



Issue Date  
February 24, 2012

Audit Report Number  
2012-CH-1004

TO: John Dorgan, Acting Director of Community Planning and Development, 5HD

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

SUBJECT: The State of Indiana's Administrator Lacked Adequate Controls Over the State's HOME Investment Partnerships Program Regarding Community Housing Development Organizations' Activities and Income

## **HIGHLIGHTS**

### **What We Audited and Why**

We audited the State of Indiana's HOME Investment Partnerships Program. The audit was part of the activities in our fiscal year 2011 annual audit plan. We selected the State based upon our analysis of risk factors relating to Program grantees in Region V's<sup>1</sup> jurisdiction. Our objectives were to determine whether the Indiana Housing and Community Development Authority, the administrator of the State's Program, complied with the U.S. Department of Housing and Urban Development's (HUD) requirements in its (1) use of Program funds for a community housing development organization's rental rehabilitation and new construction project; (2) use of resale or recapture provisions and Program funds for organizations' home-buyer activities; and (3) use and reporting of the State's Program income. This is the second of two audit reports on the State's Program.

### **What We Found**

The Authority did not comply with HUD's regulations when it did not reimburse the State's HOME investment trust fund treasury account until March 2011 for

---

<sup>1</sup> Region V includes the States of Indiana, Illinois, Ohio, Michigan, Minnesota, and Wisconsin.

\$395,000 in Program funds used for an organization's rental rehabilitation and new construction project that was terminated in November 2009. As a result, the Authority did not have \$395,000 in Program funds available for eligible Program-funded activities for more than 15 months.

The Authority also did not comply with HUD's requirements in its use of resale or recapture provisions and or use of Program funds for organizations' home-buyer new construction projects, home-buyer acquisition-only activities, and home-buyer rehabilitation projects. It (1) did not ensure that homes for home-buyer new construction projects would remain the principal residence of the home buyers throughout the affordability period; (2) provided assistance for ineligible home-buyer acquisition-only activities; and (3) lacked sufficient documentation to support that home-buyer acquisition-only activities and home-buyer rehabilitation projects were eligible. As a result, the Authority (1) used more than \$173,000 in Program funds for home-buyer new construction projects that did not meet HUD's requirements and (2) was unable to support its use of more than \$401,000 in Program funds for home-buyer acquisition-only activities and home-buyer rehabilitation projects.

In addition, the Authority did not comply with HUD's requirements in its use and reporting of the State's Program income. As a result, HUD lost nearly \$15,000 in interest on the Program funds that the Authority drew down from the State's treasury account when Program income was available.

### **What We Recommend**

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development ensure that the State uses the nearly \$406,000 the Authority reimbursed the State's treasury account or Program for eligible Program costs. We also recommend that the Acting Director require the State to (1) provide supporting documentation or reimburse its Program nearly \$393,000 from non-Federal funds; (2) reimburse HUD nearly \$15,000 from non-Federal funds, and (3) implement adequate procedures and controls to address the findings cited in this audit report.

For each recommendation in the body of the report without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

### **Auditee's Response**

We provided our discussion draft audit report and supporting schedules to the executive director of the Authority and HUD's staff and our discussion draft audit

report to the Authority's chairman of the board during the audit. We held an exit conference with the Authority's executive director on September 13, 2011. We asked the Authority's executive director to provide comments on our discussion draft audit report by September 19, 2011. The executive director provided written comments, dated September 19, 2011. The executive director generally disagreed with our findings, but partially agreed with our recommendations. The complete text of the written comments, except for documentation contained in 14 attachments that was not necessary for understanding the executive director's comments, along with our evaluation of that response, can be found in appendix B of this report. We provided the Acting Director of HUD's Indianapolis Office of Community Planning and Development with a complete copy of the Authority's written comments plus the documentation contained in the 14 attachments.

# TABLE OF CONTENTS

---

Background and Objectives	5
Results of Audit	
Finding 1: The Authority Lacked Adequate Controls Over the Reimbursement of Program Funds Used for an Organization’s Terminated Rental Rehabilitation and New Construction Project	6
Finding 2: The Authority Lacked Adequate Controls Over Organizations’ Home-Buyer New Construction Projects	9
Finding 3: The Authority Lacked Adequate Controls Over Organizations’ Home-Buyer Acquisition-Only Activities	16
Finding 4: The Authority Lacked Adequate Controls Over Organizations’ Home-Buyer Rehabilitation Projects	23
Finding 5: The Authority Lacked Adequate Controls Over Its Administration of Program Income	27
Scope and Methodology	31
Internal Controls	34
Appendixes	
A. Schedule of Questioned Costs and Funds To Be Put to Better Use	36
B. Auditee Comments and OIG’s Evaluation	37
C. HUD’s Requirements and the State’s and the Authority’s Policies	61
D. Schedule of Organizations’ Home-Buyer New Construction Projects With Inappropriate Recapture Provisions	67
E. Schedule of Organizations’ Home-Buyer Acquisition-Only Activities With Insufficient Documentation	69

## BACKGROUND AND OBJECTIVES

---

**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 acquisition, construction, and rehabilitation of housing; and providing tenant-based rental assistance.

**The State.** The Indiana Housing and Community Development Authority administers the State of Indiana's Program. The Authority was created in 1978 by the Indiana General Assembly and is a quasi-public financially self-sufficient statewide government agency. It is governed by a seven-member board of commissioners consisting of the State's lieutenant governor, the State's treasurer, and the Indiana Finance Authority's public finance director. The board includes four other members appointed to 4-year terms by the State's governor. Its mission is for every resident of the State to have the opportunity to live in safe, affordable, good-quality housing in economically stable communities. The Authority's Program records are located at 30 South Meridian Street, Indianapolis, IN.

The following table shows the amount of Program funds the U.S. Department of Housing and Urban Development (HUD) awarded the State for program years 2007 through 2011.

<b>Program year</b>	<b>Program funds</b>
<b>2007</b>	\$15,519,476
<b>2008</b>	15,012,167
<b>2009</b>	16,710,924
<b>2010</b>	16,699,875
<b>2011</b>	14,673,286
<b>Totals</b>	<b><u>\$78,615,728</u></b>

Our objectives were to determine whether the Authority complied with HUD's requirements in its (1) use of Program funds for a community housing development organization's rental rehabilitation and new construction project; (2) use of resale or recapture provisions and Program funds for organizations' home-buyer new construction projects, home-buyer acquisition-only activities, and home-buyer rehabilitation projects; and (3) use and reporting of the State's Program income.

## RESULTS OF AUDIT

---

### Finding 1: The Authority Lacked Adequate Controls Over the Reimbursement of Program Funds Used for an Organization's Terminated Rental Rehabilitation and New Construction Project

The Authority did not comply with HUD's regulations when it did not reimburse the State's HOME investment trust fund treasury account until March 2011 for \$395,000 in Program funds used for a community housing development organization's rental rehabilitation and new construction project that was terminated in November 2009. This weakness occurred because the Authority lacked adequate procedures and controls to reimburse the State's treasury account for Program funds used for a terminated project. As a result, the Authority did not have \$395,000 in Program funds available for eligible Program-funded activities for more than 15 months.

---

**The Authority Did Not Reimburse the State's Treasury Account \$395,000 in Program Funds Disbursed for a Terminated Project**

HUD's regulations at 24 CFR (Code of Federal Regulations) 92.205(e) state that a Program-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any Program funds invested in the project must be repaid to the participating jurisdiction's HOME investment trust fund in accordance with 24 CFR 92.503(b). HUD's regulations at 24 CFR 92.503(b)(2) state that except for repayments of project-specific organization loans which are waived in accordance with 24 CFR 92.301(a)(3) and 92.301(b)(3), any Program funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's treasury account, the funds must be repaid to the participating jurisdiction's treasury account.

The Authority drew down and disbursed \$395,000 in Program funds from December 2007 through January 2008 to Southern Indiana Homeownership, Incorporated, a community housing development organization, for rental rehabilitation and new construction project number 22460. The Program funds were used for developer fees (\$146,722), architectural fees (\$138,492), hard costs (\$57,276), other soft costs (\$41,760), and the repayment to the Authority for a predevelopment loan (\$10,750). The project was to be financed using nearly \$4

million in rental housing tax credits. However, the rental housing tax credit investor backed out in January 2008. Southern Indiana Homeownership, Incorporated, informed the Authority that the investor had backed out and it was trying to secure a new investor. In September 2009, the Authority inspected the project and determined that the housing rehabilitation and new construction work had not progressed since January 2008. Further, Southern Indiana Homeownership, Incorporated, had not been able to secure a new investor.

In November 2009, the Authority terminated the project and determined that it would require the repayment of nearly \$191,000 in non-predevelopment costs. It also inappropriately determined that it would (1) reclassify nearly \$194,000 in predevelopment costs of the project as a project-specific organization predevelopment loan, since the predevelopment cost would have been eligible under a loan and then (2) waive the repayment of the loan. It did not consider the nearly \$11,000 for the repayment of the predevelopment loan. In addition, the Authority inappropriately reported in HUD's Integrated Disbursement and Information System that the project was completed in February 2010.

In January 2011, the Authority entered into a repayment agreement with Southern Indiana Homeownership, Incorporated, for more than \$83,000. As of February 2011, the Authority was trying to enter into a repayment agreement with the construction company that did work on the project for the remaining nearly \$108,000. Further, the Authority had not reimbursed the State's treasury account any of the Program funds used for the rental rehabilitation and new construction project.

In March 2011, more than 15 months after rental rehabilitation and new construction project number 22460 was terminated and as a result of our audit, the Authority reimbursed the State's treasury account \$395,000 from non-Federal funds. Further, in April 2011, the Authority decommitted \$395,000 in Program funds for the project, described the project as a predevelopment loan, and reported the project as completed in HUD's system.

### **The Authority Lacked Adequate Procedures and Controls**

The weakness described above occurred because the Authority lacked adequate procedures and controls to reimburse the State's treasury account for Program funds used for an organization's terminated rental rehabilitation and new construction project.

The Authority's chief operations officer said that the Authority wanted to limit the amount of Program funds that Southern Indiana Homeownership, Incorporated, and the construction company would have to repay the Authority since the project

did not move forward. The Authority was not aware that it could not (1) reclassify the nearly \$194,000 in predevelopment cost of the project as a project-specific organization predevelopment loan, since the predevelopment cost would have been eligible under a loan and then (2) waive the repayment of the loan. The Authority's deputy counsel stated that the Authority did not initially reimburse the State's treasury account for the nearly \$191,000 in nonpredevelopment costs since the Authority was focusing its efforts in obtaining repayments from Southern Indiana Homeownership, Incorporated, and the construction company.

## **Conclusion**

The Authority lacked adequate procedures and controls to reimburse its treasury account for Program funds used for a terminated rental rehabilitation and new construction project. As result, it did not have \$395,000 in Program funds available for eligible Program-funded activities for more than 15 months.

## **Recommendations**

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development

- 1A. Ensure that the State uses the \$395,000, which the Authority reimbursed the State's treasury account for the repaid Program funds associated with rental rehabilitation and new construction project number 22460, only for eligible Program costs.

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development require the State to

- 1B. Implement adequate procedures and controls to ensure that the Authority reimburses the State's treasury account as appropriate for Program funds used for terminated projects.



## Finding 2: The Authority Lacked Adequate Controls Over Organizations' Home-Buyer New Construction Projects

The Authority did not comply with HUD's requirements in its use of Program funds for community housing development organizations' home-buyer new construction projects. It (1) did not ensure that resale provisions were implemented until August 2011 for two projects that received only development subsidies and the closing dates for the two homes occurred in November 2009, (2) did not implement appropriate recapture provisions for 42 of the remaining 43 projects, (3) did not ensure that homes for 4 of the 42 projects would remain the principal residences of the home buyers throughout the affordability period, and (4) did not reimburse the State's HOME investment trust fund treasury account for more than 17 months for Program funds that were not used for a project.

These weaknesses occurred because the Authority lacked adequate procedures and controls over the projects to ensure that it appropriately followed HUD's requirements. As a result, the Authority (1) did not ensure that homes would remain the principal residences of the home buyers throughout the affordability period for four projects totaling more than \$173,000 in Program funds and (2) did not have more than \$6,000 in Program funds available for eligible Program-funded activities for more than 17 months. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the projects is transferred through foreclosures during the affordability period.

---

### **The Authority Did Not Ensure That Resale Provisions Were Implemented in a Timely Manner for Two Projects**

We reviewed all 45 home-buyer new construction projects that the Authority set up and completed in HUD's Integrated Disbursement and Information System from July 1, 2008, through November 30, 2010. The Authority provided nearly \$1.9 million in Program funds to 10 organizations—Affordable Housing Corporation; Family Christian Development Center; Habitat for Humanity of Elkhart County; Habitat for Humanity of Monroe County; Habitat for Humanity of Morgan County; Habitat for Humanity of Whitley County; Housing Opportunities, Inc.; Jeffersonville Housing Services Corporation; La Casa of Goshen, Inc.; and Pathfinder Services, Inc.—for the 45 projects.

HUD's regulations at 24 CFR 92.254(a)(3) state that housing must be acquired by a home buyer whose household qualifies as a low-income household and the housing must be the principal residence of the household throughout the period described in section 92.254(a)(4). Section 92.254(a)(4) states 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 more than \$40,000 in Program assistance must remain affordable for

at least 15 years. Section 92.254(a)(5) states that to ensure affordability, the participating jurisdiction must impose either resale or recapture requirements 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)(A)(5) states that if Program assistance is used only for development subsidies, the Program funds are not subject to recapture and the resale option must be used.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that when the program design calls for no recapture (for home-buyer developments, the home could receive only development subsidies), the guidelines for resale will be adopted in lieu of recapture guidelines. Resale restrictions will require the seller to sell the property only to a low-income household that will use the property as its principal residence. The State's action plan for 2009 also states that the affordability period for all Program-assisted housing is determined by the total amount of Program assistance that goes into a property. Activities that receive more than \$40,000 in Program assistance per unit must remain affordable for 15 years.

The Authority provided only development subsidies for 2 of the 45 home-buyer new construction projects reviewed. The Authority provided \$104,700 in Program funds to Affordable Housing Corporation for project numbers 24860 (\$51,700) and 24862 (\$53,000). The closing dates for the two homes occurred in November 2009. However, it could not provide documentation to support that resale provisions were implemented for the two projects. The Authority also could not provide documentation to support that Affordable Housing Corporation ensured that the homes for the two projects would remain the principal residences of the home buyers throughout the affordability period. Further, unsigned declaration of affordability commitments for the two projects included an affordability period of 5 years rather than 15 years.

