



City of Cleveland, OH

HOME Investment Partnerships Program



Issue Date: February 12, 2013

Audit Report Number: 2013-CH-1001

TO: Jorgelle Lawson, Director of Community Planning and Development, 5ED

Kelly Anderson

FROM: Kelly Anderson, Regional Inspector General for Audit, Chicago Region, 5AGA

SUBJECT: The City of Cleveland, OH, Lacked Adequate Controls Over Its HOME Investment Partnerships Program

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), results of our review of the City of Cleveland's HOME Investment Partnerships Program.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8L, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (312) 913-8684.



February 12, 2013

The City of Cleveland, OH, Lacked Adequate Controls Over Its HOME Investment Partnerships Program

Highlights

Audit Report 2013-CH-1001

What We Audited and Why

We audited the City of Cleveland's HOME Investment Partnerships Program. We selected the City based upon our analysis of risk factors related to Program grantees in Region 5's¹ jurisdiction, recent media coverage regarding the City's Program, and a request from the U.S. Department of Housing and Urban Development's (HUD) Columbus Office of Community Planning and Development. Our objective was to determine whether the City complied with Federal requirements and its own policies in the administration of its Program. This is the third of three audit reports on the City's Program.

What We Recommend

We recommend that the Director of HUD's Columbus Office require the City to (1) reimburse its Program or HUD, for transmission to the U.S. Department of the Treasury, more than \$220,000, (2) provide sufficient supporting documentation or reimburse its Program nearly \$249,000, and (3) implement adequate procedures and controls to address the findings cited in this audit report.

¹ Region 5 includes the States of Indiana, Illinois, Ohio, Michigan, Minnesota, and Wisconsin.

What We Found

The City did not comply with Federal requirements or its own policies in its contracting processes for housing rehabilitation services and its use of Program funds for Repair-A-Home program projects. As a result, the City (1) used nearly \$79,000 in Program funds for projects that did not follow Federal requirements or its own policies and (2) was unable to support its use of nearly \$254,000 in Program funds for projects.

The City also did not comply with HUD's requirements in (1) its reporting of Program accomplishments in HUD's Integrated Disbursement and Information System and (2) the reimbursement of its Program from non-Federal funds for homes acquired through home-buyer activities that were later sold and ownership of the homes had been transferred. As a result, HUD and the City lacked assurance regarding the accuracy of the City's Program accomplishments reported in HUD's System, and the City did not reimburse its Program \$140,000 in Program funds used for eight homes that were sold and the ownership of the homes had been transferred. Further, the City is at risk of being required to reimburse its Program additional non-Federal funds if the ownership of additional homes acquired under its Housing Trust Fund and Afford-A-Home programs is transferred through foreclosures.

In addition, the City did not comply with HUD's requirements in its use and reporting of its Program income. As a result, the U.S. Department of the Treasury paid more than \$4,000 in unnecessary interest on the Program funds that the City drew down from its HOME investment trust fund treasury account when Program income was available.

TABLE OF CONTENTS

Background and Objective	3
Results of Audit	
Finding 1: The City Lacked Adequate Controls Over Its Contracting Processes for Repair-A-Home Program Projects	5
Finding 2: The City Lacked Adequate Controls Over Its Repair-A-Home Program To Ensure That Households Were Eligible for Assistance	12
Finding 3: The City Lacked Adequate Controls Over Its Reporting in HUD’s System and Home-Buyer Activities	15
Finding 4: The City Lacked Adequate Controls Over Its Use and Reporting of Program Income	22
Scope and Methodology	25
Internal Controls	27
Appendixes	
A. Schedule of Questioned Costs	29
B. Auditee Comments and OIG’s Evaluation	30
C. Applicable Requirements	60
D. The City’s Contracting Processes for Repair-A-Home Program Projects	67
E. Schedule of Program Income That Was Not Reported in a Timely Manner	78

BACKGROUND AND OBJECTIVE

The Program. Authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, the HOME Investment Partnerships Program is funded for the purpose of increasing the supply of affordable standard rental housing; improving substandard housing for existing homeowners; assisting new home buyers through the acquisition, construction, and rehabilitation of housing; and providing tenant-based rental assistance.

The City. Organized under the laws of the State of Ohio, the City of Cleveland is governed by a mayor and a 19-member council, elected to 4-year terms. The City's Department of Community Development is responsible for planning, administering, and evaluating the City's U.S. Department of Housing and Urban Development (HUD) programs. The Department's Division of Neighborhood Services administers the City's Program-funded Repair-A-Home program, which provides housing rehabilitation services to homeowners using a deferred or term loan and a grant. The Housing Development Office administers the City's Program-funded Housing Trust Fund program, which provides gap funding for development projects, including offering interest-free second mortgage loans to low-income home buyers to assist in purchasing homes. The Housing Development Office was part of the Department's Director's Office until January 2011, and then it was moved to the Department's newly formed Division of Neighborhood Development. The Division of Neighborhood Services also administered the City's Program-funded Afford-A-Home program, which assists low-income home buyers in purchasing homes by offering interest-free second mortgage loans. However, in January 2011, the Afford-A-Home program was transferred to the Division of Neighborhood Development. The overall mission of the Department is to improve the quality of life in Cleveland by strengthening neighborhoods through successful housing and commercial rehabilitation efforts, new housing construction, home ownership, and community-focused human services. The City's Program records are located at 601 Lakeside Avenue, Cleveland, OH.

The following table shows the amount of Program funds HUD awarded the City for fiscal years 2007 through 2011.

Fiscal year	Program funds
2007	\$6,268,729
2008	6,081,589
2009	6,763,777
2010	6,743,584
2011	5,943,064
Total	<u>\$31,800,743</u>

Our objective was to determine whether the City complied with Federal requirements and its own policies in its (1) use of Program funds for Repair-A-Home program projects, (2) reporting of Program accomplishments in HUD's Integrated Disbursement and Information System, (3) reimbursing its Program from non-Federal funds for homes acquired through home-buyer activities that were later sold through a sheriff's sale and ownership of the homes had been

transferred within 5 years of the execution of the mortgages and promissory notes, and (4) use and reporting of Program income. This is the third of three audit reports on the City's Program.

RESULTS OF AUDIT

Finding 1: The City Lacked Adequate Controls Over Its Contracting Processes for Repair-A-Home Program Projects

The City did not comply with Federal requirements and its own policies in its contracting processes for housing rehabilitation services for its Program-funded Repair-A-Home program projects. These weaknesses occurred because the City lacked adequate procedures and controls regarding its contracting processes for projects to ensure that it appropriately followed Federal requirements and its own policies. As a result, it (1) did not ensure that written agreements covered more than \$21,000 in Program funds used for four projects, (2) used more than \$57,000 in Program funds for services for 13 projects that was not reasonable, and (3) lacked sufficient documentation to support that its use of nearly \$87,000 in Program funds for the cost of services for 15 projects was reasonable.

The City Did Not Ensure That Written Agreements Covered Its Use of More Than \$21,000 in Program Funds

We reviewed all 15 Program-funded projects the City reported as completed in HUD's Integrated Disbursement and Information System from January 1, 2009, through September 30, 2011. The City used \$728,267 in Program funds for the 15 projects. Contrary to HUD's regulations and its own policies, the City did not ensure that written agreements covered \$21,093 in Program funds used for 4 of the 15 projects.

HUD's regulations at 24 CFR (Code of Federal Regulations) 92.504(a) state that a participating jurisdiction is responsible for ensuring that Program funds are used in accordance with all Program requirements and written agreements. Section 92.504(b) states that before disbursing any Program funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Section 92.504(c)(5)(ii) states that the written agreement between the participating jurisdiction and the homeowner must specify the amount and form of Program assistance.

The City's Department of Community Development's Division of Neighborhood Services' General Specifications Standards states that the bid specifications that are accepted by the homeowner, with the City's approval, become part of the contract between the homeowner and the bidder. All proposed changes and additions to the contract must be submitted in writing to the Division's rehabilitation advisor, rehabilitation supervisor, and rehabilitation inspector, who will consult with the homeowner and then prepare a change order for the

deletions, additions, or both as deemed appropriate, which must be signed by the homeowner; the contractor; and the Division's rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector. The contractor is not to begin work on items included in a change order until notified to proceed by the Division's rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector in writing (the change order).

The City designed its Repair-A-Home program to provide housing rehabilitation services to a homeowner using a combination of a Program-funded deferred or term loan and a grant for the price in the rehabilitation construction contract between the homeowner and the contractor plus a contingency of up to 10 percent. If additional Program funds were needed to complete the housing rehabilitation work on the home, the City would execute a change order to be signed by the homeowner, contractor, and designated City employee and award the additional funds through a grant to the homeowner. However, for 6 of the 15 projects, the City entered into Program-funded deferred or term loans and grant agreements with the homeowners for the original contract price or the original contract price plus a contingency of up to 10 percent of the contract amount but did not amend the grant agreements or enter into additional grant agreements with the homeowners when an additional \$10,214 in Program funds was used to complete the work on the homes. Further, in August 2012, as a result of our audit, the City entered into grant agreements with the homeowners for four of the six projects for the additional Program funds used to complete the work on the homes. Therefore, the City used an additional \$4,873 in Program funds to complete the work on the homes for two projects (\$758 + \$4,115 in Program funds for project numbers 10902 and 11401, respectively) without amending the grant agreements or entering into additional agreements with the homeowners.

The City also used \$4,660 in Program funds for project number 9738 without a rehabilitation construction contract between the homeowner and the contractor and an additional \$11,560 in Program funds to complete the housing rehabilitation work on the home for project number 9104 without a change order signed by the homeowner.

The City Did Not Ensure That the Cost of Housing Rehabilitation Services Was Reasonable

Contrary to Federal requirements, the City awarded 13 contracts for housing rehabilitation services for 13 of the 15 projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent.

HUD's regulations at 24 CFR 85.36(b)(9) state that grantees and subgrantees must maintain records, such as the basis for the contract price, sufficient to detail the significant history of procurement. Section 85.36(c)(1) states that all

procurement transactions will be conducted in a manner providing full and open competition consistent with HUD’s regulations at 24 CFR 85.36. Section 85.36(d)(1) states that when procurement by small purchase is used, price or rate quotations must be obtained from an adequate number of qualified sources. Section 85.36(f)(1) states that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. Grantees must make independent estimates before receiving bids or proposals.

Appendix A, section C.1, of Office of Management and Budget Circular A-87, revised May 10, 2004, requires all costs to be necessary, reasonable, and adequately documented. Section C.2 states that a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

The City used more than \$57,000 in Program funds for services in excess of 110 percent of the City’s estimates for the 13 projects. In addition, it used nearly \$87,000 in Program funds through change orders for all 15 projects without sufficient documentation to support that the cost of the additional services was reasonable. The following table includes the project number, the amount of Program funds the City used for services in excess of 110 percent of the City’s estimates for the 13 projects, and the amount of Program funds used through change orders for the 15 projects without sufficient documentation to support that the cost of the additional services was reasonable.

Project number	Program funds used	
	For excessive costs	Without sufficient documentation
8534		\$2,629
9104	\$2,147	11,560
9571	6,802	8,170
9647	978	3,050
9738	3,831	8,022
10274	193	1,388
10449	7,868	5,851
10874	999	3,700
10895	4,649	6,244
10901	4,410	6,200
10902	5,027	10,914
10922	3,506	4,527
10973	11,200	6,516
11344		1,200
11401	<u>5,825</u>	<u>6,826</u>
Totals	<u>\$57,435</u>	<u>\$86,797</u>

Further, although the City invited three contractors to bid on the housing rehabilitation services for project number 9571, only one contractor submitted a bid. The City awarded the rehabilitation construction contract to the contractor, although it did not receive bids from an adequate number of qualified sources and the contractor's bid was 26.9 percent higher than the City's estimate for the services.

The City also selected contractors to complete housing rehabilitation services for project numbers 9738 and 10901 without procuring the services through full and open competition. Specifically, the homeowner assisted through project number 9738 refused to let the original contractor complete the remaining \$4,660 in services on the contract. Therefore, the City selected another contractor to complete the remaining services without soliciting bids from other contractors. For the homeowner assisted through project number 10901, the City awarded a \$1,420 Community Development Block Grant-funded grant and added \$1,000 to its Program-funded deferred loan to the homeowner to complete additional services. The homeowner requested that a new contractor complete the services. Therefore, the City selected another contractor to complete the services without soliciting bids from other contractors.

We included in appendix D of this report the specific details for the 15 projects for which the City (1) did not ensure that written agreements covered Program funds used, (2) used Program funds for the cost of housing rehabilitation services that was not reasonable, or (3) lacked sufficient documentation to support that its use of Program funds for the cost of services was reasonable.

The City Did Not Ensure That Its Written Agreements With Homeowners Included All of the Necessary Provisions

The City entered into deferred (5) or term (10) loans with the homeowners in the form of mortgages and promissory notes and grant agreements with the homeowners in the form of applications for grant assistance under the City's Community Development Block Grant rehabilitation program. However, contrary to HUD's regulations, the City's written agreements for the projects did not include the housing rehabilitation services to be undertaken, date of completion, or property standards to be met.

HUD's regulations at 24 CFR 92.254(b) state that for rehabilitation not involving acquisition, a project qualifies as affordable housing only if the estimated value of the property after rehabilitation does not exceed 95 percent of the median purchase price for the area and the housing is the principal residence of an owner whose household qualifies as a low-income household at the time Program funds are committed to the housing. Section 92.504(c)(5)(ii) states that the written agreement between the participating jurisdiction and the homeowner must include

the requirements in 24 CFR 92.254(b) and specify the amount and form of Program assistance, rehabilitation work to be undertaken, date of completion, and property standards to be met.

The mortgages and promissory notes (deferred loans) for 5 of the 15 projects did not specify the services to be undertaken or the date of completion. The mortgages and promissory notes (term loans) for the remaining 10 projects did not specify the date of completion or the property standards to be met.

In addition to the City's using its application for grant assistance under the City's Community Development Block Grant rehabilitation program for its Program grant agreements, the grant agreements did not specify the services to be undertaken or the date of completion. Further, although the rehabilitation construction contracts between the homeowners and the contractors for all of the projects specified the amount and form of Program assistance, services to be undertaken, date of completion, and property standards to be met, the City was only a third-party beneficiary under the contracts. Neither the mortgages and promissory notes, grant agreements, nor contracts addressed the income eligibility of the homeowner or the after-rehabilitation value of the property at the time Program funds were committed to the housing. In addition, only the mortgages and promissory notes (deferred loans) for the five projects included principal residency requirements.

The City Lacked Adequate Procedures and Controls

The City (1) did not ensure that written agreements covered Program funds used for 4 projects, (2) awarded 13 contracts for housing rehabilitation services for 13 projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent, (3) selected contractors to complete services for two projects without procuring the services through full and open competition, (4) lacked sufficient documentation to support that the cost of additional services for 15 projects was reasonable, and (5) did not ensure that written agreements for projects included all of the necessary provisions. These weaknesses occurred because the City lacked adequate procedures and controls regarding its contracting processes for projects to ensure that it appropriately followed Federal requirements and its own policies.

For two projects, the City entered into loans and grant agreements with the homeowners for the original housing rehabilitation contract price or the original contract price plus a contingency of up to 10 percent of the contract amount. However, it did not amend the grant agreements or enter into additional grant agreements with the homeowners when additional Program funds were used to complete the housing rehabilitation work on the homes. The commissioner of the City's Department of Community Development's Division of Neighborhood Services stated that she believed the City followed HUD's regulations since it was

a third-party beneficiary under the rehabilitation construction contracts between the homeowners and the contractors and the City executed change orders that amended the contracts. However, although the City was a third-party beneficiary under the contracts between the homeowners and the contractors, the contracts did not constitute a written agreement between the City and the homeowners.

The homeowner assisted through project number 9738 refused to let the original contractor complete the remaining \$4,660 in housing rehabilitation services on the contract. The commissioner of the Division of Neighborhood Services stated that the original contractor agreed to allow another contractor to complete the housing rehabilitation work under its rehabilitation construction contract. However, there was no written agreement between the initial and the new contractor or among the homeowner, the City, and the new contractor for the rehabilitation work completed by the new contractor. Regarding project number 9104, the Department of Community Development's neighborhood stabilization program manager stated that the homeowner and the contractor verbally agreed to changes in the services to be provided under the housing rehabilitation contract between the homeowner and the contractor. The change order form was created to track changes from the original contract and was not processed as a normal change order. Upon completion of the housing rehabilitation work, the homeowner refused to sign the change order.

The commissioner of the City's Division of Neighborhood Services stated that the City was not aware of a Federal requirement that a contractor's bid not exceed a cost estimate by more than 10 percent. Further, the Department's neighborhood stabilization program manager stated that the City believed the bids were reasonable. However, the City could not provide documentation to support that it had a reasonable basis for awarding contracts for housing rehabilitation services for projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent. The commissioner stated that the City used its rehabilitation estimating and specification writing system software to determine the reasonableness of the additional services provided through the change orders. However, it did not develop cost estimates to support that the cost of the services was reasonable. The neighborhood stabilization program manager also stated that the City should have rebid the services for project number 9571.

Finally, the commissioner of the City's Division of Neighborhood Services stated that she believed the written agreements for the projects included all of the necessary provisions since the City's mortgages and promissory notes and grant agreements with the homeowners or the rehabilitation construction contracts between the homeowner and the contractor included the necessary provisions. However, the contracts did not constitute a written agreement between the City and the homeowners. Further, neither the mortgages and promissory notes, grant agreements, nor contracts addressed the income eligibility of the homeowner or the after-rehabilitation value of the property at the time Program funds were committed to the housing.

