critical for making informed judgments about CDBG-DR program effectiveness and management efficiency. Monitoring is helpful in identifying occurrences of fraud, waste and abuse. ODOC will use monitoring to accomplish the following objectives:

- Provide that all CDBG-DR activities and projects are carried out efficiently, effectively, and in compliance with applicable laws and regulations.
- Assist sub recipients to improve their performance, develop or increase capacity, and augment management and technical skills.
- Ensure that sub recipients with project delivery responsibilities will be monitored through regular reviews and recommend appropriate compliance/management steps are taken to reduce compliance problems and fraud, waste and abuse.
- Ensure compliance roles and responsibilities are clearly established across ODOC and the sub recipient and that care is given to delegating authority to the sub recipient.
- Ensure that sub recipients have written policies and procedures and internal control systems capable of ensuring compliance.
- Individual’s responsible DRGR compliance and ethics programs have adequate resources authority and competencies to carry out their responsibilities.

- Ensure that sub recipients maintain an effective mechanism to report any wrongdoing, including mechanisms to allow for anonymous reporting, and protect against retaliation.
- Enable the State to submit appropriate and documented quarterly reports in HUDs Disaster Recovery Grant Reporting (DRGR) System.
- Enable the State to submit annually financial summary reports in HUD's DRGR system.

Managing the Monitoring Process

ODOC staff will perform final on-site monitoring review visits and final reports for each contract under the Supplemental Disaster Program. ODOC staff shall perform “desk monitoring” on a daily basis by review of submittals in the OK-Grants system for all sub-recipients. “On-site monitoring” is a structured review conducted by ODOC staff at locations where project activities are being carried out and project records are being maintained. An on-site monitoring can be conducted during the course of a project as necessary but definitely a final visit will be conducted. The monitoring review considers all available evidence of conforming to the approved Action Plan and all other federal and state requirements. The attached Checklist Template is utilized to ensure that all requirements are addressed.

ODOC Program Monitors will be thoroughly familiar with the Disaster program to be monitored and knowledgeable of the entities to be monitored. Preparation for monitoring is critical and includes:

1. Understanding 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; and
3. Obtaining other relevant information from previous monitoring reports and issues

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.

ODOC will be in constant communication with our sub recipients. These sub recipients will be provided guidance and the monitoring checklist regarding technical areas which will be carefully reviewed. These include:

- Program Progress
- National Objectives of Benefit to CDBG- eligible beneficiaries
- State requirements
- Affordability Requirements
- Environmental
- Fair Housing and Equal Opportunity

- Labor
- As applicable Homebuyer and Homeowner programs
- As applicable Rental projects
- Administrative and Financial management requirements
- Lead hazards

Conducting the Monitoring

All monitoring by ODOC will consist of the following elements:

A. Notification to the Sub-recipient.

After the monitoring strategy has been developed, communicate with the sub-recipient to establish a date (whether on-site or remote). Once a date has been set, a formal written letter to the sub-recipient will be sent. Unless there are extenuating circumstances, the letter will be sent at least two weeks prior to the monitoring. The letter will discuss the monitoring schedule identify the areas to be reviewed, and the names and titles of the ODOC staff conducting the monitoring. It will also request that the necessary participant staff be available during the monitoring. For on-site monitoring, the letter will confirm the need for any required services (e.g., conference rooms, telephones, and computers). For remote monitoring, the letter will identify specific information to be submitted by the program participant and a timeframe for submission.

B. Entrance Conference. The purpose of the entrance conference is to:

1. Explain how the monitoring will be conducted;
2. Identify and confirm key program participant staff that 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;
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.

Monitoring entails interviews and file reviews to verify and document compliance and performance (and can include physical inspections, if monitoring is conducted on-site). ODOC will utilize checklists designed to capture all appropriate information and guide the review of the monitoring. The Checklist can be found in Attachment 1 of this document.

1. Evaluate!

The monitoring checklist is designed to assess and document compliance with program requirements based upon:

- a. File reviews to determine the accuracy of the information, using both automated and manual data and reports submitted to ODOC by the sub-recipient; and
- b. Interviews with sub-recipient staff, contractors, 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.

Specific responses to the Monitoring Checklist questions are required.

Although this approach can take more time up-front, it yields higher quality reviews that provide a better picture of the sub-recipient grant program for supervisory staff, HUDs Local Office, and others who have a need to review performance. The responses to each question provide important documentation for ODOCs administrative record.

ODOC will use a common sense approach and engage in a thorough evaluation of data and other information to draw defensible and supportable conclusions. ODOC understands that the main objective of monitoring is to assist program participants in carrying out their program responsibilities. “Is the program purpose being accomplished? Are the program beneficiaries being served as intended?” Are program requirements being met?

2. Communicate!

Throughout the monitoring, ODOC will maintain an on-going dialogue with the program participant. This communication will keep 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 ODOC Monitor. It also minimizes the potential for surprises to 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 questions in the Monitoring Checklist form the basis for monitoring conclusions and are supplemented by program participant records copied or reviewed during the monitoring. All Checklist questions will be clearly answered (both the “Yes/No/N/A” box and the “Findings/Comments” 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 (due to time constraints, unexpected problems in other areas, etc.). The “Finding/Comments” section needs to succinctly but explicitly explain this.