In August 2011, more than 20 months after the closing dates for the two homes and as a result of our audit, Affordable Housing Corporation entered into notice of lien and restrictive covenant agreements with the home buyers for the two projects. The agreements included resale provisions and that the homes would remain the principal residences of the home buyers throughout the affordability period of 15 years.

**The Authority Did Not Implement Appropriate Recapture Provisions for 42 of the Remaining 43 Projects**

HUD's regulations at 24 CFR 91.220 state that if a participating jurisdiction intends to use Program funds for home buyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254, in its action plan. HUD's

regulations at 24 CFR 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 in section 92.254(a)(5) and include those provisions in its consolidated plan. Section 92.254(a)(5)(ii)(A) states that in establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction may recapture only the net proceeds, if any.

HUD's HOMEfires, volume 5, number 5, states that a participating jurisdiction must select either the resale or recapture option for its Program-assisted home-buyer projects at the time the assistance is provided. The participating jurisdiction may select one option for all of its Program-assisted home-buyer projects or choose on a case-by-case basis depending upon market conditions and or the buyer's preference. In addition, all options that the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount of Program funds to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment.

Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that it implemented appropriate recapture provisions for 42 of the remaining 43 home-buyer new construction projects. The notice of lien and restrictive covenant agreements between the organizations and home buyers for 23 projects inappropriately gave the home buyers the option of resale or recapture. The agreements were developed by the Authority. For the remaining 19 projects, either the Authority or the organizations used various notes and mortgages that either did not contain recapture provisions or contained a variety of recapture provisions that were not included in the State's consolidated plan for 2005 through 2009 and action plan for Program year 2009.

Promissory notes, which were secured by second mortgages, between the Authority and the home buyers for 11 projects required the home buyers to repay the entire amount of home-buyer assistance at or before maturity of the loan. The promissory notes defined maturity as the sale of the property, the payoff or refinancing of the first mortgage on the property, or the home buyer's changing his or her principal place of residence from the property purchased. The organizations entered into various notes and mortgages with the home buyers for the last eight projects that either did not contain recapture provisions or contained

a variety of recapture provisions that were not included in the State's consolidated plan and action plan. None of the notice of lien and restrictive covenant agreements, promissory notes, or other various notes and mortgages used for the 42 projects contained language that limited the amount of Program funds the Authority could recapture to the net proceeds from the sale of the property.

Further, the recapture provisions for 9 of the 42 home-buyer new construction projects also included an affordability period longer than required by the State's action plan for Program year 2009, and the amount of the Program assistance that was subject to recapture for 7 of the 42 projects was more than the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.

The table in appendix D of this report shows the 42 home-buyer new construction projects for which the Authority did not ensure that it implemented appropriate recapture provisions and included an affordability period longer than required by the State's action plan for Program year 2009 and or the amount of the Program assistance that was subject to recapture was more than the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.

In addition, the Authority did not ensure that the homes for four home-buyer new construction projects (numbers 24162, 24530, 24531, and 25529) would remain the principal residences of the home buyers throughout the affordability period. The promissory notes, which were secured by second mortgages, between Housing Opportunities, Inc., and the home buyers did not include language requiring the property to remain the principal residence throughout the affordability period. The Authority provided \$173,455 in Program funds to Housing Opportunities, Inc., for these four projects.

**The Authority Did Not Reimburse the State's Treasury Account for More Than \$6,000 in Program Funds Not Used for a Project**

HUD's regulations at 24 CFR 92.502(c)(2) state that Program funds drawn from a participating jurisdiction's treasury account must be expended for eligible costs within 15 days. Any Program funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit into the participating jurisdiction's treasury account.

As previously stated, the Authority provided Affordable Housing Corporation nearly \$52,000 in Program funds for home-buyer new construction project number 24860. The Authority provided the funds to Affordable Housing

Corporation from May through October 2009 for development subsidy (\$45,324) and downpayment assistance (\$6,376). However, Affordable Housing Corporation did not use the more than \$6,000 in Program funds for downpayment assistance due to the home buyer receiving a U.S. Department of Agriculture loan that financed the entire purchase price of the home. Further, the Authority did not allow Affordable Housing Corporation to return the more than \$6,000 in unused Program funds by submitting a revised claim for the project.

The Authority reported in HUD's system that the project was completed in March 2010. In August 2011, more than 17 months after the project was entered as completed in HUD's system and as a result of our audit, the Authority reimbursed the State's treasury account more than \$6,000 from non-Federal funds. The Authority also reported in HUD's system that nearly \$52,000 in Program funds was disbursed for the project. The nearly \$52,000 reported in HUD's system included the more than \$6,000 that had not been used.

### **The Authority Lacked Adequate Procedures and Controls**

The weaknesses regarding the Authority's (1) not ensuring that resale provisions were implemented for more than 20 months for two projects that received only development subsidies, (2) not implementing appropriate recapture provisions for 42 of the remaining 43 projects, (3) not ensuring that homes for 4 of the 42 projects would remain the principal residences of the home buyers throughout the affordability period, and (4) not reimbursing the State's treasury account for Program funds that were not used for a project occurred because the Authority lacked adequate procedures and controls regarding organizations' projects to ensure that it appropriately followed HUD's requirements.

The Authority did not require organizations to submit notice of lien and restrictive covenant agreements or promissory notes that the organizations entered into with home buyers for home-buyer new construction projects. Therefore, the Authority did not know whether organizations implemented resale or recapture provisions for the projects.

The Authority's deputy counsel stated that the Authority's staff members, who drafted the (1) notice of lien and restrictive covenant agreements between the organizations and home buyers and (2) promissory notes between the Authority and the home buyers, were not aware that recapture provisions in the documents needed to conform to the recapture provisions in the consolidated plan and action plan. The deputy counsel also stated that the Authority did not know why (1) some organizations entered into various notes and mortgages rather than the notice of lien and restrictive covenant agreements prepared by the Authority's staff, (2) the recapture provisions for 9 of the 42 home-buyer new construction

projects included an affordability period longer than required by the State's action plan for Program year 2009, and (3) the amount of Program assistance that was subject to recapture for 7 of the 42 projects was more than the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.

The deputy counsel said that due to a misunderstanding between the Authority and Affordable Housing Corporation, the Authority did not allow Affordable Housing Corporation to return the more than \$6,000 in unused Program funds for project number 24860. However, the Authority did not sufficiently follow up with Affordable Housing Corporation to determine what happened with the project and ensure that Affordable Housing Corporation repaid the more than \$6,000 in unused Program funds.

## Conclusion

The Authority lacked adequate procedures and controls regarding the organizations' home-buyer new construction projects to ensure that it appropriately followed HUD's requirements. It (1) did not ensure that resale provisions were implemented until August 2011 for two projects that received only development subsidies and the closing dates for the two homes occurred in November 2009, (2) did not implement appropriate recapture provisions for 42 of the remaining 43 projects reviewed, (3) did not ensure that homes would remain the principal residences of the home buyers throughout the affordability period for four projects totaling more than \$173,000 in Program funds, and (4) did not have more than \$6,000 in Program funds available for eligible Program-funded activities for more than 17 months. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the projects is transferred through foreclosures during the affordability period.

## Recommendations

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development require the State to

- 2A. Revise the amount of Program funds reported in HUD's system as disbursed for home-buyer new construction project number 24860 to \$45,324 (\$51,700 disbursed less \$6,376 not used).
- 2B. Revise its consolidated plan and action plan to include the recapture provisions used for organizations' home-buyer new construction projects or revise the recapture provisions being used for the projects to comply with the recapture provisions in the State's consolidated plan and action

plan. If the State revises its consolidated plan and action plan, it needs to submit the consolidated plan and action plan to HUD for approval.

- 2C. Revise the recapture provisions for the nine home-buyer new construction projects to reduce the affordability period to that required by the State and revise the amount of Program assistance subject to recapture for the seven projects to the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.
- 2D. Implement adequate procedures and controls to monitor the four home-buyer new construction projects to ensure that the homes remain the principal residences of the home buyers throughout the applicable affordability period. If the State does not implement adequate procedures and controls or the homes do not remain the principal residences of the home buyers throughout the applicable affordability period, the State should reimburse its Program \$173,455 from non-Federal funds as appropriate.
- 2E. Implement adequate procedures and controls to ensure that the affordability period is met for home-buyer new construction projects in accordance with the resale and recapture procedures contained in the State's consolidated plan and action plan.

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development

- 2F. Ensures that the State uses the \$6,376, which the Authority reimbursed the State's treasury account for the Program funds that were not used for project number 24860, only for eligible Program costs.

### Finding 3: The Authority Lacked Adequate Controls Over Organizations' Home-Buyer Acquisition-Only Activities

The Authority did not comply with HUD's requirements in its use of Program funds for community housing development organizations' home-buyer acquisition-only activities. It (1) did not implement appropriate recapture provisions for all 51 of the activities reviewed, (2) did not reimburse the State's Program until July 2011 for an activity in which the home was no longer the household's principal residence as of June 2010, (3) provided Program funds to assist two households that were overincome, and (4) lacked sufficient documentation to support that activities were eligible.

These weaknesses occurred because the Authority lacked adequate procedures and controls regarding the activities to ensure that it appropriately followed HUD's requirements. As a result, the Authority (1) did not have \$4,500 in Program funds available for eligible Program-funded activities for more than 1 year, (2) inappropriately provided nearly \$9,000 in Program funds to assist two households that were overincome, and (3) was unable to support its use of more than \$182,000 in Program funds for 39 activities without sufficient documentation to support eligibility. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the activities is transferred through foreclosures during the affordability period.

---

**The Authority Did Not Implement Appropriate Recapture Provisions for Activities and Did Not Reimburse the State's Program From Non-Federal Funds**

We reviewed 51 of the 197 home-buyer acquisition-only activities that the Authority set up and completed in HUD's Integrated Disbursement and Information System from July 1, 2008, through November 30, 2010. The Authority provided more than \$237,000 in Program funds to six organizations—Affordable Housing Corporation; Community Action Program, Inc. of Evansville; Housing Opportunities, Inc.; Pathfinder Services, Inc.; Pathstone Corporation; and Southeastern Indiana Community Preservation and Development Corporation—for the 51 activities.

HUD's regulations at 24 CFR 91.220 state that if a participating jurisdiction intends to use Program funds for home buyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254, in its action plan. HUD's regulations at 24 CFR 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 in section 92.254(a)(5) and include



those 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. Section 92.254(a)(5)(ii)(A) states that in establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction may recapture only the net proceeds, if any. HUD's regulations at 92.503(c) state that Program funds recaptured in accordance with 24 CFR 92.254(a)(5)(ii) must be deposited into the participating jurisdiction's HOME investment trust fund local account and used in accordance with the requirements of 24 CFR Part 92.

HUD's HOMEfires, volume 5, number 5, states that a participating jurisdiction must select either the resale or recapture option for its Program-assisted home-buyer projects at the time the assistance is provided. The participating jurisdiction may select one option for all of its Program-assisted home-buyer projects or choose on a case-by-case basis depending upon market conditions and or the buyer's preference. In addition, all options that the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount of Program funds to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment.

Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that it implemented appropriate recapture provisions for all 51 home-buyer acquisition-only activities reviewed. The Authority used recapture provisions that were not included in the State's consolidated plan for 2005 through 2009 and action plan for Program year 2009. The promissory notes, which were secured by second mortgages, between the Authority and the home buyers required the home buyers to repay the entire amount of assistance at or before maturity of the loan. The promissory notes defined maturity as sale of the property, payoff or refinancing the first mortgage on the property, or the home buyer changing his or her principal place of residence from the property purchased. The promissory notes did not contain language that limited the amount of Program funds the Authority could recapture to the net proceeds from the sale of the property.

Further, the Authority drew down and disbursed \$4,500 in Program funds to Affordable Housing Corporation from June 2009 through February 2010 for home-buyer acquisition-only activity number 24853. The household purchased the property in April 2009. However, the household moved, and the home was no longer the household's principal residence as of June 2010. The Authority was not aware that the household had moved and was no longer residing in the home. In July 2011, more than 1 year after the household moved and as a result of our audit, the Authority reimbursed the State's Program more than \$4,500 from non-Federal funds.

**The Authority Provided Nearly \$9,000 in Program Funds for Two Ineligible Activities**

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 92.217 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.

Contrary to HUD's regulations, the Authority drew down and disbursed \$8,585 in Program funds to Housing Opportunities, Inc., from November 2009 through May 2010 to assist two households that were not income eligible. The Program funds were used to provide interest-free second mortgage loans to the home buyers for home-buyer acquisition-only activity numbers 25719 (\$4,600) and 26432 (\$3,985). The household income exceeded HUD's income guidelines by \$985 (2.1 percent) and \$2,834 (7.5 percent) for activity numbers 25719 and 26432, respectively.

**The Authority Lacked Sufficient Documentation To Support Its Use of More Than \$182,000 in Program Funds**

HUD's regulations at 24 CFR 92.508(a) 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 and each activity meets the property standards in 24 CFR 92.251. Section 92.508(c)(4) states that written agreements must be retained for 5 years after the agreement terminates. HUD's HOMEfires, volume 6, number 2, states that a participating jurisdiction must perform inspections of Program units purchased with Program funds. Participating jurisdictions may not rely on independent

inspections performed by any party not under contract with the participating jurisdiction. Third parties such as consumer inspectors or Federal Housing Administration (FHA) appraisers are not contractually obligated to perform the participating jurisdictions' obligations. Their inspections cannot be used to determine compliance with Program property standards requirements.

Contrary to HUD's requirements, the Authority lacked sufficient documentation for 16 of the 51 home-buyer acquisition-only activities reviewed to support that it used \$73,335 in Program funds for eligible households and or activities. The 16 activities involved the following 4 organizations: Community Action Program, Inc., of Evansville; Housing Opportunities, Inc.; Pathfinder Services, Inc.; and Southeastern Indiana Community Preservation and Development Corporation. The Authority lacked sufficient documentation to support that the households for 2 activities were income eligible and that homes for 14 activities met HUD's property standards requirements. The Authority could not provide 3 consecutive months of income documentation, complete income verification documentation, and or certified copies of tax returns for the two households. Further, neither the Authority nor a party contracted by the Authority inspected the 14 homes. The Authority relied on occupancy inspections performed by the cities or counties where the homes were located or inspections performed by other inspectors not under contract with the Authority. In addition, 7 of the 14 homes were new construction homes.

