

**SYSTEMIC IMPLICATIONS
REPORT**

**U. S. Department of Housing
and Urban Development
Office of Inspector General
Office of Investigation**

AGENT (b) (7)(C)	
DISTRICT/OFFICE: Region 8/	DATE: June 11, 2012
A. Description of Systemic Deficiency: <p>During the course of a Home Equity Conversion Mortgage (HECM) investigation (2011GP001855I) it was discovered that while the participants of a HECM program are required to receive counseling prior to being approved for participation, a Power of Attorney (POA) is not required to receive any program counseling. Additionally, the POA is granted the complete autonomy to act as a manager of the estate, however, the participant of the HECM program /borrower may be residing in the home, and does not exercise any financial control over the property. This systemic deficiency allows for the POA to have the complete authority to change, receive, or request a line of credit advance, without the knowledge or consent of the HECM participant, making HUD and the borrower vulnerable to fraud.</p>	
B. Suggestions to Correct Deficiency: <p>It is recommended, in situations where a POA is acting on behalf of a HECM participant (i.e., corresponding with the servicer, changing line of credit or payment amounts), the POA should be required to attend HECM program counseling and sign a certification of their attendance.</p> <p>A further review of this process should be conducted by HUD program staff.</p>	
C. Investigative Techniques: <p>During the investigation the following files were reviewed and techniques were utilized:</p> <p>A review of the servicing file showed that the POA does not sign any certifications or receive any counseling regarding the HECM program.</p> <p>An interview with the HUD National Servicing Center also disclosed that the POA is not required to sign any certifications or receive any type of counseling for the HECM program participation.</p>	
Distribution: <input type="checkbox"/> Case File <input type="checkbox"/> AIGI <input type="checkbox"/> OMAP <input type="checkbox"/> Other: __ __	

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U. S. Department of Housing
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AGENT: (b) (7)(C)(b) (7)(C)(b) (7)(C) - 2011MW001084I

DISTRICT/OFFICE:

(b) (7)(C) HUD OIG, Midwest Region

DATE: April 16, 2012

A. Description of Systemic Deficiency

In a current HUD Office of Inspector General investigation, involving the HUD insured Home Equity Conversion Mortgage (HECM), "Section 255"; investigators were made aware of a process that as an office, we believe merits review and correcting by HUD single family officials.

The systemic concern is the use of the "Power of Attorney," who has the authority to act with complete autonomy, on behalf of the mortgagor/borrower.

Specifically, the scenario is as follows: A HUD insured mortgage (FHA Case (b) (4)(b) (4)), was originated and ultimately closed on January 7, 2009. On that date, an attorney-in-fact (person designated by the Power of Attorney) signed the closing package documents and was issued a check for \$75,000. Subsequent withdrawals from this mortgage included an additional \$275,000 between the aforementioned January date and December 2, 2009, which was the final draw. The mortgagor died 3 days later on December 5, 2009. What was most concerning to agents in this case and is the most telling in terms of a deficiency is the fact that the actual mortgagor was an elderly woman, who was in a nursing home at the time of the closing. Moreover, further investigation revealed that she had been admitted into the nursing home on November 28, 2006, which was almost 26 months before the actual closing. Finally, at no time since her admittance had she been released to her former residence, which was subject to the HECM.

Paragraph 1.8 of the Home Equity Conversion Loan Agreement from this specific loan file stated:

"Principal Residence" means the dwelling where the Borrower maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have one principal residence at any one time. The Property shall be considered to be the Principal Residence of any Borrower who is temporarily or permanently in a health care institution as long as the Property is the Principal Residence of at least one other Borrower who is not in a health care institution.

In this particular case, there was no co-borrower who occupied the HECM residence. In fact, the investigation revealed that on October 30, 2008, nursing home records document the mortgagor's inability to recognize the names of family members in a picture. This was the same date that an ambulance took her to obtain an Illinois Identification card because without it, the mortgage would not have gone through. Further, the care facility's records reflect that her only departure of the nursing home since admission, other than hospital visits, was this trip to the State of Illinois identification office.

