



County of Beaver, Beaver Falls, PA

HOME Investment Partnerships Program



To: John E. Tolbert III, Director, Office of Community Planning and Development,
Pittsburgh Field Office, 3ED
//signed//
From: David E. Kasperowicz, Regional Inspector General for Audit, Philadelphia
Region, 3AGA
Subject: The County of Beaver, Beaver Falls, PA, Did Not Always Administer Its HOME
Program in Accordance With Applicable HUD and Federal Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of Beaver County's administration and use of HOME Investment Partnerships Program funds.

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

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

If you have any questions or comments about this report, please do not hesitate to call me at 215-430-6730.



Audit Report Number: 2015-PH-1001

Date: January 30, 2015

The County of Beaver, Beaver Falls, PA, Did Not Always Administer Its HOME Program in Accordance With Applicable HUD and Federal Requirements

Highlights

What We Audited and Why

We audited the County of Beaver, Beaver Falls, PA's administration of the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program funds. We audited the County because we received a complaint alleging misuse of Federal funds resulting from a potential conflict of interest involving a County employee. Our audit objective was to determine whether the County administered its HOME program in accordance with applicable HUD and Federal requirements.

What We Found

The County did not always administer its HOME program in accordance with applicable HUD and Federal requirements. The allegation in the complaint had merit. The County allowed an apparent conflict of interest to exist. It also (1) did not commit program funds to the owner of an assisted property, (2) did not adequately evaluate developers' sources and uses of funds, (3) did not execute and record a mortgage, (4) did not impose deed restrictions, (5) did not determine whether its potential business partners were excluded or disqualified from participating in a HOME-funded project, (6) made payments for expenses that were not supported with adequate documentation, (7) did not ensure that program documentation was accurate and complete, and (8) did not enforce the terms of its loan agreement. These deficiencies occurred because the County did not establish and implement controls to ensure that it complied with applicable program requirements. As a result, it could not adequately support disbursements totaling \$519,284.

What We Recommend

We recommend that HUD direct the County to (1) execute and record a mortgage, (2) impose and record deed restrictions, (3) provide documentation to support its use of \$519,284 in program funds or reimburse its program from non-Federal funds for any amount that it cannot support, and (4) establish and implement controls to ensure that it complies with applicable program requirements. We also recommend that HUD (1) evaluate the apparent conflict-of-interest situation identified in this report, determine whether a conflict of interest existed, and pursue administrative sanctions if warranted; and (2) provide technical assistance to the County to ensure that it administers its HOME program in accordance with applicable HUD and Federal requirements.

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Background and Objective

The HOME Investment Partnerships Program was created under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, and is regulated by 24 CFR (Code of Federal Regulations) Part 92. The program provides formula grants to States and localities that communities use, often in partnership with local nonprofit groups, to fund a wide range of activities that build, buy, or rehabilitate affordable housing for rent or home ownership or provide direct rental assistance to low-income people. It is the largest Federal block grant provided to State and local governments designed exclusively to create affordable housing for low-income households.

Participating jurisdictions may choose among a broad range of eligible activities, using program funds (1) to provide home purchase or rehabilitation financing assistance to eligible homeowners and new home buyers; (2) to build or rehabilitate housing for rent or ownership; or (3) for other reasonable and necessary expenses related to the development of non-luxury housing, including site acquisition or improvement, demolition of dilapidated housing to make way for a program-assisted development, and payment of relocation expenses. HOME funds cannot be committed to a project unless the participating jurisdictions can reasonably expect construction or rehabilitation to begin within 12 months. Participating jurisdictions are required to commit HOME funds within 24 months and expend them within 5 years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME agreement.

The County of Beaver is a participating jurisdiction. It administers its HOME program through its Community Development Program Office. The County primarily used its HOME funds on rental housing acquisition and rehabilitation, home buyer assistance, and tenant-based rental assistance activities. For program years 2010 and 2011, the County received HOME program funds totaling about \$1.6 million. The following chart provides details.

Program year	HOME funds received
2010	\$ 847,268
2011	749,385
Total	\$1,596,653

As of September 2013, the County's two largest open projects involved the acquisition and rehabilitation of two properties as shown in the table below.

Activity	Program year	Activity amount	Amount disbursed
1760 (Connecticut Avenue)	2010	\$455,000	\$404,647
1816 (Elm Street)	2011	210,000	205,809
Totals		\$665,000	\$610,456

For activity 1760, the County provided a developer a \$455,000 forgivable loan to convert a commercial structure located at 262 Connecticut Avenue, Rochester, PA, to 36 rental units, 6 of which would be designated as HOME-assisted units with 3 units to be equipped for handicapped persons. As of October 2014, the rehabilitation of the property had not been completed.

For activity 1816, the County provided a developer a \$210,000 forgivable loan to convert a school building located at 1135 Elm Street, Monaca, PA, to 11 rental units, 4 of which would be designated as HOME-assisted units. As of January 2014, the rehabilitation had been completed, and the units were occupied.

Our audit objective was to determine whether the County administered its HOME program in accordance with applicable HUD and Federal requirements.

