



U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT
OFFICE OF INSPECTOR GENERAL

March 20, 2014

MEMORANDUM NO:
2014-AT-1801

Memorandum

TO: María Ortiz, Director, Community Planning and Development, San Juan Field Office, 4ND

Paul Webster, Director, Financial Management Division, Office of Block Grant Assistance, DGBF

//signed//

FROM: Nikita N. Irons, Regional Inspector General for Audit, Atlanta Region, 4AGA

SUBJECT: Vieques Sports City Complex, Office of the Commissioner for Municipal Affairs, San Juan, PR, Section 108 Loan Guarantee Program

INTRODUCTION

The U.S. Department of Housing and Urban Development (HUD), Office of Inspector General (OIG), completed a review of the Office of the Commissioner for Municipal Affairs' (OCMA) Puerto Rico State Community Development Block Grant (CDBG) Section 108 Loan Guarantee program. We selected OCMA for review as part of our strategic plan, based on concerns regarding the slow progress of the Vieques sports complex project. The objective of this audit was to determine whether OCMA used Section 108 loan proceeds on a project that met a national objective of the CDBG program and fully provided the intended benefits.

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

METHODOLOGY AND SCOPE

To accomplish our objective, we performed the following associated with the Vieques sports complex project:

- Reviewed applicable laws, regulations, and relevant HUD program requirements, including the Section 108 loan contract and CDBG grant agreements;
- Reviewed HUD Section 108 loan-related files, including the application for the loan, status reports, and disbursement information reported on the loan proceeds and CDBG funds;
- Reviewed OCMA project files and records, including proposals submitted by the Municipality of Vieques;
- Reviewed HUD and OCMA applicable monitoring reports, including action plans submitted by OCMA for completing the project and related correspondence;
- Reviewed HUD's Integrated Disbursement and Information System reports;
- Conducted site inspections of the project; and
- Interviewed HUD, OCMA, and Municipality officials.

We did not review the Municipality's project files because they were not available for review.¹ The only documentation the Municipality provided for our review was a certification of project disbursements, dated August 28, 2003, and schedules listing general disbursement information for the Section 108 loan proceeds and CDBG funds.

To determine the amount of CDBG funds expended for the development of the project, including repayments of the Section 108 loan and program income proceeds, we

- Performed a limited review of OCMA's financial records, including disbursed amounts recorded in budget records corresponding to program years 1993 through 2003 and 2005, and reviewed the check register for the period July 1998 through November 2013;
- Compared, as applicable, information reported in HUD's Integrated Disbursement and Information System with OCMA's records;
- Reviewed proposals² submitted by the Municipality to OCMA, including a balance sheet, dated December 31, 1997; and
- Obtained from HUD information regarding the source of funds used for the repayment of the Section 108 loan.

We reviewed, among other things, loan repayment information provided by HUD, compared OCMA's disbursements with drawdowns in HUD's information system, and compared

¹ The project files date back to 1993. According to a Municipality official, the project files were destroyed.

² We reviewed proposals submitted by the Municipality corresponding to program years 1995 through 2003 and 2005.

disbursements reported by the Municipality with HUD's and OCMA's records. Although we did not verify all of the data reported by HUD, OCMA, and the Municipality, we found the data adequate for our purpose of determining the amount of unsupported CDBG costs incurred for the incomplete project.

We conducted the review at the HUD field office, OCMA office, and our HUD OIG office in San Juan, PR, from September through December 2013. We also conducted site inspections of the project on November 7 and 20, 2013. Our review generally covered the period July 1, 1993, through August 31, 2013. This was a limited scope review, and we did not review OCMA's internal and information system controls and procedures. Therefore, the review was not performed in accordance with generally accepted government auditing standards. To meet our objective, it was not necessary to fully comply with the standards, nor did our approach negatively affect our review results.

BACKGROUND

The Section 108 Loan Guarantee program is the loan guarantee provision of the CDBG program. Section 108 loans provide grantees with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. The principal security for the loan guarantee is a pledge by the grantee or the State of current and future CDBG funds. Section 108 obligations are financed through underwritten public offerings and may be for terms up to 20 years. A nonentitlement public entity³ (subrecipient) may apply for up to five times the latest approved CDBG amount received by its State.

For purposes of determining project and activity eligibility, the CDBG rules and requirements apply. All projects and activities must meet one of the following three national objectives of the CDBG program: (1) principally benefit low- and moderate-income persons, (2) assist in eliminating or preventing slums and blight, or (3) assist with community development needs having a particular urgency.

OCMA is the lead agency in Puerto Rico charged with the responsibility of overseeing the administration of the State allocation of CDBG program funds. OCMA was created August 30, 1991, through the Commonwealth of Puerto Rico Autonomous Municipalities Act of 1991. One of OCMA's responsibilities is to regulate, advise, and give technical and professional assistance to municipalities in the areas related to their organization, administration, and operations. In fiscal year 2013, HUD awarded Puerto Rico nearly \$27.8 million in State CDBG funds, distributed among 51 nonentitlement recipients, including the Municipality of Vieques. Vieques is an island located about 6 miles east of Puerto Rico with a population of 9,301.⁴

In July 1993, the Municipality of Vieques, a nonentitlement recipient, submitted an application for a \$5 million Section 108 loan for the planning, design, development, and construction of a

³ A nonentitlement public entity represents a unit of general local government that does not receive CDBG funds directly from HUD as part of the CDBG entitlement program.

⁴ According to available data from the U.S. Census Bureau, the population of the Municipality of Vieques increased from 8,602 in 1990 to 9,301 in 2010.

sports city complex in the Luján ward. The Municipality expected to complete the project 2 years after signing the Section 108 loan contract.

In August 1993, OCMA recommended the approval of the loan and agreed to pledge future State CDBG funds in favor of the Section 108 loan. HUD approved the \$5 million Section 108 loan in April 1994. More than \$10.8 million in State CDBG funds were disbursed for the development of a sports complex facility targeted to serve the low- and moderate-income residents of Vieques.⁵

OCMA's books and records are maintained at 255 Ponce de León Avenue, San Juan, PR.