Conclusion

The City lacked adequate procedures and controls regarding its contracting processes for projects to ensure that it appropriately followed Federal requirements and its own policies. It (1) did not ensure that written agreements covered more than \$21,000 in Program funds used for 4 of the 15 projects, (2) used more than \$57,000 in Program funds for housing rehabilitation services for 13 projects that was not reasonable, and (3) lacked sufficient documentation to support that its use of nearly \$87,000 in Program funds for the cost of services for 15 projects was reasonable.

Recommendations

We recommend that the Director of HUD's Columbus Office of Community Planning and Development require the City to

- 1A. Reimburse its Program \$78,528 from non-Federal funds for the (1) more than \$21,000 in Program funds used for 4 projects not covered by written agreements and (2) more than \$57,000 in Program funds for housing rehabilitation services for 13 projects that was not reasonable.
- 1B. Provide sufficient supporting documentation or reimburse its Program from non-Federal funds, as appropriate, for the \$86,797 in Program funds used for 15 projects for which the City did not have sufficient documentation to demonstrate that the cost of additional housing rehabilitation services was reasonable.
- 1C. Implement adequate procedures and controls, including training for the City's employees, to ensure that (1) it amends grant agreements or enters into additional grant agreements with homeowners when additional Program funds are needed to complete projects, (2) rehabilitation construction contracts between the homeowners and contractors and change orders are properly executed for housing rehabilitation services, (3) it procures the services through full and open competition, (4) costs of services are reasonable, (5) it maintains documentation to sufficiently support that the costs of services are reasonable, and (6) written agreements include all of the necessary provisions.

Finding 2: The City Lacked Adequate Controls Over Its Repair-A-Home Program To Ensure That Households Were Eligible for Assistance

The City did not comply with HUD’s requirements in its use of Program funds for Repair-A-Home program projects. It lacked sufficient income documentation to support that households were eligible for assistance. These weaknesses occurred because the City lacked adequate procedures and controls regarding its projects to ensure that it appropriately followed HUD’s requirements. As a result, the City was unable to support its use of \$193,000 in Program funds for four projects without sufficient documentation to demonstrate that households were income eligible.

The City Lacked Sufficient Documentation To Support Its Use of \$193,000 in Program Funds

We reviewed all 15 Program-funded projects that the City reported as completed in HUD’s Integrated Disbursement and Information System from January 1, 2009, through September 30, 2011. The City used \$728,267 in Program funds for the 15 projects. Contrary to HUD’s requirements, the City lacked sufficient income documentation for 4 of the 15 projects reviewed to support that it used \$193,000 in Program funds for eligible households.

HUD’s regulations at 24 CFR 92.508(a)(3)(v) state that a participating jurisdiction must establish and maintain sufficient records to demonstrate that each household that receives Program funds is income eligible in accordance with 24 CFR 92.203.

The City lacked 3 consecutive months of income documentation for a household member. The following table shows the four projects for which the City did not have sufficient income documentation to demonstrate that households were income eligible.

<i>Project number</i>	<i>Amount of assistance</i>
9104	\$71,480
10874	41,670
10895	46,424
10922	33,426
Total	<u>\$193,000</u>

Further, the City did not ensure that it properly projected households' annual income for 4 of the 15 projects (numbers 10449, 10874, 10895, and 10922) reviewed. The City projected the four households' annual income based entirely or in part on one pay statement. The City also used gross year-to-date income in its calculation of projected annual income rather than using current circumstances to project future income for project numbers 10449, 10895, and 10922.

The City Lacked Adequate Procedures and Controls

The weakness regarding the City's lack of sufficient documentation to support that households were income eligible occurred because the City lacked adequate procedures and controls regarding its projects to ensure that it appropriately followed HUD's requirements.

The City's internal procedures for its Repair-A-Home program required only two pay statements to be maintained for all income-producing members of a household. The commissioner of the City's Department of Community Development's Division of Neighborhood Services stated that the City was not aware that HUD's requirements specified that participating jurisdictions were required to maintain 3 consecutive months' worth of income documentation on which to base a household's projected income calculation. However, the commissioner believed that the City generally complied with the 3-month requirement through a combination of year-to-date pay statement information, Internal Revenue Service Form W-2 statements, tax returns, Social Security information, and other items that were used to verify and substantiate households' income.

Conclusion

The City lacked adequate procedures and controls regarding its projects to ensure that it appropriately followed HUD's requirements. It was unable to support its use of \$193,000 in Program funds for four projects without sufficient documentation to demonstrate that households were income eligible.

Recommendations

We recommend that the Director of HUD's Columbus Office of Community Planning and Development require the City to

- 2A. Provide sufficient supporting documentation or reimburse its Program from non-Federal funds, as appropriate, for the \$193,000 in Program funds used for the four projects for which the City did not have sufficient documentation to demonstrate that households were income eligible.

- 2B. Implement adequate procedures and controls, including training for the City's employees, to ensure that it maintains documentation to sufficiently support the eligibility of households in accordance with HUD's requirements.

Finding 3: The City Lacked Adequate Controls Over Its Reporting in HUD's System and Home-Buyer Activities

The City of Cleveland did not comply with the HUD's requirements in reporting its Program accomplishments in HUD's Integrated Disbursement and Information System. It also did not ensure it reimbursed its Program for homes acquired through home-buyer activities that were later sold through a sheriff's sale. These weaknesses occurred because the City lacked adequate procedures and controls to ensure that it appropriately followed HUD's requirements. As a result, HUD and the City lacked assurance that the City accurately reported Program accomplishments in HUD's System. Further, the City (1) was unable to support whether its use of nearly \$23,000 in Urban Development Action Grant miscellaneous revenues for activity numbers 11379 and 12177 was an eligible initial use of miscellaneous revenues or a reuse of the revenues, (2) did not ensure that its Program was reimbursed \$140,000 for eight homes that were later sold through a sheriff's sale, and (3) did not implement appropriate affordability periods for 30 of the 33 Housing Trust Fund program rental new construction projects and 1 of the 13 Housing Trust Fund program rental rehabilitation projects reviewed. In addition, the City is at risk of being required to reimburse its Program additional non-Federal funds if the ownership of additional homes acquired under its Housing Trust Fund and Afford-A-Home programs is transferred through foreclosures.

The City Did Not Report Program Accomplishments in HUD's System in a Timely Manner

The City did not report Program accomplishments in HUD's System in a timely manner. As of February 28, 2011, the City had 89 open Program-funded activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System. The elapsed time since the City's final drawdown for the activities ranged from 144 to 4,793 days; for 63 activities, the elapsed time was more than 5 years. On April 8, 2011, we notified the City of this issue. As of September 30, 2011, the City had 17 open activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System. The elapsed time since the City's final drawdown for the activities ranged from 804 to 5,007 days; for 15 activities, the elapsed time was more than 5 years.

We reviewed all 17 activities for which, as of September 30, 2011, at least 120 days had elapsed since the City made its final drawdown in HUD's System and all 74 activities for which, as of February 28, 2011, at least 120 days had elapsed since the City made its final drawdown in HUD's System and that were reported as complete in HUD's System as of September 30, 2011. The City provided more than \$4.8 million in Program funds for the 91 activities. The 91 activities included 33 Housing Trust Fund program rental new construction projects, 23

Afford-A-Home program home-buyer activities, 21 Housing Trust Fund program home-buyer activities, and 14 Housing Trust Fund program rental rehabilitation projects. Of the 21 Housing Trust Fund program home-buyer activities, 1 (number 8711) included 5 different properties.

HUD's regulations at 24 CFR 92.502(d)(1) state that complete project completion information must be entered into HUD's System or otherwise provided within 120 days of the final project drawdown.

Paragraph 2-2(C) of HUD Handbook 6511.02, REV-1, states that only the initial use of Urban Development Action Grant miscellaneous revenues must comply with the appropriate eligibility requirements under Title I of the Housing and Community Development Act of 1974 as amended. The reuse of miscellaneous revenues through other recycling mechanisms is not subject to the provisions of the Act.

The questions and answers provided in HUD's former Assistant Secretary for Community Planning and Development's December 10, 1990, memorandum to HUD staff regarding Urban Development Action Grant project management stated that for projects approved before July and September of 1989 and governed by the grant agreement rider provisions in effect before the August 1988 revised regulations, miscellaneous revenues may be spent for any activity eligible under Title I of the Housing and Community Development Act of 1974 as amended. For the 85 projects approved in July and September of 1989 and subject to the revised grant agreement rider provisions, miscellaneous revenues must be made available by the recipient for economic development activities eligible for funding under either the Urban Development Action Grant program or Section 105 of the Act.

As a result of our audit, from March 1, 2011, through May 3, 2012, the City reported 88 of the 91 activities as complete in HUD's System. For 67 of the 88 activities, the City entered completion dates into HUD's System 230 to 5,202 days after it made the final drawdowns. For the remaining 21 activities, the City could not determine when it entered the completion dates into HUD's System. Therefore, we could not determine the number of days, after the City's final drawdown, that it took to enter the completion dates into HUD's System for these activities. However, based on information in HUD's System, as of February 28, 2011, at least 174 to 741 days had elapsed before the City entered the completion dates into HUD's System.

Further, the City determined that two activities (Housing Trust Fund program rental rehabilitation project number 3731 and Housing Trust Fund program home-buyer activity number 10182) were not eligible under the Program. Therefore, the City decommitted the \$22,730 in Program funds and canceled the two activities in HUD's System and then used \$22,730 in Urban Development Action Grant miscellaneous revenues for two new activities (numbers 11379 and 12177) under

the Program. However, it was unable to provide its Urban Development Action Grant agreement with HUD or grant closeout documentation to support how the miscellaneous revenues were to be used or that the use of the miscellaneous revenues was a reuse of the revenues.

The City also determined that it had inappropriately created a second project number for a Housing Trust Fund program rental rehabilitation project when it awarded additional funds for the project. The City transferred the Program funds from project number 6018 to project number 5042 and then canceled project number 6018.

The City Did Not Reimburse Its Program \$140,000 From Non-Federal Funds

As of May 2, 2012, the City had received foreclosure notices for 12 of the 16 homes associated with 12 of the 44 home-buyer activities (23 Afford-A-Home program home-buyer activities plus 21 Housing Trust Fund program home-buyer activities). Therefore, we reviewed the 12 activities, as applicable, to determine whether (1) the City implemented the recapture provisions after June 2003, the date of HUD's HOMEfires, volume 5, number 2; (2) the recapture provisions limited the amount of Program funds the City could recapture to the net proceeds from the sale of a home; and (3) the homes were sold and ownership of the homes had been transferred within 5 years of the execution of the City's mortgages and promissory notes with the home buyers.

The City entered into mortgages and promissory notes with the home buyers for 11 of the 12 activities after June 2003. Further, although the mortgages and promissory notes between the City and the home buyers included affordability requirements, neither the mortgages nor the promissory notes contained language that limited the amount of Program funds the City could recapture to the net proceeds from the sale of a home. The mortgages and promissory notes required repayment of the full amount of the loan upon sale, lease, refinance, or transfer. An additional amount equal to the interest that would have accrued on the second mortgage loan if it had been made at the same interest rate as the first mortgage loan was also due and payable in the event that the borrower sold, leased, refinanced, or transferred the property within the initial 5 years of the execution of the mortgage and promissory note.

As previously stated, the mortgages and promissory notes required repayment of the entire amount of the Program investment upon sale. As of May 25, 2012, 8 of the 11 homes had been sold through a sheriff's sale, and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory notes. The City did not receive any net proceeds from the sale of the eight homes, nor did it reimburse its Program for \$140,000 in Program funds used for the eight homes.

HUD's regulations at 24 CFR 92.252(e) state that Program-assisted units must meet the affordability requirements for not less than the applicable period beginning after project completion. Rental activities that involve rehabilitation or acquisition of existing housing and receive more than \$40,000 in Program assistance per unit or involve rehabilitation that includes financing must remain affordable for at least 15 years. Rental activities that involve new construction or acquisition of newly constructed housing must remain affordable for at least 20 years. HUD's regulations at 92.254(a)(4) state that Program-assisted housing must meet HUD's affordability requirements. Section 92.254(a)(5) states that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards of section 92.254(a)(5).

HUD's HOMEfires, volume 5, number 2, dated June 2003, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid if the ownership of the housing is conveyed pursuant to a foreclosure sale is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture provisions require the entire amount of the Program investment from the home buyer or an amount reduced prorata based on the time the home buyer has owned and occupied the home measured against the affordability period, the amount required by the recapture provisions is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, the participating jurisdiction must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer.

The following table includes the activity number, the date of closing, the date the City entered into the mortgages and promissory notes with the home buyers, the date Program funds were drawn down for the activity in HUD's System, the date the home was sold through a sheriff's sale, the date ownership was transferred, and the amount of assistance provided through loans for the eight homes.

<i>Activity number</i>	<i>Date of closing</i>	<i>Date of mortgage and note</i>	<i>Date of drawdown</i>	<i>Date of sheriff's sale</i>	<i>Date of ownership transfer</i>	<i>Amount of assistance</i>
6840	Aug. 3, 2004	Aug. 3, 2004	Dec. 10, 2004	Oct. 16, 2006	Mar. 20, 2007	10,000
6841	Apr. 9, 2004	Apr. 9, 2004	Sept. 1, 2004	Nov. 19, 2007	Jan. 29, 2008	10,000
6849	Oct. 10, 2002	Mar. 29, 2004	Sept. 15, 2004	July 24, 2006	Nov. 17, 2006	20,000
7765	June 11, 2003	July 21, 2004	Sept. 23, 2004	July 28, 2008	Sept. 15, 2008	20,000
7766	July 29, 2004	July 28, 2004	Sept. 23, 2004	Apr. 21, 2008	Oct. 7, 2008	20,000
8711	July 30, 2004	Nov. 10, 2005	Feb. 10, 2006	Nov. 10, 2008	Jan. 15, 2009	20,000
11054	Oct. 7, 2009	Oct. 7, 2009	Oct. 9, 2009	Mar. 19, 2012	May 3, 2012	20,000
11082	Dec. 1, 2009	Dec. 1, 2009	Dec. 21, 2009	Apr. 11, 2011	Aug. 24, 2011	20,000
Total						\$140,000

Further, the City's loan agreements with the owners for 30 of the 33 Housing Trust Fund program rental new construction projects and 1 of the 13 Housing Trust Fund program rental rehabilitation projects (14 projects less canceled

project number 6018) included an affordability period shorter than required by HUD's regulations at 24 CFR 92.252. The loan agreements for the 30 Housing Trust Fund program rental new construction projects (numbers 6868 through 6897) included an affordability period of 10 years rather than 20 years. The loan agreement for the Housing Trust Fund program rental rehabilitation project (number 8214) included an affordability period of 10 years rather than 15 years.

The City Lacked Adequate Procedures and Controls

The City (1) did not report Program accomplishments in HUD's System in a timely manner, (2) lacked sufficient documentation to support how the Urban Development Action Grant miscellaneous revenues were to be used or that the use of the miscellaneous revenues was a reuse of the miscellaneous revenues, (3) did not implement appropriate recapture provisions for its home-buyer activities, (4) did not ensure that its Program was reimbursed for Program funds used to assist home buyers in purchasing homes that were later sold through a sheriff's sale and ownership of the homes had been transferred, and (5) did not implement appropriate affordability periods for Housing Trust Fund program rental new construction and rehabilitation projects. These weaknesses occurred because the City lacked adequate procedures and controls to ensure that it appropriately followed HUD's requirements.

The Department's neighborhood stabilization program manager stated that HUD's participating jurisdiction open activities reports for the City were provided to the program managers within the Department who oversaw the Housing Trust Fund and Afford-A-Home programs. However, the Department did not have sufficient staff to report Program accomplishments in HUD's System in a timely manner.

The neighborhood stabilization program manager stated that the City was not aware that it was required to include language in its mortgages and promissory notes that limited recapture to the net proceeds from the sale of the homes until HUD conducted an onsite monitoring review in February 2010. Further, the director of the Department stated that although the City was not aware that it had created an additional financial burden on itself, it complied with HUD's requirements and State law regarding foreclosure sales and did not recapture more than the net proceeds from the sale of the homes. As of March 2010, the City was using a revised mortgage and promissory note for its Afford-A-Home home-buyer activities that included language that would limit the amount of Program funds the City could recapture to the net proceeds from the sale of a home.

The neighborhood stabilization program manager also stated that the program managers within the Department who oversaw the Housing Trust Fund program were responsible for reviewing the loan agreements to ensure that the correct affordability periods were used for the rental new construction and rehabilitation projects. The City could not determine why it did not implement appropriate

affordability periods for the projects. However, for the Housing Trust Fund program rental new construction projects, it appeared that the City used the affordability period applicable to rental activities that involve rehabilitation or acquisition of existing housing rather than the affordability period for rental activities that involve new construction or acquisition of newly constructed housing.

Conclusion

HUD and the City lacked assurance regarding the accuracy of the City's Program accomplishments reported in HUD's System. Further, the City (1) was unable to support whether its use of nearly \$23,000 in Urban Development Action Grant miscellaneous revenues for activity numbers 11379 and 12177 was an eligible initial use of miscellaneous revenues or a reuse of the revenues, (2) did not ensure that its Program was reimbursed for \$140,000 in Program funds used for the eight homes that were later sold through a sheriff's sale and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory notes, and (3) did not implement appropriate affordability periods for 30 of the 33 Housing Trust Fund program rental new construction projects and 1 of the 13 Housing Trust Fund program rental rehabilitation projects reviewed. In addition, the City is at risk of being required to reimburse its Program additional non-Federal funds if the ownership of additional homes acquired under its Housing Trust Fund and Afford-A-Home programs is transferred through foreclosures.