Results of Audit

Finding: The County Did Not Always Administer Its HOME Program in Accordance With Applicable HUD and Federal Requirements

The allegation in the complaint had merit. The County allowed an apparent conflict of interest to exist. It also (1) did not commit program funds to the owner of an assisted property, (2) did not adequately evaluate developers' sources and uses of funds, (3) did not execute and record a mortgage, (4) did not impose deed restrictions, (5) did not determine whether its potential business partners were excluded or disqualified from participating in a HOME-funded project, (6) made payments for expenses that were not supported with adequate documentation, (7) did not ensure that program documentation was accurate and complete, and (8) did not enforce the terms of its loan agreement. These deficiencies occurred because the County did not establish and implement controls to ensure that it complied with applicable program requirements. As a result, it could not adequately support disbursements totaling \$519,284.

The County Did Not Properly Administer Activities

According to regulations at 24 CFR 92.504(a), the County was responsible for managing the day-to-day operations of its HOME program, ensuring that program funds were used in accordance with program requirements and loan agreements and taking appropriate action when problems arose. The County

- Allowed an apparent conflict of interest to exist for activity 1760 when it awarded program funds not to exceed \$455,000 in June 2011 to a limited partnership developer¹ in which a County employee² was a limited partner. The duties and responsibilities of the County employee provided the employee the potential to gain inside information concerning the County's HOME program. Regulations at 24 CFR 92.356 prohibit any person who is in a position to participate in a decision-making process or gain inside information with regard to program activities from obtaining a financial interest or benefit from a HOME-assisted activity or having any interest in any contract, subcontract, or agreement during his or her tenure or for 1 year after. In this case, in November 2011, the general partner made two payments totaling \$34,000 to the employee from the HOME-assisted project's bank account. One payment (\$21,500) was made to pay the employee for legal services rendered that were related

¹ T. Rose Developers, LP, was the developer. The limited partnership entity consisted of Rosenberger Land Company, Inc., as the general partner, and Greenville Development, LLC, of which the County employee was president, as the limited partner.

² The County employee performed the duties of both a part-time district attorney and solicitor within the County controller's office.

to the project. The other payment (\$12,500) was made to the employee on behalf of the project's demolition contractor for legal services to be provided that were not related to the project. The general partner did not submit the \$21,500 for legal services to the County for reimbursement from HOME funds. However, the general partner submitted and was reimbursed from HOME funds for all of the demolition expenses related to the project, including the \$12,500 that was paid to the County employee on behalf of the demolition contractor.

- Did not commit program funds to the owner of the property for activity 1760. The loan agreement, dated June 9, 2011, identified the owner as T. Rose Developers. However, the County's real estate property database indicated that the property was owned by Rosenberger Land Company.³ Regulations at 24 CFR 92.2(1) required that a commitment take place only when the County had met the requirements to commit to a specific local project and executed a written legally binding agreement with the owner. At the time of the award, the County was not aware that the loan agreement was inaccurate. When we brought this issue to the County's attention, it executed an amendment to the loan agreement on March 13, 2014, 33 months later, with Rosenberger Land Company, the owner of the project.
- Did not adequately evaluate developers' sources and uses of funds. For activity 1760, the County did not have documentation to show that it verified the owner's equity of \$300,000 and that the developer had a \$1.1 million bank loan. Documentation in the County's files showed that the developer had a \$1.4 million line of credit loan and that \$716,000 of that amount was going to be disbursed to a law firm. The \$716,000 was for unrelated properties, leaving only \$646,000 of the loan for the assisted property. For activity 1816, the County did not have documentation to show that it verified the owner's equity of \$167,001 and that the developer had a \$250,000 bank loan. Project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and use of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Specifically, regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and use of funds provided for assisted activities. Also, requirements at 24 CFR 92.250 required the County to evaluate the project in accordance with its adopted guidelines before committing funds to a project. The deficiency described above occurred because the County did not request documentation beyond the owner's certification in the application for funds.
- Did not execute and record the mortgage as required. For activity 1760, the mortgage was recorded 12 months after the County initially signed the agreement with the developer and after the County had disbursed program funds. However, the mortgage

³ Anthony T. Rosenberger was the general partner of T. Rose Developers, LP, and president of Rosenberger Land Company.

did not identify the assisted project since it contained incorrect parcel numbers. During the audit, the County provided the owner a revised modification of the mortgage, but as of September 2, 2014, the owner had not executed or recorded the document as required by Chapter 1, Section 1.3.F of HUD's Compliance in HOME Rental Projects guidebook to protect HUD's and the County's interests. Until it is recorded, the mortgage is not effective or valid. Therefore, lenders, title search companies, and other mortgage industry professionals would not be aware of its existence.

- Did not impose deed restrictions for activities 1760 and 1816 as required. Regulations at 24 CFR 92.252(e) and 92.504(c)(3)(vii) required the County to impose affordability requirements through a deed restriction, covenants running with the land, or other mechanisms approved by HUD. The deed restriction must be recorded to ensure that the property remains affordable for the minimum period of affordability prescribed in 24 CFR 92.252(e) regardless of transfer of ownership. Regulations at 24 CFR 92.503(b) state that any HOME funds invested in housing that does not meet the affordability requirements for the period specified in 24 CFR 92.252 must be repaid. The County did not comply with any of these requirements because it believed that recording affordability requirements in the mortgage and placing a municipal lien on the property was sufficient to ensure that the affordability requirements were met.
- Did not determine whether its potential business partners were excluded or disqualified from participating in a HOME-funded project as required by 24 CFR 2424.300. Additionally, it did not ensure that developers made the same determination for their contractors and subcontractors as required by their agreements with the County. County officials stated that they were not aware of the requirement and believed it was the developer's responsibility. Although none of the developers, contractors, or subcontractors associated with activities 1760 and 1816 were excluded, disqualified, or otherwise ineligible to participate in the program, the County should have screened its business partners.
- Made payments for expenses that were not supported with adequate documentation. We reviewed project expenses of \$404,647 for activity 1760 and \$205,809 for activity 1816. The County did not have adequate documentation to support \$391,500 of the payments for activity 1760 and \$127,784 for activity 1816. The County did not always have invoices or other documentation, such as contracts or timesheets, to demonstrate that the costs were reasonable and related to the project. Regulations at 24 CFR 92.505(a) incorporate the cost allowability and reasonableness standards of 24 CFR 85.20 into the HOME rule. Project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and application of funds provided for assisted activities and 24 CFR 85.20(b)(6) required accounting