RESULTS OF REVIEW

OCMA did not ensure that the Municipality completed a Section 108 Loan Guarantee project to construct a sports complex. The project was abandoned and not completed, materials and equipment acquired for its construction were unaccounted for, and the intended benefit was not realized. These deficiencies occurred because no corrective action plan was implemented and the completion of the sports complex was not feasible. As a result, program objectives were not met, preventing low- and moderate-income persons from receiving the intended benefits. HUD also lacked assurance of the allowability of more than \$10.8 million in State CDBG funds invested in the unfinished project.

Incomplete Project

The development of the sports complex project started in 1993. On December 24, 1997, the Vieques Conservation and Historical Trust, Inc., and a Vieques resident filed a lawsuit in Federal court, alleging environmental violations by the Municipality and two Federal agencies, HUD and the U.S. Department of the Interior. The plaintiffs alleged that the defendants, by planning, funding, and carrying out the construction of the sports complex, would violate the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act. In September 2002, after various negotiation efforts, the plaintiffs entered into a settlement agreement, and the Municipality agreed to

- Not complete the sports complex as designed;
- Comply with the requirements for outdoor lighting in case a future facility is constructed; and
- Continue to maintain the site in full compliance with all applicable Federal and State laws, including putting in place erosion control measures and protecting the archeological site.

⁵ The more than \$10.8 million in State CDBG funds consisted of (1) more than \$6.8 million used to repay the Section 108 loan, (2) more than \$3.7 million expended for development costs, and (3) \$320,252 in expended program income proceeds.

As a result of the settlement agreement, the construction of the sports complex was suspended, with about 72 percent⁶ of the project completed.

According to the Section 108 loan application, the sports complex was to be built on a 61-acre property conveyed to the Municipality by the U.S. Department of the Interior.⁷ The project consisted of a main recreational building to house, among others facilities, a cafeteria, basketball-volleyball court with a seating area for 1,000 spectators, three handball courts, three game rooms, a child care room, an exercise room, and a swimming pool. It also included two baseball parks with seating areas for 3,000 spectators.

A 1998 aerial picture shows the main recreational building and bleachers for the two baseball parks that were under construction at the project site.



Source: HUD San Juan field office files

⁶ The construction progress is based on Municipality proposals corresponding to program years 1999 through 2002.

⁷ The title of the land was transferred by the U.S. Department of the Interior, National Park Service, through the Federal Lands to Parks Program, to the Municipality during 2011. The Federal Lands to Parks Program helps communities obtain surplus Federal property for public parks and recreational use.

We performed two site inspections of the sports complex in November 2013 and confirmed that the project was not finished. The physical condition of the site demonstrated that the project had been abandoned for a long time. Dense vegetation had grown over the years and expanded over the project site and the partially built facilities, which were not accessible by foot.



On November 20, 2013, aerial pictures were taken of the project site. The sports complex was abandoned, and the main recreational building and the baseball facilities were covered with dense vegetation.

In 2002, an OCMA consultant inspected the sports complex and found unused materials and equipment stored at the project site, including air conditioning, pool and plumbing, and electrical equipment.





The 2002 pictures show materials and equipment stored at the project site and air conditioning systems that had not been used.

Municipality officials informed us that they did not know what happened to the unused materials and equipment stored at the project site. No inventory of the unused materials and equipment was maintained.

In addition, the Municipality could not provide documentation evidencing the use of the State CDBG funds disbursed for the sports complex. A Municipality official explained that the records were destroyed and that they had provided to us all available documentation. This was not an acceptable explanation for not performing an integral component of the Municipality's CDBG and Section 108 loan programs responsibilities. The Municipality failed to maintain adequate documentation on the use of HUD funds as required by 24 CFR (Code of Federal Regulations) 85.22.⁸ The only documentation available was a spreadsheet listing disbursements made with general information on the payee and purpose. Among the items listed as having been paid for with HUD funds were salaries, transportation, gasoline, and ice.

A 2002 HUD monitoring report concluded that the Section 108 loan proceeds, as well as additional CDBG grants used to repay the loan and for the development of the sports complex, did not accomplish program objectives. However, the deficiency remained unresolved. More than 11 years had elapsed since the construction of the sports complex was suspended, and more than \$10.8 million in HUD funds had been disbursed, but the project remained incomplete and abandoned without meeting a national objective of the CDBG program.⁹ As a result, funds were wasted, and HUD had no assurance that State CDBG funds were used for allowable purposes and that program objectives were met. In addition, low- and moderate-income persons did not receive the intended benefits for which more than \$10.8 million in HUD funds was invested.

Unfeasible Project

The sports complex was not a feasible project. An OCMA consultant-engineer inspected the sports complex in 2002 and concluded that the project was not useful or cost effective to operate and maintain and was out of proportion, considering the size of the Municipality's population and the current infrastructure of the island. In the report, the engineer also stated that the project

⁸ Federal regulations at 24 CFR 85.22 provide cost principles for determining allowable costs. Specifically, to be allowable under federal awards, costs must be necessary, reasonable, and adequately documented.

⁹ Required by 24 CFR 570.200(a)(2) and 570.703

was designed and constructed without consideration for the high operating and maintenance costs that this type of facility would require.¹⁰ In addition, the consultant pointed out that the location where the project was constructed was not ideal because the site required a large amount of earth movement, resulting in a considerable increase in development costs.

The Municipality's 2005 action plan proposed the redesign of the project to reduce its scope. The Municipality also stated that the project was unrealistic for a town with fewer than 10,000 residents and it lacked the basic infrastructure to accommodate a large number of visitors for a project of such magnitude. Therefore, the sports complex was not a viable project as originally planned.

OCMA informed us that it was looking for a solution to the abandoned sports complex and that it would not be feasible to continue with the original proposed project. It believed that cutting down the trees and vegetation and rehabilitating the partially built facilities would be too expensive. OCMA informed HUD that according to the most recent estimate it would cost more than \$16 million to rehabilitate the site, and neither OCMA nor the Municipality had available funds to complete the project. Therefore, the completion of the sports complex was not feasible, resulting in the inefficient use of State CDBG funds.

