



Issue Date	November 4, 2003
Audit Case Number	2004-BO-1002

TO: Philip W. Holmes, Director, Multifamily Program Center, Manchester Field Office,
1FHMLAT

FROM: Barry L. Savill, Regional Inspector General, Office of Audit, 1AGA

SUBJECT: Family Living Adult Care Center
FHA Project Number 024-22019
Biddeford and Saco, Maine

INTRODUCTION

As requested by your office, we have completed an audit of the Family Living Adult Care Center (FLACCI) located in Biddeford and Saco, Maine. Our audit objectives were to determine whether the owner of FLACCI expended project funds in accordance with applicable regulatory requirements, and to evaluate general management practices in use at FLACCI.

In conducting the audit, we reviewed the applicable Code of Federal Regulations (CFR), Office of Management and Budget (OMB) Circulars, HUD Handbooks, Notices and Directives, and the Regulatory Agreement between HUD and the Mortgagor. We reviewed HUD files and records pertaining to the Family Living project. We also reviewed project bank statements, cancelled checks, general ledgers, and related records and documents maintained at the project site. We interviewed HUD – Office of Multifamily Housing, and on-site FLACCI management personnel to obtain information regarding project operations, financial procedures, and accounting policies. The audit was conducted between April 2002 and October 2002 and the audit work covered the period from June 2000 through February 2002. When appropriate, we extended the audit period to include other periods.

Within 60 days please provide us with a status report, for each recommendation without a management decision, on corrective actions taken or planned, and estimated completion dates. Your status report should explain any instances where you feel corrective action is not necessary. Please furnish us copies of any correspondence or directives issued because of the audit.

Should you or your staff have questions, please contact Michael Motulski, Assistant Regional Inspector General for Audit, in our office at (617) 994-8380.

SUMMARY

Our review disclosed that the Family Living project has suffered serious financial problems, including a default on the HUD-insured mortgage, and had ceased being a profitable entity. These problems were caused by questionable cash distributions (withdrawals) from the project bank accounts by the Owner. We consider these distributions, totaling \$455,439, to be “equity skimming” and to be in violation of applicable Federal statutes and HUD regulations. By means of these distributions, the Owner diverted project funds from June 2000 to February 2002 to other businesses he owned and for personal expenses.

Due to the poor financial condition of the project, and to ensure the safety and continued care of the residents of the project, the State of Maine took control of Family Living in February 2002. In November 2002, pursuant to a decision by HUD to foreclose on the property, the tenants were moved from the facility and the project discontinued operations. As of April 2003, the Owner owed \$3,662,822 in mortgage principal, interest, and miscellaneous charges to HUD. We have included as part of this report an audit finding that provides pertinent details on our review and contains recommendations requiring action by your office.

BACKGROUND

The Family Living project is a Section 232/223(f) assisted-living facility consisting of three separate buildings (48 beds in total), located in Biddeford and Saco, Maine. The mortgage was financed through Greystone Servicing Corporation, and was insured by HUD under Section 223(f) of the National Housing Act (FHA Project Number 024-22019). The original amount of the insured mortgage was \$2,983,500.

Section 232 of the National Housing Act authorized a program of Mortgage Insurance for residential Care Facilities (12 U.S.C. 1715w). The Housing and Community Development Act of 1987 extended Section 223(f) eligibility to the refinancing or purchase of Section 232 facilities. Title 24, Part 232, of the Code of Federal Regulations (CFR) contains the program’s regulatory guidelines.

The Mortgagor of FLACCI is Adult Care Centers of America (Adult Care), located in West Orange, New Jersey. FLACCI, which is a wholly owned subsidiary of Adult Care, was created to operate the Family Living project. Adult Care also owns and operates two other assisted-living facilities; one in Sanford and Springvale Maine, and one in West Orange, New Jersey. The owner of Adult Care (Owner) is also the Chief Executive Officer and President of the Corporation. Local management personnel operated the day-to-day business of each assisted living facility that Adult Care owns, and these local managers reported directly to the Adult Care corporate offices in New Jersey.