Recommendations

We recommend that the Director of HUD's Columbus Office of Community Planning and Development require the City to

- 3A. Reimburse its Program \$140,000 from non-Federal funds for the homes that were sold through a sheriff's sale and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory notes.
- 3B. Provide documentation supporting that the use of the \$22,730 in Urban Development Action Grant miscellaneous revenues for activity numbers 11379 and 12177 was an eligible initial use of miscellaneous revenues or a reuse of the revenues or reimburse its miscellaneous revenues from non-Federal funds for the \$22,730 in miscellaneous revenues used.
- 3C. Implement adequate procedures and controls to ensure that if the ownership of additional homes acquired through its Housing Trust Fund and Afford-A-Home programs is transferred through foreclosures, the City recaptures the entire amount of the Program funds through the receipt of net proceeds from

the sales of the homes or reimburses its Program from non-Federal funds for the Program funds provided to the home buyers as appropriate.

- 3D. Implement adequate procedures and controls to ensure that it includes appropriate affordability periods in its written agreements for Housing Trust Fund program rental new construction and rehabilitation projects.

Finding 4: The City Lacked Adequate Controls Over Its Use and Reporting of Program Income

The City did not always follow HUD's requirements in its use and reporting of Program income. It (1) inappropriately drew down more than \$11.5 million in Program funds from its HOME investment trust fund treasury account from January 1, 2009, through September 30, 2011, when it had available Program income in its HOME investment trust fund local account and (2) did not report nearly \$424,000 in Program income in HUD's Integrated Disbursement and Information System in a timely manner. These weaknesses occurred because the City lacked adequate procedures and controls regarding its administration of Program income to ensure that it followed HUD's requirements. As a result, the U.S. Department of the Treasury paid more than \$4,000 in unnecessary interest on the Program funds that the City drew down from its treasury account when Program income was available. Further, HUD and the City lacked assurance regarding the amount of Program income available to the City.

The City Inappropriately Drew Down Program Funds When it Had Program Income

Contrary to HUD's regulations, the City did not always properly use income generated from its Program. HUD's regulations at 24 CFR 92.502(c)(3) state that a participating jurisdiction must disburse Program funds, including Program income and recaptured Program funds, in its local account before requesting Program funds from its treasury account.

The City inappropriately made 232 drawdowns from its treasury account from January 1, 2009, through September 30, 2011, when it had available Program income in its local account. The drawdowns totaled more than \$11.5 million in Program funds. The U.S. Department of the Treasury paid \$4,166 in unnecessary interest on the more than \$11.5 million in Program funds that the City drew down from its treasury account when Program income was available. We were conservative in our determination of the amount of unnecessary interest that the U.S. Department of the Treasury paid. We used the 10-year U.S. Treasury rate using simple interest on the City's daily balance of Program income. Further, we did not include in the City's daily balance of Program income any Program income received during a month until the first day of the following month.

The City's Reporting of Nearly \$424,000 in Program Income to HUD Was Not Timely

Contrary to HUD's requirements, the City did not always report Program income in HUD's System in a timely manner. HUD's Office of Community Planning and

Development Notice 97-9 requires available Program income to be determined and recorded in HUD's System in periodic intervals not to exceed 30 days.

The City reported more than \$992,000 in Program income in HUD's System through 30 entries from January 1, 2009, through September 30, 2011. However, it exceeded HUD's 30-day reporting requirement by 2 to 67 days 13 times. The City's 13 entries totaled nearly \$424,000 in Program income. Further, the City did not meet its goal of reporting in HUD's System Program income earned during a month by the 15th of the following month. It exceeded its goal by 1 to 100 days 27 times. The table in appendix E of this report shows the month in which the City earned Program income, the amount of Program income earned, the date it reported the Program income in HUD's System, and the number of days it exceeded HUD's 30-day requirement and its own goal as applicable.

The City Lacked Adequate Procedures and Controls

The weaknesses regarding the City's (1) drawing down of Program funds from its treasury account when it had available Program income in its local account and (2) not reporting Program income in HUD's System in a timely manner occurred because the City lacked adequate procedures and controls regarding its administration of Program income to ensure that it followed HUD's requirements.

The City's Department of Community Development did not report Program income in HUD's System until it had a chance to reconcile Program income receipts to Program income data in the City's financial system, which was not available until approximately 1 week after the end of a month. The accounting manager of the Department stated that the City had not met its goal of reporting in HUD's System Program income earned during a month by the 15th of the following month due to the time it took the Department to review the accuracy of Program income receipts and complete its reconciliation. Further, the City changed its financial system in January 2010, and the Department did not have access to data in the City's new financial system from January through April 2010. Therefore, the Department was not able to reconcile its Program income receipts to data in the City's financial system and report in HUD's System Program income earned from January through April 2010 until May 2010. In addition, the City drew down Program funds from its treasury account when it had available Program income in its local account due to not reporting Program income in HUD's System in a timely manner and not using Program income until it was reported in HUD's System.

Conclusion

The City lacked adequate procedures and controls regarding its administration of its Program income to ensure that it appropriately followed HUD's requirements.

It (1) inappropriately drew down more than \$11.5 million in Program funds from its treasury account from January 1, 2009, through September 30, 2011, when it had available Program income in its local account, which resulted in the U.S. Department of the Treasury's paying more than \$4,000 in unnecessary interest, and (2) did not report nearly \$424,000 in Program income in HUD's System in a timely manner. Further, HUD and the City lacked assurance regarding the amount of Program income available to the City.

Recommendations

We recommend that the Director of HUD's Columbus Office of Community Planning and Development require the City to

- 4A. Reimburse HUD, for transmission to the U.S. Treasury, \$4,166 from non-Federal funds for the unnecessary interest the U.S. Department of the Treasury paid on the Program funds that the City drew down from its treasury account when Program income was available.
- 4B. Implement adequate procedures and controls to ensure that available Program income is used for eligible housing activities before Program funds are drawn down from its treasury account.
- 4C. Implement adequate procedures and controls to ensure that it reports Program income in HUD's System in a timely manner.

SCOPE AND METHODOLOGY

To accomplish our objectives, we reviewed

- Applicable laws; Federal regulations at 24 CFR Part 225; HUD's regulations at 24 CFR Parts 85, 92, and 570; HUD's "Building HOME: A Program Primer"; HUD's HOMEfires, volume 5, numbers 2 and 5, and volume 6, number 1; HUD's Technical Guide for Determining Income and Allowances for the Program; HUD Handbook 6511.02, REV-1; HUD's Office of Community Planning and Development Notices 97-9, 98-9, and 12-003; and HUD's former Assistant Secretary for Community Planning and Development's December 10, 1990, memorandum to HUD staff regarding Urban Development Action Grant project management.
- The City's accounting records; audited financial statements for the years ending December 31, 2009, and 2010; data from HUD's Integrated Disbursement and Information System; Program activity files; policies and procedures; organizational chart; consolidated plan for 2005 through 2010 and 2011 through 2016; action plans for program years 2008 to 2009, 2009 to 2010, 2010 to 2011, and 2011 to 2012; and consolidated annual performance and evaluation reports for program years 2008, 2009, and 2010.
- HUD's files for the City.

In addition, we interviewed the City's employees and HUD's staff.

Findings 1 and 2

We selected all 15 Program-funded Repair-A-Home program projects the City reported as completed in HUD's System from January 1, 2009, through September 30, 2011. The City used more than \$728,000 in Program funds for the 15 projects.

Finding 3

We selected all 17 activities for which, as of September 30, 2011, at least 120 days had elapsed since the City made its final drawdown in HUD's System and all 74 Program-funded activities for which, as of February 28, 2011, at least 120 days had elapsed since the City made its final drawdown in HUD's System and that were reported as complete in HUD's System as of September 30, 2011. The City provided more than \$4.8 million in Program funds for the 91 activities. The 91 activities included 33 Housing Trust Fund program rental new construction projects, 23 Afford-A-Home program home-buyer activities, 21 Housing Trust Fund program home-buyer activities, and 14 Housing Trust Fund program rental rehabilitation projects.

We relied in part on data maintained by the City for its Program and data in HUD's system. Although we did not perform detailed assessments of the reliability of the data, we performed minimal levels of testing and found the data to be adequately reliable for our purposes.

We performed our onsite audit work from October 2011 through March 2012 at the City's offices located at 601 Lakeside Avenue, Cleveland, OH. The audit covered the period January 2009 through September 2011 and was expanded as determined necessary.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

INTERNAL CONTROLS

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Effectiveness and efficiency of operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Reliability of financial reporting – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiencies

Based on our review, we believe that the following items are significant deficiencies. The City lacked adequate procedures and controls to ensure that

- Written agreements covered Program funds used for Repair-A-Home program projects, (2) contracts for housing rehabilitation services were not awarded for projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent, (3) it procured contractors to complete services for projects through full and open competition, (4) it maintained sufficient documentation to support that the cost of additional services for projects was reasonable, and (5) written agreements for projects included all of the necessary provisions (see finding 1).
- It maintained sufficient documentation to support that households were income eligible (see finding 2).
- It reported Program accomplishments in HUD's Integrated Disbursement and Information System in a timely manner, (2) it maintained sufficient documentation to support whether its use of Urban Development Action Grant miscellaneous revenues for activities was an eligible initial use of miscellaneous revenues or a reuse of the revenues, (3) its Program was reimbursed for Program funds used to assist home buyers in purchasing homes that were later sold through a sheriff's sale and ownership of the homes had been transferred, and (4) it implemented appropriate affordability periods for Housing Trust Fund program rental new construction and rehabilitation projects (see finding 3).
- It complied with HUD's requirements in its use and reporting of Program income (see finding 4).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$78,528	
1B ²		\$70,364
2A ³		155,668
3A	140,000	
3B		<u>22,730</u>
4A	<u>4,166</u>	
Totals	<u>\$222,694</u>	<u>\$248,762</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

² We did not include \$16,433 in Program funds used for three projects for which the City did not have sufficient documentation to demonstrate that the costs of additional housing rehabilitation services were reasonable since we included it in recommendation 1A of this report.

³ We did not include \$37,332 in Program funds used for the four projects for which the City did not have sufficient documentation to demonstrate that households were income eligible since we included it in recommendation 1A (\$11,301), recommendation 1B (\$14,471), or recommendations 1A and 1B (\$11,560) of this report.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



City of Cleveland
Frank Jackson, Mayor

Department of Community Development
Daryl P. Rush, Director
601 Lakeside Avenue, Room 320
Cleveland, Ohio 44114-1070
216-664-4000
www.city.cleveland.oh.us

August 9, 2012

Transmitted via e-mail

Ms. Kelly Anderson
Regional Inspector General for Audit, SAGA
United States Department of HUD-Office of Inspector General
77 West Jackson Boulevard, Room 2646
Chicago, Illinois 60604

Re: Management Response to Audit Report Number 2012-CH101X

Dear Ms. Anderson:

I am in receipt of the discussion draft of the captioned audit, which was issued on July 25, 2012. I am writing to submit to you the management response of the City of Cleveland to the discussion draft audit report.

During the audit, our staff provided your office with records related to the HOME Investment Partnership Program.

Your review generated four (4) draft findings regarding the city's administration of the HOME Investment Partnership Program, for which the City of Cleveland's Management Responses are enclosed with this letter. While the City has reservations regarding the specifics of the findings and believes that it has met both the spirit and the letter of HUD regulations in its administration of the HOME funded programs, I would like to express my appreciation to you and your staff for your thorough review. If you have any questions or require further information please feel free to contact me at (216) 664-4288.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Daryl P. Rush".

Daryl P. Rush, Director
Department of Community Development

Enclosure:

Ref to OIG Evaluation

Auditee Comments

Comments 1
and 2

Comment 3

Comment 4

City Of Cleveland Management Response to OIG Discussion Draft, Audit Report Number: 2012-CH101X, issued July 25, 2012

The discussion draft audit of the City of Cleveland's HOME Investment Partnerships Program stated findings and made recommendations with respect to each of those findings. Below is the management's response to each finding and recommendation.

Finding 1: The City Lacked Adequate Controls Over Its Contracting Processes for Repair-A-Home Program Projects

Management Response. Disagree.

The City disagrees with the conclusions that its written agreements were inadequate and that costs incurred under its Repair-A-Home Program were unreasonable. The City addresses in more detail below each subpart within Finding 1.

Finding 1(A): The City did not ensure that written agreements covered its use of more than \$26,000 in program funds

Management Response. Disagree.

The City disagrees that its written agreements do not cover the \$10,214 in additional assistance associated with Project numbers 9571, 10895, 10902, 10922, 10973, and 11401. Paragraph 14.1(c) of the Rehabilitation Construction Contract, for which the City is a third-party beneficiary with an enforceable interest, allows the contract to be modified by written change order. Thus, the approved Change Orders amended the existing written agreements for those activities. Nevertheless, the City will contact the six homeowners to execute updated grant agreements covering the additional assistance for each activity. The updated and executed grant agreements for Project numbers 9571, 10895, 10922, and 10973 are attached as Appendix A.

The homeowner assisted through Project number 9738 refused to let the original contractor complete the remaining \$4,660 of housing rehabilitation services on the contract. A second contractor was selected to complete the work, and the original contractor agreed to the second contractor finishing out the work under the original contractor's contract. The file contains documentation to show that the homeowner refused to let the original contractor back on the job for reasons not related to the quality of the work, and a second contractor was used to complete the remaining specification items. The second contractor provided the necessary sub-skills to complete the remaining scope of work under the existing contract. 24 CFR 85.36(d)(4)(B) allows for noncompetitive procurement where the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. The City's competitive processes, which include a site visit, bid opening, and certification of funds, takes 30-45 days. The work done by the second contractor including issues that created exigency: termite infestation, a leaking furnace, and security doors that wouldn't lock correctly. Under 24 CFR 85.36(d)(4)(B), noncompetitive procurement was appropriate. The work was completed in a quality manner, accepted by the owner, and the job was closed.

Ref to OIG Evaluation

Auditee Comments

Comment 5

The City acknowledges that for Project number 9104, \$11,560 in program costs were incurred in a change order that was not agreed to via homeowner signature. The homeowner did orally agree to the work as stated in the change order, but later refused to sign the change order form. The file contains documentation to show that the homeowner declined to sign for any work completed in the home. While the homeowner must approve of the work, however, Section 14.1(b) of the contract does not explicitly require the homeowner's signature on the change order. The work performed was inspected and approved as meeting program standards before funds were released, and the file was administratively closed and payment approved.

24 CFR 85.36(b)(11) provides:

Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

Comments 5 and 6

Consistent with this provision, the City appropriately resolved the issue arising out of the procurement by administratively closing the file and approving payment for work that had been inspected and approved by the City's inspector.

Finding 1(B) The City did not ensure that the cost of housing rehabilitation services was reasonable.

Management Response. Disagree.

The Discussion Draft maintains that the City must repay its Program \$57,435 for excessive costs based on a definition of cost reasonableness as being any costs that exceed the City's estimate by more than 10 percent. To the City's knowledge, no rule or regulation specifically defines costs that are more than 10 percent over an estimate as presumptively unreasonable.

As the Discussion Draft correctly notes, Appendix A, section C.1, of 2 CFR Part 225 requires costs to be necessary, reasonable, and adequately documented. Section C.2 says that a cost is reasonable if it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. But the same section states that consideration must also be given to market prices for comparable goods or services. Section III of HUD's Office of Community Planning and Development Notice 98-9 states that when procuring property or services with Program funds, local governments must use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36.

Ref to OIG Evaluation

Auditee Comments

Comment 7
Comments 6, 7,
and 8
Comment 7

The Commissioner for Neighborhood Services had stated to OIG that the City’s own policy was to accept bids up to 30 percent more than the City’s estimate. The City agrees that costs must be necessary, reasonable, and adequately documented, and the 30 percent threshold serves the goal of limiting costs to those that are reasonable. Furthermore, in instances where more than one bid was returned, and the City selected the lowest bid, the fact that all bids exceeded the City’s estimate by an arbitrary 10 percent standard is evidence that the market prices for comparable goods and services exceeded that which was reflected in the City’s estimate. The City is following Federal, State, and local laws, including the standards identified in 24 CFR 85.36.

Imposing a specific rule that appears nowhere in the regulations or rules—that a bid exceeding the City’s estimate by more than 10 percent is *ipso facto* unreasonable—is rulemaking, not regulatory interpretation. This threshold is wholly arbitrary, as evidenced by the Discussion Draft’s lack of citation to any rule or regulation contrary to the City’s local procurement process. Moreover, this rule is being applied retroactively.

Comment 7

The City’s 30 percent threshold meets the goal of ensuring reasonableness. In the absence of any rule, regulation, or local procurement procedure explicitly defining reasonable as being no more than 10 percent over the estimate, the City believes that OIG is improperly imposing this standard.

Comment 9

Project number 10973 was the only project that was more than 30 percent over City’s estimate. The City will evaluate the estimate and costs and requests additional time to provide evidence that this amount was reasonable. As to the \$86,797 in “undocumented costs,” the City has begun evaluating the cost of the work done using the RESPEC cost-estimating software and other sources to provide evidence of reasonableness. Table 1 compares the “undocumented costs” presented in the Discussion Draft with the City’s estimate (based on RESPEC). Appendix B contains copies of the RESPEC In-House Estimate used to document the City’s estimate in Table 1.