records to be supported by source documentation such as paid bills, payrolls, time and attendance records, and contracts. The County reiterated these requirements in the loan agreement. The deficiencies described above occurred because the County did not enforce the terms of its loan agreement with the developer, as required by 24 CFR 92.504(a), and obtain and review source documentation, such as contracts or other documentation, to ensure the reasonableness of individual costs and the overall cost of the project.

- Did not ensure that program documentation was accurate and complete. For activity 1760, the application, rental mortgage, note, loan agreement, environmental review, and other program documents contained errors. For example, the mortgage did not identify the correct land parcel numbers of the assisted project. The executed loan agreement did not include required provisions for rent increases, a drug-free workplace, and 5-year record retention requirements. The environmental review had the incorrect address and land parcel number. As a result, the State Bureau for Historical Preservation provided an opinion on a property not associated with the project.⁴ Section (I)(B) of HUD's Office of Community Planning and Development (CPD) Notice CPD-01-11 required the environmental review process to be completed before physical action was taken on a site or a commitment or expenditure of HUD or non-HUD funds was made for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. For activity 1816, the mortgage did not include the correct land parcel numbers and affordability covenants, and the loan agreement did not include program requirements governing record retention, rent increases, and a drug-free workplace. Also, contrary to regulations at 24 CFR 92.504 (c)(3)(1), the County's loan agreements for activities 1760 and 1816 did not include a description of the use of the HOME funds, including the tasks to be performed. The regulations required these items to be in sufficient detail to provide a sound basis for the County to effectively monitor performance under the agreement. These errors occurred because the County did not carefully review its program documentation to ensure that it was accurate and complete.
- Did not enforce the terms of its loan agreement for activity 1760. Regulations at 24 CFR 92.504(a) required the County to ensure that HOME funds were used in accordance with all program requirements and loan agreements. According to the agreement, the developer agreed to complete the project by June 2012. However, as of October 2014, the Borough of Rochester had not issued a certificate of occupancy for the project because the developer needed to provide additional documentation to ensure compliance with elevator, fire detection, and fire suppression systems. Although a certificate of occupancy had not been issued, tenants occupied the building, which was prohibited. Regulations at 24 CFR 92.251(a)(1) required the

⁴ During the audit, the County contacted the Bureau for Historical Preservation and provided the correct address of the property. The Bureau did not identify any concerns with the assisted property.

County to ensure that the project met all applicable local codes, rehabilitation standards, and zoning ordinances at the time of completion to ensure that HOME-assisted housing was decent, safe, and sanitary.

Conclusion

The allegation in the complaint had merit. The County allowed an apparent conflict of interest to exist and did not always administer its HOME program in accordance with applicable HUD and Federal requirements. These conditions occurred because the County did not establish and implement controls to ensure that it complied with applicable program requirements. As a result, it could not adequately support disbursements totaling \$519,284.⁵

Recommendations

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

- 1A. Execute and record the mortgage for activity 1760.
- 1B. Impose and record deed restrictions for activities 1760 and 1816.
- 1C. Provide documentation to support its use of \$519,284 in program funds for activities 1760 and 1816 or reimburse its program from non-Federal funds for any amount that it cannot support.
- 1D. Correct the errors in the project documentation identified by the audit.
- 1E. Establish and implement controls to ensure that it complies with applicable program requirements.

We also recommend that the Director of HUD's Pittsburgh Office of Community Planning and Development

- 1F. Evaluate the apparent conflict-of-interest situation identified in this report, determine whether a conflict of interest existed, and pursue administrative sanctions if warranted.
- 1G. Provide technical assistance to the County to ensure that it administers its HOME program in accordance with applicable HUD and Federal requirements.

⁵ \$391,500 + \$127,784 = \$519,284

Scope and Methodology

We performed our onsite audit work from August 2013 through February 2014 at the County's Community Development Program Office located at 1013 Eighth Avenue, Beaver Falls, PA. The audit covered the period September 1, 2010, through August 31, 2012, but was expanded when necessary.