Housing Opportunities, Inc., and Pathfinder Services, Inc., did not have third-party inspections performed for activities that involved new construction homes. Therefore, we reviewed an additional 23 activities completed by these two organizations, which the Authority set up and completed in HUD's system from July 1, 2008, through November 30, 2010. The Authority also lacked sufficient documentation for the additional 23 activities to support that it used \$108,900 in Program funds for homes that met HUD's property standards requirements.

The table in appendix E of this report shows the 39 activities for which the Authority did not have (1) sufficient income documentation to demonstrate that households were income eligible and or (2) final inspection reports or certifications supporting that homes met HUD's property standards requirements.

The Authority had inspections for the remaining 37 home-buyer acquisition-only activities initially selected for review. The inspections were performed by third-party inspectors. However, the Authority could not provide contracts with the inspectors that were effective at the time the inspectors inspected 18 of the homes. The Authority provided \$84,400 in Program funds to Affordable Housing Corporation; Housing Opportunities, Inc.; Pathfinder Services, Inc.; and Southeastern Indiana Community Preservation and Development Corporation for the 18 activities.

## **The Authority Lacked Adequate Procedures and Controls**

The weaknesses regarding the Authority's (1) not implementing appropriate recapture provisions for the organizations' home-buyer acquisition-only activities, (2) not reimbursing the State's Program for an activity in which the home was no longer the household's principal residence, (3) providing Program funds to assist two households that were overincome, and (4) lack of sufficient documentation to support that activities were appropriate and contracts with inspectors were effective at the time the inspectors inspected homes occurred because the Authority lacked adequate procedures and controls regarding organizations' activities to ensure that it appropriately followed HUD's requirements.

The Authority's deputy counsel stated that the Authority's staff members, who drafted the promissory notes between the Authority and the home buyers, were not aware that recapture provisions in the promissory notes needed to conform to the recapture provisions in the consolidated plan and action plan.

Housing Opportunities, Inc., did not include overtime and bonus pay when calculating the annual income for the household associated with activity number 25719 and used a Program income limit for the wrong area when determining the income eligibility for the household associated with activity number 26432.

Housing Opportunities, Inc., and Southeastern Indiana Community Preservation and Development Corporation believed that although the income documentation that the organizations obtained for the households was not 3 consecutive months' worth of income documentation, it was sufficient for the organizations to make an accurate determination of whether the households were income eligible. The Authority did not inform the organizations that they were required to maintain 3 consecutive months' worth of income documentation on which to base a household's projected income calculation.

Housing Opportunities, Inc., was not aware that homes had to be inspected by the Authority or a party contracted by the Authority. Community Action Program, Inc., of Evansville's director of housing programs stated that Community Action Program, Inc., of Evansville had issues with obtaining inspectors contracted by the Authority to perform inspections due to the inspectors' workload. The Authority allowed Community Action Program, Inc., of Evansville to use any inspector as long as the inspector was licensed and qualified and inspected the entire home. Further, Pathfinder Services, Inc., was not aware that third-party inspections needed to be performed for activities that involved new construction homes.

The Authority's deputy counsel stated that once the Authority executed current contracts with the inspectors, it discarded the prior contracts with the inspectors. A single family underwriter was not aware that HUD's regulations at 24 CFR 92.508(c)(4) required written agreements to be retained for 5 years after the agreements were terminated.

## Conclusion

The Authority lacked adequate procedures and controls regarding organizations' home-buyer acquisition-only activities to ensure that it appropriately followed HUD's requirements. It (1) did not implement appropriate recapture provisions for all 51 of the activities reviewed, (2) did not have \$4,500 in Program funds available for eligible Program-funded activities for more than 1 year, (3) inappropriately provided nearly \$9,000 in Program funds to assist two households that were not income eligible, and (4) was unable to support its use of more than \$182,000 in Program funds for 39 activities without sufficient documentation to support eligibility. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the activities is transferred through foreclosures during the affordability period.

## Recommendations

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development require the State to

- 3A. Revise its consolidated plan and action plan to include the recapture provisions the Authority uses for organizations' home-buyer acquisition-only activities or revise the recapture provisions the Authority uses for the activities to comply with the recapture provisions in the State's consolidated plan and action plan. If the State revises its consolidated plan and action plan, it needs to submit the consolidated plan and action plan to HUD for approval.
- 3B. Reimburse its Program \$8,585 from non-Federal funds for the Program funds inappropriately used to assist home-buyer acquisition-only activity numbers 25719 (\$4,600) and 26432 (\$3,985).
- 3C. Provide supporting documentation or reimburse its Program from non-Federal funds, as appropriate, for the \$173,650 in Program funds used for the 37 households and or home-buyer acquisition-only activities for which the Authority did not have (1) sufficient income documentation to demonstrate that households were income eligible and or (2) final inspection reports or certifications supporting that activities met HUD's

property standards requirements. We did not include \$8,585 in Program funds used for activity numbers 25719 (\$4,600) and 26432 (\$3,985) for which the Authority did not have final inspection reports or certifications supporting that the activities met HUD's property standards requirements since we included it in recommendation 3B of this report.

- 3D. Implement adequate procedures and controls to ensure that (1) the Authority recaptures Program funds used for activities that no longer meet HUD's affordability requirements, (2) Program funds are used only for eligible households, (3) all homes are inspected by the Authority or a third party contracted by the Authority to ensure that the homes meet HUD's property standards requirements, and (4) the Authority maintains documentation to sufficiently support the eligibility of households and home-buyer acquisition-only activities in accordance with HUD's requirements.
- 3E. Implement adequate procedures and controls to ensure that the Authority maintains all contracts with third-party inspectors for at least 5 years after the contracts terminate.

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development

- 3F. Ensures that the State uses the \$4,500, which the Authority reimbursed the State's Program for the repaid Program funds associated home-buyer acquisition-only activity number 24853, only for eligible Program costs.

## Finding 4: The Authority Lacked Adequate Controls Over Organizations' Home-Buyer Rehabilitation Projects

The Authority did not comply with HUD's requirements in its use of Program funds for community housing development organizations' home-buyer rehabilitation projects. It (1) did not implement appropriate recapture provisions for 3 of the 15 projects reviewed and (2) lacked sufficient documentation to support that 6 households were income eligible. These weaknesses occurred because the Authority lacked adequate procedures and controls regarding the projects to ensure that it appropriately followed HUD's requirements. As a result, it was unable to support its use of nearly \$219,000 in Program funds for six projects without sufficient documentation to demonstrate that households were income eligible. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the projects is transferred through foreclosures during the affordability period.

---

### **The Authority Did Not Implement Appropriate Recapture Provisions for Projects**

We reviewed all 15 home-buyer rehabilitation projects that the Authority set up and completed in HUD's Integrated Disbursement and Information System from July 1, 2008, through November 30, 2010. The Authority provided \$514,399 in Program funds to two organizations—Housing Partnerships, Inc, and La Casa of Goshen, Inc.—for the 15 projects.

HUD's regulations at 24 CFR 91.220 state that if a participating jurisdiction intends to use Program funds for home buyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254, in its action plan. HUD's regulations at 24 CFR 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) and include those provisions in its consolidated plan. Section 92.254(a)(5)(ii)(A) states that in establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction recapture only the net proceeds, if any.

HUD's HOMEfires, volume 5, number 5, states that a participating jurisdiction must select either the resale or recapture option for its Program-assisted home-buyer projects at the time the assistance is provided. The participating jurisdiction may select one option for all of its Program-assisted home-buyer projects or choose on a case-by-case basis depending upon market conditions and

or the buyer's preference. In addition, all options that the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount of Program funds to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment.

Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that appropriate recapture provisions were implemented for 3 of the 15 home-buyer rehabilitation projects reviewed. The project numbers were 23964, 24412, and 24413. Housing Partnerships, Inc., used recapture provisions that were not included in the State's consolidated plan for 2005 through 2009 and action plan for Program year 2009.

The promissory notes, which were secured by second mortgages, between Housing Partnerships, Inc., and the home buyers, required the home buyers to repay the amount of downpayment assistance not forgiven over the affordability period if any of the following occurred: (1) transfer of the property through sale, contract, lease, or other transfer of ownership and the prospective home buyer did not assume the note and mortgage or did not qualify as low income, (2) the home buyer did not occupy the property as his or her principal residence; (3) restrictions or encumbrances were placed on the property that would unduly restrict the good and marketable nature of the home buyer's ownership interest; or (4) the property was refinanced or the terms of the first mortgage on the property were changed without the prior written consent of Housing Partnerships, Inc. The promissory notes did not contain language that limited the amount of Program funds the Authority could recapture to the net proceeds from the sale of the property. Further, the promissory notes for the three projects also included an affordability period longer than required by the State's action plan for Program year 2009.

**The Authority Lacked Sufficient Documentation To Support Its Use of Nearly \$219,000 in Program Funds**

HUD's regulations at 24 CFR 92.508(a) 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.

Contrary to HUD's regulations, the Authority lacked sufficient income documentation for 6 of the 15 home-buyer rehabilitation projects reviewed to support that it used nearly \$219,000 in Program funds for eligible households.



The Authority lacked 3 consecutive months of income documentation, had incomplete income verification documentation, and or did not have certified copies of tax returns. The following table shows the six projects for which the Authority did not have sufficient income documentation to demonstrate that households were income eligible.

Activity number	Amount of assistance
23964	\$46,414
24983	34,588
24985	33,515
24986	37,524
25498	34,317
25499	32,559
<b>Total</b>	<b><u>\$218,917</u></b>

### The Authority Lacked Adequate Procedures and Controls

The weaknesses regarding the Authority’s (1) not implementing appropriate recapture provisions for an organization’s home-buyer rehabilitation projects and (2) lack of sufficient documentation to support that households were income eligible occurred because the Authority lacked adequate procedures and controls regarding organizations’ projects to ensure that it appropriately followed HUD’s requirements.

The president of Housing Partnerships, Inc., stated that the Authority did not provide it specific language regarding recapture provisions to include in its promissory notes with the home buyers. The president also stated that the recapture provisions for the three home-buyer rehabilitation projects included an affordability period longer than required by the State’s action plan for Program year 2009 because Housing Partnerships, Inc., based the affordability period on the entire amount of Program funds drawn down for the projects rather than the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.

Housing Partnerships, Inc., and La Casa of Goshen, Inc., believed that although the income documentation that the organizations obtained for the households was not 3 consecutive months’ worth of income documentation, it was sufficient for the organizations to make an accurate determination of whether the households were income eligible. The Authority did not inform the organizations that it was required to maintain 3 consecutive months’ worth of income documentation on which to base a household’s projected income calculation.

## Conclusion

The Authority lacked adequate procedures and controls regarding the organizations' home-buyer rehabilitation projects to ensure that it appropriately followed HUD's requirements. It (1) did not implement appropriate recapture provisions for 3 of the 15 projects reviewed and (2) was unable to support its use of nearly \$219,000 in Program funds for 6 projects without sufficient documentation to demonstrate that households were income eligible. Further, the Authority is at risk of being required to reimburse the State's Program from non-Federal funds if the ownership of homes acquired through the projects is transferred through foreclosures during the affordability period.

## Recommendations

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development require the State to

- 4A. Revise its consolidated plan and action plan to include the recapture provisions used for organizations' home-buyer rehabilitation projects or revise the recapture provisions that Housing Partnerships, Inc., uses for projects to comply with the recapture provisions in the State's consolidated plan and action plan. If the State revises its consolidated plan and action plan, it needs to submit the consolidated plan and action plan to HUD for approval.
- 4B. Revise the recapture provisions for the three home-buyer rehabilitation projects to reduce the affordability period to that required by the State.
- 4C. Provide supporting documentation or reimburse its Program from non-Federal funds, as appropriate, for the \$218,917 in Program funds used for the six home-buyer rehabilitation projects for which the Authority did not have sufficient documentation to demonstrate that households were income eligible.
- 4D. Implement adequate procedures and controls to ensure that it maintains documentation to sufficiently support the eligibility of households in accordance with HUD's requirements.

## Finding 5: The Authority Lacked Adequate Controls Over Its Administration of Program Income

The Authority did not comply with HUD's requirements in its use and reporting of the State's Program income. It (1) drew down more than \$24.8 million in Program funds from the State's HOME investment trust fund treasury account from July 1, 2008, through November 30, 2010, when it had available Program income in the State's HOME investment trust fund local account; (2) did not always appropriately account for Program income; (3) lacked sufficient documentation to identify the source and application of Program income receipts and disbursements; and (4) did not report in HUD's Integrated Disbursement and Information System more than \$162,000 in Program income receipts for more than 1 year. These weaknesses occurred because the Authority lacked adequate procedures and controls regarding its administration of the State's Program income to ensure that it appropriately followed HUD's requirements. As a result, HUD lost nearly \$15,000 in interest on the Program funds that the Authority drew down from the State's treasury account when Program income was available. Further, HUD and the State lacked assurance regarding the amount of Program income available to the Authority.

---

### **The Authority Inappropriately Drew Down Program Funds When It Had Program Income**

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.

Contrary to HUD's regulations, the Authority did not always properly use income generated from the State's Program. It inappropriately made 2,132 drawdowns from the State's treasury account from July 1, 2008, through November 30, 2010, when it had available Program income in the State's local account. The drawdowns totaled more than \$24.8 million in Program funds. HUD lost \$14,736 in interest on the more than \$24.8 million in Program funds that the Authority drew down from the State's treasury account when Program income was available. We were conservative in our determination of the amount of interest HUD lost. We used the 10-year U.S. Treasury's rate using simple interest on the Authority's daily balance of Program income. Further, we did not include in the Authority's daily balance of Program income any Program income received during a month until the 1<sup>st</sup> day of the following month.

**The Authority Did Not Always Appropriately Account for and Lacked Sufficient Documentation To Support Program Income**

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 identifying the source and application of program income, repayments, and recaptured funds. HUD's Community Planning and Development Notice 97-9, issued September 12, 1997, requires participating jurisdictions to be able to identify which projects generated Program income and which projects received Program income, including the amount.

Although the Authority used a spreadsheet to track its receipts and disbursements of Program income, it did not always appropriately account for Program income in the spreadsheet. The Authority did not include in the spreadsheet (1) more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009, (2) nearly \$16,000 in Program income disbursements until April 2010, and (3) nearly \$16,000 in Program income receipts until August (nearly \$4,000) and September (more than \$12,000) 2010. Further, it lacked sufficient documentation to identify the source and application of the Program income receipts and disbursements.