FINDING

QUESTIONABLE CASH DISTRIBUTIONS BY OWNER OF FAMILY LIVING PROJECT

The Family Living project ceased being a profitable entity and suffered significant financial problems, including a default on the HUD-insured mortgage, due to questionable cash distributions (withdrawals) from the project bank accounts by the Owner. These distributions, (identified as “equity skimming”) from June 2000 to February 2002, and totaling \$455,439 were in violation of applicable Federal statutes and HUD regulations. In making these distributions, the Owner diverted operating funds of the project to pay for non-project related expenses and personal expenses.

Due to the “equity skimming” and the financial problems encountered, the Family Living project was unable to sufficiently meet its operating expenses. As a result, and to ensure the safety and continued care of the residents, the State of Maine took control of the project in February 2002. Finally, in November 2002, and pursuant to a decision by HUD to foreclose on the property, the tenants were moved from the facility and the project discontinued operations. As of April 2003, the Owner owed \$3,662,822 in mortgage principal, interest, and miscellaneous charges to HUD.

Project Purchased by Owner in June 2000

The Owner closed on the purchase of this property on June 13, 2000. The prior owners, a married couple, had operated the project under the name Family Living, Inc. since 1985. At the time of the purchase, the Owner renamed the project as the Family Living Adult Care Center, Inc. (FLACCI), and he hired the prior owners as the local management team for the project. At the time of the purchase, the new owner did not immediately provide operating funds for the project, and he did not provide checks to the local managers from the new FLACCI checking account until July 2000. The prior owners resigned their positions as managers of FLACCI in September 2000. From this point, the Owner and his assistant, the Vice President and Comptroller of Adult Care, managed FLACCI from their offices in West Orange, NJ, until January 2001 when a new on-site director of FLACCI was hired. There were three FLACCI bank accounts; a regular checking account and a petty cash account with a large regional bank (Bank A), and a regular checking account with another regional bank (Bank B).

Mortgage in Default

The amount due from the Owner of FLACCI to HUD/FHA as reflected on the Statement of Multifamily Mortgage Account (HUD Form 2771) was \$3,662,822, as of April 1, 2003. This total includes the mortgage principal balance, mortgage interest, escrow and reserves, and miscellaneous charges and fees.

From our review of project bank account records and related documents on file at the HUD New Hampshire State Office, we determined that the Owner of the Family Living project made only one mortgage payment to the Mortgagee (Greystone Servicing Corporation). This payment of \$27,394 was made in November 2000. On July 1, 2001, Greystone Servicing Corporation assigned the

mortgage to HUD. Subsequent to the mortgage being assigned, no payments have been made to HUD by the Owner of the project.

Summary of Cash Distributions

The Owner withdrew operating funds of the project in the form of ATM withdrawals, debit memos, wire transfers, debit card purchases at commercial establishments, and checks made payable either to himself, or to other parties/entities associated with Adult Care (the parent corporation of FLACCI). The Owner, who had access to the project bank accounts from June 2000 until February 2002, either withdrew the funds directly from FLACCI accounts, or he prepared checks payable to various payees, including himself. Of the total of \$455,439 in cash distributions, we identified \$392,945 as ineligible project costs and \$62,494 as unsupported project costs. The following chart further summarizes the cash distributions from FLACCI:

Payee	Purpose(s) of Distribution	Amount of Funds Distributed
Adult Care (Corporate)	Deposits to Adult Care accounts for corporate expenses	\$ 101,612
AC-facility NJ / AC-facility ME	Deposits to facilities' accounts for expenses	\$ 90,490
<i>Not Identified</i>	Fed Wire withdrawals/Debit Memo transfers to unidentified recipients	\$ 62,494 <u>1/</u>
Owner/President and CEO of Adult Care	Replacement of lost paychecks, and compensation to Owner/President and CEO.	\$ 47,970
Property Mgmt. Company – Adult Care Offices	Rental/lease of Adult Care corporate offices in New Jersey	\$ 28,469
Various Law / Accounting Firms	Legal and Auditing Fees for Adult Care (corporate)	\$ 25,000
Commercial Loan Companies	Capital loans for Adult Care (corporate) and AC-facility NJ	\$ 24,579
Vice Pres./Comptroller of Adult Care	Replacement of lost paychecks, and compensation to Vice Pres./Comptroller.	\$ 18,960
Bank A and Bank B	Bank fees and charges.	\$ 18,575
Various Commercial Stores and Restaurants in NJ	ATM withdrawals and debit card purchases.	\$ 18,030
Credit card, utility, and car loan companies, and relative of Adult Care Owner/President and CEO	Personal credit card, utility, and car payments, for Owner/President and CEO, and payment to relative.	\$ 7,277
Bank A	Federal Tax (941/ FICA) for Adult Care (corporate)	\$ 4,380
Various / State tax agency, credit collection and capital invest.firm	Miscellaneous Adult Care (corporate) charges	\$ 7,603
	Total	\$ 455,439

1/ distributions representing unsupported project costs

From our review of project documents and discussions with project personnel, we noted that in many instances, the on-site managers were unaware that the Owner had made any cash distributions. The on-site managers became aware of this only when they received the bank statements or notices from the bank related to bank charges and checks that could not be processed

due to insufficient funds. From our review of the bank statements, we noted also that deposits were made to FLACCI accounts from locations both in Maine and New Jersey. However, we were unable to determine the specific breakdown of these deposits as representing either (1) tenant/client payments, (2) transfers from Adult Care (corporate), AC-facility NJ, or AC-facility ME accounts, or (3) payments/advances from the Owner himself.

Distributions to Related Entities and Unidentified Recipients

The Owner withdrew project operating funds in various forms and diverted them to other Adult Care owned assisted living facilities: a residential facility in Sanford and Springvale, Maine (AC-facility ME) and a residential facility in West Orange, New Jersey (AC-facility NJ). Neither of these two facilities were HUD insured nor did they receive any HUD financial assistance. Some examples of these diversions of funds/cash distributions are as follows:

- We determined that the Owner made distributions (or directed that distributions be made) of \$90,490 for expenses related to AC-facility ME and AC-facility NJ. Of the total cash distributed, AC-facility ME received \$66,615, and AC-facility NJ received \$23,875.
- We identified \$62,494 in cash distributions, in the form of Fed Wire Withdrawals and Debit Memo Transfers, paid to unidentified recipients.
- Our analysis showed that \$24,579 in FLACCI funds were used to pay for capital loans associated with some of these other entities. We determined that \$15,625 in cash distributed from FLACCI was used for payment on a capital loan for AC-facility NJ, and \$8,954 in cash distributed from FLACCI was used for payment on a capital loan for the corporate (Adult Care) entity.

In addition, FLACCI incurred a significant amount of bank charges and fees due to the large number of ATM withdrawals, debit memos, wire transfers, and for checks returned for insufficient funds. These charges totaled \$18,575 from June 2000 to February 2002.

HUD Criteria and Regulatory Agreement

The regulatory agreement (between HUD and the owner of the project) is the principal instrument through which HUD protects the Government's interest in the project. The Owner of FLACCI signed a Regulatory Agreement for Multifamily Housing Projects with HUD on June 6, 2000. This Agreement (par. 1) required the owner to agree to make prompt payments due under the note and mortgage. In addition, the owner agreed not to (1) assign or transfer any personal property of the project, including rent, or to pay out any funds except from surplus cash, and only for reasonable operating expenses and necessary repairs [par. 6(b)], or (2) make, receive, or retain any project assets or income of any kind, except from surplus cash, and only when there was no default under the Agreement, the note, or the mortgage [par. 6(e) and 6(e)(2)]. The Agreement [par. 9 (e)] also requires the Owner to provide a complete annual financial report (prepared by a Certified Public Accountant) to HUD within 60 days after the end of each fiscal year.