Ref to OIG Evaluation

Auditee Comments

Comment 10

Comment 11

Comment 12

Comment 13

Comment 14

Comments 10 and 15

Comments 2 and 16

TABLE 1

IDIS #	Homeowner	Address	"Undocumented Costs" per Audit Report	City's Estimate (from RESPEC)	Percent Over (or Under) City's Estimate
9571			\$8,170.00	\$6,925.00	17.98%
9647			\$3,050.00	\$4,574.36	-33.32%
9738			\$8,022.00	\$7,495.42	7.03%
8534			\$2,629.00	\$2,575.39	2.08%
9104			\$11,560.00	\$10,184.80	13.50%
10274			\$1,388.00	\$1,180.15	17.61%
10449			\$5,851.00	\$4,831.50	21.10%
10874			\$3,700.00	\$3,046.00	21.47%
10895			\$6,244.00	\$4,939.00	26.42%
10901			\$6,200.00	\$7,654.00	-19.00%
10902			\$10,914.00	\$11,802.37	-7.53%
10922			\$4,527.00	\$4,779.84	-5.29%
10973			\$6,516.00	\$7,318.55	-10.97%
11344			\$1,200.00	\$1,524.00	-21.26%
11401			\$6,826.00	5020.95	35.95%

Thus, the City's initial investigation has yielded only Project number 11401 that exceeded the City's policy for reasonableness. The City requests that the remaining 14 Projects be removed from the list of projects comprising the \$86,797 of program funds used without sufficient documentation on page 8 of the Discussion Draft.

Finding 1 (C) The City did not ensure that its written agreements with homeowners included all the necessary provisions

Management Response. Disagree.

As described in the Discussion Draft, the rehabilitation construction contracts between the homeowners and the contractors for all projects specified the amount and form of program assistance, services to be undertaken, date of completion, and property standards to be met. The contracts further required compliance with all federal laws and regulations. Because the contract specifically recognizes the intent to benefit the City as a third-party beneficiary, the City has

Ref to OIG Evaluation

Auditee Comments

Comments 2
and 16
Comments 2,
16, and 17
Comment 18

enforceable rights under the contract under Ohio law. *Hill v. Sonitrol of Southwestern Ohio, Inc.*, 36 Ohio St. 3d 36, 40 (1988). Consequently, the written agreements with homeowners included all of the necessary provisions.

The City nevertheless has revised its written agreements and now has a direct contract with the homeowner. Additionally, the contracts, mortgages, and promissory notes all explicitly contain the housing rehabilitation services to be undertaken, date of completion, property standards to be met, estimated value of the property after rehabilitation, and the principal residency requirements.

Finding 1(D): The City lacked adequate procedures and controls.

Management Response. Disagree.

Comments 2,
16, and 17
Comments 7
and 9

Through the combination of grant agreements, construction contracts, change orders, and other supporting documents in the file, the City's written agreements contained all required HOME provisions. Additionally, the City's processes and policies have generally ensured that the costs of services are reasonable through its policy of only accepting bids that are no more than 30% over the City's estimate. Nevertheless, the City has updated its procedures, policies, and controls, as well as its written agreements, as evidenced in Appendices C and D, respectively.¹

Recommendations

Comment 19
Comments 1, 2,
and 3
Comment 4
Comments 5
and 6
Comment 3

- 1A. The City disagrees that it must reimburse its Program \$83,869 from non-Federal funds. Out of the 8 projects associated with the \$26,000 in Program funds referenced in this recommendation, 6 had change orders that effectively amended the construction agreement. Project number 9738 was completed by a second contractor under the original contractor's agreement. Project number 9104 was administratively approved because the homeowner, who had orally agreed to the work, later refused to sign the change order. The City is nevertheless obtaining updated grant agreements for the work that was not part of the original grant agreement. Updated grant agreements for Project numbers 9571, 10895, 10922, and 10973 are attached as Appendix A.

Comments 7
and 9

As to the \$57,435 in alleged unreasonable costs, the costs associated with 12 of the 13 projects were less than 30 percent over the City's estimate, which was the City's policy for establishing reasonableness, and there is no HOME regulatory requirement defining reasonableness as more than 10 percent over the City's estimate. As to the \$11,200 associated with Project number 10973, the City requests additional time to provide evidence of cost reasonableness.

¹ The cost reasonableness provisions in the City's RAH Bidding Policies and Procedures were modified by the April 12, 2011 memorandum from Chris Boles, Acting Commissioner, Division of Neighborhood Services. The memorandum is also included in Appendix C.

Ref to OIG Evaluation

Auditee Comments

Comments 10,
11, 12, 13, 14,
and 15
Comment 20
Comment 18

- 1B. The City’s initial investigation has provided evidence in Appendix B establishing the cost reasonableness of 13 out of the 15 activities. The City requests additional time to provide evidence of cost reasonableness as to Project number 11401.
- 1C. Although the City maintains that its written agreements, controls for cost reasonableness, and competitive bidding processes were adequate, the City (1) has put in place written agreements (Appendix D); (2) has implemented new processes regarding competitive bidding (Appendix C); and (3) has adopted new policies designed to ensure cost reasonableness (also Appendix C). The City has now adopted a 20% threshold for cost reasonableness.

Finding 2: The City lacked adequate controls over its Repair-A-Home Program to ensure that households were eligible for assistance.

Management Response. Disagree.

Comment 21

As stated below, the City’s income verification documentation was adequate for ensuring that households were eligible for assistance, and the four households specifically identified in the Discussion Draft were eligible for assistance.

Finding 2(A): The City lacked sufficient documentation to support its use of \$193,000 in program funds.

Management Response. Disagree.

Comment 22

Comments 21
and 22
Comment 18

The income verification method used in Cleveland’s Repair-A-Home Program meets or exceeds the guidelines under 24 CFR 92.203 and the *Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition)* (Technical Guide). Consequently, the City’s procedures and controls for maintaining documentation to support eligibility in accordance with HUD requirements are not inadequate. Nevertheless, the City has implemented new controls for the approval of Repair-A-Home projects to further strengthen its program.

Comments 21
and 22

The City contends it has abided by HUD’s guidelines found within Chapter 2 of the Technical Guide. The applicable guideline reads:

PJs may develop their own verification procedures provided they collect source documentation and that this documentation is sufficient for HUD to monitor program compliance.

Comments 21,
22, and 23

Accordingly, the City had a procedure requiring the submission by the applicants of two (2) pay stubs, previous year W2s, and previous year 1040 documents. By reviewing YTD information on the pay stubs and/or the W2 or 1040 documents (especially important for income calculations conducted during the first quarter of a calendar year) the City procedure was designed to capture information documenting at least three consecutive months’ worth of income information.

Ref to OIG Evaluation

Auditee Comments

Comments 21,
22, and 23

A summary of the file contents and income calculation for Project numbers 9104, 10874, 10895, and 10922 is attached as Appendix E. As shown by these documents, all four households are comfortably within the HOME income guidelines based on the documentation described above. The City properly project annual income using the recent paystubs and year-to-date information that clearly showed a consistent bi-weekly pay.

Comments 21,
22, and 23

Despite the City’s compliance with the requirement that it document at least three consecutive months of income information, OIG maintains that the City’s required documentation was inadequate. In effect, this is another a new rule: that three consecutive months of income information in the form of year-to-date pay statements or W2’s is inadequate, and that what is required is actual pay stubs issued over that three-month period. And although HUD regularly monitors the City’s programs on an annual basis, the City was never given notice of this new rule until Phase I of the OIG Audit; nor can the City find evidence of this rule being applied in this region or any other region before 2010.

Comment 24

The most recent edition of HUD’s Technical Guide was released in January 2005. It is this edition that OIG uses to conclude that the income documentation required by the City during the audit period was inadequate.

Comment 25

Staff from the City’s Department of Community Development attended a training on Determining Income and Allowances in 2007—two years after HUD’s Technical Guide was released. The training was sponsored by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development. The training manual, released in June 2006 (seventeen months after the Technical Guide’s most recent edition was released), was prepared by ICF International under contract to the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, Office of Affordable Housing Programs (OAHP) (Appendix F). The presentation slides included in the training manual do not mention any requirement for 90 days of pay documentation. More importantly, the City’s documentation requirements mirror those in the manual’s exercises:

Notably, the very first example appears under the heading “Income Determination & Documentation Exercise” (emphasis added):

- Bob and Betty Martinez have two children. Mr. Martinez W2 lists annual income as \$24,000. Ms. Martinez is a part-time waitress and her W2 lists income as \$5,000. She also has tips of \$1,200. Their 16 year old son earns \$2,000 from his part-time job.

Comment 25

While OIG’s interpretation of the Technical Guide may or may not mean Mr. Martinez’ W2 is acceptable (it is unclear whether his employment is seasonal or not), OIG’s interpretation would mean that a W2 is inadequate to allow projection of Ms. Martinez income. Additionally, none of the exercises require the 90 days of income documentation as interpreted in the Discussion Draft.

- The training manual also includes a 30-minute Income Calculation Exercise that has the objective of making participants “understand how to calculate and certify income and assets using the Section 8 (Part 5) definition of income. The income documentation

Ref to OIG Evaluation

Auditee Comments

Comment 25

provided includes only 3 pay stubs, even though the applicant's employment income is paid on a bi-monthly basis (under OIG's interpretation, an additional 3 pay stubs would be necessary).

Comment 18

Through these examples, the training manual—approved by HUD 17 months after issuing the Technical Guide—clarifies that a W2 is acceptable to project income, as is 45 days of pay stubs. The City modified its policies in 2010 to require documentation consistent with OIG's 90-day interpretation of the Technical Guide. The City requests, however, that it not be retroactively held to that standard, and that it be held to a standard consistent with the Technical Guide and what was presented in HUD-approved training courses at the time.

Comment 18

Finding 2(B): The City lacked adequate procedures and controls.

Notwithstanding the position stated above, the City has already revised its income verification and income projection requirements. Beginning October 1, 2010, homeowners assisted with HOME funds that have consistent incomes must provide three consecutive months of pay stubs to support income projections and confirm program eligibility. The revised policy and procedure is included in Appendix G. The revised policy also includes language for projecting income for families and individuals whose income is not consistent. We ask that HUD acknowledge the City's good faith efforts in making these changes and that if, after review, HUD determines that modifications to the City's policies are needed, all activities administered between October 1, 2010 and the date of a final policy agreement by the City and HUD be accepted as complying with HOME income verification rules.

1. Changes to Program file contents:
 - a. An eligibility form has been created and is now placed in all Program files. This form provides a concise format for collecting, organizing, and presenting documentation on how staff determined eligibility for the client, as well as providing a means for calculating income.
 - b. Documentation of applicable year income limits is now placed in all Program files.
 - c. Supplemental file forms such as calculation worksheets, clarification record sheets and notation to files sheets have been created and are now placed in all Program files.
2. Homeowner contracts had already been put in place, and promissory notes and mortgages modified, to better ensure inclusion of all necessary HOME regulations, including the housing rehabilitation services to be undertaken, date of completion, property standards to be met, estimated value of the property after rehabilitation, and the principal residency requirements..

Ref to OIG Evaluation

Auditee Comments

Comment 18

- 3. The Program application and supplemental application documents have been reviewed and revised. The application and related materials are attached as Appendix H.
- 4. The City has taken steps to increase staff capacity relevant to income verification:
 - a. Staff attended the “Expert HOME and CDBG: Working Together to Create Affordable Housing” training sponsored by the U.S. Department of Housing and Urban Development.
 - b. Staff attended and passed the “Certified HOME Program Specialist – Regulations” course offered by the U.S. Department of Housing and Urban Development.
 - c. Staff certified in the ‘Certified HOME Program Specialist – Regulations’ have provided Program eligibility training to departmental staff.
 - d. The City engaged ICF International to provide two days of consultation to the City in September of 2011. The scope of work included review of current client files, income and eligibility training, and review of current policies and procedures.

Recommendations:

Comments 21,
22, and 23
Comment 18

- 2A. The City has provided sufficient documentation to support household Program eligibility. (See Appendix E.)
- 2B. As described above, since October 1, 2010, the City has engaged in training for employees and has augmented income documentation requirements Department-wide.

The City therefore request that Finding 2 be removed from the final audit report.

Finding 3: The City lacked adequate controls over its reporting in HUD’s system and homebuyer activities.

Management Response. Agree in part; Disagree in part.

Comment 26
Comments 27
and 28

While the City does not dispute that aged cases were not timely closed in IDIS, the City maintains that its procedures have allowed for the closing of the aged cases on IDIS over the last several years, while at the same time avoiding instances of new untimely IDIS closing. The City also disagrees with the requirement that it reimburse its Program \$178,000 from non-Federal funds due to the omission of “net proceeds” verbiage from its promissory notes and mortgages. These points are more fully discussed below.

Ref to OIG Evaluation

Auditee Comments

Comments 29
and 30

Finding 3(A): The City did not report program accomplishments in HUD’s system in a timely manner.

Management Response. Agree in part; Disagree in part.

The City agrees that not all program accomplishments were reported in HUD’s system in a timely manner. But contrary to the Discussion Draft’s implication that the City was first given notice of the issue by OIG on April 8, 2011, and that the activities were closed “as a result of” the Audit, the City was aware of and actively addressing the issue well before the OIG Audit. Indeed, on June 30, 2008, the City had hired a staff person responsible for (among other tasks) assisting in closing overage activities.

Comments 18
and 26

The City is now up-to-date in its HOME program accomplishments reporting. It will continue to remain up-to-date on its HOME program accomplishments reporting by virtue of having expanded the number of staff with IDIS access, decentralizing IDIS completion and implementing new tracking review and close-out processes. The City submits that its current processes are adequate to report program accomplishments in a timely manner. This is evidenced by the information cited in the Discussion Draft itself, which demonstrates that the vast majority of the untimely accomplishment reports were due to aged projects, rather than to newer projects. As the Discussion Draft notes, on February 28, 2011, there were 89 open activities that exceeded the 120-day requirement for reporting program accomplishments. More than 70 percent of these activities had an elapsed time since final drawdown of more than five years. By September 30, 2011, only 17 open activities remained, and the elapsed time ranged from 804 to 5,007 days. (These projects are now closed.) Notably, all of these were completed, aged projects, and the City submits that the absence of any recent activities exceeding the 120-day requirement is evidence that its processes are now adequate to report program accomplishments in a timely manner.

Comments 31
and 32

As to the use of Urban Development Action Grant miscellaneous revenues in the amount of \$22,730 for Project numbers 3731 and 10182 (incorrectly identified in the Discussion Draft as 11379 and 11217), the City believes that despite not providing the UDAG agreement or grant closeout documentation, it has provided sufficient documentation to show that the UDAG repayment funds qualified as miscellaneous revenues rather than program income. As such, the funds became unrestricted. The initial UDAG grants were closed out in 1994. While the City is unable to produce the original UDAG agreements in this response, even the broadest record retention policies do not require the City to retain grant agreements almost twenty years after grant closeout. In the years since that time, funds have been recycled many times for numerous projects. The source year is not relevant because the UDAG grants were already closed. The funds are “miscellaneous revenues” and are categorized as UDAG Repayment funds. (See Correspondence from John E. Riordan to Andis D. Udris dated February 29, 1988, attached as Appendix I.) The allocation for the Department of Community Development’s use of UDAG repayment funds was established in 2006. In 2008, some of these funds were set aside for

Comment 33

Ref to OIG Evaluation

Auditee Comments

Comment 33

second mortgage assistance. Based on the time frame involved, these funds have been appropriately characterized as the reuse of miscellaneous revenues.

Comment 33

Additionally, as Recommendation 3B of the Discussion Draft recognizes, even were the funds the initial use (rather than reuse) of miscellaneous revenues, the UDAG expenditures would be appropriate if they were an eligible initial use of those funds. As stated in Appendix I, “[a]ny repayments received after the completion of UDAG-funded Recipient Activities are considered miscellaneous revenue” that must “be spent for activities eligible under Title I,” but are not governed by Part 570. Homeownership assistance is an eligible initial use of miscellaneous revenues. 42 U.S.C. Section 5305(a)(24).

Should HUD deem this insufficient to establish that the City appropriately used these funds for activity numbers 3731 and 10182, the City requests additional time to provide substantiating documentation.

Finding 3(B): The City did not reimburse its program \$178,000 from non-federal funds

Management Response. Disagree.

Comments 27 and 28

The City disagrees with the requirement that it reimburse its program \$178,000 from non-federal funds based on the omission of the recapture verbiage from the City’s notes and mortgages.

This finding alleges that the City failed to include in its mortgages and promissory notes specific verbiage limiting the amount of Program funds the City could recapture to the net proceeds from the sale of a home. The City is being asked to reimburse its HOME account, from non-federal funds, the amount of HOME funds used to assist homes that have gone to Sheriff’s Sale, resulting in a transfer of ownership.

This finding is contrary to statute. This finding is contrary to Section 215 of the HOME Investment Partnership Act. 42 U.S.C. Section 12745(b)(3)(B) states:

Housing for homeownership shall qualify for affordable housing if it is subject to resale restrictions established by the PJ and determined by the Secretary to be appropriate to recapture the investment provided under this subchapter in order to assist other persons in accordance with the requirements of this subchapter, except where there are no net proceeds or where the net proceeds are insufficient to repay the full amount of assistance.

Comment 34

HUD cannot require what the statute prohibits. Where (as here) there are no net proceeds, HOME funds are statutorily excluded from being recaptured into the Program.

Consistent with this statutory prohibition, HUD’s recently-released guidance on recapture, CPD Notice 12-003, explicitly states that even where a PJ’s recapture provisions allow for recapture of the entire direct HOME subsidy, the PJ will not be required to repay more than what is available from net proceeds:

Ref to OIG Evaluation

Auditee Comments

Comments 27,
28, 34, and 35
Comments 27,
28, and 35

Comment 18

Comments 27,
28, and 35

1. PJ Recaptures Entire Direct HOME Subsidy

In this option, the PJ recaptures the entire amount of the direct HOME subsidy provided to the homebuyer before the homebuyer receives a return. The PJ's recapture amount is limited to the net proceeds available from the sale.