Project Future Uncertain

The Municipality and OCMA submitted various proposals for completing the project. The proposals included redesigning the project, changing the original scope and use of the project, and requiring the investment of additional funds. For example, in 2005, the Municipality requested from OCMA an additional \$269,675 from its State CDBG allocation to redesign the project¹¹ and estimated that an additional \$7 million would be needed to finish the project.

The last proposal submitted to HUD was on February 10, 2011. The proposal stated that the Municipality wanted to complete the sports complex, by preserving the partially built facilities and constructing new ones, and use a commercial approach to generate proceeds from recreational and commercial activities to pay for its maintenance. The estimated cost for rehabilitating and operating the project with the new facilities was \$16.5 million, including a new Section 108 loan in the amount of \$5.5 million and an additional \$2.5 million in State CDBG funds. However, none of the proposed alternatives occurred.

In September 2013, OCMA informed us that it was working on a plan to convert the sports complex to a forest preservation activity for the benefit of low- and moderate-income persons. The Municipality informed us that it was looking for alternatives to bring the sports complex into compliance with HUD requirements. Although the Municipality had conversations with OCMA, no final determination had been made on the future plan for the project.

¹⁰ The main recreational building was about 30 feet tall and was designed to have air conditioning in all of its interior facilities, which would result in excessive energy costs to operate. In addition, the Municipality would incur high maintenance costs for cleaning and painting the facilities.

¹¹ From the \$269,675 in 2005 State CDBG funds requested, only \$87,681 was expended. OCMA reprogrammed the unused allocation to other subrecipients.

In a letter dated January 7, 2014, addressed to the San Juan Field Office Director, OCMA proposed a change in the use of the project to a wild life refuge and cultural resources conservation site. However, OCMA did not address the issues related to the abandoned and deteriorated structures, and the wasted materials and equipment for which more than \$10.8 million in HUD funds was invested. In its letter OCMA stated that for years the Municipality sought a solution to the abandoned project, but the Municipality and the State did not have the funds to rehabilitate the abandoned facilities. The San Juan Office of Community Planning and Development informed us that it has not received OCMA's letter nor approved a change to the use of the project site.

The Municipality and OCMA failed to develop an acceptable solution to resolve the issues associated with the abandoned project. Therefore, the future of the sports complex remained uncertain.

Other Deficiencies

Our review disclosed other instances of noncompliance with HUD requirements and loan agreement provisions.

Unsupported drawdown - OCMA could not support the use of \$37,215, which it withdrew from HUD on August 8, 2006 (voucher number 1305973/2). OCMA identified in HUD's information system that the funds were used for a repayment of the Section 108 loan. However, the loan was paid in full in 2003, and no evidence was found that these proceeds corresponded to a repayment. OCMA provided no other documentation that could support the use of these funds.

Inaccurate reporting - HUD's information system reflected inaccurate information. OCMA did not properly classify in HUD's information system four withdrawals totaling \$216,630 to properly reflect the use of State CDBG funds for the repayment of the Section 108 loan. These withdrawals corresponded to deductions made by HUD from OCMA's line of credit between 2001 and 2003. One withdrawal was posted under an incorrect repayment activity, and three withdrawals were not posted in HUD's information system to a corresponding repayment activity, resulting in the understatement of \$132,985 in loan repayments made with CDBG funds.

Voucher number	Draw date	Amount	Comment
606618/2	February 27, 2001	\$83,645	Posted to an incorrect activity
606618/3	February 27, 2001	21,475	Not posted to an activity
722895/1	February 6, 2002	74,295	Not posted to an activity
852308/1	February 12, 2003	<u>37,215</u>	Not posted to an activity
Total:		<u>\$216,630</u>	

Conclusion

OCMA failed to properly administer its State CDBG and Section 108 Loan Guarantee programs by not ensuring compliance with program requirements and loan agreement provisions. It

permitted the use of more than \$10.8 million in State CDBG funds for a sports complex that did not achieve program objectives and did not provide the intended benefits. More than 11 years had elapsed since the 2002 HUD monitoring review; however, the deficiencies remained unresolved. OCMA and the Municipality had not developed an acceptable solution to the issues associated with the abandoned sports complex and to bring the project into compliance with HUD requirements. These deficiencies occurred because the completion of the sports complex was not feasible. The failure to implement a corrective action plan also contributed to the abandonment and deterioration of the facilities, which were subsidized with mostly Federal funds.¹²

The failure of the sports complex had a large negative impact on the State CDBG program, as more than \$10.8 million in Federal funds was used to repay the Section 108 loan debt and to develop a project that was not completed. The Municipality of Vieques and other nonentitlement recipients were deprived of State CDBG funds that could have been used for other and more efficient and effective activities. Thus, not only were the objectives of the Section 108 Loan Guarantee program not met, the State CDBG program and its intended benefit to low- and moderate-income residents would be deprived of more than \$10.8 million in State CDBG funds.

RECOMMENDATIONS

We recommend that the Director of the Financial Management Division of the Office of Block Grant Assistance instruct OCMA to

- 1A. Submit a plan for the sports complex project within 30 days, without proposing the use of additional HUD funds to implement it. HUD must reevaluate the feasibility of the sports complex project. If HUD determines the project has been canceled or not feasible, OCMA must reimburse total project costs in the amount of \$10,838,880¹³ to its State CDBG program from non-Federal funds.

We also recommend that the Director of the San Juan Office of Community Planning and Development instruct OCMA to

- 1B. Provide all supporting documentation associated with the \$10,838,880¹³ in State CDBG, Section 108, and program income proceeds disbursed for the development of the sports complex, if HUD determines the plan to be feasible (recommendation 1A). HUD must determine the eligibility, reasonableness, and allocability of the funds disbursed. OCMA must reimburse its State CDBG program from non-Federal funds any amount determined ineligible.
- 1C. Ensure that the Municipality maintains adequate documentation related to the Vieques sports complex project in accordance with HUD requirements and that these demonstrate the allowability, necessity, and reasonableness of the costs incurred.

