

Monitoring Plan

Exhibit 16 – Appeal Process

Appeal process

Availability of appeal process

If a subrecipient disagrees with the Department's finding(s) and/or any corrective action(s) and/or sanction(s) related thereto, as contained in a Monitoring Report Letter, then, pursuant to this Exhibit 16 to the Monitoring Plan, the subrecipient may request that the Department conduct an independent review of the decisions it disputes in the underlying Monitoring Plan by way of appeal.

Details relating to submission of an appeal, including, but not limited to, the manner, format, content, and location of that submission, follow below.

Who can appeal?

Any subrecipient of CDBG-Disaster Recovery funding and/or Mitigation funding (hereinafter, "subrecipient") may appeal a Monitoring Report issued to that subrecipient by the Department, including any corrective action(s), attached thereto, and/or any sanction(s) that may follow therefrom.

What is appealable?

The subrecipient may appeal of any determination in the Department's Monitoring Report Letter that a finding of noncompliance is made and a resulting corrective action(s) or sanction(s) is required. The subrecipient may also appeal the fact and specific requirements of the resulting corrective action(s) and/or sanction(s) required by the underlying Monitoring Report.

The Monitoring Report Letter indicates the project or program areas monitored, any concern(s) and/or finding(s) of noncompliance, the accompanying corrective action(s) and/or sanction(s), and the applicable laws, regulations, policies and/or procedures, and includes a copy of this exhibit, Exhibit 16, Appeal Process.

What is NOT reviewable?

This appeals process prohibits the subrecipient from appealing the methodology and standards found within the applicable laws, regulations, policies and procedures, which are used to identify the finding(s) of noncompliance and establish the resulting corrective action(s) and/or sanction(s).

When must an appeal be filed?

An appeal must be filed no later than 5pm Pacific Time, 30 calendar days from the date the Department issued the underlying Monitoring Report. If the deadline falls on a

weekend or a state or federal holiday, the deadline for submission will be extended to 5pm the next business day.

Note: If an appeal is not received within 30 calendar days, then the appeal will not be accepted and the underlying Monitoring Report shall remain in effect, as issued.

Seeking to stay enforcement of the underlying Monitoring Report Letter, pending appeal

A subrecipient may include in its appeal a request that the Department stay enforcement of any corrective action(s) or sanction(s) otherwise required by the underlying Monitoring Report Letter, pending issuance of an appeal decision. Any request to stay enforcement of the underlying Monitoring Report Letter must be included in and meet the same submission deadline as the associated appeal.

The reviewing official (Fiscal Compliance Section Manager or Designee) for the Department shall, within 10 calendar days of receipt of the appeal, inclusive of weekends and state and federal holidays, have the authority and discretion to stay enforcement of the underlying decision. This determination by the reviewing official is based on whether the stay will promote the ends of justice, considering the imminence of any requirement in the underlying Monitoring Report or sanction that might materially affect the status of the corrective action or sanction to be stayed.

Any subrecipient requesting to stay corrective action(s) and/or sanction(s) included in the Monitoring Report Letter must include the reasons why the subrecipient believes a stay is justified in its appeal for each and every requirement the subrecipient seeks to stay.

The reviewing official's determination of whether to stay one or more of the requirements contained within the underlying Monitoring Report Letter, including any corrective action(s) and/or sanction(s), in part or in whole, and, if so, for what time period, shall be final.

If the reviewing official fails to answer the request for stay by the 10th day following receipt of the requested stay, the underlying decision shall be stayed, automatically and in its entirety, until the reviewing official issues an appeal decision.

Any request to stay the corrective action(s) and/or sanction(s) at issue on appeal is limited to five (5), single-sided pages, on 8.5 x 11-inch paper, using 12-point Arial font, one-inch margins, and, at minimum, 1.15-spaced lines, not including any supporting evidence or exhibits that may be included in support of the requested stay and are limited in length and volume only by what is reasonable and relevant under the circumstances.

General requirements for filing an appeal

Contents of appeal

Include all relevant issues in the appeal: The subrecipient must raise all relevant issues in and at the time of submission of the appeal. Issues that are not raised in and at the time of submission of the appeal cannot be raised at a later time and will be dismissed as untimely.

An appeal must include, at a minimum:

A statement that the document is an appeal, filed pursuant to this exhibit (Exhibit 16) to the Monitoring Plan and any relevant section(s) of the published policies and procedures for the Department's Federal Disaster Relief and Recovery Program;

The name, title, address, telephone number, and e-mail address of the point of contact or representative for the subrecipient;

Identification of the decision(s) for which the appeal is being made;

Identification of the document in which the decision is contained, by title and subject, date of the decision, and name and title of the deciding officer;

Identification of the specific issues within the underlying Monitoring Report disputed by the subrecipient in the subrecipient's appeal;

The subrecipient's reasons for the appeal, including issues of fact, law, regulation, or policy and, if applicable, specifically how underlying decision reached the wrong factual conclusions and/or violates the law, regulation, or policy, in the subrecipient's view;

Identification of the specific change(s) in the underlying Monitoring Report that the subrecipient seeks; and

Any and all documentation or other evidence that supports the appeal.