In addition, the Authority (1) did not include in the spreadsheet nearly \$7,000 in Program income disbursements made in August 2008 (more than \$6,000) and February 2010 (more than \$400), (2) incorrectly included in the spreadsheet nearly \$6,000 in Program income receipts in March 2009 that were actually Program income disbursements, and (3) inaccurately included in the spreadsheet more than \$45,000 in Program income disbursements in November 2009 (nearly \$37,000) and September 2010 (nearly \$9,000) that were not disbursements from Program income. Therefore, its balance of Program income was understated by more than \$27,000 as of June 2011. In July 2011 and as a result of our audit, the Authority made the necessary corrections to the spreadsheet so that its Program income was no longer understated.

**The Authority's Reporting of More Than \$160,000 in Program Income to HUD Was Not Timely**

HUD's 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. However, the Authority did not report in HUD's system the more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009.

### **The Authority Lacked Adequate Procedures and Controls**

The weaknesses regarding the Authority's (1) drawing down of Program funds from the State's treasury account when it had available Program income in the State's local account, (2) not always appropriately accounting for Program income, (3) lack of sufficient documentation to identify the source and application of Program income receipts and disbursements, and (4) not reporting Program income in HUD's system in a timely manner occurred because the Authority lacked adequate procedures and controls regarding its administration of Program income to ensure that it appropriately followed HUD's requirements.

The Authority's deputy counsel stated that the Authority drew down Program funds from the State's treasury account when it had available Program income in the State's local account because it was cautious about disbursing Program income since it was not confident that the amount of Program income in the local account was accurate.

### **Conclusion**

The Authority lacked adequate procedures and controls regarding its administration of the State's Program income to ensure that it appropriately followed HUD's requirements. It (1) inappropriately drew down more than \$24.8 million in Program funds from the State's treasury account from July 1, 2008, through November 30, 2010, when it had available Program income in the State's local account that resulted in HUD's losing nearly \$15,000 in interest; (2) did not always appropriately account for Program income; (3) lacked sufficient documentation to identify the source and application of Program income receipts and disbursements; and (4) did not report in HUD's system more than \$162,000 in Program income receipts for more than 1 year. Further, HUD and the State lacked assurance regarding the amount of Program income available to the Authority.

### **Recommendations**

We recommend that the Acting Director of HUD's Indianapolis Office of Community Planning and Development require the State to

- 5A. Reimburse HUD \$14,736 from non-Federal funds for the interest HUD lost on the Program funds that the Authority drew down from the State's treasury account when program income was available.
- 5B. 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.
- 5C. Implement adequate procedures and controls to ensure that sufficient documentation is maintained to identify the source and application of Program income receipts and disbursements and Program income is accurately accounted for in its spreadsheet and reported in HUD's system.

## SCOPE AND METHODOLOGY

---

To accomplish our objectives, we reviewed

- Applicable laws; HUD’s regulations at 24 CFR Parts 91 and 92; HUD’s “Building HOME: A Program Primer”; HUD’s HOMEfires, volume 5, numbers 2 and 5, and volume 6, number 2; HUD’s Technical Guide for Determining Income and Allowances for the Program; and HUD’s Office of Community Planning and Development Notice 97-9.
- The State’s data from HUD’s Integrated Disbursement and Information System, consolidated plan for 2005 through 2009, action plans for 2008 and 2009, and consolidated annual performance and evaluation reports for 2008 and 2009.
- The Authority’s accounting records; audited financial statements for 2008 and 2009; single audits for 2009; Program data; Program award and community housing development organizations’ rental rehabilitation and new construction project, home-buyer new construction project, home-buyer acquisition-only activity, and home-buyer rehabilitation project files; contracts with inspectors; policies and procedures; organizational chart; and board meeting minutes from July 2008 through November 2010.
- Organizations’ home-buyer new construction project, home-buyer acquisition-only activity, and home-buyer rehabilitation project files.
- HUD’s files for the State.

We also interviewed the Authority’s and organizations’ employees and HUD’s staff.

### **Finding 1**

We selected terminated rental rehabilitation and new construction project number 22460 due to the project being a predevelopment loan in the amount of \$395,000 in Program funds while the other predevelopment loans for 14 projects that the Authority set up or completed in HUD’s system from July 1, 2008, through November 30, 2010, were for \$30,000 or less in Program funds or resulted in a completed construction project. We selected the project to determine whether the Authority complied with HUD’s regulations in its use of Program funds for the project.

### **Finding 2**

We selected all 45 of the home-buyer new construction projects that the Authority set up and completed in HUD’s system from July 1, 2008, through November 30, 2010, to determine whether the Authority implemented appropriate resale or recapture provisions for projects and complied with HUD’s requirements in its use of Program funds for projects. The Authority

provided nearly \$1.9 million in Program funds to 10 organizations—Affordable Housing Corporation; Family Christian Development Center; Habitat for Humanity of Elkhart County; Habitat for Humanity of Monroe County; Habitat for Humanity of Morgan County; Habitat for Humanity of Whitley County; Housing Opportunities, Inc.; Jeffersonville Housing Services Corporation; La Casa of Goshen, Inc.; and Pathfinder Services, Inc.—for the 45 projects.

### **Finding 3**

We statistically selected 51 of the 197 home-buyer acquisition-only activities that the Authority set up and completed in HUD’s system from July 1, 2008, through November 30, 2010, to determine whether the Authority implemented appropriate recapture provisions for activities and complied with HUD’s requirements in its use of Program funds for activities. The Authority provided more than \$237,000 in Program funds to six organizations—Affordable Housing Corporation; Community Action Program, Inc. of Evansville; Housing Opportunities, Inc.; Pathfinder Services, Inc.; Pathstone Corporation; and Southeastern Indiana Community Preservation and Development Corporation—for the 51 activities. Our sampling criteria used a 90 percent confidence level, 50 percent error rate, and precision of plus or minus 10 percent. The Authority lacked sufficient documentation to support that homes for 14 activities met HUD’s property standards requirements. In addition, 7 of the 14 homes involved the purchase of new construction homes. Housing Opportunities, Inc., and Pathfinder Services, Inc., did not have third-party inspections performed for activities that involved new construction homes. Therefore, we selected the remaining 23 activities completed by these two organizations which the Authority set up and completed in HUD’s system from July 1, 2008, through November 30, 2010.

### **Finding 4**

We reviewed all 15 of the home-buyer rehabilitation projects that the Authority set up and completed in HUD’s system from July 1, 2008, through November 30, 2010, to determine whether the Authority implemented appropriate recapture provisions for projects and complied with HUD’s requirements in its use of Program funds for projects. The Authority provided more than \$514,000 in Program funds to two organizations—Housing Partnerships, Inc. and La Casa of Goshen, Inc.—for the 15 projects.

We relied in part on data maintained by the Authority for the State’s 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 January through April 2011 at the Authority’s office located at 30 South Meridian Street, Indianapolis, IN. The audit covered the period July 2008 through November 2010 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 objectives.

# INTERNAL CONTROLS

---

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about 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 objectives:

- 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 and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws or regulations on a timely basis.

## Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The Authority lacked adequate procedures and controls to ensure that (1) the State's HOME investment trust fund treasury account was reimbursed for Program funds used for a community housing development organization's terminated rental rehabilitation and new construction project; (2) it implemented appropriate recapture provisions for organizations' home-buyer new construction projects, home-buyer acquisition-only activities, and home-buyer rehabilitation projects; (3) homes for organizations' home-buyer new construction projects would remain the principal residences of the home buyers throughout the affordability period; (4) it used Program funds for organizations' home-buyer new construction projects, home-buyer acquisition-only activities, and home-buyer rehabilitation projects in accordance with HUD's requirements, (5) the State's Program was reimbursed for Program funds used for an organization's home-buyer acquisition-only activity in which the home was no longer the household's principal residence; and (6) it complied with HUD's requirements in its use and reporting of the State's Program income (see findings 1, 2, 3, 4, and 5).

## APPENDIXES

### Appendix A

#### SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

Recommendation number	Ineligible 1/	Unsupported 2/	Funds to be put to better use 3/
1A			\$395,000
2D	173,455		
2F			6,376
3B	8,585		
3C		173,650	
3F			4,500
4C		<u>218,917</u>	
5A	<u>14,736</u>		
Totals	<u>\$196,776</u>	<u>\$392,567</u>	<u>\$405,876</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.
- 3/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest, costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, implementation of our recommendations will ensure that the State's Program funds are used according to HUD's regulations.

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

Comment 1



September 19, 2011

Brent G. Bowen  
Assistant Regional Inspector General for Audit  
United States Department of HUD-Office of Inspector General  
77 West Jackson Boulevard, Room 2646  
Chicago, Illinois 60604

Re: Discussion Draft Audit Report on OIG's Audit of the State of Indiana's HOME Investment Partnerships Program -Phase II

Dear Mr. Bowen,

The Indiana Housing and Community Development Authority ("IHCDA" or "we") is in receipt of the discussion draft audit report of HUD's Office of Inspector General ("OIG" or "you") of the Audit of State of Indiana's HOME Investment Partnerships Program - Phase II dated September 8, 2011. As the State of Indiana's administrator of HOME Investment Partnership Program ("Program") funds, IHCDA has carefully reviewed the discussion draft audit report, and welcomes the opportunity to provide comment. Please consider this letter to be our official response.

Per your request, our comments will indicate our agreement or disagreement with each specific finding contained in the discussion draft. We will also provide an explanation supporting why we agree or disagree with these findings. Also per your request, you will find these comments address each recommendation and state how it will be implemented; why it is not necessary, or present an alternative action and show how the alternative action will correct the problem which the recommendation was designed to fix.

We begin our response with OIG's Finding 1.

**OIG Finding 1: IHCDA Lacked Adequate Controls Over the Reimbursement of Program Funds Used for an Organization's Terminated Rental Rehabilitation and New Construction Project**

**IHCDA Response to Finding 1: DISAGREE.**

IHCDA reimbursed the State of Indiana's Program investment trust fund treasury account in accord with all Program regulations and guidance.

HUD's regulations at 24 CFR 92.205(e) states that that a project assisted with funds that is terminated before completion constitutes an ineligible activity and any Program funds invested in

P: 317.232.7777 - F: 317.232.7778 - TF: 800.872.0371

 EQUAL OPPORTUNITY EMPLOYER AND HOUSING AGENCY 

Ref to OIG Evaluation

Auditee Comments

September 19, 2011  
Mr. Brent G. Bowen  
Page 2

the project must be repaid to the participating jurisdiction's Program investment trust fund in accordance with 24 CFR 92.503(b).

HUD's regulations at 24 CFR 92.503(b)(2) state that, with limited exceptions, any Program funds invested in a project that is terminated before completion must be repaid by the participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's treasury account, the funds must be repaid to the participating jurisdiction's treasury account.

Comment 1

OIG asserts that IHCDA failed to comply with the above-referenced Program regulations with respect to new construction project number 22460. There is no basis in fact for this conclusion.

IHCDA drew down \$395,000 in Program funds for the above-referenced project number between December 2007 and January 2008. In September 2009, IHCDA inspected the project and determined that the housing rehabilitation and new construction work had not progressed since January 2008. This inspection triggered a review of the project by IHCDA. In November 2009, IHCDA terminated the project and, as good stewards of Program funds, tasked its legal department with recovering Program funds from the entities which had received them.

Comment 1

In March 2011, as collection efforts continued, IHCDA used non-federal funds to reimburse the State's treasury account for the full amount of project number 22460. Because the funds had been disbursed from the State's treasury account, IHCDA directed the reimbursement to the State's treasury account, in strict compliance with all regulations listed above and cited in the discussion draft audit report.

Comment 1

These regulations do not contain a deadline for reimbursement. Nor has IHCDA, in conducting its own review of Program regulations, discovered any. Nonetheless, the discussion draft implies that IHCDA violated a timing requirement related to the reimbursement of funds. Without OIG providing legal support for this conclusion, it is but an opinion, and an opinion has no basis serving as the foundation for Finding 1.

Comment 1

Reviewing the facts in hindsight OIG is entitled to its opinion that reimbursement of the treasury account did not occur quickly enough for its tastes, just as IHCDA is entitled to its opinion that reimbursement occurred quickly and in the natural order of how project number 22460 unfolded. Whose opinion is superior would make for a good debate, but this is not a debate – this is a Program audit grounded in the law. Given that none of the regulations cited by OIG address quickness, this is neither material nor relevant to IHCDA's obligations under 24 CFR 92.205(e), 92.503(b)(2) and 92.503(b)(3). Therefore, Finding 1 is not properly included in an audit of the Program.

Comment 1

Indeed, IHCDA would argue that project 22460 is the opposite of a finding – it is evidence of the diligence and oversight of IHCDA as an administrator of Program funds. Three hundred ninety-five thousand dollars were drawn from the account, and \$395,000 were reimbursed to the account. But for IHCDA's oversight, this would not be the case. IHCDA – not the local HUD office or the State's treasury account – has borne the full out-of-pocket financial brunt of project number 22460. To serve IHCDA with a finding – in a matter which IHCDA solely discovered, investigated and

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 1

September 19, 2011  
Mr. Brent G. Bowen  
Page 3

remedied – smacks of punishing the messenger, and could have the unintended consequence of discouraging administrators from taking such a stewardship role in the future.

Comment 1

Therefore, Finding 1 is not valid and IHCDA respectfully requests that OIG not include Finding 1 in the final audit report and make the necessary corresponding changes to the final draft audit.

**OIG Recommendations 1**

The discussion draft presents two (2) recommendations to HUD’s Indianapolis Field Office of Community Planning and Development (“CPD”) as a result of Finding 1, and, per your direction, we will respond to each individually.

Comment 1

**Recommendation 1A:** CPD should ensure that the State uses the \$395,000, which IHCDA reimbursed to the State’s treasury account for the repaid Program funds associated with project number 22460, only for eligible Program costs.

**Response to 1A:** IHCDA asserts that this Recommendation is not necessary, since Finding 1 is not valid, and asks that it be removed from the final report along with Finding 1.

Comment 1

**Recommendation 1B:** CPD should require the State to implement adequate procedures and controls to ensure that IHCDA reimburses the State’s treasury account as appropriate for Program funds used for terminated projects.