Yet, the attorney-in-fact (agent of Power of Attorney) was provided the opportunity to act on behalf of the borrower in virtually every step in the process. Moreover, in many cases, he was not even required to meet face-to-face. For instance, the HECM counseling in this mortgage was conducted between the counselor and the attorney-in-fact (Power of Attorney) telephonically. Secondly, the initial loan application was filled out by the attorney-in-fact and mailed to the loan officer. Finally, the closing was held at the residence of the attorney-in-fact (Power of Attorney), wherein, he signed every document that was made part of the

settlement package.

B. Suggestions to Correct Deficiency

It is recommended that mortgagors meet in-person with the borrower when providing counseling, if they are both located in the same geographical area. If they are not, then it is recommended that the mortgagors meet in-person with the attorney-in-fact (Power of Attorney). In this particular instance, the Power of Attorney resided in the Chicago metropolitan area, within a reasonable driving distance of the mortgagor. Yet, the Power of Attorney was allowed to attend the counseling session telephonically and then sign on behalf of the borrower. Additionally, it is improper for a Power of Attorney to fill out a loan application, wherein he or she stands to gain from the mortgage draws, without being required to post a surety/fiduciary bond to ensure faithful performance of his or her duties. Lastly, it is recommended that the borrower be required to attend the closing for his or her own property, otherwise this opens the door to the potential for fraud.

If at any point in the process described in Page 1 of this SIR, had there been a requirement for a face-to-face meeting with the borrower, this mortgage would have been immediately terminated. As described earlier, the only departures for the borrower/mortgagor from her nursing facility were by ambulance. The property in question was vacant for over two years prior to the closing. If any of the recommended safeguards had been implemented, Paragraph 1.8 (above) would have immediately kicked in and HUD would have been less vulnerable to fraud.

HECM mortgagors are particularly vulnerable to victimization due to their advanced age and mental capacity. It is prudent to provide additional protections for his vulnerable class, rather than allow the attorney-in-fact complete autonomy through the Power of Attorney. Stricter standards for Power of Attorney instruments must be implemented, while simultaneously requiring the applicant to have some interaction with the various HECM mortgagor professionals involved in the loan application process.

C. Investigative Techniques

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*Office of Investigation***

AGENT: (b) (7)(C)

DISTRICT/OFFICE: 9AGI

DATE: February 27, 2012

A. Description of Systemic Deficiency:

HUD's Community and Planning Development (CPD) grants all have different rules on how the grant monies can be spent. HUD currently requires that recipients and sub-recipients of CPD funds demonstrate that the funds were spent on eligible activities according to the specific program. However, there appears to be no specific HUD requirement for recipients and sub-recipients of CPD grants (across the board) to maintain HUD funds separate from other private and public funds.

When an entity co-mingles HUD funds with other public and private funds, it is difficult to account for and determine if HUD funds are being spent in accordance with HUD regulations through financial record reviews. The following is an example of the problem encountered in a recent HUD OIG investigation (kept in basic format for explanation purposes):

A non-profit HUD Community Development Block Grant (CDBG) sub-recipient receives \$500,000 per year from a mixture of state funds, HUD funds, and private donations. The \$500,000 is composed of \$200,000 from the state, \$100,000 from HUD CDBG funds, and \$200,000 from private donations. The non-profit places the entire \$500,000 in a single account. Over the course of a year the non-profit buys cases of wine, hosts parties at an exclusive dinner club, sponsors golf outings for board members, etc. The non-profit also claims to have provided business technical assistance to multiple companies throughout the year (an authorized HUD expenditure). When questioned about the expenses, the non-profit claims that the unauthorized expenditures were funded with the non-HUD money.

By co-mingling the funds, it provides recipients and sub-recipients a way to side step or conceal the specific ways they are spending public money. The non-profit can simply explain that one employee paid \$100,000 per year works full time doing business technical assistance; they have then justified the HUD funds expenditure for the year.