The Agreement (par. 13f) defines “Surplus Cash” as cash remaining after the mortgage or note payments have been made, and after all other obligations of the project other than the mortgage, have been paid. “Distribution” is defined (par. 13g) as any withdrawal of cash or any assets of the project, and excluding payments for reasonable project expenses. The Agreement (par. 9g) provides that all project funds, including rents and other receipts, are to be withdrawn only in accordance with the terms of the Agreement, and only for project expenses, or for distributions of surplus cash. The Agreement (par. 6 [e][1]) also requires that distributions be made only as of, and after the end of, a semiannual or annual fiscal period.

HUD Criteria and Applicable Statutes

12 U.S.C. Sec. 1715z-4a stipulates that HUD may recover any assets or income used by any person in violation a regulatory agreement applicable to a multifamily project insured by HUD. For purposes of this statute, the “use of assets or income” includes any use not established, by records and documentation, as a reasonable or necessary operating expense of the project. For purposes of a mortgage insured under Title II of the National Housing Act, the term “any person” refers to any person or entity which owns a project, including stockholders, and any beneficial owner, officer, director, or partner of an entity owning the project. The U.S. Government may recover **double the value** of any assets and income of the project that have been used in violation of the regulatory agreement, plus all related costs such as reasonable attorney and auditing fees.

12 U.S.C. Sec. 1715z-19 provides that any owner of a HUD-insured property who willfully uses any funds derived from the property during a period when the mortgage note is in default or the project is in a non-surplus cash position, for any purpose other than actual and necessary project expenses, shall be subject to various penalties, including fines. This statute also applies to agents of the owner and managers, and the use of funds includes authorizing the use of funds, or any part of the rents, assets, proceeds, income, or any other funds of the project.

HUD Directive 4370.1, Review of Annual and Monthly Financial Reports, Chapter 2, Section 4, par. 2-21.F addresses and defines Owners Contributions and Advances as “cash or other assets provided to the project by the owner, (and) the assets are used for operation of the project”. This Directive also notes that advances are made available for a limited time, and therefore are repaid, whereas contributions become a permanent part of the project and are not repaid. The repayment of owner’s advances are not considered to be distributions to the owner, and may only be made from surplus cash at the end of an annual or semi-annual period. Also, repayments of owner advances may not be made if the repayment would bring the project into default, or if the project was already in default.

Bills for Project Expenses Not Paid

Soon after the Owner purchased the Family Living project in June 2000, outstanding bills for project expenses began to accumulate. According to documents prepared by the prior owners (in their capacity as the on-site FLACCI managers from June to September 2000), several problems were identified within the first few months after the Owner purchased the project:

During August 2000,

- Payroll checks (processed during July 2000) were returned from local banks as Not Sufficient Funds (NSF). Bank A initially agreed to honor the payroll checks if they were cashed at that bank. This situation changed in early September 2000, when the bank began to return these employee paychecks to the project, due to NSF.
- The payroll company cancelled the tax service for FLACCI due to non-payment.
- Contractors were not being hired to complete the HUD-required maintenance projects.
- The project Medical Insurance Company (employee insurance) issued a Cancellation Notice due to non-payment.
- Supermarkets in the local area of the Family Living project sent notices stating that project checks would no longer be honored, and (employee) check-cashing privileges were being revoked.
- A local Foodservice Company refused to make any more deliveries to the project due to non-payment on the account.

During September 2000,

- The local gas utility company in the area of the project refused to make further deliveries, due to non-payment on the account.
- Some direct deposits and 401K deposits were not made even though the funds were deducted from employee paychecks.
- A local cable company issued a notice to the Family Living project that its account was 45 days past due.
- A Worker's Compensation insurance company issued a notice to the project that the coverage it was providing would soon be cancelled due to non-payment on the account.
- The Family Living project received notification from the local electrical utility company stating that power would be turned off due to the account not being transferred to the new owners, as required.