**Response to 1B:** IHCDA asserts that this Recommendation is not necessary, since Finding 1 is not valid, and asks that it be removed from the final report along with Finding 1. IHCDA reimbursed the State treasury account for project number 22460 and will do so in accordance with federal regulations for future terminated projects.

We move now to OIG Finding 2.

Comment 2

**OIG Finding 2: IHCDA Lacked Adequate Controls Over Organizations’ Home-Buyer New Construction Projects**

**IHCDA Response to Finding 2:** DISAGREE, the finding statement as currently drafted is vague and broadly implies that IHCDA does not have policies in place and/or does not communicate these procedures to its sub-recipients. During the course of this audit IHCDA has provided documentation in the form of award letters, monitoring letters and other documentation, closeout letters, the award manual, notices and award agreements that demonstrates the procedures established for the Program and what has been communicated to its sub-recipients, therefore, IHCDA requests that this finding statement is revised to more narrowly describe IHCDA’s “opportunities for improvement”.

Comment 3

**Incorrect Statement on Page 14.**

The discussion draft audit report states that: “The Authority did not sufficiently follow up project and ensure that Affordable Housing Corporation to determine what happened with the project and

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 3

September 19, 2011  
Mr. Brent G. Bowen  
Page 4

ensure that Affordable Housing Corporation, repaid the more than \$6,000 in unused Program funds." This statement is not true. IHCDCA received completion forms from Affordable Housing Corporation that did not match the documentation that it originally submitted to IHCDCA. These forms did not include any explanation for the discrepancy. The discrepancy appeared to indicate a typo or miscalculation on the part of Affordable Housing Corporation made during the process of preparing the form. IHCDCA immediately contacted Affordable Housing Corporation in order to resolve the discrepancy and communicated with Affordable Housing Corporation at least three times via e-mail and at least once via phone in attempt to resolve the discrepancy. The documentation provided to IHCDCA by the OIG audit team confirms that these actions were taken by IHCDCA (see Attachment A). Therefore, it would not be accurate to describe this level of interaction as "not sufficiently follow[ing] up" on an issue, and this statement should not appear in the final audit.

**OIG Recommendations 2**

The discussion draft presents five (5) recommendations to CPD as a result of Finding 2, and, per your direction, we will respond to each individually.

**Recommendation 2A:** CPD should require IHCDCA to reimburse its treasury account from non-Federal funds for the \$6,376 in unused Program funds that IHCDCA disbursed for home-buyer new construction project number 24860 and revise the amount of Program funds reported in HUD's system as disbursed for the project to \$45,324.

Comment 4

**Response to 2A:** IHCDCA agrees with this Recommendation and has already implemented it. On August 17, 2011 IHCDCA reimbursed its treasury account from non-Federal funds for the \$6,376 in unused Program funds (see Funds Transfer Initiation Report attached as Attachment B having a payment amount of \$6,376). Given that IHCDCA has implemented Recommendation 2A prior to the issuance of the final report, the final report should not contain this Recommendation.

**Recommendation 2B:** CPD should require IHCDCA to revise its consolidated plan and action plan to include the recapture provisions used for organizations' home-buyer new construction projects or revise the recapture provisions being used for the projects to comply with the recapture provisions in the State's consolidated plan and action plan.

Comment 5

**Response to 2B:** IHCDCA asserts that this Recommendation is not necessary; last year, in July of 2010 almost six (6) months before the OIG survey of these activities began, IHCDCA drafted and implemented two (2) new liens: a recapture lien and a resale lien for its home-buyer Program (see two Lien and Restrictive Covenant Agreement for Indiana Housing and Community Development Authority HOME Investment Partnership Homebuyer Activities Program, attached as Attachment C). Given that IHCDCA has implemented Recommendation 2B prior to the issuance of the final report, the final report should not contain this Recommendation.

**Recommendation 2C:** CPD should require IHCDCA to revise recapture provisions for the nine (9) home-buyer new constructions projects to reduce the affordability period to that required by the State and revise the amount of Program assistance subject to recapture for the seven (7) projects to



**Ref to OIG Evaluation**

**Auditee Comments**

Comment 6

September 19, 2011  
Mr. Brent G. Bowen  
Page 5

the amount of assistance that reduced the purchase price from fair market value to an affordable price for the home buyers.

**Response to 2C:** IHCDA agrees with this Recommendation. IHCDA is in the process of drafting amendments to the recapture agreements associated with the nine (9) home-buyer new construction projects to reduce the affordability periods. IHCDA has already drafted and e-mailed amendments to the recapture agreements associated with the seven home-buyer new construction projects to the not-for-profits involved with these projects (see Attachment D).

**Recommendation 2D:** CPD should require IHCDA to implement adequate procedures and controls to monitor the four (4) home-buyer construction projects to ensure that the homes remain the principal residences of the home-buyers throughout the applicable affordability periods. If the homes do not remain the principal residences of the home buyers throughout the applicable affordability period, IHCDA should reimburse its Program \$173,455 from non-Federal funds as appropriate.

Comment 6

**Response to 2D:** IHCDA asserts that this Recommendation is not necessary; IHCDA is in the process of drafting amendments for the recapture agreements associated with this award. Therefore, the "retain ownership" language that is currently referenced in these recapture agreements and appears to be the basis of Recommendation 2D will be replaced with "primary residence" language and the net proceeds language will also be added.

**Recommendation 2E:** CPD should require IHCDA to implement adequate procedures and controls to ensure that the affordability period is met for home-buyer new construction projects in accordance with the resale and recapture procedures contained in the State's consolidated plan and action plan.

Comment 5

**Response to 2E:** IHCDA asserts that this Recommendation is not necessary; last year, in July of 2010 at least six (6) months before the OIG survey of these activities began, IHCDA created new recapture and resale provisions for its home-buyer program (see Attachment B). In addition, the properties are secured by liens or mortgages which will provide IHCDA and/or the not-for-profit with adequate notice of any sale, foreclosures, or condemnation against the properties. Unlike in the case of HOME-assisted rental properties, 24 CFR 92 does not set-forth any long-term monitoring requirements for HOME-assisted home-buyer units. Given that IHCDA has implemented Recommendation 2E prior to the issuance of the final report, the final report should not contain this Recommendation.

Comment 7

We move now to OIG Finding 3.

**OIG Finding 3: IHCDA Lacked Adequate Controls Over Organizations' Home-Buyer Acquisition-Only Activities**

Comment 2

**IHCDA Response to Finding 3: DISAGREE, the finding statement as currently drafted is vague and broadly implies that IHCDA lacks policies and procedures and/or does not communicate these procedures to its sub-recipients. During the course of this audit IHCDA**

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 2

September 19, 2011  
Mr. Brent G. Bowen  
Page 6

has provided documentation in the form of award letters, monitoring letters and other documentation, closeout letters, the award manual, notices, and award agreements that demonstrates the procedures established for the Program and the information that has been communicated to its sub-recipients, therefore, IHCDCA requests that this finding statement is revised to more narrowly describe IHCDCA's "opportunities for improvement".

Comment 8

**Correction.**

IHCDCA requests that any reference to activity numbers 25034 and 25085 be removed from this discussion draft, including but not limited to any request for reimbursements made therein, and references contained in Appendix E. IHCDCA received correspondence on July 26, 2011 indicating that these two (2) activities were removed from the finding list (see Attachment E).

Comment 9

**Incorrect Statement on Page 19.**

The discussion draft audit report states that: "The Authority relied on occupancy inspections performed by the cities or counties where the homes were located or inspections performed by other inspectors not under contract with the Authority." This statement is untrue. The guidelines published by IHCDCA indicate that an IHCDCA approved inspector must be utilized in the HEC-DPA Program (acquisition only program). Page 8 of the HEC-DPA RFP states the following:

"Third party inspections are required and must be performed by an IHCDCA approved inspector on all loans that receive down payment assistance and/or closing costs. For a complete list of approved inspectors please refer to our website at <http://lenderonline.in.gov>."

Comment 9

In addition, Chapter 2 of the HEC-DPA Award Manual entitled "Policy Requirements" sets forth the following requirement with respect to inspections: "Third party inspections are required and must be performed by an IHCDCA approved inspector on all loans receiving down payment assistance and/or closing costs". Therefore, stating that IHCDCA relied on city or county inspections is not accurate and should not appear in the final audit report.

Comment 10

**Incorrect Statement on Page 21.**

The discussion draft audit report states that: "The Authority's deputy counsel stated that once the Authority executed current contracts with the inspectors, it discarded the prior contracts with the inspectors. The authority was not aware that HUD's regulations at 24 CFR 92.508(c)(4) required written agreements to be retained for 5 years after the agreements were terminated." This statement is not true. It was not the policy of IHCDCA to discard prior year contracts once current contracts were executed. The discussion draft implies that this was the case. In reality, a single employee in charge of maintaining inspection contracts took this action without consulting the Single Family Director or IHCDCA Executive Management. As of November 12, 2010, this employee no longer works at IHCDCA. Additionally and out of an abundance of caution, IHCDCA's General Counsel provided training on 24 CFR 92.616(i) record retentions requirements to the staff in the Single Family department, the department that maintains the inspections contracts, on January 12, 2011 at its monthly staff meeting. Please revise the final draft to incorporate the prior three (3) sentences in place of the statement currently on page 21.

Comment 11

Comments 10 and 11

**OIG Recommendations 3**

Ref to OIG Evaluation

Auditee Comments

September 19, 2011  
Mr. Brent G. Bowen  
Page 7

The discussion draft presents five (5) recommendations to CPD as a result of Finding 3, and, per your direction, we will respond to each individually.

**Recommendation 3A:** CPD should require IHCDA to revise its consolidated plan and action plan to include the recapture provisions used for organizations' home-buyer acquisition only projects or revise the recapture provisions being used for the projects to comply with the recapture provisions in the State's consolidated plan and action plan.

Comment 6

**Response to 3A:** IHCDA agrees with this Recommendation. It will either revise its consolidated plan and action plan to include the recapture provisions used for organizations' home-buyer acquisition only projects or revise the recapture provisions used for the projects to comply with the recapture provisions in the State's consolidated plan and action plan.

**Recommendation 3B:** CPD should require IHCDA to reimburse its treasury account from non-Federal funds in the amount \$8,585 for funds inappropriately used to assist home-buyer acquisition-only activity numbers 25710 and 26432.

Comment 12

**Response to 3B:** IHCDA agrees with this Recommendation and has already implemented it. On August 17, 2011 IHCDA reimbursed its treasury account from non-Federal funds for the \$8,585 inappropriately used to assist home-buyer acquisition-only activity numbers 25710 and 26432 (see Funds Transfer Initiation Report attached as Attachment F in the amount of \$8,585). Given that IHCDA has implemented Recommendation 3B prior to the issuance of the final report, the final report should not contain this Recommendation.

**Recommendation 3C:** CPD should require IHCDA to provide sufficient supporting documentation or reimburse its HOME program from non-federal funds for the \$178,250 in Program funds used in the 38 households and/or home-buyer acquisition-only activities for which IHCDA did not have (1) sufficient income documentation to demonstrate that households were income eligible and/or (2) final inspection reports or certifications supporting that activities met HUD's property standards requirements.

Comment 8

**Response to 3C:** IHCDA agrees with subsection 1 of this Recommendation as related to activity number 24486. IHCDA requested that Housing Opportunities make another request for third-party documentation and Housing Opportunities made this request via e-mail (see Attachment G). As stated earlier, IHCDA requests that any reference to activity numbers 25034 and 25085 be removed from this discussion draft, included by not limited to any request for reimbursements made therein, and references contained in Appendix E (see Attachment E).

IHCDA agrees with subsection 2 of this Recommendation and is in the process of scheduling inspections for the 37 properties identified in the report.

**Recommendation 3D:** CPD should require IHCDA to implement adequate procedures and controls to ensure that (1) the IHCDA recaptures Program funds used for activities that no longer meet HUD's affordability requirements, (2) Program funds are used only for eligible households,

Ref to OIG Evaluation

Auditee Comments

Comment 13  
Comment 7  
Comments 13  
and 14  
Comment 14  
and 15  
  
Comments 14  
and 16  
  
Comments 14  
and 16

September 19, 2011  
Mr. Brent G. Bowen  
Page 8

(3) all homes are inspected by the IHCD A or a third party contracted by the IHCD A, and (4) the IHCD A maintains documentation to sufficiently support the eligibility of households and home-buyer acquisition-only activities

**Response to 3D:** IHCD A asserts that subsection 1 of this Recommendation is not necessary as the properties are secured by liens or mortgages which will provide IHCD A and/or the not-for-profit with adequate notice of any sale, foreclosures, or condemnation against the properties. Unlike in the case of HOME-assisted rental properties, 24 CFR 92 does not set-forth any long-term monitoring requirements for HOME-assisted home-buyer units. Given this, the final report should not contain subsection 1 of this Recommendation.

IHCD A disagrees with subsection 2 of this Recommendation. IHCD A's HOME Investment Partnerships Program Manual already discusses the correct method of calculating and verifying income. It is neither good policy nor a good use of Program administrative resources to create new policies and procedures on this topic in response to two (2) activities that were over-income by a total of \$8585. Alternatively, IHCD A will be happy to issue a reminder guidance or training to sub-recipients on the existing income verification methods contained in the manual.

IHCD A asserts that subsection 3 of this Recommendation is not necessary. IHCD A's normal inspection procedures for its HOME homebuyer programs in its Real Estate Department require at the very least, a final inspection by an inspector employed by IHCD A. The HEC-DPA program was an exception to this rule and was set up to mirror the homebuyer program that exists in IHCD A's Single Family department and therefore required the use of IHCD A-approved inspectors. Given this, the final report should not contain subsection 3 of this Recommendation.

IHCD A does not agree with subsection 4 of this Recommendation. The issues cited in the discussion draft do not suggest that this documentation was not available rather that it was not sufficient. IHCD A already communicates record retention requirements to sub-recipients in at least two different ways:

(1) its closeout letter contains the following: "As required by HOME regulations at 24 CFR 92.508(c), all records maintained throughout the life of the award must be retained by the recipient for a period of five years from the date of closeout."; and

(2) subsection m of Section 3 of its Home Investment Partnerships Homebuyer Award Agreement contains the following provision: "[Recipient] will maintain books, records, documents, and other evidence pertaining to the Project and all costs and expenses incurred and revenues received under this Agreement in sufficient detail to reflect all activities undertaken in connection with the Project and all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs of whatever nature, for which payment is claimed under this Agreement. Such records shall be maintained for five (5) years after the date on which the affordability requirements applicable under 24 C.F.R. 92.252 and 24 C.F.R. 92.254 expire. Records shall be retained beyond the prescribed period if any litigation, claim, negotiation, audit, or other action is begun involving this Agreement or the Project. In that instance, the records shall be retained until the litigation, claim, negotiation, audit, or other action has been finally resolved. Records covering displacement and acquisition

**Ref to OIG Evaluation**

**Auditee Comments**

Comments 14  
and 16

Comment 17

Comment 2

Comment 6

September 19, 2011  
Mr. Brent G. Bowen  
Page 9

must be retained for not less than five (5) years after the date by which all persons displaced and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 C.F.R. 92.353."