In this example, if HUD teamed-up with state investigators/auditors and jointly conducted an investigation, they would likely determine that public money was used for unauthorized expenditures. Were state funds or HUD funds used for the unauthorized expenditures? There is no way of knowing because the funds are being managed through a co-mingled account.

Public perception is another factor. If a concerned citizen or the media obtain the financial records for the non-profit, they would see all the aforementioned unauthorized expenditures coming out of an account that contains state and federal money.

B. Suggestions to Correct Deficiency:

Require recipients and sub-recipients of all HUD CPD funds to maintain a separate bank account, or some other method of keeping a wall between the money, for each grant and not allow any other funds to be co-mingled in the account. This would significantly increase the transparency and allow investigators, auditors, CPD staff, and the public to clearly see exactly how HUD funds are being spent.

The aforementioned non-profit could have three (3) bank accounts, 1 private, 1 state, and 1 HUD. They could then easily demonstrate how HUD funds were spent versus state and private funds.

Most recipients and sub-recipients receive reimbursement by HUD for expenditures based on authorized activities after they have already spent the money (HUD funds are not given in advance but instead given after the fact). The same separation should apply.

Using the previous example, the non-profit (a sub-recipient) knows that the original recipient of HUD funds will be providing them \$100,000 of their CDBG funds at the end of the year. The non-profit should separate \$100,000 at the beginning of the year and dedicate it to HUD expenditures based on the assumption that they will be reimbursed at the end of the year with HUD money. They could then draw-down on the \$100,000 when needed for an authorized HUD expenditure. At the end of the year, the non-profit is reimbursed, and there is then no question as to how the money was spent.

Any associated costs or extra burden on the recipients and sub-recipients with this proposed requirement would be minimal. This would improve the efficiency of HUD audits, investigations, and monitoring.

24 CFR Section 85.20 provides guidance on financial management of grant funds. The regulation specifically states that the funds must be accounted for and spent on authorized activities. Nowhere does the regulation require the separation of HUD funds from non-HUD funds.

C. Investigative Techniques:

Agents in Las Vegas, Phoenix, and Sacramento report similar issues on CPD investigations they have conducted. In these instances, the source and application method was attempted to distinguish HUD funds from other sources. In one case this technique was successful and in others it was not. In order to conduct an in-depth financial analysis, HUD OIG forensic auditors are typically needed which ties up resources that could be better utilized elsewhere.

The case agents for the aforementioned cases are in concurrence that requiring separate accounts for HUD funds would increase transparency of the CPD program and make financial accountability more easily obtainable.

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[REDACTED] was convicted of making false statements in connection with his list of the occupants of his rental unit on the HAP Contract.

In consideration that (b) (7)(C) [REDACTED] resulted considerably from testimony by (b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C) [REDACTED] resided together, the Housing Authority of Billings developed a separate form on which landlords are required to acknowledge that they cannot live in the assisted unit. The form also includes several of the requirements contained in the HAP Contract but in a clearer manner. (See the attached exhibit.)

More recently, an investigation involving a landlord that used a small portion of the unfinished basement of a unit for which he receives HAP on behalf of tenants residing on the main floor of the home was recently declined to be accepted for prosecution by (b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C)(b) (7)(C) [REDACTED] (b) (7)(C)(b) (7)(C)(b) (7)(C) [REDACTED] In contrast to the earlier cases, no shared bank accounts, property, or mail boxes were identified that further linked the tenant with the landlord. A visit to the premises by (b) (7)(C) [REDACTED] revealed that the landlord cooked meals on a hotplate in the basement and used only the bathroom of the subsidized unit. Despite having created the Owner's Certification form described above, the Housing Authority of Billings did not retroactively require landlords to sign it; as a result, in the

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B. Suggestions to Correct Deficiency:

Establish regulations to require landlords to certify at the time of their tenants' lease-up or annually to statements concerning conflicts of interest and other program rules.

C. Investigative Techniques:

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