¹² The Municipality expended an additional \$4.7 million from local funds for the development of the project.

¹³ Total disbursements of \$10,876,095 were adjusted to consider \$37,215 questioned in recommendation 1D.

- 1D. Submit supporting documentation showing the eligibility and propriety of \$37,215 drawn from HUD or reimburse the State CDBG program from non-Federal funds.
- 1E. Correct any inaccurate information in HUD's information system related to the sports complex, including but not limited to the drawdowns of \$216,630 associated with the loan repayment.

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1B	\$10,838,880
1D	<u>37,215</u>
Total	<u>\$10,876,095</u>

- 1/ 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.


Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 1

<p style="text-align: center;">COMMONWEALTH OF PUERTO RICO</p> <p style="text-align: center;"> OCMA Oficina del Contrólador de Asuntos Municipales</p> <p style="text-align: right;">CARLOS M. SANTINI RODRÍGUEZ, ESQ COMMISSIONER</p>	
<p>February 19, 2014</p>	
<p>Mrs. Nikita Irons Regional Inspector General for Audit U.S. Department of Housing and Urban Development Region 4 - Office of Inspector General Office of Audit, Box 42 Richard B. Russell Federal Building 75 Spring Street, SW, Room 350 Atlanta, GA, 30303-3388</p>	
<p>Subject: Comments to Draft Audit Memorandum Vieques Sports City Complex, Office of the Commissioner for Municipal Affairs, San Juan, PR, Section 108 Loan Guarantee Program</p>	
<p>Dear Mrs. Irons:</p> <p>We appreciate the opportunity to comment on the subject draft Memorandum your Office submitted to our attention on February 3, 2014. As requested by your Office, we completed the review of the document and have prepared the following comments. Our comments are based on the information included in the report as well as additional information provided during the exit conference. We request that you consider our comments and include them in the final audit memorandum.</p> <p>Comment #1- Introduction Section (Memorandum to Mrs. María Ortíz)</p> <p>It is not clear what is the purpose, nature and methodology of the document. The notification letter from your Office (dated September 13, 2013) notified OCMA, that the OIG will perform a "survey" of the State Community Development Block Grant (CDBG) Section 108 Loan Guarantee program. The type of intervention (survey) is not defined by <i>HUD Handbook 2000.06, REV-4</i> nor by the <i>Government Auditing Standards 2011 Revision</i>.</p> <p>The result of the "survey" is the draft document submitted for our "corrective action". However the draft document is identified as a memorandum but establishes corrective action typical of an audit. The introduction section of the Memorandum to Mrs. María</p>	
<hr/> <p style="text-align: center;">P.O. BOX 70167 San Juan, P. R. 00936 - 8167 Tel: (787) 754 - 1600 Fax: (787) 753-8254</p>	

Ref to OIG Evaluation

Auditee Comments

Comment 1

Ortiz indicates that the corrective action to be taken by the Municipality must be in accordance to HUD's Handbook 2000.06, REV-4. It is contradictory how the OIG performed a work that does not follow any audit standards, but requires OCMA to comply with the standards not followed by the Agency in the preparation of the document.

Therefore, OCMA requests the OIG to identify the administrative or professional standards used for the "survey", including the need, objective, purpose, and procedure of the review. This information is necessary in order to prepare our response and future administrative or legal actions.

Comment 2

Comment #2- Page 2 of the memorandum states the following "Although we did not verify all of the data reported by HUD, OCMA, and the Municipality, we found the data adequate for our purpose of determining the amount of unsupported CDBG costs incurred for the incomplete project".

How can the OIG reach this conclusion without reviewing all the documentation provided by OCMA? Among the documents provided to the OIG are the amortization tables and evidence of the loan payments made to HUD. The interest payments are included in the questioned costs, although their use is clearly recorded in the accounting records of OCMA for this purpose.

We request the elimination of such statement because the same is inaccurate and misleading.

Comment 3

Comment #3- The following statement at page 4 of the audit memorandum draft is incorrect:

"In August 1993, OCMA recommended the approval of the sports complex and agreed to pledge future State CDBG funds in favor of the Section 108 loan. HUD approved the \$5 million Section 108 loan in April 1994. OCMA disbursed more than \$10.8 million in State CDBG funds for the development of a sports complex facility targeted to serve the low- and moderate-income residents of Vieques."

In August 1993, OCMA did not recommended the approval of the Sport Complex. The certification of pledging of the funds is a mandatory requirement for the presentation of section 108 loan applications to HUD (24 CFR 570.704(a)(i)(C) and 24 CFR 570.705(b)(2)). The purpose of the pledge is limited to guarantee that CDBG funds are available for the repayment of the notes after HUD approves the loan. Under the regulation, OCMA was obligated to pledge the funds¹.

OCMA has no authority under local or federal laws to approve section 108 loans or to determine their feasibility.

¹ According to HUD's Section 108 Loan Guarantee Program Reference Manual, when the Section 108 program was started, only entitlement public entities were eligible to apply for loan guarantees. In 1990, with the passage of the National Affordable Housing Act (NAHA), non-entitlement localities were authorized to participate in the Section 108 program. However, because these localities do not receive CDBG funds directly, their States must pledge block grant funds as collateral for the Section 108 guarantee. (Page 3-1).

Ref to OIG Evaluation

Auditee Comments

Comment 3

Comment 4

We understand that it is the intention of the Auditor to imply that it was OCMA's decision to approve the loan. For the Auditor's reference, we are including how the HUD's Section 108 Loan Guarantee Program Reference Manual establishes the approval process:

The Section 108 application process generally takes several months, of which up to 90 days involves HUD review and approval.

The steps in the Section 108 process involve the development of the deal, the creation of the application, its submission to the HUD field and area offices for review, subsequent review by HUD Headquarters, and the formal approval or denial of the application.

The locality may spend several months developing a Section 108 deal and preparing the application. If there are only minor problems with the application and no outstanding issues related to a locality's CDBG program, review by the field offices can usually be done within a month. Subsequent review by HUD Headquarters and final decision on approval takes another 30 to 60 days².