Format of appeal

Appeals are limited in length and volume only by what is reasonable and relevant under the circumstances. Appeals should be submitted on 8.5 x 11-inch paper, using 12-point Arial font, one-inch margins, and, at minimum, 1.15-spaced lines.

Amendment

The subrecipient may amend the appeal, if the subrecipient needs to include additional information that may be relevant to the subrecipient's argument in the Appeal. Amendments to an appeal must meet the original 30-day submission deadline. The timely submission of an amendment to an Appeal will restart the 30-day timeline for the Department to issue a decision on appeal.

Submission of appeal via e-mail

E-mail

An appeal must be submitted via electronic mail (e-mail) to the appropriate e-mail address, as designated below.

Physical and/or post mail delivery of hardcopy appeals will not be accepted.

Note: Electronic submissions will be considered timely if they are received in the designated appeals mailbox by 5pm Pacific Time on the deadline date.

Where to submit the appeal?

Appeal

[e-mail address]

General Inquiries and Technical Questions regarding the Appeals Process

[e-mail address, if different than above]

Format for e-mail submission of appeal

For an appeal, include the contract number and the phrase "DR Appeal" in the subject line of the e-mail (e.g., "[2017DR#####] DR Appeal"). The appeal submission must include all relevant and required information, be well organized, and comply with the formatting and related limitations and requirements set forth previously.

Documentation shall be submitted to the Department by contract number. If the subrecipient is appealing decisions for multiple contracts, the subrecipient must submit a separate e-mail request and supporting appeal for each contract; all supporting documentation should be carefully categorized, clearly legible, easily understood, and cross-referenced, where necessary. All information relevant to the appeal of the Monitoring Report must be included in this initial submission to be considered on appeal.

Withdrawing an appeal

The subrecipient may withdraw an appeal at any time prior to a decision being issued. If an appeal is withdrawn, then the decision(s) in the underlying Monitoring Report Letter shall remain in effect, as issued, and, the deadline for the appeal having passed, the subrecipient shall have no further recourse to appeal the decision(s) in the underlying Monitoring Report Letter to the Department.

Appeal withdrawals should be submitted to:
[e-mail address; probably same as submission e-mail address]

Conduct of appeal

Reviewing official

The Department's Fiscal Compliance Section Manager or Designee will serve as the reviewing official. The Section Manager may designate an alternate reviewing official, of the same rank, i.e., section chief, or higher within the Department, in order to preserve the independence of the review on appeal, ensure that the timeframe for responding to the appeal is met, or for other reasonable justification.

The reviewing official may consult with other Department officials, including, but not limited to, the Department's attorneys, division chief, deputy director(s), and/or director, during the course of conducting the appeal.

Note: The Section Manager's Designee on an appeal may not be the Compliance Manager, who signed the underlying Monitoring Report Letter.

Independent review

Upon receiving an appeal, the reviewing official must conduct an independent review of the disputed findings, corrective action(s), sanction(s), or other decision(s) in the underlying Monitoring Report Letter. The official conducting the Independent Review will:

- (i) Examine the entire record;
- (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
- (iii) Seek additional evidence, if necessary;
- (iv) Afford the appealing party an opportunity for oral or written argument or both, at the discretion of the reviewing official;
- (v) Make an independent decision upon completion of the review; and
- (vi) Give a copy of the written findings of fact and decisions to the appealing party.

In the conduct of the reviewing official's independent review, the reviewing official has and may exercise the authority to amend the finding(s) and/or sanction(s) in the Monitoring Report Letter in number, type, and/or degree. Therefore, it is incumbent upon the subrecipient to evaluate the merits of the subrecipient's appeal and the likelihood of success on appeal, as compared to the risk of an adverse ruling, prior to submitting an appeal and receiving a decision on that appeal.

The reviewing official will issue a final appeal decision within 30 calendar days of receipt of the timely-filed appeal.

Actions following from decision on appeal

If the appeal is granted, in whole or in part, the finding(s) of noncompliance and/or corresponding corrective action(s) and/or subsequent sanction(s) will be removed, amended, and/or reduced, accordingly, by operation of the appeal decision. Similarly, any stay will be adjusted by and in accordance with the resulting appeal decision. A record of the original Monitoring Report Letter will be kept in the subrecipient's monitoring file, along with the associated appeal decision, as part of the administrative record.

If the original decision in the Monitoring Report Letter is upheld or upheld, as amended, the decision shall be final and any stay will be lifted, in accordance with the decision. No additional administrative review or appeal will be provided and the relevant corrective action(s) and/or sanction(s), if previously stayed, will go into effect, immediately, upon issuance of the appeal decision.