On-site management personnel repeatedly notified the owner that project expenses were not always being met, and that the local management was not always aware of the cash withdrawals made by the owner. The delayed payment and non-payment of bills continued after the prior owners left as managers of the project in September 2000. From discussions with on-site personnel who managed the project in 2001 and 2002, we determined that the problems encountered in paying bills and having checks returned from the bank due to insufficient funds remained constant issues for the project. Among the many bills that went unpaid were the payments to the IRS for taxes withheld from employee paychecks. As of May 2002, the owner of the FLACCI owed the Internal Revenue Service (IRS) \$298,771 in taxes and penalties. Virtually all of this total represented FICA taxes. We also noted that the Owner did not file any FLACCI Financial Statements audited by an Independent Public Accountant (IPA) as required by the Regulatory Agreement with HUD.

Owner Had Insufficient Cash at Time of Purchase

The Owner was unable to provide the cash required to complete the sale/purchase of the Family Living project. We noted that during the closing process of the purchase of the project from the prior owners in June 2000, the Owner was unable to provide the cash on hand in order to complete

the transaction. According to the Underwriting Summary Report (HUD Form 92438), dated March 21, 2000, the Owner was required to provide \$934,243 in cash (over and above the mortgage proceeds) to complete his purchase of the project.

Of the \$934,243 total cash required to complete the purchase of the project, the Owner (as the Mortgagor) obtained \$263,339 in Secondary Financing from the seller (previous owners), in March 2000. This financing reduced the cash balance required from the Owner at the time of closing to \$670,904 (\$934,243 less \$263,339). However, prior to the closing in June 2000, the Owner agreed to secure two Notes Payable (totaling \$700,000) to cover the balance of the cash required (\$670,904). The first Note was from the seller for \$550,000, and the second Note was from the real estate broker for \$150,000. The result of these transactions was that the Owner did not provide any of his own funds in cash when he closed on the purchase of the project. In addition, we were unable to determine whether the Owner contributed any of his own funds to the project after the purchase.

Owner Needed Funds to Cover Expenses at Other Properties

We noted instances where the Owner either acknowledged that he needed funds from FLACCI for other entities he owned, or he directed that funds be distributed to these other entities to cover their expenses. In February 2002, when the State of Maine assumed control of AC-facility ME and FLACCI, the Owner was quoted in a local Maine newspaper article as stating “Family Living [FLACCI] was the overall problem...There was not as much revenue as we anticipated”. In the newspaper article, the Owner acknowledged that some revenues from the two Adult Care properties in Maine were used to pay for corporate (Adult Care) office expenses. The Owner referred to these expenses as “bills of the business” and he confirmed that FLACCI funds were used to help support AC-facility NJ. The newspaper article further quotes the Owner: “[AC-facility NJ] is a small operation here [in New Jersey] and I acquired those [AC-facility ME and FLACCI] to pay bills here...[AC-facility ME] and Family Living [FLACCI] were supposed to make money for us”.

Takeover of Family Living Project by State of Maine and Subsequent Events

In February 2002, the State of Maine took control of FLACCI in Biddeford and Saco, Maine, and the AC-facility ME, in Sanford and Springvale, Maine. The Maine Department of Human Services (DHS) decided on this course of action after being contacted by local management at the Family Living project. The Maine Superior Court ordered the takeover of the two properties by the State, at the request of DHS. The State appointed a Receiver to operate the projects, and in August of 2002, the Receiver requested that one of the three homes comprising FLACCI be closed due to insufficient income. By October 2002, the Receiver, the State of Maine, and HUD all agreed to close FLACCI as it was no longer economically viable to keep the project open. Prior to the decision to close the project, HUD initiated foreclosure proceedings against the owner. Subsequent to the foreclosure, HUD advertised the project for sale in January 2003, and the new owners closed on the purchase of the project on April 3, 2003. The purchase price was \$975,000.