Therefore, the final report should not contain subsection 4 of Recommendation 3D.

**Recommendation 3E:** CPD should require IHCDA to implement adequate procedures and controls to ensure that the IHCDA maintains all contracts with third-party inspectors for at least five (5) years after the contracts terminate.

**Response to 3E:** IHCDA asserts that this Recommendation is not necessary; IHCDA's General Counsel provided training on record retentions requirements to the staff in the Single Family department, the department that maintains the inspections contracts, on January 12, 2011 at its monthly staff meeting. Given that IHCDA has implemented Recommendation 3E prior to the issuance of the final report, the final report should not contain this Recommendation.

We move now to OIG Finding 4.

**OIG Finding 4: IHCDA Lacked Adequate Controls Over Organizations' Home-Buyer Rehabilitation Projects**

**IHCDA Response to Finding 4:** DISAGREE, the finding statement as currently drafted is vague and broadly implies that IHCDA lacks policies and procedures and/or does not communicate these procedures to its sub-recipients. During the course of this audit IHCDA has provided documentation in the form of award letters, monitoring letters and other documentation, closeout letters, the award manual, notices, and award agreements that demonstrates the procedures established for the Program and the information that has been communicated to its sub-recipients, therefore, IHCDA requests that this finding statement is revised to more narrowly describe IHCDA's "opportunities for improvement".

**OIG Recommendations 4**

The discussion draft presents four (4) recommendations to CPD as a result of Finding 4, and, per your direction, we will respond to each individually.

**Recommendation 4A:** CPD should require IHCDA to revise its consolidated plan and action plan to include the recapture provisions that Housing Partnerships, Inc. uses for projects to comply with the recapture provisions in the State's consolidated plan and action plan.

**Response to 4A:** IHCDA agrees with this Recommendation. IHCDA is in the process of drafting amendments to the recapture agreements that Housing Partnerships, Inc. used in the three (3) home-buyer rehabilitation projects to comply with the recapture provisions in the State's consolidated plan and action plan.

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 6

September 19, 2011  
Mr. Brent G. Bowen  
Page 10

**Recommendation 4B:** CPD should require IHCDA to revise recapture provisions for the three (3) home-buyer rehabilitation projects to reduce the affordability period to that required by the State.

**Response to 4B:** IHCDA agrees with this Recommendation. IHCDA is in the process of drafting amendments to the recapture agreements associated with the three (3) home-buyer new rehabilitation projects to reduce the affordability periods.

Comment 18

**Recommendation 4C:** CPD should require IHCDA to provide sufficient supporting documentation or reimburse its HOME program from non-federal funds for the \$259,634 in Program funds used for the seven (7) home-buyer rehabilitation projects for which the IHCDA did not have sufficient documentation to demonstrate that households were income eligible.

**Response to 4C:** IHCDA disagrees with this Recommendation. The documentation provided by Housing Partnerships, Inc. (with respect to activity number 23964) and LaCasa was sufficient to determine income eligibility. The last paragraph of page 2 of the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005) states the following: "PJ's may use two (2) of the three (3) verification procedures provided to public housing agencies for the Section 8 as a basis for developing their procedures." These forms of verification are third party verification and review of documents. As a part of the third party verification process, a third party (e.g., employer, Social Security Administration, or public assistance agency) is contacted to provide information to verify income. As a part of the review of documents process, documents provided by the applicant (e.g., pay stubs, tax returns, etc.) can be used as an alternative to third party verifications. Based on this foundation, IHCDA will address the documentation collected for each activity number separately.

Comment 19

Activity No. 23964: while IHCDA would have preferred that Housing Partnerships, Inc. provided third-party documentation or three (3) consecutive months of payroll information, the 2007 Social Security Administration 1099 statement along with the Social Security Cost of Living adjustments, the 1099 form 1099R in light of the fact that the trust company would not provide any additional documentation, and the 2007 federal tax return that Housing Partnerships, Inc. provided is sufficient documentation to demonstrate that the household was income qualified under the 80% AMI level (see Attachment H).

Comment 20

Activity No. 24412: IHCDA has requested that Housing Partnerships, Inc. obtain additional documentation in the form of a more comprehensive form of third-party documentation or three (3) consecutive months of payroll information.

Comment 19

Activity No. 24983: while IHCDA would have preferred that LaCasa of Goshen provided third-party documentation or three (3) consecutive months of payroll information, the three (3) years worth of tax returns that include W2's is sufficient documentation under the review of documents process set forth in the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005), HUD handbook 4350.3 Rev-1, and the HUD Verification Guidance for the Public Housing & Housing Choice Voucher Programs (March 2004) to demonstrate that the household was income qualified under the 80% AMI level (see Attachment J).

Ref to OIG Evaluation

Auditee Comments

September 19, 2011  
Mr. Brent G. Bowen  
Page 11

Comment 19

Activity No. 24985: while IHCD A would have preferred that LaCasa of Goshen provided third-party documentation or three (3) consecutive months of payroll information, the three (3) years worth of tax returns that include W2's is sufficient documentation under the review of documents process set forth in the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005), HUD handbook 4350.3 Rev-1, and the HUD Verification Guidance for the Public Housing & Housing Choice Voucher Programs (March 2004) is sufficient to demonstrate that the household was income qualified under the 80% AMI level (see Attachment K).

Comment 19

Activity No. 24986: while IHCD A would have preferred that LaCasa of Goshen provided third-party documentation or three (3) consecutive months of payroll information, the three (3) years worth of tax returns that include W2's is sufficient documentation under the review of documents process set forth in the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005), HUD handbook 4350.3 Rev-1, and the HUD Verification Guidance for the Public Housing & Housing Choice Voucher Programs (March 2004) is sufficient to demonstrate that the household was income qualified under the 80% AMI level (see Attachment L).

Comment 19

Activity No. 25498: while IHCD A would have preferred that LaCasa of Goshen provided third-party documentation or three (3) consecutive months of payroll information, the two (2) years worth of tax returns that include W2's is sufficient documentation under the review of documents process set forth in the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005), HUD handbook 4350.3 Rev-1, and the HUD Verification Guidance for the Public Housing & Housing Choice Voucher Programs (March 2004) is sufficient to demonstrate that the household was income qualified under the 80% AMI level (see Attachment M).

Comment 19

Activity No. 25499: while IHCD A would have preferred that LaCasa of Goshen provided third-party documentation or three (3) consecutive months of payroll information, the two (2) year's worth of tax returns that include W2's is sufficient documentation under the review of documents process set forth in the Technical Guide for Determining Income and Allowances for the HOME Program (Third Edition January 2005), HUD handbook 4350.3 Rev-1, and the HUD Verification Guidance for the Public Housing & Housing Choice Voucher Programs (March 2004) is sufficient to demonstrate that the household was income qualified under the 80% AMI level (see Attachment N).

Therefore, the final report should not contain Recommendation 4C.

**Recommendation 4D:** CPD should require IHCD A to implement adequate procedures and controls to ensure that it maintains documentation to sufficiently support the eligibility of households in accordance with HUD's requirements.

Comments 18  
and 21

**Response to 4D:** IHCD A disagrees with this Recommendation. The issues cited in the discussion draft do not suggest that this documentation was not available rather that it was not sufficient.

Ref to OIG Evaluation

Auditee Comments

September 19, 2011  
Mr. Brent G. Bowen  
Page 12

Additionally, IHCD A already communicates record retention requirements to sub-recipients in at least two different ways:

(1) its closeout letter contains the following: "As required by HOME regulations at 24 CFR 92.508(c), all records maintained throughout the life of the award must be retained by the recipient for a period of five years from the date of closeout."; and

(2) subsection m of Section 3 of its Home Investment Partnerships Homebuyer Award Agreement contains the following provision: "[Recipient] will maintain books, records, documents, and other evidence pertaining to the Project and all costs and expenses incurred and revenues received under this Agreement in sufficient detail to reflect all activities undertaken in connection with the Project and all costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs of whatever nature, for which payment is claimed under this Agreement. Such records shall be maintained for five (5) years after the date on which the affordability requirements applicable under 24 C.F.R. 92.252 and 24 C.F.R. 92.254 expire. Records shall be retained beyond the prescribed period if any litigation, claim, negotiation, audit, or other action is begun involving this Agreement or the Project. In that instance, the records shall be retained until the litigation, claim, negotiation, audit, or other action has been finally resolved. Records covering displacement and acquisition must be retained for not less than five (5) years after the date by which all persons displaced and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 C.F.R. 92.353."

Therefore, the final report should not contain Recommendation 4D. We move now to OIG Finding 5.

**OIG Finding 5: IHCD A Lacked Adequate Controls Over Its Administration of Program Income**

**IHCD A Response to Finding 5: DISAGREE**

IHCD A properly accounted for and used income generated from the State's Program. During the audit scope – from July 1, 2008 through November 30, 2010 – the amount of Program income received by IHCD A equals the amount of Program income used for eligible Program activities by IHCD A.

Part of the difficulty in responding to this Finding is that the OIG's conclusions about Program income do not follow from the facts which apparently are used to form the basis of such conclusions. For example, in paragraph 3 on page 28, OIG lists offsetting adjustments to the IHCD A tracking spreadsheet that involved dollar amounts of \$7,000, \$6,000, and \$45,000. From those numbers, OIG concludes that IHCD A has understated its Program income by \$27,000. To the best of IHCD A's calculations, one cannot arrive at \$27,000 from \$7,000, \$6,000 and \$45,000, no matter what combination of mathematical functions used. But OIG arrives there, without providing calculation or explanation, and uses the \$27,000 as evidence of IHCD A's apparent lack of procedures and controls.

Comments 18 and 21

Comment 22

Comment 23



Ref to OIG Evaluation

Auditee Comments

Comment 24  
Comments 24  
and 25

Comment 22

Comment 26

Comment 22

Comment 23

Comments 24  
and 25

Comments 24  
and 27

Comment 25

Comment 25

Comment 25

September 19, 2011  
Mr. Brent G. Bowen  
Page 13

This example is an appropriate segue into Section 1 of Finding 5, as OIG fails to offer evidence which supports its conclusion that IHCD A did not appropriately account for, and lacked sufficient documentation to support, Program income.

The second paragraph in the Section (paragraph 2, page 28) offers three (3) instances when IHCD A allegedly failed to track Program income. The first example is of a transaction that occurred outside OIG's self-imposed audit scope. (The audit scope will be addressed in full later in this response to Finding 5). The second and third examples are examples of offsetting entries that were made; there is no question that the Program income was received and disbursed.

The third and last paragraph of Section 1 of Finding 5 (paragraph 3, page 28) refers to three (3) entries (\$7,000, \$6,000 and \$45,000) which were captured on the IHCD A tracking spreadsheet, but in the incorrect column. As noted by OIG, IHCD A has since updated the spreadsheet. More importantly, these placement errors were offsetting adjustments on the spreadsheet and did not affect the manner or timeliness by which IHCD A received or disbursed Program income. OIG's assertion that these offsetting adjustments resulted in a \$27,000 understatement to Program income is unsupported, misleading and confusing.

(Even assuming IHCD A understated Program income by \$27,000, this would equate to one-tenth of one percent (0.1%) of Program funding – \$24,800,000 – drawn during the audit period. While IHCD A strives to be a zero-error shop, IHCD A would put a 0.1% error rate against that of any other Program administrator in the nation. This, again, presumes the \$27,000 is accurately classified as an error, and IHCD A believes that it is not).

Section 2 of Finding 5 needs to be removed from the final report, as it relates to \$162,000 which falls outside the scope of the audit. According to slide 5 of the presentation which OIG provided during the "Entrance Conference: State of Indiana's HOME Investment Partnerships Program – Phase 2" on January 6, 2011, the audit period was limited to July 1, 2008 through November 30, 2010. OIG has the ability to extend the audit period, if necessary. However, OIG never provided notice to IHCD A that it had determined that it was necessary to expand the audit period, nor that it was going to expand the audit period. Further, the references to the 2006 and 2007 Program income do not impact the discussion drafts recommendations, so they appear to be included for illustrative, rather than substantive purposes.

Specifically, the following sentences or phrases should be removed from the final draft because they refer to events which occurred outside the scope. Reconciling formatting changes may need to be made:

Page 27: "and (4) did not report in HUD's Integrated Disbursement and Information System more than \$162,000 in Program income receipts for more than 1 year."

Page 28: "(1) more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009"

**Ref to OIG Evaluation**

**Auditee Comments**

Comment 25

September 19, 2011  
Mr. Brent G. Bowen  
Page 14

Page 29: "However, the Authority did not report in HUD's system more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009".

Comment 25

Page 29, second full paragraph. The deputy counsel's statement relates to incidents that pre-date the audit scope.

Comments 25 and 28

Lastly, if the \$24.8 million to which OIG refers includes the \$162,000, this amount should be reduced in the final audit report, as should OIG's resulting interest calculation.

Comment 25

By working outside the audit scope and not providing notice to the auditee of this, OIG did not give IHCDA fair opportunity to address issues from 2006 and 2007. Because the \$162,000 is the sole basis for Section 2 of Finding 5, this section should be deleted from the report in its entirety.

Comments 22, 23, 24, and 29

Section 3 of Finding 5 – the third and final section – asserts, without providing any evidence, that IHCDA lacked adequate procedures and controls. If not for the following section entitled "Conclusion", it would appear that this Section 3 is the conclusion because the section contains nothing but conclusory statements.

Comments 23 and 30

Responding to broad conclusory statements being offered as evidence is at best difficult and at worst futile. We can simply attest to the following: IHCDA communicated its step-by-step procedure and control for receipt of cash (some of which may be Program income) to OIG via e-mail on June 29, 2011. This procedure starts with how IHCDA receives cash until the time Program income is documented on the IHCDA tracking spreadsheet. OIG did not indicate that this response was insufficient, but IHCDA can only conclude that it was, and wonder why OIG did not request additional clarifying detail before concluding that IHCDA lacked procedures and controls.