To accomplish our objective, we reviewed

- HUD's Integrated Disbursement and Information System⁶ to identify the open activities that the County assisted with program funds. As of September 2013, the County had five open activities that were assisted with program funds totaling \$814,232. We selected the two activities with the largest amount of program funds associated with them for review. Those activities were 1760 (Connecticut Avenue), with associated program funds totaling \$455,000, and 1816 (Elm Street), with associated program funds totaling \$210,000.
- Applicable HUD regulations at 24 CFR Parts 91, 92, and 85 and Federal regulations at 2 CFR Part 2424.
- Applicable guidance contained in HUD Notice CPD 98-1 and HUD's Monitoring HOME guidebook, dated September 2010.
- HUD's April 2012 report of its onsite monitoring review of the County's program.
- The County's program documents, including the 2010-2011 consolidated plans, 2010-2011 consolidated annual performance and evaluation reports, board resolutions, program loan agreements, canceled checks, cash disbursement ledgers, project monitoring reports, correspondence, and other documentation.
- Project activity files and documentation, including the developers' applications, loan applications, bank loan documentation, loan agreements, mortgages, notes, subsidy-layering analysis, deeds, environmental reviews, American Institute of Architects application and certification for payments, invoices, and other documentation.
- The lender's security interest in the limited partnership agreement, correspondence, commercial security agreement, construction loan agreement, and other bank documentation related to activity 1760.

⁶ HUD's Integrated Disbursement and Information System provides program information and funding data for the HOME program.

We visited the project sites related to activities 1760 and 1816 and interviewed County employees, developers and HUD staff.

To achieve our audit objective, we relied in part on computer-processed data from the County's computer system and reports from HUD's Integrated Disbursement and Information System. Although we did not perform a detailed assessment of the reliability of the data, we did perform a minimal level of testing and found the data to be adequate for our purposes.

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 objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

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

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

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

Relevant Internal Controls

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

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that the use of resources is consistent with laws and regulations.

We assessed the relevant controls identified above.

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

Significant Deficiency

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

- The County did not establish and implement controls to ensure that it complied with applicable program requirements.

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Unsupported 1/
1C	\$519,284


- 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

	
COMMUNITY DEVELOPMENT PROGRAM OF BEAVER COUNTY	
December 16, 2014	Board of Commissioners Tony Amadio, Chairman Joe Spanik Dennis E. Nichols
Mr. David Kasperowicz 100 Penn Square East, Suite 10205 Philadelphia, PA 19107	
RE: US Dept. of HUD OIG -Audit of Beaver County HOME Program	COMMUNITY DEVELOPMENT PROGRAM OF BEAVER COUNTY
Dear Mr. Kasperowicz:	1013 Eighth Avenue Beaver Falls, PA 15010 724-847-3889 800-339-0984 724-847-3861 FAX
In response to the findings resulting from the references audit, Beaver County wishes to address each issue individually. You will find the County's responses in red ink following each of the bulleted issues.	
The County Did Not Properly Administer Activities According to regulations at 24 CFR 92.504(a), the County was responsible for managing the day-to-day operations of its HOME program, ensuring that program funds were used in accordance with program requirements and loan agreements and taking appropriate action when problems arose. The County	
<input type="checkbox"/> Allowed an apparent conflict of interest to exist for activity 1760 when it awarded program funds not to exceed \$455,000 in June 2011 to a limited partnership developer ¹ in which a County employee ² was a limited partner. The duties and responsibilities of the County employee provided the employee the potential to gain inside information concerning the County's HOME program. Regulations at 24 CFR 92.356 prohibit any person who is in a position to participate in a decision-making process or gain inside information with regard to program activities from obtaining a financial interest or benefit from a HOME-assisted activity or having any interest in any contract, subcontract, or agreement during his or her tenure or for 1 year after. In this case, in November 2011, the general partner made two payments totaling \$34,000 to the employee from the HOME-assisted project's bank account. One payment (\$21,500) was made to pay the employee for legal services rendered that were related to the project. The other payment (\$12,500) was made to the employee on behalf of the project's demolition contractor for legal services to be provided that were not related to the project. The general partner did not submit the \$21,500 for legal services to the County for reimbursement from HOME funds. However, the general partner submitted and was reimbursed from HOME funds for all of the demolition expenses related to the project, including the \$12,500 that was paid to the County employee on behalf of the demolition contractor.	
<small>¹ T. Rose Developers, LP, was the developer. The limited partnership entity consisted of Rosenberger Land Company, Inc., as the general partner, and Greenville Development, LLC, of which the County employee was president, as the limited partner. The County employee performed the duties of both a part-time district attorney and solicitor within the County controller's office.</small>	
<hr/> Beaver County Courthouse • 810 Third Street • Beaver, PA 15009 • 724-728-5700 • www.beavercountypa.gov	

Ref to OIG Evaluation

Auditee Comments

Comment 1

COUNTY RESPONSE:

The conflict-of-interest regulation, 24 CFR 92.356, states 'no one who has a decision-making role in or inside knowledge of the HOME process can have a financial or contractual interest in a HOME activity or contractual interests in a HOME activity or obtain benefits of any kind from a HOME activity'. This extends to anyone with whom a person has familial business ties during the funding process and up to one year thereafter. The Regulation then goes on to state that the provisions apply to 'any person who is an employee, agent, consultant or elected or appointed official of the participating jurisdiction'. And, if there is such conflict then certain steps must need to be taken on a case by case scenario.

In this particular case it is very important to note the alleged 'apparent conflict of interest' involves a county employee who is a part time District Attorney as well as the solicitor for the county Controller. And, in neither of these capacities does this employee have 'any decision-making role in or inside knowledge of the HOME process can have a financial or contractual interest in a HOME activity or contractual interests in a HOME activity or obtain benefits of any kind from a HOME activity'. To the contrary, this employee's role(s) has no capacity in the decision making nor inside knowledge of the HOME process.