Summary

According to documents obtained during the audit, the Family Living project had been in continuous operation for 15 years, as of June 2000, with the prior owners as on-site managers. When the project was sold to the Owner, it experienced financial problems soon afterwards due to the cash distributions made, or directed, by the Owner. These distributions continued on a consistent basis throughout the 20-month period that the Owner maintained operational control of the project; June 2000 to February 2002. Because of the drastic effect on the project's operation from these improper cash distributions, the project was permanently closed as of November 2002; only 9 months after the State of Maine took control of the project and appointed a Receiver.

AUDITEE COMMENTS

The Auditee did not provide any comments in response to the recommendations contained in this report. The Director of the HUD Multifamily Program Center, Manchester Field Office (MMPC), responded to our report and concurred in principle with all of the recommendations (See Appendix B). The Director of MMPC noted that an asset search of the mortgagor would be required to pursue recovery of the amount of the deficiency at the time of the foreclosure sale, and double the amount of the questionable cash distributions (ineligible costs), as identified in the report. Recovery of these amounts would be accomplished by action taken by the U.S. Attorney's Office, on behalf of HUD. The MMPC has already identified the mortgagor and its officers in the Previous Participation Review and Clearance system, and it plans to recommend to HUD Headquarters that debarment proceedings be initiated against the mortgagor and its officers. The Director of MMPC also noted that a suspension order or a Limited Denial of Participation (LDP) order from the Manchester Office may be appropriate if any of the principals identified attempt to participate in HUD programs in the near future. The Director of MMPC stated that the Owner should be contacted and requested to provide additional supporting information regarding the cash distributions to unidentified recipients (unsupported cost). If no supporting data is provided, double the amount of unsupported cost should be recovered from the Owner.

OIG EVALUATION OF AUDITEE COMMENTS

We acknowledge the concurrence of the Director of MMPC with the recommendations in our report, and we have subsequently held discussions with MMPC personnel, and provided them with additional comments. We have suggested that, in light of the responses provided, the Director of MMPC be more specific as to the management decisions reached, the subsequent actions to be taken, and the target dates by which these actions would be completed. As of the publication of this report, the Director of MMPC is in the process of revising the plan of management actions, as we have suggested.

RECOMMENDATIONS

We recommend that the Multifamily Program Center, Manchester Field Office:

- 1A. Pursue recovery from the Owner of the difference (\$2,687,822) between the amount owed to HUD by the Owner (\$3,662,822) and the proceeds of the Foreclosure Sale (\$975,000).
- 1B. Pursue all applicable administrative sanctions against the Owner of FLACCI, including consideration of debarment, limited denial of participation, or suspension.
- 1C. Pursue recovery of double the amount of \$392,945 in questionable cash distributions (ineligible costs) from the Owner of FLACCI, as stipulated in 12 U.S.C. Sec. 1715z-4a.
- 1D. Obtain from the Owner of FLACCI justification supporting the cash distributions to unidentified recipients of \$62,494 (unsupported cost), or pursue recovery of double this amount as stipulated in 12 U.S.C. Sec. 1715z-4a.

SCHEDULE OF INELIGIBLE AND UNSUPPORTED COSTS

RECOMMENDATION	INELIGIBLE <u>1/</u>	UNSUPPORTED <u>2/</u>
1A. Amount Owed to HUD by Owner	\$2,687,822	
1C. Questionable Cash Distributions	\$392,945	
1D. Distributions to Unidentified Recipients		\$62,494

1/ These costs represent the balance of the amount owed to HUD (mortgage principal, interest, and charges) by the Owner for the Family Living project, and the amount of cash distributions charged to the project, a HUD-insured facility, that in our opinion are in violation of HUD regulations and Federal law.

2/ These costs represent cash distributions charged to the Family Living project, a HUD-insured facility, whose eligibility cannot be determined at the time of our audit. These distributions were made to unidentified recipients. Although we were able to determine that these funds were transferred from FLACCI accounts, there was no documentation that identified the purpose of the transfers, or the end use of these funds. Additional supporting documentation needs to be obtained and a legal or administrative determination should be made on the eligibility of these costs.