After the approval of the loan and before the disbursement of the funds by HUD, it was necessary to comply with National Environmental Protection Act (NEPA) requirements. The environmental review prepared by the Municipality and the request for release of funds was reviewed and approved by HUD, not by OCMA.

Once the release of funds was approved by HUD, the section 108 loan proceeds were transferred directly to the Municipality not to OCMA. Also, once construction started, the Municipality, not OCMA, disbursed the funds to the contractor.

Based on the facts presented herein we request the OIG to rewrite the statement to reflect the actual facts.

Comment #4- Page 2 of the Memorandum establishes that to determine the amount of CDBG funds expended for the development of the project, the OIG compared the financial records with the IDIS system.

The proceeds of the section 108 loan do not pass-through the IDIS system. In addition, it must be established that OCMA initiated the use of IDIS in Program year 2000 thus, the use of IDIS data is only reliable for the 2000-2003 period.

Hence, we request the revision of the statement.

Comment #5- Page 4- The "after the facts" conclusion of the Auditor is that the project was unfeasible from the beginning. According to the audit memorandum draft, OCMA was responsible for the halting and abandonment of the project because "the sports complex was a poorly planned project that was not feasible".

² Section 108 Loan Guarantee Program Reference Manual- Page 3-18.

Ref to OIG Evaluation

Auditee Comments

Comment 5


This conclusion is incorrect, unsupported, and against the facts of the federal lawsuit. Indeed, the actual reason for the halting and abandonment of the project was the legal action that was instituted against the Municipality, HUD and the U.S. Department of the Interior which lasted five (5) years, in which both agencies were charged with noncompliance of the National Environmental Policy Act. Specifically, an injunction paralyzed the construction of the project until a final settlement was finally reached in 2002. The injunction issued concluded that the:

*"Defendants have approved, enabled, funded and/or constructed the Sports Complex without having adequately addressed the environmental effects of these actions, as required by the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA")."*³

It must be noted that OCMA was never a party in the lawsuit, nor included in the injunction. Thus, OCMA cannot be held liable and/or responsible, and it would be inaccurate to conclude that the project was not completed because of OCMA's actions and/or inactions. As the injunction well establishes, HUD and the Department of the Interior "approved, enabled, funded" the sport complex without complying with NEPA. These are the real reasons for the abandonment of the project.

Certainly, project construction was underway as planned and as stated in the report, the project was 72% completed. The remaining construction was related to the lighting system and the interior fixtures. Unfortunately, the settlement created unreasonable conditions for the completion of the project because it required its redesign. But it is incompressible how the audit memorandum draft imputes OCMA's liability for a settlement that was agreed upon by HUD. The settlement was the easiest solution for HUD, but its terms make it impossible for OCMA to comply with the dispositions of the Housing and Community Development Act and the CDBG regulations.

None of the recommendations contained in the audit memorandum draft address this situation, and the document does not require corrective action from HUD or from any other Federal Official or Agency involved in the process. A cursory review of the document seems to reveal that no responsibility has been attributed to any federal agency, although the referenced federal lawsuit indicates otherwise.

The most recent Government Auditing Standards Handbook indicates that Audits Reviews must be objective. We believe that this audit memorandum draft is not. In order for the memorandum to be objective, the same must address the following: (1) HUD's role in the approval of the project; (2) Why the HUD Field Office failed to comply with its obligation under NEPA; (3) Why the Secretary of HUD agreed to execute a settlement agreement that made the completion of the project unreasonable and an impossible task to accomplish.

³ Amended complaint for declaratory and injunctive relief- Civ. No. 97-2905 (PG)- April 24, 1998.

Ref to OIG Evaluation

Auditee Comments

Comment 5

The document must be revised to assign the responsibility to HUD and DOI and to identify that the main cause of legal action against the project was the Release of Funds granted by HUD to the Municipality, and not its lack of feasibility.

We request the elimination from the report of the feasibility or planning issue, and request the OIG the identification of the actual facts that caused the halting of the project.

Comment #6- Project Feasibility

As demonstrated in our previous comment, the feasibility of the project was not the reason for its abandonment. The statement on page 7 "*The sports complex was not completed because it was a poorly planned project that was not feasible*" should be removed from the report.

The memorandum does not recognize HUD's role in the process nor does it assign any responsibility to them for their actions during the process.

Each Section 108 Loan must be evaluated by HUD at different levels to determine its feasibility. HUD's internal procedure requires each Field Office with the initial evaluation of each Section 108 Loan Application, as established at 24 CFR 570.704(c)(2). One of the main responsibilities of the Field Office was to review the capacity of the applicant to carry out the project. It was the responsibility of the Field Office the approval or disapproval of the application based on its feasibility. It is a fact that the application was recommended by the San Juan Field Office for approval, thus we understand that the project was considered feasible.

After the Field Office review, the loan application was submitted to Headquarters for its final review and approval. It was HUD Headquarters' responsibility to determine if the activity was a risk, as stated in 24 CFR 570.704(c)(3). HUD's Section 108 Loan Manual establishes that HUD Headquarters' staff must review the application, and assess the risks and the reasonableness of the proposed project (Page 4-15). It is a fact that HUD Headquarters evaluated the risks and reasonability of the project and determined it to be feasible.

Regarding the technical aspects of the project, the Auditor cites a report from an OCMA Consultant-Engineer that concluded that the "*project was not useful or cost effective to operate and maintain and was out of proportion*". The statement made by the Consultant-engineer was made 9 years after the initiation of the project and more than five years after the filing of the lawsuit. Several of the conclusions of the report are the sole opinion of the consultant, but they are not necessarily correct.

For example, the statement made regarding the allegedly high cost of utilities that is included as a footnote on page 8 of the audit memorandum draft, does not have an effect on the project due to the fact that Municipal Governments in Puerto Rico do not pay utilities

Ref to OIG Evaluation

Auditee Comments

Comment 5

for public facilities⁴. Regarding the location of the project, the consultant failed to address the fact that at the time, more than 2/3 of the Island of Vieques was used by the U.S. Navy for military purposes and the availability of land was scarce. The location of the project was made in one of the few available lands for development.