Comment 2

To further substantiate this position the Director and manager of the County HOME program did not even know of this employee at the time the application was made but rather the mere fact he was an attorney, only. Upon receiving such complaint the director and program manager immediately evaluated the facts, with the Solicitor's Office, to determine if such conflict existed and what steps would be required to remedy the situation. However, after careful review it was determined that no conflict of interest existed, apparent or otherwise.

Comment 3

The previously provided attached Affidavit (dated April 16, 2014) of the demolition contractor addresses the funds that were disbursed to the County employee/attorney.

- Did not commit program funds to the owner of the property for activity 1760. The loan agreement, dated June 9, 2011, identified the owner as T. Rose Developers. However, the County's real estate property database indicated that the property was owned by Rosenberger Land Company.³ Regulations at 24 CFR 92.2(1) required that a commitment take place only when the County had met the requirements to commit to a specific local project and executed a written legally binding agreement with the owner. At the time of the award, the County was not aware that the loan agreement was inaccurate. When we brought this issue to the County's attention, it executed an amendment to the loan agreement on March 13, 2014, 33 months later, with Rosenberg Land Company, the owner of the project.

³ Anthony T. Rosenberger was the general partner of T. Rose Developers, LP, and president of Rosenberger Land Company.

Comment 4

COUNTY RESPONSE:

T. Rose Developers, LLC was the applicant and certified the application as the owner of the property. The County was not aware that the developer provided incorrect ownership information, nor did it have reason to believe the application was incorrect. When the error was identified, the County executed a new agreement with the correct identification

Ref to OIG
Evaluation

Auditee Comments

Comment 5

Comment 6

of the owner.

- Did not adequately evaluate developers' sources and uses of funds. For activity 1760, the County did not have documentation to show that it verified the owner's equity of \$300,000 and that the developer had a \$1.1 million bank loan. Documentation in the County's files showed that the developer had a \$1.4 million line of credit loan and that \$716,000 of that amount was going to be disbursed to a law firm. The \$716,000 was for unrelated properties, leaving only \$646,000 of the loan for the assisted property. For activity 1816, the County did not have documentation to show that it verified the owner's equity of \$167,001 and that the developer had a \$250,000 bank loan. Project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and use of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Specifically, regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and use of funds provided for assisted activities. Also, requirements at 24 CFR 92.250 required the County before committing funds to a project to evaluate the project in accordance with its adopted guidelines. The deficiency described above occurred because the County did not request documentation beyond the owner's certification in the application for funds.

COUNTY RESPONSE:

The County conducted an underwriting of the project in January 2011 that showed, with back-up documentation, that the project's sources of funds equaled the uses of funds. What the developer did with his own equity could not have been known. The County, therefore, fulfilled its obligation in this area.

- Did not execute and record the mortgage as required. For activity 1760, the mortgage was recorded 12 months after the County initially signed the agreement with the developer and after the County had disbursed program funds. However, the mortgage did not identify the assisted project since it contained incorrect parcel numbers. During the audit, the County provided the owner a revised modification of the mortgage, but as of November 25, 2014, the owner had not executed or recorded the document as required by Chapter 1, Section 1.3.F of HUD's Compliance in HOME Rental Projects guidebook to protect HUD's and the County's interests. Until it is recorded, the mortgage is not effective or valid. Therefore, lenders, title search companies, and other mortgage industry professionals would not be aware of its existence.

COUNTY RESPONSE:

The HOME assisted site for activity 1760 has a municipal lien recorded against the property, which protects HUDs and the County's interests per Chapter 1, Section 1.3F of HUD's compliance guide.

- The County did not impose deed restrictions for activities 1760 and 1816 as required. Regulations at 24 CFR 92.252(e) and 92.504(e)(3)(vii) required the County to impose affordability requirements through a deed restriction, covenants running with the land, or other mechanisms approved by HUD. The deed restriction must be recorded to ensure that the property remains affordable for the minimum period of affordability prescribed in 24 CFR

Ref to OIG
Evaluation

Auditee Comments

Comment 7

92.252(c) regardless of transfer of ownership. Regulations at 24 CFR 92.503(b) state that any HOME funds invested in housing that does not meet the affordability requirements for the period specified in 24 CFR 92.252 must be repaid. The County did not comply with any of these requirements because it believed that recording affordability requirements in the mortgage and placing a municipal lien on the property was sufficient to ensure that the affordability requirements were met.

COUNTY RESPONSE:

24 CFR Part 92.252 begins as follows: "The HOME-assisted units in a rental housing project must be **occupied by households** that are eligible as low- income families and must meet the requirements of this section to qualify as affordable housing. If the housing is **not occupied** by eligible tenants within six months following the date of **project completion** HUD will require the participating jurisdiction to submit marketing information and, if appropriate, submit a marketing plan. HUD will require the participating jurisdiction to repay HOME funds invested in any housing unit that has not been rented to eligible tenants 18 months after the date of project completion"

The County contends that the project has not been completed to date and this regulatory threshold has not yet/cannot be reached based on the fact the developer has not yet provided the County with a Certificate of Occupancy of the HOME assisted units from the Borough of Rochester. As such, HOME eligible households are not legally able to occupy these units and project is not "completed" as defined by the HOME regulations.