A homebuyer receives \$10,000 of HOME down-payment assistance to purchase a home. The direct HOME subsidy to the homebuyer is \$10,000, which results in a five-year period of affordability. If the homebuyer sells the home after three years, the PJ would recapture, assuming that there are sufficient net proceeds, the entire \$10,000 direct HOME subsidy. The homebuyer would receive any net proceeds in excess of \$10,000.

In some cases, such as declining housing markets, the net proceeds available at the time of sale may be insufficient to recapture the entire direct HOME subsidy provided to the homebuyer. Since the HOME rule limits recapture to available net proceeds, the PJ can only recapture what is available from net proceeds. ***If a PJ's recapture provisions state that it will recapture the entire direct HOME subsidy and there are insufficient net proceeds available at sale, the PJ is not required to repay the difference between the total direct HOME subsidy and the amount the PJ is able to recapture from available net proceeds.***

. Consistent with Section 215 and with CPD Guidance 12-003, the City should not be required to repay the difference between the total direct HOME subsidy and the net proceeds.

Lack of Notice. Moreover, at no point do the regulations themselves give notice that the City's liability for repaying HOME funds on foreclosed properties will be determined by the lack of one specific provision in its loan documents. The 2003 HOMEfires web posting does describe the financial risks to a participating jurisdiction of not including the "net proceeds" verbiage in its program documents. The consequences of excluding the "net proceeds" verbiage do not appear to have been explained in any subsequent HUD publications or training sessions, in spite of the national foreclosure crisis that began several years after the 2003 website reference.

After this issue was brought to the City's attention as the result of the February 1-3, 2010 HUD Onsite Monitoring Review, new program documents were developed that contain the required language limiting the homeowner's and the City's financial liability to the available net proceeds, in the event of foreclosure. This has been an appropriate corrective action.

No Substantive Impact. The City's omission of the net proceeds verbiage has had no substantive impact.

- HOME assisted properties have gone to Sheriff's Sale, which resulted in the termination of the affordability period. This would have been true whether or not the City's documents contained the "net proceeds" provision.

Ref to OIG Evaluation

Auditee Comments

Comments 27,
28, and 35

- In no cases that we are aware of did a Sheriff's Sale result in any proceeds that exceeded the amount owed to the first mortgage holder. Had the "net proceeds" language been in the City documents, there still would have been no repayment to the homeowner or the City's HOME Program account.
- In conformance with 24 CFR 92.254, in no case has the City taken legal action to require a foreclosed homeowner to repay HOME funds to the City from other sources.

Comment 36

Moreover, the City believes that the housing in question remains affordable. 24 CFR 92.254 allows affordability to be established through a market analysis of the neighborhood in which the housing is located. The City is willing to prepare a market analysis to establish whether the neighborhoods where the eight projects identified on page 19 of the Discussion Draft are located remain affordable.

Waiver. The previously mentioned 2003 HOMEfires HUD web posting stated:

"A PJ that was unaware that its homebuyer program design obligated it, in the event of foreclosure, to repay funds in excess of what would be available through the foreclosure and has changed the design to base recapture amounts on net proceeds may want to pursue a waiver of the repayment requirement at Section 92.503 (b) (1) for homeowners assisted under the original program design. HUD may grant a waiver on a program basis that, in the event of foreclosure involving homebuyers assisted under the previous program design, would limit the PJ's repayment obligation to the amount that it is able to obtain through the foreclosure."

The City of Cleveland was unaware that the omission of some additional wording to its program documents would require it to repay the entire HOME investment when a project sold at Sheriff's Sale, even though there were no net proceeds. The City never attempted to recapture more than net proceeds. The City is statutorily prohibited from recapturing more than net proceeds. Upon being notified of the issue after a 2010 HUD onsite monitoring review, the City immediately added the language with respect to all future HOME homebuyer loans.

Comment 27

On page 21 of our letter dated July 30, 2010 to the HUD Columbus Field Office, in response to the onsite monitoring review, the City requested a waiver of any past financial obligations resulting from this specific issue, as referenced in the above HOMEfires citation. The City restated this waiver request in a February 23, 2011 letter to the HUD Columbus Field Office. HUD denied the waiver request on July 30, 2012. But because one of the activities cited in the Phase III Discussion Draft closed before the June 2003 HOMEfires notice, one closed the same month as the notice, and six others closed less than thirteen months after the notice, the City renews its request for a waiver of any past financial obligation resulting from not having the specific net proceeds recapture language in the loan mortgage documents. A copy of this new waiver request is attached as Appendix J.

Ref to OIG Evaluation

Auditee Comments

Comments 34
and 35

Comments 27,
28, and 35
Comment 18

Comments 27,
28, 34, and 35

In summary:

1. Section 215 of the HOME Partnerships Act prohibits a requirement that the City repay its HOME Program an amount in excess of net proceeds, as does CPD Guidance 12-003.
2. The City of Cleveland did not violate the 24 CFR 92.254 program regulations by recapturing HOME funds in excess of net proceeds on foreclosed properties.
3. There were no homebuyers required to repay HOME assistance loans from personal funds, which was stated as a principle purpose of the rule.
4. The lack of “net proceeds” verbiage in our HOME loan documents did not cause any monetary loss to City of Cleveland’s HOME Program account.
5. The City of Cleveland took immediate action to correct the problem when it was first made aware of it during a HUD monitoring review in early 2010. The City’s current HOME homebuyer recapture provisions, including the required net proceeds language, are described on page 29 of our Consolidated Plan’s 2011-2012 Action Plan and comply fully with Recommendation 3C of Finding 3.

In light of these factors, the City asks that this portion of Finding 3 be eliminated from the final audit report. Alternatively, the City believes that HUD approval of the HOMEfires referenced waiver would be an appropriate resolution of the issue raised in Finding 3. It is inappropriate to require repayment of HOME funds based on a little-publicized notice when there was no substantive impact of the City’s not having included the “net proceeds” verbiage in its promissory notes and mortgages.

Affordability. This finding also states that the affordability period used with 30 of the 33 Housing Trust Fund program rental new construction projects and 1 of the 13 Housing Trust Fund program rental rehabilitation projects included an affordability period shorter than required by HUD’s regulations at 24 CFR 92.252. The City agrees that, due to clerical error, the incorrect affordability period was used in the 2 contracts governing these 31 projects. The City intends to amend both contracts to include the correct affordability period. Furthermore, while the affordability periods were incorrect, the nature of these projects as low-income tax-credit projects mitigates or eliminates any possible adverse impact. As low-income tax credit projects, the units must remain affordable rentals for 15 years with an annual income certification, which ensures meeting the affordability periods. As to the unit associated with project number 8214, the tax-credit affordability period is 30 years due to an additional 15-year extended use requirement required by the Ohio Housing Finance Agency. Thus, while a technical error occurred, there was no impact.

Ref to OIG Evaluation

Auditee Comments

Comment 26

Comment 18

Comments 27,
28, 34, and 35

Comment 33

Comments 27,
28, and 35

Comment 26

Comment 18

Finding 3(C): The City lacked adequate procedures and controls.

Management Response. Disagree.

Since June 30, 2008, the City has dedicated staff to closing out aged IDIS cases. The City is now current with IDIS closeouts, and will continue to remain current by virtue of having expanded the number of staff with IDIS access within the Department of Community Development. The City has also modified its mortgages and promissory notes to include "net proceeds" verbiage. Also, the City's Housing Trust Fund will add to its loan term sheets the appropriate affordability period to avoid future clerical errors within contract documents and will create a form used in determining the appropriate affordability period, which form will be included in the project file.

Recommendations:

- 3A. As stated above, the City disagrees with the requirement that it reimburse its Program \$178,000 from non-Federal funds for homes that had been sold through Sheriff's Sale.
- 3B. The City has provided adequate documentation to establish that the use of \$22,730 in Urban Development Action Grant miscellaneous revenues for Project numbers 3731 and 10182 (incorrectly identified in the Discussion Draft as 11379 and 11217) was a reuse of miscellaneous revenues and/or an eligible use of miscellaneous revenues. To the extent this information is deemed inadequate, the City requests additional time to provide the requested information.
- 3C. Since 2010, the City has incorporated the "net proceeds" language into its promissory notes and mortgages. As to projects that precede the 2010 HUD monitoring visit, the City should not be required to repay its Program when properties transfer through foreclosure because it did not receive adequate notice regarding the effect of the absence of the net proceeds verbiage. The City requests that this subpart of Finding 3 be removed from the final audit report.
- 3D. Regarding the two sub-parts of the third recommendation, (1) The City maintains that its current procedures ensure that program accomplishments are reported into HUD's System in a timely manner, as evidenced by the City's adherence to the timeliness requirements for more recent activities. (2) The City will add to its loan term sheets the appropriate affordability period to avoid future errors within contract documents. The City will also create a form used in determining the appropriate affordability period, which form will be included in the project file.

Ref to OIG Evaluation

Auditee Comments

Comment 37

Finding 4: The City lacked adequate controls over its use and reporting of program income

Management Response. Disagree.

Finding 4(A): The City inappropriately drew down program funds when it had program income.

Management Response. Disagree.

The City disagrees with this finding. The finding is that the City inappropriately drew down funds when it had available program income; and that it did not report program income into IDIS in a timely manner.

Comment 37

- The calculation of the “inappropriate” drawdown amount was based on an assumption that program income is available to draw down before it has been properly reconciled and reported as program income in IDIS.
- Furthermore, the calculation of “interest lost” is also based on the above assumption. In determining the available program income on hand, the audit schedule utilizes the date the City issued a check to trigger the reduction of available program income. The City must report the program income draw on IDIS at the time of voucher preparation—before the check is issued. There is a lag time between the voucher preparation date and the check date. By using the date the City issues a check, available funds are misrepresented because those program income funds are already committed in IDIS.

Program Income is available for drawdown only after it is reported in IDIS. The City reports HOME program income into IDIS on a monthly basis after reconciling the information with the City’s financial system. The City believes it is critical that the information reported in IDIS, and other reporting systems, accurately presents the information available from the City’s financial system.

The City has well defined procedures to receive, safeguard, record, deposit, post, reconcile, and report program income. One single system is used to administer all departmental program income. For the 42 month period from January 2009 through June 2012, the City received over \$17 million in program income funds administered through the Department of Community Development. HOME program income represents approximately 8% of this overall program income and has averaged \$34,000 per month.

Comments 37
and 38

HUD Notice CPD 97-9, dated September 12, 1997, states

“PJ’s are not required to use extraordinary procedures to determine the amount of program income available at the time of the drawdown request”.

The City has made its best effort to report program income on a timely basis (each month) and to properly utilize program income. The City attempts to balance the HOME requirements, staffing resources and the goal of reducing the number of transactions required for IDIS to reconcile with its internal accounting system.

Ref to OIG Evaluation

Auditee Comments

Comment 39

Comment 37

Comments 37
and 38

The history of the HOME program clearly shows that the number of transactions against two of the City's major programs, RAH and AAH, is proportionately greater than the number of transactions involving the other HOME (HTF) programs. To properly reflect the use of program income, the City's financial system requires several adjusting entries. With only two programs affected, transactions against RAH and AAH are easily processed within the City's financial system. To apply program income against the dozens of HTF programs would require an extraordinary number of adjusting entries. This is in line with the concept of the "extraordinary procedures." For calendar years 2009 and 2010, the City drew down available program income for the RAH and AAH programs.

It must be noted that due to market dynamics the City's RAH and AAH programs have sharply declined. As a result, the City implemented a new procedure for administering program income draws. For calendar year 2011 and beyond, the City restructured its process of administering HOME program income. This action was taken as a result of the OIG concerns over our methodology of utilizing program income and because of the decreasing number of transactions for RAH and AAH. Our procedure now applies any available program income against the next approved payment request (AAH, RAH, or HTF). For 2011 and 2012, there are no instances where entitlement funds were allegedly drawn before fully utilizing available program income. The schedule for the interest calculation assumes program income is available on the first day of the month after receipt. Program income is not available for use until reported in IDIS. Using this assumption, the City is penalized for any draws against entitlement, when no program income is actually available in IDIS.

The City did not intentionally accumulate program income at any point during the audit period (2009-2011). The program income is received, reconciled with the City's financial system, reported in IDIS, and drawn. The HOME funds are one part of the overall program income received by the Department (CDBG, NSP, Categorical Grants, Special Revenue Funds, General Funds, etc.). Beginning in calendar year 2011, the City always utilized program income as the initial source of funds when available in IDIS.

Finding 4(B): The City's reporting of more than \$423,000 in program income to HUD was not timely.

Management Response. Disagree.

The City has made its best effort to report program income on a timely basis (each month).

HUD Notice CPD 97-9, dated September 12, 1997, states

"PJ's are not required to use extraordinary procedures to determine the amount of program income available at the time of the drawdown request".

The City attempts to balance the HOME requirements, staffing resources, and the goal of reducing the number of transactions required for IDIS to reconcile with our internal accounting system.

Ref to OIG Evaluation

Auditee Comments

Comment 40

Appendix E of the Discussion Draft represents the reporting of program income for the audit period. There were 33 reporting months for the audit period.

- For 27 of those months, program income data was reported into IDIS in the month following receipt.
- The December 2009 program income data was delayed by one month due to year end closing.
- In 2010, the City implemented a new financial system (known as Advantage). Start-up issues resulted in the unavailability of key financial reports that are used to properly reconcile program income. The January, February, and March program income data was delayed until mid May. The data for the three months, plus April, was reported on May 26, 2011.
- The December 2010 program income data was delayed by two months due to issues experienced in the first year-end closing of the new financial system and a budgeting restructuring issue.
- The January 2011 program income data was delayed for one month because a new budget structure was implemented.

Of the 33 reporting months, there were delays for six (6) months. All of these delays were the result of fiscal year closings or the implementation of a new accounting system.

The City procedure of entering HOME program income data into IDIS by the 15th of the month is a goal, not a rule or regulatory requirement imposed by HUD. HUD Notice CPD 97-9, dated September 12, 1997, states

“If the participating jurisdiction’s accounting system reports on cash balances at reasonable, periodic intervals (not to exceed 30 days), then the participating jurisdiction can wait until its reports are generated to determine the cash balance (including program income) on hand”.

The City reports monthly program income into IDIS based on financial reports generated from its accounting system.

Actual times vary because:

- The date of fiscal month closing varies.
- The program income reconciliation is completed for all departmental program income (federal, state, and local).
- The number of monthly transactions varies at different times of the year.

Ref to OIG Evaluation

Auditee Comments

Comments 40,
41, and 42
Comments 37
and 38

- The staffing resources available at a particular point in time.
- The City's financial system operations.

Finding 4(C): The City lacked adequate procedures and controls.

Management Response: Disagree.

The deficiency states "the City lacked adequate procedures and controls to ensure that it complied with HUD's requirements in its use and reporting of program income."

The City did have procedures and controls regarding its administration of program income to ensure that it followed HUD's guidelines.

HUD Notice CPD 97-9, dated September 12, 1997, states

"PJ's are not required to use extraordinary procedures to determine the amount of program income available at the time of the drawdown request".

The City attempts to balance the HOME requirements, transaction timing, staffing resources, and the goal of reducing the number of transactions required for IDIS to reconcile with our internal accounting system.

The City applied program income draw downs against activities (RAH and AAH) that required minimal transactions to reconcile IDIS to the City's financial system. The City modified its procedure in 2011 so that program income would be applied to any draw involving entitlement funds. By implementing this modification, the City has forfeited some of the internal controls that enabled the City's financial system to match information on IDIS. This loss of internal control has been replaced by a manual log which reconciles the application of program income between the HUD system (IDIS) and the City's financial system (Advantage).

The City has made its best effort to report program income on a timely basis (each month). With the exception of year-end closing and the new financial system, program income is reported each month.

Comments 40,
41, and 42

The City's Department of Community Development has established detailed procedures and controls. These are in place, reviewed, and periodically modified to ensure program compliance and operational efficiency.

Recommendations:

Comments 37
and 41

- 4A. The City does not agree with the reimbursement of calculated interest. The calculation was based on assumptions of available program income in IDIS and the computation that program income was utilized at the time of check issuance

Ref to OIG Evaluation

Auditee Comments

Comments 37,
41, and 42

rather than at the time of the drawdown request. Adequate procedures and controls are in place, are reviewed, and modified to ensure operational efficiency.

Comments 37,
41, and 42

4B. Through the modifications described above, adequate procedures and controls are now in place to ensure that available program income is used for eligible activities before entitlement funds are drawn.

Comments 38,
40, and 42

4C. Through the modifications described above, adequate procedures and controls are in place to ensure that HOME program income is reported in IDIS in a timely manner.

Comments 37,
38, 40, 41,
and 42

The City requests Finding 4 be removed from the final draft of the audit report based on the:

- overall administrative issues of program income;
- corrective action implemented for 2011;
- application of the "extraordinary procedures" concept; and
- issues with the methodology for the interest computation.

OIG's Evaluation of Auditee Comments

Comment 1 The City designed its Repair-A-Home program to provide housing rehabilitation services to a homeowner using a combination of a Program-funded deferred or term loan and grant for the price in the rehabilitation construction contract between the homeowner and the contractor. If additional Program funds were needed to complete the housing rehabilitation work on the home, the City would execute a change order for signature by the homeowner, contractor, and designated City employee and award the additional funds through a grant to the homeowner. However, for 6 of the 15 projects, the City entered into Program-funded deferred or term loans and grant agreements with the homeowners for the original contract price or the original contract price plus a contingency of up to 10 percent of the contract amount but did not amend the grant agreements or enter into additional grant agreements with the homeowners when an additional \$10,214 in Program funds was used to complete the work on the homes.