D. Exit Conference.

At the end of the monitoring review, ODOC will conduct an exit conference with the appropriate participant officials or staff to discuss preliminary conclusions. 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 ODOC and the participant. The ODOC monitor is responsible for using the Checklist 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.

MONITORING CONCLUSIONS

- A. Decision Categories. As a result of monitoring, ODOC will 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; and/or
 5. There were findings that require corrective actions.

All conclusions – positive or negative - must be supportable, 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 required corrective** action.
 - a. The **condition** describes what was wrong or what the problem was.
 - b. The **criteria** cite the regulatory or statutory requirements that were not met.

- c. The **cause** explains why the condition occurred.
 - d. The **effect** describes what happened because of the condition.
 - 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 to the finding.
2. Concerns. Monitoring concerns brought to the program participant's attention should include the **condition, cause, and effect**. The ODOC monitor will 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.

SANCTIONS

A. The Process

Identify monitoring deficiencies that rise to the level of a "finding" require corrective action. Responsibility rests both with the ODOC Monitor and the entity being monitored. The ODOC monitor must validate that there is sufficient documented information and/or evidence to support a finding of noncompliance. The entity being monitored has a responsibility to determine, or assist the ODOC Monitor 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 ODOCs assessment of the cause and offer a workable solution. In some cases, the ODOC Monitor 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 ODOC to contact the local HUD Office. Additionally, suspected instances of fraud or misconduct should be referred to the HUD Office of the Inspector General for further investigation as appropriate.

B. Attached Monitoring Checklist Template

The questions contained within the Monitoring Checklist Template provide a standardized format structure of the financial and programmatic monitoring compliance areas. The Checklist provides a tool, which allow for fair and consistent monitoring procedures. Use of the Checklist will assure completeness and thoroughness of the monitoring. The Checklist also provides the monitor the information needed to prepare the monitoring letter upon return to the ODOC home offices. The checklist also provides the documentation and information necessary to justify corrective action and further monitoring if necessary. Any findings or problems noted during monitoring will be first noted on the monitoring checklist either next to the questions or noted on the note page at the back of the checklist. These problems or findings will be discussed with appropriate grantee personnel during the Exit Conference.

Understanding the cause serves to outline the action or actions needed to resolve the violation(s). To assist the ODOC monitor in developing corrective actions for findings of noncompliance, Attachment 2 of this Chapter provides a “sanctions table” by program or technical area. ODOCs and HUDs discretion for resolving deficiencies lies within these parameters. An important and fundamental principle of the monitoring process is that ODOC 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.

C. Monitoring Letter

Within 90 days after completion of monitoring, ODOC will send written correspondence to the sub-recipient 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 ODOC staff who performed the monitoring review.

- D. A listing of the program/project/activity areas reviewed (which, in most cases, will repeat 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 (e.g., time constraints, unanticipated problems arising in another area);
- F. monitoring conclusions;
- G. if applicable clearly labeled findings and concerns;
- H. if there are findings, an opportunity for the sub-recipient to demonstrate, within a time prescribed by ODOC, that the participant has, in fact, complied with the requirements;
- I. response time frames, if needed;
- J. an offer of technical assistance, if needed or a description of technical assistance provided during the monitoring.

Because ODOC works in partnership with the entities it funds, generally, the tone of the monitoring letter will be positive, in recognition of our common goal to responsibly and effectively implement Oklahoma Disaster program. ODOCs monitoring letter will not include general statements that the program participant “complied with all applicable rules and regulations.” Such broad general statements can negate ODOCs ability to apply sanctions, if deemed necessary at a later date. 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).”

CLOSING FINDINGS

A. General. Follow-up by ODOC Monitors serves two purposes:

1. It provides an opportunity to evaluate the effectiveness of monitoring efforts in maintaining or improving participant performance; and
2. It enables to determine that required corrective actions are implemented.

GAO considers the monitoring process to be completed only after an identified deficiency has been corrected, the corrective action produces improvements and it is determined that management action is not needed (see GAO/AIMD-00-21.3.1, *Standards for Internal Control in the Federal Government*, “Monitoring”).

- B. Follow-Up. All follow-up actions will 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. In the event that a program participant fails to meet a target date - and has not alerted ODOC as to the reason for not meeting the date (and, if appropriate and agreed-upon, established a new date) - the ODOC monitor will follow-up either by telephone or email, with a reminder. Either form of contact will be documented.
 2. If the program participant has not responded within 30 days after the date of the ODOC Monitor's reminder, a letter will be sent to the program participant requesting the status of the corrective action(s) and warning the participant of the possible consequences (under the applicable program requirements) of a failure to comply. Where the program participant is unresponsive or uncooperative, the ODOC will contact the HUD Local Office for guidance on carrying out progressive sanctions.
 3. When the program participant notifies ODOC that the corrective actions have been implemented, the appropriate Monitoring Staff will review the submitted information within 30 working days. Regardless of whether the response is acceptable (and/or sufficient to close a monitoring finding) or inadequate, a letter will be sent to the program participant within 45 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, ODOC will 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.