Therefore, it is impossible for the County to provide a deed restriction or covenants running with the land for this project until such time as a Certificate of Occupancy is issued and a HOME eligible household moves into the units. At such time, the period of affordability will begin, but not before.

Once a Certificate of Occupancy is obtained the developer (from the Borough), the County will record either a deed restriction or covenants running with the land that meet the requirements of 24 CFR Part 92.252(e).

Furthermore, during our exit interview/discussion on November 25, 2014, HUD agreed with this position based on the regulations. This bullet point should be revised to address this fact or deleted.

- Did not determine whether its potential business partners were excluded or disqualified from participating in a HOME-funded project as required by 2 CFR 2424.300. Additionally, it did not ensure that developers made the same determination for their contractors and subcontractors as required by their agreements with the County. County officials stated that they were not aware of the requirement and believed it was the developer's responsibility. Although none of the developers, contractors, or subcontractors associated with activities 1760 and 1816 were excluded, disqualified, or otherwise ineligible to participate in the program, the County should have screened its business partners.

COUNTY RESPONSE:

The County has begun revising its policies to incorporate the screening for eligibility in its Policies

Comment 8

Auditee Comments

Comment 9

and Procedures Manual adopted July 2014.

- Made payments for expenses that were not supported with adequate documentation. We reviewed project expenses of \$404,647 for activity 1760 and \$205,809 for activity 1816. The County did not have adequate documentation to support \$391,500 of the payments for activity 1760 and \$127,784 for activity 1816. The County did not always have invoices or other documentation, such as contracts or timesheets, to demonstrate that the costs were reasonable and related to the project. Regulations at 24 CFR 92.505(a) incorporate the cost allowability and reasonableness standards of 24 CFR 85.20 into the HOME rule. Project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and application of funds provided for assisted activities and 24 CFR 85.20(b)(6) required accounting records to be supported by source documentation such as paid bills, payrolls, time and attendance records, and contracts. The County reiterated these requirements in the loan agreement. The deficiencies described above occurred because the County did not enforce the terms of its loan agreement with the developer, as required by 24 CFR 92.504(a), and obtain and review source documentation, such as contracts or other documentation, to ensure the reasonableness of individual costs and the overall cost of the project.

COUNTY RESPONSE:

The County inadvertently included, in its loan agreement, language referring to 24CFR 85.20 to which developer agreements are not subject, as defined in 24 CFR 92.505. It is our belief that this error is more of a clerical nature than consequential to the proper administration of the project activities.

- Did not ensure that program documentation was accurate and complete. For activity 1760, the application, rental mortgage, note, loan agreement, environmental review, and other program documents contained errors. For example, the mortgage did not identify the correct land parcel numbers of the assisted project. The executed loan agreement did not include required provisions for rent increases, a drug-free workplace, and 5-year record retention requirements. The environmental review had the incorrect address and land parcel number. As a result, the State Bureau for Historical Preservation provided an opinion on a property not associated with the project. Section (I)(B) of HUD's Office of Community Planning and Development (CPD) Notice CPD-01-11 required the environmental review process to be completed before physical action was taken on a site or a commitment or expenditure of HUD or non-HUD funds was made for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. For activity 1816, the mortgage did not include the correct land parcel numbers and affordability covenants, and the loan agreement did not include program requirements governing record retention, rent increases, and a drug-free workplace. Also, contrary to regulations at 24 CFR 92.504 (c)(3)(1), the County's loan agreements for activities 1760 and 1816 did not include a description of the use of the HOME funds, including the tasks to be performed. The regulations required these items to be in sufficient detail to provide a sound basis for the County to effectively monitor performance under the agreement. These errors occurred because the County did not carefully review its program documentation to ensure that it was accurate and complete.

Ref to OIG Evaluation

Auditee Comments

Comment 10

Comment 11

Comment 12

Comment 13

⁴ During the audit, the County contacted the Bureau for Historical Preservation and provided the correct address of the property. The Bureau did not identify any concerns with the assisted property.

COUNTY RESPONSE:

- The County recognizes that clerical errors were made in its administration of these activities. However, these errors were inconsequential to their execution and management thereof.
- The absence of rent increase language and drug-free workplace provisions is recognized. These requirements have been incorporated in the updated loan agreement template.
- Section II - of the County's loan agreement provides detail regarding the scope of work and a schedule of completion. It is our determination that this meets the requirements defined under 24 CFR 92.504 (c)(3)(i).

- ☐ Did not enforce the terms of its loan agreement for activity 1760. Regulations at 24 CFR 92.504(a) required the County to ensure that HOME funds were used in accordance with all program requirements and loan agreements. According to the agreement, the developer agreed to complete the project by June 2012. However, as of October 2014, the Borough of Rochester had not issued a certificate of occupancy for the project because the developer needed to provide additional documentation to ensure compliance with elevator, fire detection, and fire suppression systems. Although a certificate of occupancy had not been issued, tenants occupied the building, which was prohibited. Regulations at 24 CFR 92.251(a)(1) required the County to ensure that the project met all applicable local codes, rehabilitation standards, and zoning ordinances at the time of completion to ensure that HOME-assisted housing was decent, safe, and sanitary.

COUNTY RESPONSE:

To the best of our knowledge, the HOME funds were used in accordance with all program requirements. The County reimbursed the developer for legitimate project costs only. The County is aware that the building is currently occupied without an occupancy permit. The County has made every effort to ensure the building met applicable codes, ordinances and rehabilitation standards as is evidenced by inspection reports. When the County became aware of occupancy and other code issues, it sought resolution through its legal counsel. A municipal lien was placed on the property when it was evident that the developer did not comply with the County's orders.