Comment 2 Although the City was a third-party beneficiary under the rehabilitation construction contracts between the homeowners and the contractors, the contracts did not constitute a written agreement between the City and the homeowners.

Comment 3 We revised the report to state the following:

- Contrary to HUD's regulations and its own policies, the City did not ensure that written agreements covered \$21,093 in Program funds used for 4 of the 15 projects.
- For two projects, the City entered into loans and grant agreements with the homeowners for the original housing rehabilitation contract price or the original contract price plus a contingency of up to 10 percent of the contract amount.

We added the following to the report:

- Further, in August 2012, and as a result of our audit, the City entered into grant agreements with the homeowners for four of the six projects for the additional Program funds used to complete the work on the homes. Therefore, the City used an additional \$4,873 in Program funds to complete the work on the homes for two projects (\$758 and \$4,115 in Program funds for project numbers 10902 and 11401, respectively) without amending the grant agreements or entering into additional agreements with the homeowners.

We removed the following from the report:

- The following table shows the six projects for which the City did not amend its initial grant agreements or enter into additional grant agreements with the

homeowners when additional Program funds were used to complete the work on the homes.

<i>Project number</i>	<i>Amount of additional assistance</i>
9571	\$400
10895	1,924
10902	758
10922	248
10973	2,769
11401	4,115
Total	<u>\$10,214</u>

We also amended recommendation 1A to reflect these revisions.

Comment 4 There was no written agreement between the initial and the new contractor or among the homeowner, the City, and the new contractor for the rehabilitation work completed by the new contractor for project number 9738.

Comment 5 HUD’s regulations at 24 CFR 85.36(b)(1) state that grantees and subgrantees must use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36.

The City’s Department of Community Development’s Division of Neighborhood Services’ General Specifications Standards states that all proposed changes and additions to the contract must be submitted in writing to the Division’s rehabilitation advisor, rehabilitation supervisor, and rehabilitation inspector, who will consult with the homeowner and then prepare a change order for the deletions, additions, or both as deemed appropriate, which must be signed by the homeowner; the contractor; and the Division’s rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector. The contractor is not to begin work on items included in a change order until notified to proceed by the Division’s rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector in writing (the change order).

Comment 6 Contrary to HUD’s regulations and its own policies, the City used \$11,560 in Program funds to complete the housing rehabilitation work on the home for project number 9104 without a change order signed by the homeowner.

Comment 7 Appendix A, section C.1, of 2 CFR Part 225 requires all costs to be necessary, reasonable, and adequately documented. Section C.2 states that a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. HUD’s Acting Director of the Office of

Affordable Housing Programs said that it is an industry standard to limit the award of contracts for housing rehabilitation services to 10 percent of the estimated costs. Further, the City could not provide documentation to support its basis that it was reasonable to award contracts for services for projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent. Therefore, contrary to Federal requirements, the City awarded 13 contracts for housing rehabilitation services for 13 of the 15 projects when the contractors' bids exceeded the City's cost estimates by more than 10 percent.

- Comment 8** The City's estimate should be based on market rates.
- Comment 9** For three projects (numbers 9738, 10449, and 10973), the City accepted the lowest bid, which exceeded the City's estimate by more than 30 percent.
- Comment 10** The City provided cost estimates to support that its use of the nearly \$87,000 in Program funds for additional housing rehabilitation services through change orders for the 15 projects was reasonable. However, the City did not provide sufficient documentation to support that the cost estimates were effective at the time the change orders were executed.
- Comment 11** The City's cost estimate for project number 9738 included an amount for the additional item that the City was able to trace to its initial estimate. We removed this amount from the amount of Program funds the City used for the project through a change order without sufficient documentation to support that the cost of the additional services was reasonable. The estimate also included six items that were not on the change order. Further, the estimate did not account for the \$696 in remaining services completed by the new contractor and applicable to the change order that we removed from the amount of Program funds the City used for the project through a change order without sufficient documentation to support that the cost of the additional services was reasonable.
- Comment 12** The City's cost estimate for project number 10874 included amounts for the three items that the City was able to trace to its initial estimate. We removed these amounts from the amount of Program funds the City used for the project through change orders without sufficient documentation to support that the cost of the additional services was reasonable.
- Comment 13** The City's cost estimate for project number 10902 included an amount for an item that was included in a change order but then deleted through another change order.
- Comment 14** The City's cost estimate for project number 10973 included amounts for the two items that the City was able to trace to its initial estimate. We removed these amounts from the amount of Program funds the City used for the project through change orders without sufficient documentation to support that the cost of the additional services was reasonable.

- Comment 15** The City used nearly \$87,000 in Program funds through change orders for all 15 projects without sufficient documentation to support that the cost of the additional services was reasonable.
- Comment 16** HUD’s regulations at 24 CFR 92.254(b) state that for rehabilitation not involving acquisition, a project qualifies as affordable housing only if the estimated value of the property after rehabilitation does not exceed 95 percent of the median purchase price for the area and the housing is the principal residence of an owner whose household qualifies as a low-income household at the time Program funds are committed to the housing. Section 92.504(c)(5)(ii) states that the written agreement between the participating jurisdiction and the homeowner must include the requirements in 24 CFR 92.254(b) and specify the amount and form of Program assistance, rehabilitation work to be undertaken, date of completion, and property standards to be met.
- Comment 17** Contrary to HUD’s regulations, the City’s written agreements for the projects did not include the housing rehabilitation services to be undertaken, date of completion, or property standards to be met.
- Comment 18** The City’s commitment to new written agreements, procedures, and controls, if fully implemented, should improve the City’s management of its Program.
- Comment 19** The City did not ensure that written agreements covered more than \$21,000 in Program funds used for 4 of the 15 projects and used more than \$57,000 in Program funds for housing rehabilitation services for 13 projects that was not reasonable.
- Comment 20** The City lacked adequate procedures and controls regarding its contracting processes for projects to ensure that it appropriately followed Federal requirements and its own policies.
- Comment 21** Contrary to HUD’s requirements, the City lacked sufficient income documentation for 4 of the 15 projects reviewed to support that it used \$193,000 in Program funds for eligible households. The City lacked 3 consecutive months of income documentation for a household member.
- Comment 22** The City’s internal procedures for its Repair-A-Home program required only two pay statements to be maintained for all income-producing members of a household. Further, the commissioner of the City’s Department of Community Development’s Division of Neighborhood Services believed that the City generally complied with the 3-month requirement through a combination of year-to-date pay statement information, Internal Revenue Service Form W-2 statements, tax returns, Social Security information, and other items that were used to verify and substantiate households’ income.

However, HUD's regulations at 24 CFR 92.203(d)(1) state that a participating jurisdiction must calculate a household's annual income by projecting the prevailing rate of the household's income at the time the participating jurisdiction determines the household to be income eligible.

Further, chapter 2 of HUD's Technical Guide for Determining Income and Allowances for the Program states that a participating jurisdiction must project a household's future income by using the household's current income circumstances. For households with jobs providing steady employment, it can be assumed that there will be only slight variations in the amount of income earned. Therefore, 3 consecutive months' worth of income documentation is an appropriate amount upon which to base a household's projected income calculation for the following 12-month period. For those households with jobs providing employment that is less stable or does not conform to a 12-month schedule (for example, seasonal laborers), income documentation that covers the entire previous 12-month period should be examined. The year-to-date pay statement, Internal Revenue Service Form W-2 wage and tax statement, or tax return information may not reflect the household's current income circumstances.

Comment 23 Contrary to HUD's requirements, the City did not ensure that it properly projected households' annual income for 4 of the 15 projects (numbers 10449, 10874, 10895, and 10922) reviewed. The City projected the four households' annual income based entirely or in part on one pay statement. The City also used gross year-to-date income in its calculation of projected annual income rather than using current circumstances to project future income for project numbers 10449, 10895, and 10922.

Comment 24 HUD's Columbus Office of Community Planning and Development's February 2010 monitoring review identified that the City lacked sufficient documentation to support that households were income eligible and its calculations of households' annual income for activities. In addition, HUD's Office requested that we conduct an audit of the City's Program due to the issues uncovered during its monitoring review.

Comment 25 In September 2010, HUD's Office of Affordable Housing Programs confirmed that a participating jurisdiction is required to maintain 3 consecutive months of income documentation for each household member and that using year-to-date income from a pay statement was not acceptable since it may not reflect a household's current income circumstances.

Comment 26 We removed from recommendation 3D that the City implement adequate procedures and controls to ensure that it enters Program accomplishments into HUD's Integrated Disbursement and Information System in a timely manner.

Comment 27 The City previously provided documentation to support that the homes for 2 of the 10 activities (numbers 5997 and 6836) had been sold through a sheriff's sale

and ownership of the homes had been transferred more than 5 years after the execution of the mortgages and promissory notes.

Therefore, we revised the report to state the following:

- As of May 25, 2012, 8 of the 11 homes had been sold through a sheriff's sale, and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory notes. The City did not receive any net proceeds from the sale of the eight homes, nor did it reimburse its Program for \$140,000 in Program funds used for the eight homes.
- The following table includes the activity number, the date of closing, the date the City entered into the mortgages and promissory notes with the home buyers, the date Program funds were drawn down for the activity in HUD's System, the date the home was sold through a sheriff's sale, the date ownership was transferred, and the amount of assistance provided through loans for the eight homes.

We also removed activity numbers 5997 and 6836 from the table in finding 3 of this report.

Further, we amended recommendation 3A to reflect these revisions.

Comment 28 HUD's HOMEfires, volume 5, number 2, dated June 2003, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid if the ownership of the housing is conveyed pursuant to foreclosure sale is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture provisions require the entire amount of the Program investment from the home buyer, the amount required by the recapture provisions is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, it must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer.

As of May 2, 2012, the City had received foreclosure notices for 12 of the 16 homes associated with 12 of the 44 home-buyer activities. The City entered into mortgages and promissory notes with the home buyers for 11 of the 12 activities after June 2003. Further, although the mortgages and promissory notes between the City and the home buyers included affordability requirements, neither the mortgages nor the promissory notes contained language that limited the amount of Program funds the City could recapture to the net proceeds from the sale of a home. The mortgages and promissory notes required repayment of the entire amount of the Program investment upon sale. As of May 25, 2012, 8 of the 11 homes had been sold through a sheriff's sale, and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory

notes. The City did not receive any net proceeds from the sale of the eight homes, nor did it reimburse its Program for \$140,000 in Program funds used for the eight homes.

Comment 29 We did not state that the first time that the City was aware of the issue of open Program-funded activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System was when we notified the City of this issue on April 8, 2011.

Comment 30 As of August 31, 2008, the City had 122 open Program-funded activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System. As of February 28, 2011, the City had 89 open activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System. On April 8, 2011, we notified the City of this issue. As of May 3, 2012, the City did not have any open activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System. From August 31, 2008, through February 28, 2011, which was 30 months, the City reduced the number of activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System by 33. From March 1, 2011, through May 3, 2012, which was just over 14 months, the City reduced the number of activities in HUD's System for which at least 120 days had elapsed since the City made its final drawdown in HUD's System by 89. Therefore, as a result of our audit, from March 1, 2011, through May 3, 2012, the City reported 88 of the 91 activities as complete in HUD's System, determined that two activities were not eligible under the Program, and determined that it had inappropriately created a second project number for a Housing Trust Fund program rental rehabilitation project when it awarded additional funds for the project.

Comment 31 Although the Urban Development Action Grant miscellaneous revenues are applicable to the two activities (Housing Trust Fund program rental rehabilitation project number 3731 and Housing Trust Fund program home-buyer activity number 10182) that the City determined were not eligible under the Program, the City used the miscellaneous revenues for the two new activities (numbers 11379 and 12177) under the Program.

Comment 32 We did not state that the City's use of Urban Development Action Grant miscellaneous revenues qualified as program income.

Comment 33 Miscellaneous revenues are not unrestricted. Paragraph 2-2(C) of HUD Handbook 6511.02, REV-1, states that only the initial use of Urban Development Action Grant miscellaneous revenues must comply with the appropriate eligibility requirements under Title I of the Housing and Community Development Act of 1974 as amended. The reuse of miscellaneous revenues through other recycling mechanisms is not subject to the provisions of the Act. The questions and answers provided with HUD's former Assistant Secretary for Community

Planning and Development's December 10, 1990, memorandum to HUD staff regarding Urban Development Action Grant project management stated that for projects approved before July and September of 1989 and governed by the grant agreement rider provisions in effect before the August 1988 revised regulations, miscellaneous revenues may be spent for any activity eligible under Title I of the Housing and Community Development Act of 1974 as amended. For the 85 projects approved in July and September of 1989 and subject to the revised grant agreement rider provisions, miscellaneous revenues must be made available by the recipient for economic development activities eligible for funding under either the Urban Development Action Grant program or Section 105 of the Act. The City was unable to provide its Action Grant agreement with HUD or grant closeout documentation to support how the miscellaneous revenues were to be used or that the use of the miscellaneous revenues was a reuse of the miscellaneous revenues.

Comment 34 As previously stated, neither the mortgages nor the promissory notes contained language that limited the amount of Program funds the City could recapture to the net proceeds from the sale of a home. The mortgages and promissory notes required repayment of the entire amount of the Program investment upon sale. Therefore, the home-buyer activities did not qualify as affordable housing, and requiring the City to reimburse its Program from non-Federal funds for the homes that had been sold through a sheriff's sale and ownership of the homes had been transferred within 5 years of the execution of the mortgages and promissory notes is not prohibited by Title II of the Cranston-Gonzalez National Affordable Housing Act as amended.

Comment 35 Section VII.a. of HUD's Office of Community Planning and Development's Notice 12-003 states that regardless of whether a participating jurisdiction uses resale or recapture, it must execute a Program written agreement that accurately reflects the resale or recapture provisions with the home buyer before or at the time of sale. The written agreement creates a legal obligation for the participating jurisdiction. Consequently, if the participating jurisdiction modifies its resale or recapture provisions in its annual action plan submission but does not make similar changes to its written agreement, the resale or recapture provisions in the written agreement prevail. Section VII.c. states that failure to comply with the resale or recapture requirements means that the home was sold during the period of affordability and the applicable resale or recapture provisions were not enforced. If this noncompliance occurs, the participating jurisdiction, as the entity responsible for the day-to-day operations of its Program, must repay its HOME investment trust funds with non-Federal funds. How much of the original Program investment must be repaid is dependent on the participating jurisdiction's Program design and use of funds. In cases of noncompliance under either resale or recapture provisions, the participating jurisdiction must repay any outstanding Program funds invested in the housing to its HOME investment trust fund in accordance with 24 CFR 92.503(b). The amount subject to repayment is the total amount of the Program funds invested in the housing less any Program

funds already repaid. The participating jurisdiction must repay its HOME investment trust fund in accordance with 24 CFR 92.503(b)(3) whether or not it is able to recover any portion of the Program investment from the noncompliant home buyer.

- Comment 36** This provision of 24 CFR 92.254(a)(5)(i)(B) is only applicable when a participating jurisdiction imposes resale requirements to ensure the affordability of an activity. The City imposed recapture provisions in its mortgages and promissory notes with the home buyers.
- Comment 37** HUD's regulations at 24 CFR 92.502(c)(3) state that a participating jurisdiction must disburse Program funds, including Program income and recaptured Program funds, in its local account before requesting Program funds from its treasury account. We were conservative in our determination of the amount of unnecessary interest that the U.S. Department of the Treasury paid. We did not include in the City's daily balance of Program income any Program income received during a month until the first day of the following month.
- Comment 38** HUD's Office of Community Planning and Development Notice 97-9 requires available Program income to be determined and recorded in HUD's System in periodic intervals not to exceed 30 days.
- Comment 39** The City inappropriately made 23 drawdowns from its treasury account from January 1 through September 30, 2011, when it had available Program income in its local account. The drawdowns totaled nearly \$1.6 million in Program funds.
- Comment 40** The City reported more than \$992,000 in Program income in HUD's System through 30 entries from January 1, 2009, through September 30, 2011. However, it exceeded HUD's 30-day reporting requirement by 2 to 67 days 13 times. The City's 13 entries totaled nearly \$424,000 in Program income. Further, the City did not meet its goal of reporting in HUD's System Program income earned during a month by the 15th of the following month. It exceeded its goal by 1 to 100 days 27 times.
- Comment 41** The City inappropriately made 232 drawdowns from its treasury account from January 1, 2009, through September 30, 2011, when it had available Program income in its local account. The drawdowns totaled more than \$11.5 million in Program funds. The U.S. Department of the Treasury paid \$4,166 in unnecessary interest on the more than \$11.5 million in Program funds that the City drew down from its treasury account when Program income was available.
- Comment 42** The City lacked adequate procedures and controls regarding its administration of Program income to ensure that it followed HUD's requirements.

Appendix C

APPLICABLE REQUIREMENTS

Finding 1

HUD's regulations at 24 CFR 85.36(b)(1) state that grantees and subgrantees must use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36. Section 85.36(b)(9) states that grantees and subgrantees must maintain records, such as the basis for the contract price, sufficient to detail the significant history of procurement. Section 85.36(c)(1) states that all procurement transactions will be conducted in a manner providing full and open competition consistent with HUD's regulations at 24 CFR 85.36. Section 85.36(d)(1) states that when procurement by small purchase is used, price or rate quotations must be obtained from an adequate number of qualified sources. Section 85.36(f)(1) states that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

HUD's regulations at 24 CFR 92.254(b) state that for rehabilitation not involving acquisition, a project qualifies as affordable housing only if the estimated value of the property after rehabilitation does not exceed 95 percent of the median purchase price for the area and the housing is the principal residence of an owner whose household qualifies as a low-income household at the time Program funds are committed to the housing.