In addition to the cash procedures, IHCDA has a Job Procedures Manual ("Manual") written specifically for tracking Program income (See Page 17 and 18 of the Manual, attached as Attachment O). This Manual was available for inspection during the audit, and IHCDA's accounting department relies on it to track and use Program income, and updates this Manual to reflect current best practices.

Comment 22

Beyond the written evidence (the cash system and Job Procedures Manual), the real-life Program income numbers support IHCDA's, and not OIG's, position. Specifically, at the end of the audit period, there was a \$0 difference between Program income received and Program income disbursed by IHCDA. Taken against the generalities contained in Section 3, the specifics of the cash procedures, Job Procedures Manual and dollar-in, dollar-out evidence are persuasive.

Comments 22, 23, 24, and 29

Based on the evidence presented, Finding 5 is not valid and IHCDA respectfully requests that OIG remove Finding 5 from the audit report and make the necessary corresponding changes.

**OIG Recommendations 5**

The discussion draft presents three (3) recommendations to CPD as a result of Finding 5, and, per your direction, we will respond to each individually.

**Ref to OIG Evaluation**

**Auditee Comments**

September 19, 2011  
Mr. Brent G. Bowen  
Page 15

Comment 22

**Recommendation 5A:** CPD should require that IHCD A reimburse HUD \$14,736 in non-federal funds for lost interest on Program funds that IHCD A drew from the State's treasury account when Program income was available.

**Response to 5A:** IHCD A disagrees with Recommendation 5A given that it complied with Program regulations in receiving, disbursing and tracking Program income. Therefore, IHCD A requests that the final report not contain Recommendation 5A.

Comment 29

(Even if IHCD A agreed with Finding 5, IHCD A anticipates that CPD would not impose the \$14,736 reimbursement without some minimal support for how this number reflects actual harm suffered by the Program. Following the pattern which we first noted with the \$27,000, OIG again fails to provide any supporting documentation or calculation for this nearly \$15,000 request. Without this, the amalgamation of guidelines used to arrive at the figure appear arbitrary, invented for the purposes of this particular audit, and without precedent.)

Comments 22  
and 31

**Recommendation 5B:** CPD should require the State to 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.

**Response to 5B:** Recommendation 5B is not necessary because IHCD A has adequate procedures and controls in place governing the use of Program income. IHCD A has a cash procedures system, which was provided to OIG via e-mail on June 29, 2011, and the Job Procedures Manual attached as Attachment O. These documents are described more fully above. Therefore, IHCD A requests that the final report not contain Recommendation 5B.

Comments 23,  
24, 31, and 32

**Recommendation 5C:** CPD should require the State to implement adequate procedures and controls to ensure that sufficient documentation is maintained to identify the source and application of Program income receipts and disbursements and Program income is accurately accounted for in its spreadsheet and reported in HUD's system.

**Response to 5C:** Recommendation 5C is not necessary because IHCD A has adequate procedures and controls in place governing the documentation of Program income. Attachment O contains methodology for IHCD A accounting for Program income. Further, as a result of the audit, IHCD A has implemented updates and design changes to its HOME spreadsheet to accurately reflect incoming and outgoing Program income. Among the notable changes are to add a column reflecting IHCD A's cash balances, which will enable IHCD A to instantly see bank cash as compared to the HOME cash balance. This should help future monitors or auditors who are not familiar with, and have limited time to learn, IHCD A's systems and controls. Therefore, IHCD A requests that the final report not contain Recommendation 5C.

Ref to OIG Evaluation

Auditee Comments

September 19, 2011  
Mr. Brent G. Bowen  
Page 16

Thank you again for providing us with the opportunity to comment on the discussion draft. Please do not hesitate to contact me at (317) 234-3873 or [ssciwert@ihcda.in.gov](mailto:ssciwert@ihcda.in.gov) with any questions or requests for further information.

Best regards,



Sherry Seiwert  
Executive Director of Indiana Housing and Community Development Authority

SS/mjw

Enclosures

cc: The Honorable Becky Skillman, Lieutenant Governor, State of Indiana (Chairman of the Board for the Indiana Housing and Community Development Authority)

## OIG Evaluation of Auditee Comments

**Comment 1** HUD's regulations at 24 CFR (Code of Federal Regulations) 92.205(e) state that a Program-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any Program funds invested in the project must be repaid to the participating jurisdiction's HOME investment trust fund in accordance with 24 CFR 92.503(b). HUD's regulations at 24 CFR 92.503(b)(2) state that except for repayments of project-specific organization loans which are waived in accordance with 24 CFR 92.301(a)(3) and 92.301(b)(3), any Program funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's HOME investment trust fund treasury account, the funds must be repaid to the participating jurisdiction's treasury account.

In November 2009, the Authority terminated rental rehabilitation and new construction project number 22460 and determined that it would require the repayment of nearly \$191,000 in non-predevelopment costs. It also inappropriately determined that it would (1) reclassify nearly \$194,000 in predevelopment costs of for the project as a project-specific community housing development organization predevelopment loan and then (2) waive the repayment of the loan. Further, it did not consider the nearly \$11,000 for the repayment of the predevelopment loan.

In January 2011, the Authority entered into a repayment agreement with Southern Indiana Homeownership, Incorporated, for more than \$83,000. As of February 2011, the Authority was trying to enter into a repayment agreement with the construction company that did work on the project for the remaining nearly \$108,000. Further, the Authority had not reimbursed the State's treasury account any of the Program funds used for the rental rehabilitation and new construction project.

Therefore, the Authority had inappropriately determined that it was only responsible for reimbursing the State's treasury account nearly \$191,000 of the \$395,000 in Program funds used for the terminated project. Further, it was not planning on reimbursing the State's treasury account until Southern Indiana Homeownership, Incorporated, and the construction company made repayments to the Authority for the nearly \$191,000.

The Authority is correct in that HUD's regulations do not include a timeframe in which a participating jurisdiction must reimburse its treasury account for any Program funds invested in a project that is terminated before completion. However, HUD expects a participating jurisdiction to promptly reimburse its treasury account for any Program funds invested in a project that is terminated before completion. HUD does not consider the 15 months that the Authority took

to reimburse the State's treasury account \$395,000 from non-Federal funds for the terminated project to be timely.

The Authority did not comply with HUD's regulations when it did not reimburse the State's treasury account until March 2011 for \$395,000 in Program funds used for an organization's rental rehabilitation and new construction project that was terminated in November 2009. This weakness occurred because the Authority lacked adequate procedures and controls to reimburse the State's treasury account for Program funds used for a terminated project. As a result, the Authority did not have \$395,000 in Program funds available for eligible Program-funded activities for more than 15 months.

**Comment 2** The titles of findings 2, 3, and 4 do not imply that the Authority lacks policies or does not communicate these procedures to its subrecipients. The titles to the findings state that the Authority lacked adequate controls over community housing development organizations' home-buyer new construction projects, home-buyer acquisition-only activities, and home-buyer rehabilitation projects.

**Comment 3** In March 2010, Affordable Housing Corporation informed the Authority that it did not use the more than \$6,000 in Program funds for downpayment assistance for home-buyer new construction project number 24860 due to the home buyer receiving a U.S. Department of Agriculture loan that financed the entire purchase price of the home. The Authority did not allow Affordable Housing Corporation to return the more than \$6,000 in unused Program funds by submitting a revised claim for the project. The Authority's deputy counsel said that due to a misunderstanding between the Authority and Affordable Housing Corporation, the Authority did not allow Affordable Housing Corporation to return the more than \$6,000 in unused Program funds for project number 24860. Therefore, the Authority did not sufficiently follow up with Affordable Housing Corporation to determine what happened with the project and ensure that Affordable Housing Corporation repaid the more than \$6,000 in unused Program funds.

**Comment 4** We revised the report to state the following:

- The Authority reported in HUD's Integrated Disbursement and Information System that home-buyer new construction project number 24860 was completed in March 2010. In August 2011, more than 17 months after the project was entered as completed in HUD's system and as a result of our audit, the Authority reimbursed the State's treasury account more than \$6,000 from non-Federal funds.
- The Authority did not have more than \$6,000 in Program funds available for eligible Program-funded activities for more than 17 months.

We revised recommendation 1A to state the following:

- Revise the amount of Program funds reported in HUD's system as disbursed for home-buyer new construction project number 24860 to \$45,324 (\$51,700 disbursed less \$6,376 not used).

We also added recommendation 2F to state the following:

- Ensures that the State uses the \$6,376, which the Authority reimbursed the State's treasury account for the Program funds that were not used for project number 24860, only for eligible Program costs.

**Comment 5** The Authority provided templates of its new lien and restrictive covenant agreements for its home-buyer activities. The templates contained resale and recapture provisions, including affordability periods, which complied with the State's consolidated plan and action plan. However, of the 43 home-buyer new construction projects we reviewed that did not involve the Authority only providing development subsidies, the inappropriate recapture provisions for 2 projects (project numbers 26447 and 26974) were included in documents that were dated after July 2010. Contrary to HUD's requirements and the State's consolidated plan and action plan, the Authority did not ensure that it implemented appropriate recapture provisions for the two projects. The promissory notes, which were secured by second mortgages, between the Authority and the home buyers for these 2 projects required the home buyers to repay the entire amount of home-buyer assistance at or before maturity of the loan. The promissory notes defined maturity as the sale of the property, the payoff or refinancing of the first mortgage on the property, or the home buyer's changing his or her principal place of residence from the property purchased. Further, the recapture provisions did not contain language that limited the amount of Program funds the Authority could recapture to the net proceeds from the sale of the property. Therefore, the templates do not support that the Authority revised the recapture provisions, including affordability periods, being used for the projects to comply with the recapture provisions in the State's consolidated plan and action plan.

**Comment 6** The Authority's planned corrective actions, if fully implemented, should resolve the issues and recommendations cited in this audit report, as applicable.

**Comment 7** 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 homeowner project meets the affordability requirements of 24 CFR 92.254 for the required period. HUD's regulations at 24 CFR 92.254(a)(3) state that the housing must be the principal residence of the family throughout the affordability period.

**Comment 8** Southeastern Indiana Community Preservation and Development Corporation previously provided documentation to support that the household for home-buyer acquisition-only activity number 25034 was income eligible.

Therefore, we revised the report to state the following:

- Contrary to HUD’s requirements, the Authority lacked sufficient documentation for 16 of the 51 home-buyer acquisition-only activities reviewed to support that it used \$73,335 in Program funds for eligible households and or activities. The 16 activities involved the following 4 organizations: Community Action Program, Inc., of Evansville; Housing Opportunities, Inc.; Pathfinder Services, Inc.; and Southeastern Indiana Community Preservation and Development Corporation. The Authority lacked sufficient documentation to support that the households for 2 activities were income eligible and that homes for 14 activities met HUD’s property standards requirements.
- The table in appendix E of this report shows the 39 activities for which the Authority did not have (1) sufficient income documentation to demonstrate that households were income eligible and or (2) final inspection reports or certifications supporting that homes met HUD’s property standards requirements.

We also revised recommendation 3C to reflect these revisions.

In addition, we revised the table in appendix E of this report by removing the entry showing that the Authority had insufficient income documentation for activity number 25034.

We informed the Authority that we removed activity number 25451, not activity number 25085, as an activity for which the Authority lacked sufficient documentation to support that the household was income eligible. We did not include activity number 25451 in this report as an activity for which the Authority lacked sufficient documentation to support that the household was income eligible.

**Comment 9** The Authority provided occupancy inspections performed by the cities or counties where the homes were located or inspections performed by other inspectors not under contract with the Authority to support that activities met HUD’s property standards requirements. Therefore, the Authority relied on occupancy inspections performed by the cities or counties where the homes were located or inspections performed by other inspectors not under contract with the Authority.

**Comment 10** We are not implying that it was the Authority’s policy to discard prior contracts with the inspectors. The audit report includes statements from the Authority’s



deputy counsel that once the Authority executed current contracts with the inspectors it discarded the prior contracts with the inspectors.

We revised the report to state the following:

- A single family underwriter was not aware that HUD's regulations at 24 CFR 92.508(c)(4) required written agreements to be retained for 5 years after the agreements terminated.

**Comment 11** The Authority did not provide documentation to support that its general counsel provided training to its Single Family Department on the record retention requirements contained HUD's regulations at 24 CFR 92.616(i). Further, HUD's regulations in 24 CFR 92.616(i) are applicable to activities funded with American Dream Downpayment Initiative funds.

**Comment 12** The Authority provided documentation to support that it reimbursed the State's treasury account \$8,585 from the State's HOME investment trust fund local account. However, it did not provide documentation to support that the reimbursement was from non-Federal funds.

**Comment 13** The Authority drew down and disbursed \$4,500 in Program funds to Affordable Housing Corporation from June 2009 through February 2010 for home-buyer acquisition-only activity number 24853. The household purchased the property in April 2009. However, the household moved, and the home was no longer the household's principal residence as of June 2010. The Authority was not aware that the household had moved and was no longer residing in the home. In July 2011, more than 1 year after the household moved and as a result of our audit, the Authority reimbursed the State's Program more than \$4,500 from non-Federal funds.

**Comment 14** This weakness occurred because the Authority lacked adequate procedures and controls regarding organizations' home-buyer acquisition-only activities to ensure that it appropriately followed HUD's requirements.

**Comment 15** Contrary to HUD's regulations, the Authority drew down and disbursed \$8,585 in Program funds to Housing Opportunities, Inc., from November 2009 through May 2010 to assist two households that were not income eligible. The Program funds were used to provide interest-free second mortgage loans to the home buyers for home-buyer acquisition-only activity numbers 25719 (\$4,600) and 26432 (\$3,985). The household income exceeded HUD's income guidelines by \$985 (2.1 percent) and \$2,834 (7.5 percent) for activity numbers 25719 and 26432, respectively.

**Comment 16** The Authority lacked sufficient documentation to support that the households for 2 home-buyer acquisition-only activities were income eligible and that the homes for 37 activities met HUD's property standards requirements. The Authority

could not provide 3 consecutive months of income documentation, complete income verification documentation, and or certified copies of tax returns for the two households. Neither the Authority nor a party contracted by the Authority inspected the 37 homes. The Authority relied on occupancy inspections performed by the cities or counties where the homes were located or inspections performed by other inspectors not under contract with the Authority.