Relevant Internal Controls

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

- ☐ Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- ☐ Validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed.
- ☐ Compliance with laws and regulations – Policies and procedures that management has

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Auditee Comments

Comment 14

implemented to reasonably ensure that the use of resources is consistent with laws and regulations.

We assessed the relevant controls identified above.

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

Significant Deficiency

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

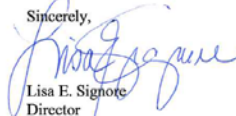
- ☐ The County did not establish and implement controls to ensure that it complied with applicable program requirements.

COUNTY RESPONSE:

Procedural controls were in place throughout the project. However, this exercise and the issuance of the HUD HOME Final Rule of July 2013 caused the County to correct the clerical errors and certain document omissions, construct new templates for HOME applications and loan agreements and to create written policies and procedures that comply with program requirements.

Please contact me at 724-847-3889, Ext. 13 or at lsignore@beavercountypa.gov if you have questions.

Sincerely,



Lisa E. Signore
Director

cc: Board of Beaver County Commissioners
Joseph Askar, Chief County Solicitor
John E. Tolbert III, Director, HUD Pgh. Office of CPD
Bill Wasielewski, Mullin and Lonergan

OIG Evaluation of Auditee Comments

- Comment 1 The County stated that the employee who was a part-time district attorney and solicitor for the County controller had no role in the decision-making process or inside knowledge of the HOME program. As stated in the audit report, the duties and responsibilities of the County employee provided the employee the potential to gain inside information concerning the County's HOME program. Regulations at 24 CFR 92.356(b) prohibit any person who is in a position to gain inside information with regard to program activities from obtaining a financial interest or benefit from a HOME-assisted activity or having any interest in any contract, subcontract, or agreement during his or her tenure or for 1 year after. The regulations at 24 CFR 92.356(c) prohibit employees of the participating jurisdiction from having a financial interest in or receiving a financial benefit from a HOME-funded activity.
- Comment 2 The County stated that upon receiving a complaint regarding the employee who was a part-time district attorney and solicitor for the County controller the director and program manager of the County's HOME program immediately evaluated the facts, with the Solicitor's office, to determine if such conflict existed and what steps would be required to remedy the situation. The County also stated that after careful review it was determined that no conflict of interest existed, apparent or otherwise. The County made reference to this determination during the audit. We requested the County to provide documentation supporting this determination however, the County did not provide any of the requested documentation.
- The regulations at 24 CFR 92.356(d) state that upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of 24 CFR 92.356(b) on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the participating jurisdiction's program or project. The County did not seek this exception. An exception may be considered only after the participating jurisdiction has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the participating jurisdiction's attorney that the interest for which the exception is sought would not violate State or local law.
- Comment 3 The County provided a copy of an affidavit of the demolition contractor dated April 16, 2014, affirming that he directed the general partner to pay \$12,500 to the employee who was a part-time district attorney and solicitor for the County controller. HUD should include this document in its evaluation of the apparent conflict-of-interest situation identified by the audit to determine whether a conflict of interest existed, and pursue administrative sanctions if warranted. Although the general partner owed the demolition contractor \$12,500 for demolition work, he directed the general partner to pay the employee who was a part-time district

attorney and solicitor for the County controller because the employee was also the demolition contractor's counsel and the employee was going to use the \$12,500 to satisfy a personal obligation that he owed to a creditor. The County provided a copy of this affidavit during the audit and we requested that it provide documentation to support the statements made therein. However, the only document that the County provided was a copy of the demolition contractor's application for a demolition permit dated August 2011.

- Comment 4 The County stated that it was not aware that the developer provided incorrect ownership information. As we recommended, the County needs to establish and implement controls to ensure that it complies with applicable program requirements. According to regulations at 24 CFR 92.504(a), the County was responsible for managing the day-to-day operations of its HOME program and ensuring that program funds were used in accordance with program requirements, including the regulations at 24 CFR 92.2(1) that required a commitment take place only when the County had met the requirements to commit to a specific local project and executed a written legally binding agreement with the owner.
- Comment 5 The County stated that it fulfilled its obligation in this area because it conducted an underwriting of the project in January 2011 that showed, with back-up documentation, that the project's sources of funds equaled the uses of funds and that it could not have known what the developer would do with his own equity. However, as stated in the audit report, the County did not have documentation to show that it verified the owner's equity of \$300,000 and that the developer had a \$1.1 million bank loan for activity 1760. In addition, it did not have documentation to show that it verified the owner's equity of \$167,001 and that the developer had a \$250,000 bank loan for activity 1816. Project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and use of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Specifically, regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and use of funds provided for assisted activities. Although we requested the required documentation during the audit, the County did not provide it during the audit or in its written response to the audit report.
- Comment 6 The County stated that it placed a municipal lien against the property which protects HUD's and the County's interests. However, the municipal lien recorded against the property did not include any language requiring compliance with the HOME affordability requirements or other program regulations. Until it is recorded, the mortgage is not effective or valid. Therefore, lenders, title search companies, and other mortgage industry professionals would not be aware of its existence.
- Comment 7 The County stated that it is impossible for it to provide a deed restriction or covenant running with the land for activity 1760 until the Borough of Rochester

issues a Certificate of Occupancy and an eligible HOME household moves into the units. At that time, the period of affordability will begin. The County also stated that when the Certificate of Occupancy is obtained it will record either a deed restriction or covenant running with the land that meets the requirements of 24 CFR 92.252(e). We disagree with the County's assertion. The HOME regulations do not require a specific time period for the deed restriction or covenant running with the land to be imposed. Although the period of affordability begins after project completion, the regulations do not prohibit the County from imposing a deed restriction before project completion. Moreover, for activity 1816, as of December 16, 2014, the County had not provided documentation to demonstrate that it had imposed a deed restriction or covenant running with the land although, as of January 2014, the project was completed and the units were occupied.