HUD's regulations at 24 CFR 92.504(a) state that a participating jurisdiction is responsible for managing the day-to-day operations of its Program, ensuring that Program funds are used in accordance with all Program requirements and written agreements, and taking proper action when performance problems arise. Section 92.504(b) states that before disbursing any Program funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Section 92.504(c)(5)(ii) states that the written agreement between the participating jurisdiction and the homeowner must include the requirements in 24 CFR 92.254(b) and specify the amount and form of Program assistance, rehabilitation work to be undertaken, date of completion, and property standards to be met.

HUD's regulations at 24 CFR 92.505(a) state that the requirements of Office of Management and Budget Circular A-87 and 24 CFR 85.36 apply to participating jurisdictions.

Appendix A, section C.1, of 2 CFR Part 225⁴ requires all costs to be necessary, reasonable, and adequately documented. Section C.2 states that a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness

⁴ Office of Management and Budget Circular A-87 was relocated to 2 CFR Part 225.

of a given cost, consideration must be given to (1) the restraints or requirements imposed by such factors as sound business practices; (2) market prices for comparable goods or services; and (3) whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its employees, the public at large, and the Federal Government.

Section III of HUD's Office of Community Planning and Development Notice 98-9 states that when procuring property or services with Program funds, local governments must use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36.

Page 3 of the City's Department of Community Development's Division of Neighborhood Services' General Specifications Standards states that three contractors will be selected to bid on each job from the approved bid rotation list. The homeowner may select one contractor to bid on the job. If the homeowner selects a contractor to bid, only two contractors will be selected from the approved bid rotation list. Page 6 states that all bids are to be submitted on the bid specification forms. Page 16 states that the bid specifications that are accepted by the homeowner, with the City's approval, become part of the contract between the homeowner and the bidder. The bidder will be known as the contractor from the time the contract is signed. All proposed changes and additions to the contract must be submitted in writing to the Division's rehabilitation advisor, rehabilitation supervisor, and rehabilitation inspector, who will consult with the homeowner and then prepare a change order for the deletions, additions, or both as deemed appropriate, which must be signed by the homeowner; the contractor; and the Division's rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector. Final approval of the change order is achieved with approval of the commissioner of the Division or a designee. The contractor is not to begin work on items included in a change order until notified to proceed by the Division's rehabilitation advisor, rehabilitation supervisor, or rehabilitation inspector in writing (the change order).

Section 1 of the rehabilitation construction contracts between the homeowners and the contractors defines a change order as a written order to the contractor signed by the homeowner and the commissioner of the City's Department of Community Development's Division of Neighborhood Services or designee, authorizing an addition, a deletion, or a revision to the project. Section 2.4 states that the contracts may not be changed except by written instrument executed by the homeowner and contractor under the laws of the State of Ohio and approved by the City as the third-party beneficiary.

Finding 2

HUD's regulations at 24 CFR 92.2 define a low-income household as a household with an annual income that does not exceed 80 percent of the median income for the area as determined by HUD.

HUD's regulations at 24 CFR 92.203(a) state that a participating jurisdiction must determine whether each household is income eligible by determining the household's annual income.

Section 92.203(a)(2) states that a participating jurisdiction must determine households' annual income by examining source documentation evidencing households' annual income. Section 92.203(d)(1) states that a participating jurisdiction must calculate a household's annual income by projecting the prevailing rate of the household's income at the time the participating jurisdiction determines the household to be income eligible. Annual income must include income from all household members.

HUD's regulations at 24 CFR 92.217 state that a participating jurisdiction must invest Program funds made available during a fiscal year so that with respect to home ownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income households.

HUD's regulations at 24 CFR 92.508(a) state that a participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether it has met the requirements of 24 CFR Part 92. The participating jurisdiction must maintain records demonstrating that each household is income eligible in accordance with 24 CFR 92.203.

Chapter two, part I, of HUD's "Building HOME: A Program Primer," dated March 2008, states that income eligibility is based on anticipated income. Therefore, the previous year's tax return does not establish anticipated income and is not adequate source documentation.

Chapter two of HUD's Technical Guide for Determining Income and Allowances for the Program, dated January 2005, states that a participating jurisdiction may develop its own income verification procedures provided that it collects source documentation and that this documentation is sufficient to enable HUD to monitor Program compliance. A participating jurisdiction must project a household's future income by using the household's current income circumstances. Exhibit 2.1 states that a participating jurisdiction must include hourly wage figures, overtime figures, bonuses, anticipated raises, cost-of-living adjustments, or other anticipated changes in income in an applicant household's projected income calculation. For households with jobs providing steady employment, it can be assumed that there will be only slight variations in the amount of income earned. Therefore, 3 consecutive months' worth of income documentation is an appropriate amount upon which to base a household's projected income calculation for the following 12-month period. For those households with jobs providing employment that is less stable or does not conform to a 12-month schedule (such as seasonal laborers), income documentation that covers the entire previous 12-month period should be examined. In addition to hourly earnings, participating jurisdictions must account for all earned income. This income will include annual cost of living adjustments, bonuses, raises, and overtime pay in addition to base salary. In the case of overtime, it is important to determine whether overtime is sporadic or predictable. If a participating jurisdiction determines that a household will continue to earn overtime pay on a regular basis, it should calculate the average amount of overtime pay earned by the household over the past 3 months. This average should then be added to the total amount of projected earned income for the following 12-month period. Appropriate income documentation includes pay statements, third-party verification, bank statements, or certified copies of tax returns.

Finding 3

Section 215(b) of Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, states that housing that is for home ownership shall qualify as affordable housing under Title II of the Act only if the housing is subject to resale restrictions that are established by the participating jurisdiction and determined by HUD's Secretary to be appropriate to (1) allow for the later purchase of the property only by a low-income household at a price that will provide the owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income home buyers or (2) recapture the Program investment to assist other persons in accordance with the requirements of Title II of the Act, except when there are no net proceeds or when the net proceeds are insufficient to repay the full amount of the assistance.

HUD's regulations at 24 CFR 92.252(e) state that Program-assisted units must meet the affordability requirements for not less than the applicable period beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. Rental activities that involve rehabilitation or acquisition of existing housing and receive less than \$15,000 in Program assistance per unit must remain affordable for at least 5 years. Rental activities that involve rehabilitation or acquisition of existing housing and receive from \$15,000 to \$40,000 in Program assistance per unit must remain affordable for at least 10 years. Rental activities that involve rehabilitation or acquisition of existing housing and receive more than \$40,000 in Program assistance per unit or involve rehabilitation that includes financing must remain affordable for at least 15 years. Rental activities that involve new construction or acquisition of newly constructed housing must remain affordable for at least 20 years.

HUD's regulations at 24 CFR 92.254(a)(4) state that Program-assisted housing must meet the affordability requirements for not less than the applicable period beginning after activity completion. Home-ownership activities that receive less than \$15,000 in Program assistance must remain affordable for at least 5 years. Home-ownership activities that receive from \$15,000 to \$40,000 in Program assistance must remain affordable for at least 10 years. Section 92.254(a)(5) states that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards of section 92.254(a)(5) and include the provisions in its consolidated plan. Section 92.254(a)(5)(ii) states that a participating jurisdiction's recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the Program assistance to the home buyers if the housing does not continue to be the principal residence of the household for the duration of the period of affordability. The recaptured funds must be used to carry out Program-eligible activities in accordance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.502(c)(3) state that a participating jurisdiction must disburse Program funds, including Program income and recaptured Program funds, in its local account before requesting Program funds from its treasury account. Section 92.502(d)(1) states that complete project completion information must be entered into HUD's Integrated Disbursement and Information System or otherwise provided within 120 days of the final project drawdown. If satisfactory activity completion information is not provided, HUD may suspend further activity setups or take other corrective actions.

HUD's regulations at 24 CFR 92.503(b)(1) state that any Program funds invested in housing that does not meet the affordability requirements for the period specified in 24 CFR 92.252 or 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with 24 CFR 92.503(b)(3). Section 92.503(b)(3) states that if Program funds were disbursed from the participating jurisdiction's treasury account, they must be repaid to the treasury account. If the Program funds were disbursed from the participating jurisdiction's local account, they must be repaid to the local account. Section 92.503(c) states that Program funds recaptured in accordance with 24 CFR 92.254(a)(5)(ii) must be deposited into the participating jurisdiction's local account and used in accordance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.504(b) state that before disbursing any Program funds to any entity, a participating jurisdiction must enter into a written agreement with that entity. Section 92.504(c)(5)(i) states that when a participating jurisdiction provides assistance to a home buyer, the written agreement must conform to the requirements in 24 CFR 92.254(a) regarding resale or recapture provisions.

Appendix A, section C.3.c., of 2 CFR Part 225 requires that any costs allocable to a particular Federal award not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.

Section VII.a. of HUD's Office of Community Planning and Development's Notice 12-003 states that regardless of whether a participating jurisdiction uses resale or recapture, it must execute a Program written agreement that accurately reflects the resale or recapture provisions with the home buyer before or at the time of sale. The written agreement creates a legal obligation for the participating jurisdiction. Consequently, if the participating jurisdiction modifies its resale or recapture provisions in its annual action plan submission but does not make similar changes to its written agreement, the resale or recapture provisions in the written agreement prevail. Section VII.c. states that failure to comply with the resale or recapture requirements means that the home was sold during the period of affordability and the applicable resale or recapture provisions were not enforced. If this noncompliance occurs, the participating jurisdiction, as the entity responsible for the day-to-day operations of its Program, must repay its HOME investment trust funds with non-Federal funds. How much of the original Program investment must be repaid is dependent on the participating jurisdiction's Program design and use of funds. In cases of noncompliance under either resale or recapture provisions, the participating jurisdiction must repay any outstanding Program funds invested in the housing to its HOME investment trust fund in accordance with 24 CFR 92.503(b). The amount subject to repayment is the total amount of the Program funds invested in the housing less any Program funds already repaid. The participating jurisdiction must repay its HOME investment trust fund in accordance with 24 CFR 92.503(b)(3) whether or not it is able to recover any portion of the Program investment from the noncompliant home buyer.

HUD's HOMEfires, volume 5, number 2, states that for Program-assisted home-buyer projects with recapture provisions, the amount of Program funds required to be repaid if the ownership of the housing is conveyed pursuant to a foreclosure sale is the amount that would be subject to recapture under the terms of the written agreement with the home buyer. If the recapture provisions provide for shared net proceeds, the amount subject to recapture is based on the

amount of net proceeds, if any, from the foreclosure sale. If the recapture provisions require the entire amount of the Program investment from the home buyer or an amount reduced prorata based on the time the home buyer has owned and occupied the home measured against the affordability period, the amount required by the recapture provisions is the amount that must be recaptured by the participating jurisdiction for the Program. If the participating jurisdiction is unable to recapture the funds from the household, the participating jurisdiction must reimburse its Program in the amount due pursuant to the recapture provisions in the written agreement with the home buyer.

HUD's HOMEfires, volume 5, number 5, requires a participating jurisdiction to select either resale or recapture provisions for its Program-assisted home-buyer projects. The participating jurisdiction may select resale or recapture provisions for all of its home-buyer projects or resale or recapture provisions on a case-by-case basis. However, the participating jurisdiction must select whether resale or recapture will be imposed for each home-buyer project at the time the assistance is provided. A participating jurisdiction may adopt any one of four options in designing its recapture provisions. All of the options the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

HUD's HOMEfires, volume 6, number 1, requires that a participating jurisdiction report activity completion and beneficiary data for initial occupants in a timely manner by entering the data into HUD's System on a regular basis and periodically review the status of all activities to identify those that need to be canceled. Failure to maintain timely information in HUD's System is a violation of 24 CFR 92.504(a). When a participating jurisdiction fails to enter information into HUD's System in a timely manner, Program results are underreported to Congress and the Office of Management and Budget. The underreporting of Program results may negatively impact future Program funding.

Paragraph 2-2(C) of HUD Handbook 6511.02, REV-1, states that only the initial use of Urban Development Action Grant miscellaneous revenues must comply with the appropriate eligibility requirements under Title I of the Housing and Community Development Act of 1974 as amended. The reuse of miscellaneous revenues through other recycling mechanisms is not subject to the provisions of the Act.

The questions and answers provided in HUD's former Assistant Secretary for Community Planning and Development's December 10, 1990, memorandum to HUD staff regarding Urban Development Action Grant project management stated that for projects approved before July and September of 1989 and governed by the grant agreement rider provisions in effect before the August 1988 revised regulations, miscellaneous revenues may be spent for any activity eligible under Title I of the Housing and Community Development Act of 1974 as amended. For the 85 projects approved in July and September of 1989 and subject to the revised grant agreement rider provisions, miscellaneous revenues must be made available by the recipient for economic development activities eligible for funding under either the Urban Development Action Grant program or Section 105 of the Act.

Finding 4

HUD's regulations at 24 CFR 92.2 define Program income as gross income received by a participating jurisdiction directly generated from the use of Program funds or matching contributions. Program income also includes interest earned on Program income pending its disposition.

HUD's regulations at 24 CFR 92.502(c)(3) state that a participating jurisdiction must disburse Program funds, including Program income and recaptured Program funds, in its local account before requesting Program funds from its treasury account.

HUD's regulations at 24 CFR 92.503(a)(1) state that a participating jurisdiction must deposit Program income into its local account unless it permits a State recipient or subrecipient to retain the Program income for additional Program projects pursuant to the written agreement required by 24 CFR 92.504.

HUD's Office of Community Planning and Development Notice 97-9, issued September 12, 1997, requires available Program income to be determined and recorded in HUD's System in periodic intervals not to exceed 30 days.

Appendix D

THE CITY'S CONTRACTING PROCESSES FOR REPAIR-A-HOME PROGRAM PROJECTS

Project number 8534

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$17,669. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On April 13, 2009, the City opened the bids, and the lowest bid was \$19,431. The lowest bid exceeded the City's estimate by 9.9 percent. The City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$19,431 on April 24, 2009. The City added 10 items to and deleted 2 items from the scope of work through a change order, dated June 25, 2009. The additional items totaled \$2,629. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$452 and \$560, respectively. The City used \$21,500 in Program funds (\$19,431 for the bid plus \$2,629 for the additional items in the change order less \$560 for the deleted items in the change order) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$17,217 and \$18,871, respectively. The contractor's bid then exceeded the City's estimate by 9.6 percent. The City did not use Program funds for services in excess of 110 percent of the City's estimate for the project. However, it used \$2,629 in Program funds through a change order for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 9104

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$61,009. The City requested bids for the services from three contractors. All three contractors submitted a bid. On August 14, 2006, the City opened the bids, and the lowest bid was \$69,440. Although the lowest bid exceeded the City's estimate by 13.8 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$69,440 on September 22, 2006. The City added 29 items to and deleted 26 items from the scope of work through a change order form signed by a City rehabilitation inspector on November 20, 2007, and the contractor on December 6, 2007. The additional items totaled \$11,560. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$8,488 and \$9,520, respectively. The City used \$71,480 in Program funds (\$69,440 for the bid plus \$11,560 for the additional items in the change order form less \$9,520 for the deleted items in the change order form) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. We were unable to trace one of the deleted items to the City's scope of work. To be conservative, we removed only the \$300 for the deleted item from the contractor's bid. We removed the remaining deleted items from the City's estimate and the contractor's bid. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$52,521 and \$59,920, respectively. The contractor's bid then exceeded the City's estimate by 14 percent. As a result, the City used \$2,147 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$11,560 in Program funds through a change order form for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 9571

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$40,577. The City requested bids for the services from three contractors. However, only one of the three contractors submitted a bid. On May 21, 2007, the City opened the bid, and the bid was \$51,500. Although the bid exceeded the City's estimate by 26.9 percent, the City accepted the bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$51,500 on June 22, 2007. The City added 22 items to and deleted 4 items from the scope of work through 2 change orders from April 2, 2008, through November 5, 2008. The additional items totaled \$8,170. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$2,324 and \$2,620, respectively. The City used \$57,050 in Program funds (\$51,500 for the bid plus \$8,170 for the additional items in the change orders less \$2,620 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$38,253 and \$48,880, respectively. The contractor's bid then exceeded the City's estimate by 27.7 percent. As a result, the City used \$6,802 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$8,170 in Program funds through two change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$28,325 on June 18, 2007, and a Program-funded grant agreement with the homeowner for \$28,325 on June 19, 2007, for the price in the rehabilitation construction contract between the homeowner and the contractor plus a 10 percent contingency of the contract amount. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$400 in Program funds (\$57,050 in Program funds used less \$56,650 in written agreements) was used to complete the housing rehabilitation work on the home.