Therefore, we request the total revision of the audit memorandum draft in order to remove all reference to the lack of feasibility as the cause of the abandonment and non-completion of the project. In addition, we request that the final audit memorandum assigns the applicable responsibility to HUD and the DOI.

Comment #7- We understand that the calculation of unsupported costs included in the audit memorandum draft is not accurate. For example, footnote #1, at page 4 of the draft, details the unsupported cost as follow:

1. \$6.8 million used to repay the section 108 loan
2. \$3.7 Million expended for development costs
3. \$320,252 expended program income proceeds

Comment 6

Regarding the \$6.8 million, the review of the amortization table shows that if the loan was for \$5.5 million the remaining amount, or \$1.8 million, were used for interest payment. The review of the amortization table of the loan clearly demonstrates that \$2.405 million dollars were used for interest payment of the loan and this amount must be deducted from the unsupported amount. If our comment is accepted, the correct unsupported amount totals \$8,433,437.50 and the document must be corrected accordingly.

Comment 7

Comment 8- The fifth paragraph in the memorandum mentions a conversation between the Auditors and OCMA Staff. On January 7, 2014, we presented to HUD an alternate solution for compliance with the National Objectives. As of today, we have not received a response from HUD. A copy of the letter is included for review. Based on this letter we request the elimination of the last paragraph of the memorandum because the same is inaccurate.

Comment 5

Comment 9 –Conclusion (Page 9) - We request the elimination of the editorial sentence *“These deficiencies occurred because the Sports Complex was a poorly planned project that was not feasible”*. This statement is incorrect as demonstrated by the facts presented in this letter, which validate that the main cause of legal action against the project was the Release of Funds granted by HUD to the Municipality, not its lack of feasibility.

Comment 8

Comment #10- This project was never visited, monitored or reviewed by HUD, and it is not until the OIG conducts a review, that the deficiencies of the activity are identified. We understand that the monitoring review was due after HUD entered into a settlement agreement with the Plaintiffs in the federal lawsuit. The delays caused by the legal action

⁴ Under Puerto Rico Law the Puerto Rico Electric Power Authority and Puerto Rico Aqueduct and Sewer Authority provides electricity and water to the Municipalities free of charge as Contribution in Lieu of Taxes. The CILT is intended to compensate the municipalities for foregone tax revenues not charged to the public entities.

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Comment 5

were obviously to produce cost overrun. At that point, the downsizing of the project should have been an option to be evaluated by HUD.

Comment 11- Conclusion (Page 9 last paragraph). We request the revision of the conclusion to read as follow:

"The Vieques Sport Complex has not complied with the CDBG National Objectives. Due to multiple reasons the Vieques Sports Complex was not completed and the State has failed to comply with the CDBG National Objectives. The failure of the sports complex had a large negative impact on the State CDBG program, as more than \$10.8 million in Federal funds was used to repay the Section 108 loan debt and to develop a project that was not completed. The Municipality of Vieques and other non-entitlement recipients were deprived of State CDBG funds that could have been used for other and more efficient and effective activities. Thus, not only were the objectives of the Section 108 Loan Guarantee program not met, the State CDBG program and its intended benefit to low- and moderate-income residents would be deprived of more than \$10.8 million in State CDBG funds."

Comment 9

Comment #12- Page 10- Recommendation 1A requires OCMA to present a plan for the Sport Complex without indicating the type, purpose or its content. We believe that the recommendation must be clarified and be more specific regarding the type of plan (reuse, demolish, adapt, etc.) and its scope.

In addition, the requirement that HUD evaluate the feasibility of the project must be revised. The recommendation must require HUD to evaluate the plan presented by OCMA and the Municipality to determine that it will comply with the CDBG National Objectives.

Comment 5

We believe it is impossible to determine the feasibility of the existing project after 20 years of its approval. Again, the OIG assigns HUD the responsibility to determine the feasibility or if the project should be cancelled, but makes OCMA responsible for the reimbursement of \$10.8 million. This request is totally unreasonable and against the settlement agreement because the Secretary of HUD already determined that the project should not be completed. In addition, the final order of the Court established that any redesign of the project must be approved by reviewed by the Plaintiffs and not by HUD. If HUD approves the plan but the plaintiffs understand that the same is contrary to the Judgment, they are entitled to request the U.S. District Court to force the Municipality to stop its construction⁵.

Comment 10

Please clarify.

Comment #10- Page 10- Recommendations 1B and 1C- The existing recommendation 1c is directly related to the recommendation 1b. We request the elimination of recommendation 1c and merging its text with recommendation 1b to read as follow:

⁵ One of the conditions (not mentioned by the "survey" of The Settlement Agreement Between Plaintiffs and Municipal Defendant, requires that the Municipality must notify the Plaintiffs of any plan to resume construction at the site. The purpose of this notification is to allow the plaintiff to review the proposed action to determine if the plan does not affect their case against HUD and the other defendants.

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If HUD determines the plan to be feasible (recommendation 1A), provide and maintain all supporting documentation associated with the \$10,838,880 disbursed for the development of the sports complex in accordance with HUD requirements. HUD must determine the eligibility, reasonableness, and allocability of the funds disbursed. OCMA must reimburse its State CDBG program from non-Federal funds any amount determined ineligible.

Should you need additional information regarding this finding please contact Mrs. Tomasita Rosado Assistant Commissioner for Federal Programs, at 787-754-1600 at your convenience.

Sincerely,



Carlos M. Santini Rodríguez, Esq.