**Comment 17** The Authority did not provide documentation to support that its general counsel provided training to its Single Family Department on record retention requirements. Further, providing training to staff does not support procedures and controls have been implemented to ensure that the Authority maintains all contracts with third-party inspectors for at least 5 years after the contract terminate.

**Comment 18** Contrary to HUD's regulations, the Authority lacked sufficient income documentation for 6 of the 15 home-buyer rehabilitation projects reviewed to support that it used nearly \$219,000 in Program funds for eligible households. The Authority lacked 3 consecutive months of income documentation, had incomplete income verification documentation, and or did not have certified copies of tax returns.

**Comment 19** Chapter two of HUD's Technical Guide for Determining Income and Allowances for the Program, dated January 2005, states that a participating jurisdiction must project a household's future income by using the household's current income circumstances. The year-to-date pay statement, Internal Revenue Service forms W-2 wage and tax statement and 1099s, and non-certified tax return information may not reflect the household's current income circumstances.

**Comment 20** The Authority provided documentation to support that the household for home-buyer rehabilitation project number 24412 was income eligible.

Therefore, we revised the report to state the following:

- Contrary to HUD's regulations, the Authority lacked sufficient income documentation for 6 of the 15 home-buyer rehabilitation projects reviewed to support that it used nearly \$219,000 in Program funds for eligible households.
- The following table shows the six projects for which the Authority did not have sufficient income documentation to demonstrate that households were income eligible.

We revised the table by removing the entry for project number 24412.

We also revised recommendation 4C to reflect these revisions.

- Comment 21** The weaknesses regarding the Authority's lack of sufficient documentation to support that households were income eligible occurred because the Authority lacked adequate procedures and controls regarding organizations' home-buyer rehabilitation projects to ensure that it appropriately followed HUD's requirements.
- Comment 22** The Authority (1) drew down more than \$24.8 million in Program funds from the State's treasury account from July 1, 2008, through November 30, 2010, when it had available Program income in the State's local account; and (2) did not always appropriately account for Program income.
- Comment 23** We rounded the overstatements and understatements of Program income to make the report more readable. The Authority (1) did not include in the spreadsheet \$6,818 in Program income disbursements made in August 2008 (\$6,418) and February 2010 (\$420), (2) incorrectly included in the spreadsheet \$5,612 in Program income receipts in March 2009 that were actually Program income disbursements, and (3) inaccurately included in the spreadsheet \$45,497 in Program income disbursements in November 2009 (\$36,597) and September 2010 (\$8,900) that were not disbursements from Program income. Therefore, its balance of Program income was understated by \$27,455 (\$45,497 less \$6,818 and \$5,612 times 2) as of June 2011. In July 2011, we provided the Authority a schedule showing the overstatements and understatements of Program income and the Authority made the necessary corrections to the spreadsheet so that its Program income was no longer understated.
- Comment 24** The Authority did not always appropriately account for Program income in the spreadsheet. The Authority did not include in the spreadsheet (1) more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009, (2) nearly \$16,000 in Program income disbursements until April 2010, and (3) nearly \$16,000 in Program income receipts until August (nearly \$4,000) and September (more than \$12,000) 2010. Further, it lacked sufficient documentation to identify the source and application of the Program income receipts and disbursements.
- Comment 25** The inclusion in the spreadsheet of the more than \$162,000 in Program income receipts in January 2009 was within our audit period of July 2008 through November 2010.
- Comment 26** The Authority used the spreadsheet to track its receipts and disbursements of Program income and determine the amount of Program income it had available to be disbursed. Therefore, since its balance of Program income in the spreadsheet was understated by more than \$27,000, it was not aware that it had additional Program income available in the State's local account to disburse before drawing down Program funds from the State's treasury account.

- Comment 27** By not including in the spreadsheet more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009, the Authority had additional Program income available in the State's local account from July 2008 through December 2008 to disburse before drawing down Program funds from the State's treasury account. Further, the Authority lacked sufficient documentation to identify the source and application of the Program income receipts. All three recommendations are associated with this issue.
- Comment 28** The \$24.8 million is the amount of Program funds that the Authority drew down from the State's treasury account when it had available Program income in the State's local account. Therefore, the \$24.8 million does not include the \$162,000 in Program income receipts from 2006 through 2007 that the Authority did not include in the spreadsheet until January 2009.
- Comment 29** On August 2, 2011, we provided the executive director of the Authority and HUD's staff a schedule supporting that the Authority drew down more than \$24.8 million in Program funds from the State's treasury account from July 1, 2008, through November 30, 2010, when it had available Program income in the State's local account and HUD lost nearly \$15,000 in interest on the Program funds that the Authority drew down from the State's treasury account when Program income was available.
- Comment 30** Further, we provided our draft audit finding outline regarding the Authority's lack of adequate controls over its administration of Program income to the executive director of the Authority on August 2, 2011.
- Comment 31** The weaknesses regarding the Authority's (1) drawing down of Program funds from the State's treasury account when it had available Program income in the State's local account, (2) not always appropriately accounting for Program income, (3) lack of sufficient documentation to identify the source and application of Program income receipts and disbursements, and (4) not reporting Program income in HUD's system in a timely manner occurred because the Authority lacked adequate procedures and controls regarding its administration of Program income to ensure that it appropriately followed HUD's requirements.
- Comment 32** The Authority did not report in HUD's system the more than \$162,000 in Program income receipts from 2006 through 2007 until January 2009.

## Appendix C

### HUD'S REQUIREMENTS AND THE STATE'S AND THE AUTHORITY'S POLICIES

---

#### **Finding 1**

HUD's regulations at 24 CFR 92.205(e) state that a Program-assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any Program funds invested in the project must be repaid to the participating jurisdiction's HOME investment trust fund in accordance with 24 CFR 92.503(b).

HUD's regulations at 24 CFR 92.503(b)(2) state that except for repayments of project-specific organization loans which are waived in accordance with 24 CFR 92.301(a)(3) and 92.301(b)(3), any Program funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with section 92.503(b)(3). Section 92.503(b)(3) states that if the Program funds were disbursed from the participating jurisdiction's treasury account, the funds must be repaid to the participating jurisdiction's treasury account. If the Program funds were disbursed from the participating jurisdiction's local account, the funds must be repaid to the participating jurisdiction's local account.

#### **Findings 2, 3, and 4**

Section 215(b) of Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, states that housing that is for homeownership 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 which 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 91.200(a) state that a complete consolidated plan consists of the information required in section 91.220.

HUD's regulations at 24 CFR 91.220(l)(2)(ii) state that the action plan must include the guidelines for resale or recapture, as required in 24 CFR 92.254, if a participating jurisdiction intends to use Program funds for home buyers.

HUD's regulations at 24 CFR 92.254(a)(3) state that housing must be acquired by a home buyer whose household qualifies as a low-income household and the housing must be the principal

residence of the household throughout the period described section 92.254(a)(4). Section 92.254(a)(4) states 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. Home-ownership activities that receive more than \$40,000 in Program assistance must remain affordable for at least 15 years. Section 92.254(a)(5) states that to ensure affordability, the participating jurisdiction must impose either resale or recapture requirements that comply with the standards of section 92.254(a)(5) and include the provisions in its consolidated plan. HUD must determine that they are appropriate. 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 participating jurisdiction may structure its recapture provisions based on its program design and market conditions. Section 92.254(a)(5)(ii)(A) states that in establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction may recapture only the net proceeds if any. 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 92.503(c) state that Program funds recaptured in accordance with 24 CFR 92.254(a)(5)(ii) must be deposited into the participating jurisdiction's local account; unless the participating jurisdiction permits a State recipient, subrecipient, or organization to retain the recaptured funds for additional Program projects pursuant to a written agreement; and used in accordance with the requirements of 24 CFR Part 92.

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 agreement provides 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 agreement requires the entire amount of the Program investment from the home buyer or an amount reduced pro rata based on the time the home buyer has owned and occupied the housing measured against the affordability period, the amount required by the agreement 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. Regardless of the terms of its written agreements, it is important that the participating jurisdiction establish mechanisms to ensure that it will be notified of pending foreclosures so that it can attempt to recoup some or all of the Program subsidy.

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.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that the amount of Program funds to be recaptured is based on a pro rata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original Program investment. The State's action plan for 2009 also states that the affordability period for all Program-assisted housing is determined by the total amount of Program assistance that goes into a property. Activities that receive less than \$15,000 in Program assistance per unit must remain affordable for 5 years. Activities that receive from \$15,000 to \$40,000 in Program assistance per unit must remain affordable for 10 years. Activities that receive more than \$40,000 in Program assistance per unit must remain affordable for 15 years.

## **Finding 2**

HUD's regulations at 24 CFR 92.254(a)(5)(ii)(A)(5) state that if the Program assistance is used only for development subsidy, the Program funds are not subject to recapture and the resale option must be used.

HUD's regulations at 24 CFR 92.502(c)(2) state that Program funds drawn from the treasury account must be expended for eligible costs within 15 days. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit into the participating jurisdiction's treasury account.

The State's consolidated plan for 2005 through 2009 and action plan for 2009 state that when the program design calls for no recapture (for home-buyer developments, the home could receive only development subsidy), the guidelines for resale will be adopted in lieu of recapture guidelines. Resale restrictions will require the seller to sell the property only to a low-income household that will use the property as its principal residence. Recipients should describe in the application, program guidelines, or award agreement their guidelines in using the resale guidelines. The homeowner selling the property will be allowed to receive a fair return on investment, which will include the homeowner's investment and any capital improvements made to the property.

## **Findings 3 and 4**

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 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**

HUD's regulations at 24 CFR 92.251(a)(2) state that housing acquired with Program funds must meet all applicable State and local housing quality standards and code requirements. If there are no such housing quality standards or code requirements, the housing must meet HUD's housing quality standards.

HUD's regulations at 24 CFR 92.504(b) state that before disbursing any Program funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any Program funds to any entity, a State recipient, subrecipient, or contractor, which is administering all or a part of the Program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of 24 CFR Part 92.

HUD's regulations at 24 CFR 92.508(a) state that a participating jurisdiction must maintain records demonstrating that each activity meets the property standards of 24 CFR 92.251. Section 92.508(c)(4) states that written agreements must be retained for 5 years after the agreement terminates.

HUD's HOMEfires, volume 6, number 2, states that pursuant to HUD's regulations at 24 CFR 92.504(a), a participating jurisdiction is responsible for managing the day-to-day operations of its Program, including compliance with property standards applicable to Program units. Participating jurisdictions must perform inspections of Program units purchased with Program funds. Participating jurisdictions may not rely on independent inspections performed by any party not under contract with the participating jurisdiction. Third parties such as consumer inspectors or FHA appraisers are not contractually obligated to perform the participating jurisdictions' obligations. Their inspections cannot be used to determine compliance with Program property standards requirements.

### **Finding 5**

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.

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.

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 identifying the source and application of program income, repayments, and recaptured funds.

HUD's Community Planning and Development Notice 97-9, issued September 12, 1997 requires

- Available Program income to be determined and recorded in HUD's Integrated Disbursement and Information System in periodic intervals not to exceed 30 days;
- Participating jurisdictions to maintain records which adequately identify the source and application of Program income as part of the financial transactions of their Program, consistent with 24 CFR 85.20; and
- Participating jurisdictions to be able to identify which projects generated Program income and which projects received Program income, including the amount.

## Appendix D

### SCHEDULE OF ORGANIZATIONS' HOME-BUYER NEW CONSTRUCTION PROJECTS WITH INAPPROPRIATE RECAPTURE PROVISIONS

Activity number	Inappropriate recapture provisions	Affordability period too long	Recapture amount too large
23956	X		
23959	X	X	
24064	X		
24162	X	X	
24286	X		
24372	X		
24403	X		
24404	X		
24419	X		
24420	X		
24461	X		
24514	X		
24530	X	X	
24531	X	X	
24621	X		
24859	X		
24861	X	X	
25053	X		
25054	X	X	X
25246	X		
25417	X		
25488	X		
25489	X		
25529	X	X	
25534	X		X
25536	X		X
25537	X		X
25538	X	X	X
25563	X		
25564	X		
25654	X		
25655	X		
25701	X		

**SCHEDULE OF ORGANIZATIONS' HOME-BUYER NEW  
CONSTRUCTION PROJECTS WITH INAPPROPRIATE  
RECAPTURE PROVISIONS (CONT.)**

---

<b>Activity number</b>	<b>Inappropriate recapture provisions</b>	<b>Affordability period too long</b>	<b>Recapture amount too large</b>
<b>25702</b>	<b>X</b>		
<b>25720</b>	<b>X</b>		
<b>25721</b>	<b>X</b>		<b>X</b>
<b>25849</b>	<b>X</b>	<b><u>X</u></b>	<b><u>X</u></b>
<b>25933</b>	<b>X</b>		
<b>26067</b>	<b>X</b>		
<b>26319</b>	<b>X</b>		
<b>26447</b>	<b>X</b>		
<b>26974</b>	<b><u>X</u></b>		
<b>Totals</b>	<b><u>42</u></b>	<b><u>9</u></b>	<b><u>7</u></b>

## Appendix E

### SCHEDULE OF ORGANIZATIONS' HOME-BUYER ACQUISITION-ONLY ACTIVITIES WITH INSUFFICIENT DOCUMENTATION

<i>Activity number</i>	<i>Final inspections or certifications</i>	<i>Income documentation</i>	<i>Assistance amount</i>
24486		X	\$4,700
24743*	X		3,750
24823*	X		4,750
24870*	X		4,850
24873*	X		4,750
24874*	X		4,750
24923*	X		4,850
24938*	X		4,850
24977*	X		4,750
25021*	X		4,700
25056	X		4,600
25066*	X		4,700
25080	X		4,600
25085		X	4,600
25091*	X		4,600
25235	X		4,700
25248*	X		4,850
25719	X		4,600
25748	X		4,700
25782*	X		4,750
25852*	X		4,700
25893*	X		4,850
25932*	X		4,850
25979*	X		4,850
26086	X		4,700
26096*	X		4,850
26097*	X		4,850
26175*	X		4,850
26176*	X		4,700
26177*	X		3,350
26206*	X		4,850
26207*	X		4,850
26208*	X		4,850
26240*	X		4,850
26242*	X		4,850
26303*	X		4,600
26314*	X		4,850
26432	X		3,985
26433*	X		4,600
<b>Totals</b>	<b>37</b>	<b>2</b>	<b>\$182,235</b>

\* Home-buyer acquisition-only activities that were for the purchase of a new construction home.