Project number 9647

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$23,928. The City requested bids for the services from three contractors. All three contractors submitted a bid. On May 27, 2007, the City opened the bids, and the lowest bid was \$27,545. Although the lowest bid exceeded the City's estimate by 15.1 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$27,545 on August 2, 2007. The City added eight items to and deleted two items from the scope of work through three change orders from September 28 through November 1, 2007. The additional items totaled \$3,174. However, the City did not estimate the cost for the additional services. Further, one of the additional items was an increase of \$80 due to a calculation error in the contractor's bid. The City's cost estimate and the contractor's bid for the deleted items were \$45 and \$375, respectively. The City used \$30,300 in Program funds (\$27,545 for the bid plus \$3,130 for the additional items in the change orders less \$375 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home. The City did not pay the contractor for \$44 in additional services.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the contractor's bid or from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. We were unable to trace one of the deleted items to the City's scope of work. To be conservative, we removed only the \$300 for the deleted item from the contractor's bid. We removed the remaining deleted item from the City's estimate and the contractor's bid. We also added \$80 to the contractor's bid since an additional item was an increase due to a calculation error in the contractor's bid. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$23,883 and \$27,250, respectively. The contractor's bid then exceeded the City's estimate by 14.1 percent. As a result, the City used \$978 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$3,050 (\$3,130 in Program funds used for the additional items less \$80 for the increase due to a calculation error in the contractor's bid) in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 9738

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$42,539. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On August 13, 2007, the City opened the bids, and the lowest bid was \$58,376. Although the lowest bid exceeded the City's estimate by 37.2 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$58,376 on September 27, 2007. The City added 12 items to and deleted 13 items from the scope of work through a change order, dated December 7, 2007. The additional items totaled \$10,512. The City did not estimate the cost for the additional services. However, it was able to trace 1 of the 12 additional items to its initial estimate since the services were for additional units of an item in its scope of work and the cost matched the amount in the contractor's bid. The additional item was \$60. The City's cost estimate for the additional item was \$15. The City's cost estimate and the contractor's bid for the deleted items were \$4,497 and \$8,778, respectively. Further, the homeowner refused to let

the contractor complete the remaining \$4,660 in services on the contract. Therefore, the City selected another contractor to complete the remaining services without soliciting bids from other contractors. The City developed a punch list for the services to be completed by the new contractor. However, we were not able to match the services on the punch list to the services in the scope of work or the change order. Further, the City did not ensure that the homeowner and the new contractor entered into a contract. The City used \$58,376 in Program funds (\$53,716 to the initial contractor plus \$8,778 for the additional items in the change order and \$4,660 to the new contractor less \$8,778 for the deleted items in the change order) to pay the contractors for the rehabilitation work completed on the home. The City did not pay the initial contractor for \$1,734 in additional services or \$4,660 in services completed by the new contractor.

Since the City did not pay the initial contractor for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of services that exceeded the City's estimate. We also added to the City's estimate and the contractor's bid the additional item the City was able to trace to its initial estimate. Further, since we were not able to match the new contractor's services on the punch list to the initial contractor's services in the scope of work or the change order and the City did not ensure that the homeowner and the new contractor entered into a contract, we applied the \$4,660 in remaining services completed by the new contractor, based on a percentage of the total contract, to the contractor's bid (after removing the deleted items in the change order and adding the additional item in the change order that the City was able to trace to its initial estimate) and the change order (after removing the additional item in the change order that the City was able to trace to its initial estimate and the amount the City did not pay the initial contractor for additional services). The amount of the remaining services completed by the new contractor applicable to the contractor's bid and change order was \$3,964 (\$49,658 for the contractor's bid after the revisions divided by \$58,376 for the contract times \$4,660 in remaining services completed by the new contractor) and \$696 (\$8,718 for the change order after the revisions divided by \$58,376 for the contract times \$4,660 in remaining services completed by the new contractor), respectively. To be conservative, we removed only the \$3,964 in remaining services completed by the new contractor and applicable to the contractor's bid from the contractor's bid. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the initial contractor were \$38,057 and \$45,694, respectively. The contractor's bid then exceeded the City's estimate by 20 percent. As a result, the City used \$3,831 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$8,022 (\$8,778 in Program funds used for the additional items less \$60 in Program funds used for the additional item the City was able to trace to its initial estimate and \$696 in remaining services completed by the new contractor and applicable to the change order) in Program funds through a change order for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 10274

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$51,404. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On July 8, 2008, the City opened the bids, and the lowest bid was \$57,436. Although the lowest bid exceeded the City's estimate by 11.7 percent, the City accepted the lowest bid, and the homeowner and the

contractor entered into a rehabilitation construction contract for \$57,436 on August 1, 2008. The City added seven items to and deleted one item from the scope of work through two change orders from August 20, 2008, through January 6, 2009. The additional items totaled \$1,388. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted item were \$165 and \$880, respectively. The City used \$57,944 in Program funds (\$57,436 for the bid plus \$1,388 for the additional items in the change orders less \$880 for the deleted item in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for the item deleted from the scope of work, we removed the deleted item from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$51,239 and \$56,556, respectively. The contractor's bid then exceeded the City's estimate by 10.3 percent. As a result, the City used \$193 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$1,388 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 10449

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$41,902. The City requested bids for the services from three contractors. All three contractors submitted a bid. On October 20, 2008, the City opened the bids, and the lowest bid was \$55,730. Although the lowest bid exceeded the City's estimate by 33 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$55,730 on December 4, 2008. The City added seven items to and deleted five items from the scope of work through two change orders from March 6 through May 11, 2009. The additional items totaled \$5,851. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$2,300 and \$4,300, respectively. The City used \$57,281 in Program funds (\$55,730 for the bid plus \$5,851 for the additional items in the change orders less \$4,300 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$39,602 and \$51,430, respectively. The contractor's bid then exceeded the City's estimate by 29.8 percent. As a result, the City used \$7,868 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$5,851 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 10874

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$34,420. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On May 18, 2009, the City opened the bids, and the lowest bid was \$38,230. Although the lowest bid exceeded the City's estimate by 11 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$38,230 on July 8, 2009. The City added 17 items to and deleted 4 items from the scope of work through 2 change orders from December 17, 2009, through January 19, 2010. The additional items totaled \$4,840. The City did not estimate the cost for the additional services. However, it was able to trace 3 of the 17 additional items to its initial estimate since the services were for additional units of items in its scope of work and the costs matched amounts in the contractor's bid. The three additional items totaled \$1,140. The City's cost estimate for the three additional items was \$1,010. The City's cost estimate and the contractor's bid for the deleted items were \$1,820 and \$1,400, respectively. The City used \$41,670 in Program funds (\$38,230 for the bid plus \$4,840 for the additional items in the change orders less \$1,400 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. We also added to the City's estimate and the contractor's bid the three additional items the City was able to trace to its initial estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$33,610 and \$37,970, respectively. The contractor's bid then exceeded the City's estimate by 12.9 percent. As a result, the City used \$999 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$3,700 (\$4,840 in Program funds used for the additional items less \$1,140 in Program funds used for the three additional items the City was able to trace to its initial estimate) in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 10895

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$32,551. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 29, 2009, the City opened the bids, and the lowest bid was \$40,480. Although the lowest bid exceeded the City's estimate by 24.3 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$40,480 on August 3, 2009. The City added four items to and deleted one item from the scope of work through two change orders from October 16 through November 4, 2009. The additional items totaled \$6,244. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted item were \$250 and \$300, respectively. The City used \$46,424 in Program funds (\$40,480 for the bid plus \$6,244 for the additional items in the change orders less \$300 for the deleted item in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$32,301 and \$40,180, respectively. The contractor's bid still exceeded the City's estimate by 24.3 percent. As a result, the City used \$4,649 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$6,244 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$22,250 and a Program-funded grant agreement with the homeowner for \$22,250 on July 28, 2009, for the price in the rehabilitation construction contract between the homeowner and the contractor plus a nearly 10 percent contingency of the contract amount. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$1,924 in Program funds (\$46,424 in Program funds used less \$44,500 in written agreements) was used to complete the housing rehabilitation work on the home.

Project number 10901

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$45,792. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 29, 2009, the City opened the bids, and the lowest bid was \$54,410. Although the lowest bid exceeded the City's estimate by 18.8 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$54,410 on August 10, 2009. The City added 18 items to and deleted 7 items from the scope of work through 2 change orders from September 3 through October 2, 2009. The additional items totaled \$6,200. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$3,109 and \$3,049, respectively. The City also added \$1,000 to its Program-funded deferred loan to the homeowner to complete additional services. The homeowner requested that a new contractor complete the services. Therefore, the City selected another contractor to complete the services without soliciting bids from other contractors. The City estimated the cost of the Program-funded services to be \$1,464. It used \$58,561 in Program funds (\$54,410 for the bid plus \$6,200 for the additional items in the change orders and \$1,000 for the additional services to the new contractor less \$3,049 for the deleted items in the change orders) to pay the contractors for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$42,683 and \$51,361, respectively. The contractor's bid then exceeded the City's estimate by 20.3 percent. As a result, the City used \$4,410 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$6,200 in Program funds through change orders

for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 10902

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$34,877. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 29, 2009, the City opened the bids, and the lowest bid was \$44,380. Although the lowest bid exceeded the City's estimate by 27.2 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$44,380 on August 8, 2009. The City added 30 items to and deleted 8 items from the initial scope of work through 5 change orders from August 27 through December 3, 2009. The additional items totaled \$11,004. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$4,316 and \$5,736, respectively. The City used \$49,558 in Program funds (\$44,380 for the bid plus \$10,914 for the additional items in the change orders less \$5,736 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home. The City did not pay the contractor for \$90 in additional services.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$30,561 and \$38,644, respectively. The contractor's bid then exceeded the City's estimate by 26.4 percent. As a result, the City used \$5,027 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$10,914 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$24,400 on August 3, 2009, and a Program-funded grant agreement with the homeowner for \$24,400 on August 4, 2009, for the price in the rehabilitation construction contract between the homeowner and the contractor plus a nearly 10 percent contingency of the contract amount. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$758 in Program funds (\$49,558 in Program funds used less \$48,800 in written agreements) was used to complete the housing rehabilitation work on the home.

Project number 10922

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$24,606. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 8, 2009, the City opened the bids, and the lowest bid was \$28,914. However, the City accepted the other bid of \$30,162 because the City did not include \$1,875 in services that the contractor included in its bid and listed the bid at \$28,287. Further, the contractor with the lowest bid did not include costs for three of the items in the scope of work. The accepted bid exceeded the City's estimate by

22.5 percent. On August 21, 2009, the homeowner and the contractor entered into a rehabilitation construction contract for \$33,178. The contract included a 10 percent contingency of the bid amount. The City added 16 items to and deleted 2 items from the scope of work through 2 change orders from November 5 through December 1, 2009. The additional items totaled \$4,527. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$1,521 and \$1,263, respectively. The City used \$33,426 in Program funds (\$30,162 for the bid plus \$4,527 for the additional items in the change orders less \$1,263 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor for were \$23,085 and \$28,899, respectively. The contractor's bid then exceeded the City's estimate by 25.1 percent. As a result, the City used \$3,506 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$4,527 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$16,589 on August 14, 2009, and a Program-funded grant agreement with the homeowner for \$16,589 on August 27, 2009, for the price in the rehabilitation construction contract between the homeowner and the contractor. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$248 in Program funds (\$33,426 in Program funds used less \$33,178 in written agreements) was used to complete the housing rehabilitation work on the home.

Project number 10973

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$32,149. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 8, 2009, the City opened the bids, and the lowest bid was \$44,985. Although the lowest bid exceeded the City's estimate by 39.9 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$44,985 on September 25, 2009. The City added 22 items to and deleted 3 items from the scope of work through 2 change orders from November 2 through December 24, 2009. The additional items totaled \$8,716. The City did not estimate the cost for the additional services. However, it was able to trace 2 of the 22 additional items to its initial estimate since the services were for additional units of items in its scope of work and the costs matched amounts in the contractor's bid. The two additional items totaled \$2,200. The City's cost estimate for the traceable two additional items was \$1,296. The City's cost estimate and the contractor's bid for the deleted items were \$2,050 and \$1,450, respectively. The City used \$52,251 in Program funds (\$44,985 for the bid plus \$8,716 for the additional items in the change orders less \$1,450 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. We also added to the City's estimate and the contractor's bid the two additional items the City was able to trace to its initial estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$31,395 and \$45,735, respectively. The contractor's bid then exceeded the City's estimate by 45.6 percent. As a result, the City used \$11,200 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$6,516 (\$8,716 in Program funds used for the additional items less \$2,200 in Program funds used for the two additional items the City was able to trace to its initial estimate) in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$33,180 on September 18, 2009, and a Program-funded grant agreement with the homeowner for \$16,302 on May 6, 2010, for the price in the rehabilitation construction contract between the homeowner and the contractor plus a 10 percent contingency of the contract amount. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$2,769 in Program funds (\$52,251 in Program funds used less \$49,482 in written agreements) was used to complete the housing rehabilitation work on the home.

Project Number 11344

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$25,015. The City requested bids for the services from three contractors. All three contractors submitted a bid. On March 15, 2010, the City opened the bids, and the lowest bid was \$27,331. The lowest bid exceeded the City's estimate by 9.2 percent. The City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$27,331 on April 29, 2010. The City added two items to and deleted one item from the scope of work through a change order, dated November 17, 2010. The additional items totaled \$1,200. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted item were \$204 and \$200, respectively. The City used \$28,331 in Program funds (\$27,331 for the bid plus \$1,200 for the additional items in the change order less \$200 for the deleted item in the change order) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for the item deleted from the scope of work, we removed the deleted item from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor for were \$24,811 and \$27,131, respectively. The contractor's bid then exceeded the City's estimate by 9.3 percent. The City did not use Program funds for services in excess of 110 percent of the City's estimate for the project. However, it used \$1,200 in Program funds through a change order for the project without sufficient documentation to support that the cost of the additional services was reasonable.

Project number 11401

The City developed a scope of work for housing rehabilitation services for the home and estimated the services to cost \$47,450. The City requested bids for the services from three contractors. However, only two of the three contractors submitted a bid. On June 1, 2010, the City opened the bids, and the lowest bid was \$58,425. Although the lowest bid exceeded the City's estimate by 23.1 percent, the City accepted the lowest bid, and the homeowner and the contractor entered into a rehabilitation construction contract for \$58,425 on July 12, 2010. The City added 20 items to and deleted 2 items from the scope of work through 3 change orders from September 13 through December 7, 2010. The additional items totaled \$6,826. However, the City did not estimate the cost for the additional services. The City's cost estimate and the contractor's bid for the deleted items were \$665 and \$1,136, respectively. The City used \$64,115 in Program funds (\$58,425 for the bid plus \$6,826 for the additional items in the change orders less \$1,136 for the deleted items in the change orders) to pay the contractor for the rehabilitation work completed on the home.

Since the City did not pay for items deleted from the scope of work, we removed the deleted items from the contractor's bid or from the City's estimate and the contractor's bid to determine the amount of housing rehabilitation services that exceeded the City's estimate. We were unable to trace one of the deleted items to the City's scope of work. To be conservative, we removed only the \$250 for the deleted item from the contractor's bid. We removed the remaining deleted item from the City's estimate and the contractor's bid. Therefore, the City's cost estimate and the contractor's bid for the services for which the City paid the contractor were \$46,785 and \$57,289, respectively. The contractor's bid then exceeded the City's estimate by 22.4 percent. As a result, the City used \$5,825 in Program funds for services in excess of 110 percent of the City's estimate for the project. Further, it used \$6,826 in Program funds through change orders for the project without sufficient documentation to support that the cost of the additional services was reasonable.

In addition, the City entered into a Program-funded term loan with the homeowner for \$30,000 and a Program-funded grant agreement with the homeowner for \$30,000 on June 30, 2010, for the price in the rehabilitation construction contract between the homeowner and the contractor plus a nearly 3 percent contingency of the contract amount. However, the City did not amend the grant agreement or enter into an additional grant agreement with the homeowner when an additional \$4,115 in Program funds (\$64,115 in Program funds used less \$60,000 in written agreements) was used to complete the housing rehabilitation work on the home.

Appendix E

SCHEDULE OF PROGRAM INCOME THAT WAS NOT REPORTED IN A TIMELY MANNER

Month Program income received	Program income earned	Date reported in HUD's System	Days over HUD's 30-day requirement*	Days over City's goal
Dec. 2008	\$48,884	Jan. 16, 2009		1
Jan. 2009	41,191	Feb. 13, 2009		
Feb. 2009	22,719	Mar. 25, 2009	10	10
Mar. 2009	30,489	April 22, 2009		7
Apr. 2009	24,608	May 21, 2009		6
May 2009	18,337	June 18, 2009		3
June 2009	24,233	July 16, 2009		1
July 2009	20,977	Aug. 20, 2009	5	5
Aug. 2009	25,350	Sept. 18, 2009		3
Sept. 2009	21,452	Oct. 13, 2009		
Oct. 2009	22,875	Nov. 23, 2009	11	8
Nov. 2009	20,183	Dec. 28, 2009	5	13
Dec. 2009	23,508	Feb. 18, 2010	22	34
Jan. 2010	17,103	May 26, 2010	67	100
Feb. 2010	29,822	May 26, 2010	67	72
Mar. 2010	42,760	May 26, 2010	67	41
Apr. 2010	25,918	May 26, 2010	67	11
May 2010	32,973	June 25, 2010		10
June 2010	35,759	July 15, 2010		
July 2010	23,099	Aug. 19, 2010	5	4
Aug. 2010	24,051	Sept. 14, 2010		
Sept. 2010	29,034	Oct. 28, 2010	14	13
Oct. 2010	26,153	Nov. 18, 2010		3
Nov. 2010	24,583	Dec. 28, 2010	10	13
Dec. 2010	20,226	Mar. 11, 2011	43	55
Jan. 2011	25,705	Mar. 18, 2011		31
Feb. 2011	26,424	Mar. 24, 2011		9
Mar. 2011	81,555	Apr. 11, 2011		
Apr. 2011	56,956	May 10, 2011		
May 2011	31,768	June 24, 2011	15	9
June 2011	42,914	July 26, 2011	2	11
July 2011	24,138	Aug. 18, 2011		3
Aug. 2011	26,355	Sept. 21, 2011	4	6

* The number of days after the 30th day since the City last reported Program income in HUD's Integrated Disbursement and Information System