BUILDING THE ADMINISTRATIVE RECORD

A. The Administrative Record will include all documents considered, either directly or indirectly, by ODOC in reaching a final decision on an issue. Documents can include contracts, forms, agreements, internal memoranda and notes, correspondence, email, electronic submissions, and any other document considered by the decision-maker or his staff in reaching the decision. It can be used by ODOC to take enforcement actions (e.g., to reduce or terminate a participant's grant) or to defend ODOCs decision if sued. Once the final decision is made, the Administrative Record cannot be supplemented with subsequent documents.

ODOC will ensure that it has a sufficient administrative record that supports its decisions so that ODOC can defend itself against appeals of the decision. In HUD-CPD programs that provide the participant an opportunity for a hearing before an administrative law judge before ODOC can reduce or terminate the grant, ODOC 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. All basic documents will be readily available. ODOC will write correspondence with the realization that it can be used effectively either for or against ODOC 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 ODOC). 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 ODOC makes a finding, a request for corrective action is being conveyed, or ODOC is saying “no” to a request, the letter conveying the decision or action needs will show an understanding of the nature of the issue and explain our reasons.

Adverse actions must cite the authority, e.g., the applicable regulation, OMB Circular, or statutory provision. ODOC will avoid characterizations or personal opinions in written correspondence, whether letters, emails, or internal memorandums. ODOC will answer all correspondence within a reasonable amount of time after received. 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. All attachments will be retained to incoming or outgoing correspondence. All dates, signatures, and concurrences will be clearly legible. These actions will help protect ODOC against allegations of arbitrary and capricious conduct.

C. Telephone calls will be returned promptly. Notes will be taken of such calls, including 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). Errors to Avoid. To the extent that compliance issues arise with a program participant that results in litigation, indefensible or incomplete administrative records can hurt ODOCs ability to prove our case. Some of these problems are fixable; some are not. However, any problems either have to be corrected before ODOC can go to court or a judgment made by the Local HUD Office that a problem is fatal to any enforcement effort. ODOC will be cognizant of the problems that are difficult to fix such as:

- Letters from ODOC that deny a request but do not explain the basis for the denial or cite the wrong authority;
- Letters from ODOC containing unreasonable requests, either in time or action;
- Unfulfilled promises by ODOC;
- Letters that demonstrate lack of understanding of what a participant was asking for or proposing;

- Actions taken by ODOC that do not follow our own procedures including inconsistencies in making findings;
- 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);
- Missing or illegible documents; and/or
- Letters that clear findings without stipulations or verification of compliance.

D. Potential Consequences. All ODOC files will be disclosed in litigation if the program participant requests it. Therefore, ODOC will 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 up to three years after you delete them and, in most cases, must be disclosed in litigation. Voice mail messages are generally retained for up to three calendar days. All monitoring conclusions must be supported.

DUPLICATION OF BENEFITS POLICY

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he or she has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Developments Community Development Block Grant (CDBG-DR) program may not be used for any costs for which Other disaster recovery assistance was previously provided for the same purpose.

A duplication of benefit occurs when a beneficiary receives assistance from multiple sources such as FEMA, NFIP, private insurance companies, non-profits, City State, etc., for cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. The State of Oklahoma (Oklahoma Department of Commerce) Duplication of Benefit (DOB) Policy adheres to the guidelines published in the Federal Register/Vol. 76, No. 221/Wednesday, November 16, 2011.

There are various programs identified in the State CDBG Disaster Recovery Program-Action Plan that is subject to the Duplication of Benefit Policy. The Sub-grantee must calculate the amount of funds previously received or made available to assist with disaster needs. The sub grantee, during the intake/application process, persons, business concerns, and other

entities will be required to disclose all sources of disaster recovery assistance received, and the sub-grantee will verify the amount received.

The sub-grantee at a minimum will:

- Identify the total need of assistance
- Identify the total of all available assistance
- Identify the assistance determined to be not available for the same purpose/activity
- Perform calculation determining the total funds available from other sources.
- Perform calculation determining the maximum eligible award
- Require all applicants to sign a subrogation agreement to repay any assistance later received for the same purpose
- Recapture funds if necessary. If additional need is established, subsequent funds would not be considered a duplication. If additional need is not demonstrated, disaster recovery funds must be recaptured to the extent they are in excess of the need and duplicate other assistance received by the beneficiary for the same purpose.

The Oklahoma Department of Commerce will contract out Disaster Recovery Funds with Units of Local Government (sub-grantees) for the implementation of all project delivery and management activities. In performance of these activities the administrative function of the ODOC will be ensuring that all CDBG-DR requirements are met although the work is performed by the Sub-grantee. The Sub-grantee will perform the required analysis and determine any duplication of benefits (DOB). The Sub-grantee will work with all State, Federal, and private agencies, including FEMA, to obtain information about any assistance received from those agencies and their programs for each applicant. Project Manager Staff at ODOC will monitor the DOB process to ensure that Sub-grantees have conducted and complied with DOB analysis.