AUDITEE COMMENTS



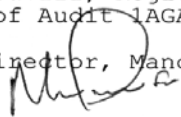
"To Help People Create
Communities of Opportunity"

US Department of Housing and Urban Development

Manchester Field Office
Norris Cotton Federal Building
275 Chestnut Street
Manchester, New Hampshire 03101-2487

DATE: August 25, 2003

MEMORANDUM FOR: Barry L. Savill, Regional Inspector General,
Office of Audit 1AGA

FROM: Philip W. Holmes, Director, Manchester Multifamily Program
Center 1FHMLAT 

RE: Family Living AdultCare Center
Biddeford and Saco, ME
FHA Project No. 024-22019

The Manchester Multifamily Program Center (MMPC) reviewed the draft audit report for the subject project prepared by your office and has the comments listed below. The report makes four recommendations for actions to be taken by the MMPC. It recommends that (1) HUD pursue recovery from the Owner of the difference between the amount realized at the foreclosure sale and the amount owed to HUD by the Owner; (2) HUD pursue all applicable administrative sanctions against the Owner; (3) HUD pursue recovery of double damages against the Owner on account of \$392,945 in ineligible costs identified in your report; and (4) HUD obtain from the Owner justification for \$62,494 in additional cash distributions or pursue a double damages remedy with respect to this amount.

The MMPC concurs in recommendation #1A. This would be an attempt to collect by legal action against the mortgagor, Family Living AdultCare Centers, Inc., the amount of the deficiency at the foreclosure sale. The U.S. Attorney's office in Portland, ME would institute such an action on behalf of HUD. It is recommended that an asset search be conducted prior to commencement of litigation to determine whether the mortgagor has any assets that could be levied upon to collect any judgment issued in favor of HUD. If no assets are found, a further decision should be made whether to continue with this action.

The MMPC concurs in recommendation #1B. This would involve the imposition of various forms of administrative sanctions against the mortgagor and its principals to prevent them from doing business in HUD programs for the foreseeable future. The MMPC already has flagged the mortgagor and its president and chief executive officer in the Previous Participation Review and Clearance system under 24 CFR Part 200, Subpart H. It plans to

forward to HQ a recommendation to institute debarment proceedings against the president/ceo and any other principals identified by your review as having involvement in the wrongdoing identified in your draft report. A suspension order from HQ or a Limited Denial of Participation (LDP) order from the Manchester Office may be appropriate if any of the individuals appear likely to attempt to participate in HUD programs in the near future.

The MMPC concurs in recommendation #1C. This would be the institution by the U.S. Attorney's office on HUD's behalf of a civil action to recover double the amount of funds wrongfully diverted from the project. The action would be brought against the president/ceo and any other individuals identified as having participated in the diversion provided they are liable under the double damages statute, 12 U.S.C. 1715z-4a. It is recommended that an asset search be conducted prior to the institution of any such action to determine whether any of the individual targets has assets against which a judgment could be collected. If no assets are found, a further decision should be made whether to continue with this action.

The MMPC concurs in recommendation #1D. This involves seeking from the Owner additional information regarding additional cash distributions made to determine whether they are allowable project expenses. The MMPC believes that your office, with its investigative background and subpoena power, is in the best position to obtain the additional information needed. This office is willing to assist in that endeavor in any way that it can. If it is determined that some or all of the additional distributions cannot be justified, the amount determined to be ineligible should be added to the recovery sought in the double damages action discussed under recommendation 1C.

Before any civil action is instituted against the president/ceo or any other individual, it is recommended that any and all criminal proceedings being contemplated against such parties first be completed. Such proceedings may (1) produce evidence relevant to any civil action under consideration and (2) result in a court order to provide restitution to HUD which may take the place of a civil action to recover amounts wrongfully diverted.