Enclosure

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Auditee Comments

Comment 7

ESTADO LIBRE ASOCIADO DE PUERTO RICO



L.C.D.O. CARLOS M. SANTINI RODRÍGUEZ
COMISIONADO

January 7, 2014

Mr. Efraim Maldonado
Director
U.S. Department of Housing and Urban Development
Caribbean Field Office
San Juan, Puerto Rico

VIEQUES SPORTS CITY COMPLEX AT LUJAN WARD

Dear Mr. Director:

In 1993 the Municipality of Vieques initiated the development of a Sports City Complex at Lujan Ward. During the 1993-2005 period the Municipality invested \$14,356,440.31 in the project. The sports complex was located in a site of 68 acres approximately one mile north of Puerto Ferro, and one and one-quarter miles north-northeast of Puerto Mosquito, both of which are recognized worldwide as "bioluminescent bays". The complex was designed to meet the recreation demand of the residents of Vieques specially to benefit the low income persons. The design contained a number of diverse sports facilities, including baseball fields, a gymnasium, tennis courts, a horse arena, walking track, etc. The proposed baseball fields and the facility would have been equipped with floodlights mounted on high poles, to enable night play and use.

On December 25, 1997 the Vieques Conservation and Historical Trust, Inc.; and Carlos Ventura filed legal action against the U.S. Departments of Housing and Interior and against the Mayor of the Municipality of Vieques Mrs. Damaso Serrano. The trust alleged that the Secretary of Housing and Urban Development and defendant Secretary of the Interior, and the Municipal Government violated the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA"), the National Historic Preservation Act, 16 U.S.C. §§470f & 470h-2, and the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq. The trust contended that the use of floodlights adversely affected the reproductive behavior of sea turtles, which use the shoreline of Vieques for nesting. In addition, and during the construction of the project a series of cultural resource (Taino Indian Settlement) were found at the site. The cultural resources include prehistoric artifacts and human remains. It must be noted that

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the construction of the project was authorized by an environmental release obtained from HUD.

On September 24, 2002, after various negotiation efforts plaintiffs entered into a settlement with the Municipality of Vieques. As a result of the settlement the Municipality agreed to, (1) not complete the Sports Complex as designed; (2) comply with the requirements for outdoor lighting in case a future facility is constructed; and (3) continue to maintain the site in full compliance with all applicable federal and state laws, including erosion control methods. We must also establish that HUD is one of the Defendants of the Case (HUD's secretary is one signatories in the settlement agreement).

As a result of the litigation and the required mitigation for the cultural resources the completion of the project as originally planned was not completed and its construction was halted.

One of the main issues and concern for the parties involved in the process is that after a significant CDBG investment the low income population has not benefited from the project thus compliance with the National Objectives has not been met.

For years the Municipality has been looking for an alternative to complete the project in compliance with the terms of the settlement. The most recent cost estimate to rehabilitate the site (2011) total \$16,500,000. This amount is not available and the Municipality nor the State can allocate such amount for the rehabilitation of the site. The actual situation requires that HUD considers an alternative presented in this document that will allow the project to comply with national objectives. The proposed alternative considers the change of use of the facility to one that is approved will comply with objective of benefitting low and moderate income persons.



The original project was presented to HUD as a public facility with active recreation activities. In order to comply with the CDBG program National Objectives it is necessary to change the original use of the facility from active recreation to passive recreation. As an alternative, the Municipality is proposing to convert the project into a Wild Life Refuge and a Cultural Resources conservation site. The proposed use is compatible with the existing use of the adjacent property administrated by the U.S. Fish and Wild Life Service. Both the site and the (FWL) Refuge contains several ecologically distinct habitats including; beaches, coastal lagoons, mangrove wetlands, and upland forested areas that can be complemented. In addition to its ecological value, both sites contain important resources of archeological and historic significance, legacy of the Taino culture and the sugar cane era. The Municipality will continue with the administration of the site in coordination with the U.S. Department of the Interior.

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The proposed change of use is allowed by the regulation. The CDBG regulations at 24 CFR 570.489(j) permits the change of use subject to the completion of a citizen participation process. The regulation read as follow:

(j) Change of use of real property. The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments"). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(1) A unit of general local governments may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the unit of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

(i) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government;

In order to comply with the regulation OCAM in conjunction with the municipality will conduct an extensive citizen participation process. The Municipality of Vieques will be required to publish a public notice in a newspaper of general circulation and held at least two (2) public hearings to inform citizens of the new proposed use. The hearings will be recorded and a record of the meeting will be transcribed.

The change of use will allow compliance with the National Objective but will not oblige the Municipality to continue with this use indefinitely. If economic resources are identified and the Municipality understand that the original project can be finished in compliance with the term of the settlement they will be allowed to continue with it.¹

¹ The settlement establishes the following: "2. The Municipality will not complete the Sports Complex project as presently designed; 3. If the Sports Complex is completed according to a different design, or if any other facility is constructed at the Site, all outdoor lighting will meet the requirements of the biological opinions, i.e., will not be visible from the shore....5. The Municipality agrees that, in the event it decides to resume construction at the Site, it will provide written notice to the Plaintiffs of any plans to resume construction at least thirty days before seeking any permitting or regulatory approvals, and at least ninety days before any actual construction at the Site begins.

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With the new proposed use the public facility will comply with the Low and Moderate income national objective based on an area benefit as required by the Housing and Community Development Act. Neither the HCDA nor the CDBG regulations define the terms "public facilities" or "public improvements." The term public facility is broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. The change of use will convert the site into a "public facility" that will be open to the general public of Vieques for enjoyment. The service area of the project is citywide. According to the most recent LMI income data 57.47% of the population of Vieques are of low income. Based on this data the project will comply with the National Objective of Benefit Low Income persons (24 CFR 570.483(B)(1)(i)). We urge HUD to consider our request that as of today is the most feasible and reasonable solution to the problem.

Should you need additional information please feel free to contact Mrs. Tomasita Rosado at 787-754-1600 extension 309.

Cordially,



Carlos M. Santini Rodríguez

OIG Evaluation of Auditee Comments

Comment 1 OCMA requested that we identify the administrative or professional standards used for the review, including the need of the review, objective, purpose, and procedures used to prepare a response and take future administrative or legal actions.