- Comment 8 The County stated that it has begun revising its policies to incorporate the screening for eligibility in its Policies and Procedures Manual adopted July 2014. We have not reviewed any of the County's revisions. As part of the normal audit resolution process, HUD will work with the County to ensure that its corrective actions meet the intent of our recommendations.
- Comment 9 The County stated that it inadvertently included language referring to 24 CFR 85.20 in its loan agreement to which developer agreements are not subject, as defined in 24 CFR 92.505. The County asserted that this error was more clerical in nature than consequential to the proper administration of the project activities. We disagree with the County's assertion. If the requirements were in the loan agreement, they were applicable. Moreover, project recordkeeping requirements at 24 CFR 92.508(a)(3)(ii) required the County to maintain records regarding the source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20. Regulations at 24 CFR 85.20(b)(2) required the County to maintain records which adequately identified the source and application of funds provided for assisted activities and 24 CFR 85.20(b)(6) required accounting records to be supported by source documentation such as paid bills, payrolls, time and attendance records, and contracts. During the audit, the County sent a certified letter to the developer requesting additional documentation such as invoices, contracts and other documentation to support the payments so that it could be in compliance with program regulations. However, although the loan agreement required the developer to make available to the County all records related to the project, the developer did not respond to the County's request nor provide the requested documentation.
- Comment 10 The County recognized that clerical errors were made in its administration of the activities that we audited and it opined that the errors were inconsequential to the execution and management of the activities. We disagree with the County's characterization of the clerical errors as inconsequential. For example, as stated in the audit report, for activity 1760, the environmental review had the incorrect

address and land parcel number. As a result, the State Bureau for Historical Preservation provided an opinion on a property not associated with the project.

- Comment 11 The County recognized the absence of rent increase language and drug-free workplace provisions in its loan agreement and stated that those requirements have been incorporated in the updated loan agreement template. We did not review the County's updated loan agreement template. As part of the normal audit resolution process, HUD will work with the County to ensure that its corrective actions meet the intent of our recommendations.
- Comment 12 The County stated that it was its determination that Section II of its loan agreement provided sufficient detail regarding the scope of work and a schedule of completion that meets the requirements of 24 CFR 92.504(c)(3)(i). However, as stated in the audit report, the County's loan agreements for activities 1760 and 1816 did not include a description of the use of the HOME funds, including the tasks to be performed, contrary to regulations at 24 CFR 92.504(c)(3)(i). The regulations required these items to be in sufficient detail to provide a sound basis for the County to effectively monitor performance under the agreement. Section II of the loan agreements for activities 1760 and 1816 did not include a description of the use of HOME funds including the tasks to be performed. The agreements lacked sufficient detail for the County to effectively monitor performance under the agreement.
- Comment 13 The County stated that to the best of its knowledge, HOME funds were used in accordance with all program requirements, although it acknowledged that it was aware that the building was occupied without an occupancy permit. As stated in the audit report, regulations at 24 CFR 92.504(a) required the County to ensure that HOME funds were used in accordance with all program requirements and loan agreements. The developer agreed to complete the project by June 2012. However, as of October 2014, more than 2 years after the target completion date, the project was not completed. The Borough of Rochester had not issued a certificate of occupancy for the project because the developer failed to provide additional documentation to ensure compliance with elevator, fire detection, and fire suppression systems. Although a certificate of occupancy had not been issued, tenants occupied the building, which was prohibited because regulations at 24 CFR 92.251(a)(1) required the County to ensure that the project met all applicable local codes, rehabilitation standards, and zoning ordinances at the time of completion to ensure that HOME-assisted housing was decent, safe, and sanitary. Regulations at 24 CFR 92.504(a) required the County to take appropriate action when performance problems arose. The loan agreement allowed the County to suspend or terminate the agreement, in whole or in part, if the developer materially failed to comply with any term of the agreement, or with any of the rules, regulations or provisions referred to therein. The County stated that it placed a lien on the property when it was evident that the developer did not comply with its orders. However, placing a lien on a property that should have

been completed more than 2 years ago is insufficient when a significant amount of HOME funds have been expended for a project that is not benefitting families in need of affordable housing.

Comment 14 The County stated that procedural controls were in place throughout the project and that it has corrected the clerical errors and certain document omissions, constructed new templates for HOME applications and loan agreements and created written policies and procedures that comply with program requirements. While the County had some written procedures and controls, it did not have controls to ensure that it complied with applicable program requirements discussed in the audit report. We did not review any of the County's improvements to its controls because they were made at the end of the audit. As part of the normal audit resolution process, HUD will work with the County to ensure that its corrective actions meet the intent of our recommendations.