As stated in the Introduction, OCMA was selected for review as part of our strategic plan, based on concerns regarding the slow progress of the Vieques sports complex project. A survey is the first step in an audit that permits an orderly approach to planning and carrying out the audit work. The audit work done during the survey was sufficient to address our objectives and identify the reportable conditions of noncompliance. The objective of this audit was to determine whether OCMA used Section 108 loan proceeds on a project that met a national objective of the CDBG program and fully provided the intended benefits. The Inspector General Act of 1978, as amended, authorizes OIG to conduct audits, reviews, inspections, and evaluations related to HUD programs and access to any and all documents associated with any HUD program or operation held by any entity or individual. The audit was conducted in accordance with OIG policies and procedures, and consistent with our statutory mission of detecting and preventing fraud, waste, abuse, and mismanagement and promoting the effectiveness and efficiency of government operations.

Comment 2 OCMA requested that we eliminate the statement because it was inaccurate and misleading and made reference that the interest paid on the Section 108 loan were questioned although these were properly recorded in the accounting records. We disagree with OCMA's statement; its records did not reflect information on all loan repayments. In addition, OCMA did not provide additional support identifying the alleged inaccurate information. Therefore, we did not eliminate the statement from the memorandum.

Comment 3 OCMA requested that we rewrite the statement because it did not recommend the approval of the sports complex and was obligated to pledge future CDBG funds.

Contrary to OCMA's statement, in a letter dated August 16, 1993,¹⁴ the former Commissioner did recommend that HUD approve the loan and agreed to pledge future CDBG funds as follows: "Based [on] our review and taking [into] consideration that the municipality performance meets the standard required by the state we recommend the application and agree to make the pledge of future grants required under 570.705(b)(2)." We modified the statement clarifying OCMA's recommendation of the Section 108 loan.

We disagree with OCMA's statement that it did not disburse State CDBG funds for the development of the sports complex. OCMA disbursed more than \$6.8

¹⁴ Application for the Section 108 Loan Guarantee Vieques, Puerto Rico.

million to repay the Section 108 loan and more than \$3.7 million for development costs.

Comment 4 OCMA suggested we revised the statement in the memorandum. However, it did not provide additional information showing or explaining what was incorrect. Therefore, we did not modify the statement in the memorandum.

Comment 5 OCMA requested the removal from the memorandum of all reference to the lack of feasibility as the cause for the abandonment and non-compliance with CDBG program requirements. It attributed the halting and abandonment of the project to the legal action against the Municipality, HUD, and the U.S. Department of the Interior. It further added that the settlement agreement made the completion of the project an unreasonable and impossible task to accomplish. Thus, OCMA claimed it could not be held liable and responsible for not completing the sports complex.

We acknowledge that the construction work of the sports complex was suspended because of the legal action against the parties involved in the project. However, OCMA and the Municipality abandoned the sports complex project and allowed the existing facilities to deteriorate after an agreement was reached with the plaintiff. OCMA informed us and HUD that the completion of the sports complex was not feasible because it would cost more than \$16 million to rehabilitate and that it did not have the funds to complete the work. We added this information to clarify the memorandum, but did not remove the statement as requested.

We disagree with OCMA's statement that it should not be held responsible for not completing the project. States are responsible for managing the day-to-day operations of their CDBG program and ensuring that funds are used in keeping with all program requirements. Implementation of activities by other entities (units of local government, nonprofit development organizations, etc.) does not relieve states of this responsibility. OCMA did not ensure that the Municipality completed the sports complex and failed to perform an integral component of the State's CDBG program responsibilities. As a result, program objectives were not met, preventing low- and moderate-income persons from receiving the intended benefits.

We also disagree with OCMA's statement that the settlement created unreasonable and impossible burdens to complete the project. Contrary to OCMA's statement, the September 2002 settlement did not prohibit or impose unreasonable burdens on the sports complex project. The Municipality agreed to

- Not complete the sports complex as designed;
- Comply with the requirements for outdoor lighting in case a future facility is constructed; and

- Continue to maintain the site in full compliance with all applicable Federal and State laws, including putting in place erosion control measures and protecting the archeological site.

OCMA did not provide additional information to support that the settlement imposed unreasonable burdens that impeded the completion of the sports complex and ensure that low- and moderate-income persons received the intended benefits.

- Comment 6** OCMA believed that the questioned costs should not include the interest paid on the Section 108 loan and that the correct unsupported amount was more than \$8.4 million. OCMA disbursed State CDBG funds to repay the Section 108 loan, including principal and interest, of a project that did not meet program objectives. Therefore, all CDBG funds disbursed for the sports complex are unsupported. OCMA did not provide additional information or explain why the interest paid with CDBG funds should be excluded from the questioned amount. Therefore, the memorandum and recommendation were not modified.
- Comment 7** OCMA requested that we eliminate the statement because it was inaccurate. We updated the memorandum to acknowledge that OCMA sent a letter to the San Juan, PR, HUD Field Office Director, proposing a change in the use of the project to a wild life refuge and cultural resources conservation site. We did not eliminate the statement because change in use of the site had not been evaluated or approved by HUD. In addition, the proposed change in the use of the site did not address the issues related to the abandoned and deteriorated structures, and the wasted materials and equipment for which more than \$10.8 million in HUD funds was invested.
- Comment 8** Contrary to OCMA's claim, HUD did monitor the Vieques sports complex and the results of the review were discussed with OCMA's former Commissioner on August 21, 2002. However, the deficiencies remained unresolved.
- Comment 9** OCMA stated that it would be impossible to determine the feasibility of the sports complex after 20 years and disagreed with the recommendation to reimburse \$10.8 million if HUD determines the project to have been cancelled or not feasible. In addition, it stated that Recommendation 1A must specify the type of plan to be submitted and its scope.

OCMA must reimburse any ineligible amounts determined by HUD. During the audit resolution process, HUD will request all pertinent information to address the audit findings and recommendations. We disagreed with OCMA's statement and did not modify the recommendation.

Comment 10 OCMA suggested the merger of Recommendations 1B and 1C because these were related. We disagree with OCMA's statement and did not modify the recommendations. Although related, each recommendation was directed to different entities and addressing specific deficiencies found. Recommendation 1B is directed to OCMA and 1C is directed to the Municipality of Vieques.