



Issue Date February 24, 2009
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Audit Report Number 2009-NY-1008
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TO: Vincent Hom, Director, Community Planning and Development, 2ADM1

FROM: *Edgar Moore*  
Edgar Moore, Regional Inspector General for Audit, 2AGA

SUBJECT: The City of Newburgh, New York, Did Not Always Administer Its Community Development Block Grant Program in Accordance with HUD Requirements

## **HIGHLIGHTS**

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

We audited the City of Newburgh, New York (City), regarding its administration of its Community Development Block Grant (CDBG) program because of issues identified during our initial audit of the City's Section 108 Loan Guarantee program. The objective of our audit was to determine whether the City (1) administered its CDBG program effectively, efficiently, and economically in accordance with applicable rules and regulations, and (2) expended CDBG funds for eligible activities that met a national objective of the program.

### **What We Found**

The City did not always carry out its activities effectively, efficiently, and economically in compliance with HUD regulations. Further, it expended CDBG funds for activities that did not meet a national objective of the program. Specifically, the City disbursed CDBG program funds for questionable administrative expenditures. It routinely charged certain costs, including wages, fringe benefits, and other overhead costs, to the CDBG program without adequate support or detail. Consequently, it could not ensure that only reasonable and necessary administrative costs were charged to its CDBG program.

The City also did not establish adequate administrative controls to ensure that CDBG program activities administered by the City or through a subrecipient complied with applicable HUD regulations. Specifically, it could not adequately demonstrate that CDBG program funds were used for eligible and necessary activities or that funded activities achieved program objectives. Consequently, the City's ability to administer its programs efficiently and effectively, monitor the activities of a subrecipient, and ensure that CDBG program objectives were met was diminished.

In addition, the City did not establish adequate administrative controls to ensure that contracts were properly procured and executed and that the services to be provided were clear to ensure compliance with applicable regulations. As a result, it awarded a contract for consulting services without ensuring compliance with federal procurement requirements, and the CDBG program was charged for the costs of the contract without evidence that all of the contract services provided for related to the City's CDBG program. Consequently, program funds may have been expended for services that were not necessary or reasonable.

### **What We Recommend**

We recommend that the Director of HUD's New York Office of Community Planning and Development instruct the City to (1) provide supporting documentation to justify the eligibility of \$894,793 in questionable CDBG disbursements or reimburse the program from nonfederal funds any amounts not supported, (2) establish procedures to ensure adequate monitoring of subrecipient-administered activities, and (3) establish procedures to ensure compliance with CDBG program requirements.

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

### **Auditee's Response**

We discussed the results of our review during the audit, provided a copy of the draft report to City officials, and requested their comments on January 7, 2009. We held an exit conference on January 14, 2009, and City officials provided their written comments on January 28, 2009, at which time they generally disagreed with our findings. The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix B of this report.

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## BACKGROUND AND OBJECTIVES

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The Community Development Block Grant (CDBG) program was established by Title I of the Housing and Community Development Act of 1974 (Public Law 93-383). The program provides grants to state and local governments to aid in the development of viable urban communities. Governments are to use grant funds to provide decent housing and suitable living environments and to expand economic opportunities, principally for persons of low and moderate income. To be eligible for funding, every CDBG-funded activity must meet one of the program's three national objectives. Specifically, every activity, except for program administration and planning, must

- Benefit low- and moderate-income persons,
- Aid in preventing or eliminating slums or blight, or
- Address a need with a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

The City of Newburgh (City) is a CDBG entitlement recipient that administers more than \$800,000 in CDBG funds annually. These funds are available to support a variety of activities directed at improving the physical condition of neighborhoods by providing housing or public improvements and facilities, creating employment, or improving services for low- and/or moderate-income households.

In addition to programs administered in house by the City's Department of Community Development, the City works with some outside nonprofit organizations to carry out its CDBG-funded programs. It is responsible for overseeing, monitoring, and supporting its CDBG activities. The files and records related to the City's CDBG program are maintained in City Hall, located at 83 Broadway, Newburgh, New York.

We selected the City for audit based on issues identified during our review of the City's Section 108 Loan Guarantee program, audit report number 2009-NY-1001, issued on November 15, 2008. The objectives of our audit were to determine whether the City (1) administered its CDBG program effectively, efficiently, and economically in accordance with applicable rules and regulations, and (2) expended CDBG funds for eligible activities that met a national objective of the program.

## RESULTS OF AUDIT

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### Finding 1: Questionable Administrative Costs Were Charged to the CDBG Program

Contrary to HUD requirements, the City disbursed CDBG program funds for questionable administrative expenditures. Specifically, it routinely charged certain costs, including wages, fringe benefits, and other overhead costs, to the CDBG program without adequate supporting documentation. We attribute these deficiencies to the City's failure to implement controls over disbursements that were sufficient to ensure compliance with applicable regulations. Consequently, the City could not ensure that only reasonable and necessary administrative costs were charged to its CDBG program.

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#### Federal Requirements

Regulations at 24 CFR (*Code of Federal Regulations*) 85.22(b) require the City to comply with the cost principles of Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Attachment A, paragraph C(1)(a), requires that all costs be necessary and reasonable for proper and efficient performance and administration of federal awards, and paragraph C(1)(j) requires that all costs be documented. Therefore, the City is required to maintain records sufficient to document the reasonableness and necessity of expenditures. In addition, 24 CFR 85.22 requires that accounting records be supported by source documentation such as payrolls, timesheets, and attendance records.

#### Administrative Costs Not Adequately Supported

Contrary to regulations, the City routinely charged certain costs, including wages, fringe benefits, and other overhead costs, to the CDBG program without adequate support or detail. Specifically, it did not have adequate documentation to support its method of allocating costs, including salaries, fringe benefits, and related overhead costs for its Planning Department staff, whose duties included program areas administered by the City's Industrial Development Agency (Agency). Instead, the City merely listed selected employees by name and title and the percentage of their time to be charged to its CDBG program or other Agency-related activities without detailed timesheets or a time study to support the percentages used to allocate the wages. Moreover, during the period January through December 2007, the City charged its CDBG program the entire costs of these employees. According to the City's comptroller, the Agency had routinely reimbursed the CDBG program for employees' time charged to the Agency but paid from CDBG program funds. However, over the past several years, the Agency's funding sources had diminished,

and it had been unable to totally reimburse the CDBG program. As of May 2008, the City's general ledger report detailed \$558,344 due to the CDBG program from the Agency for employee wages, fringe benefits, and other overhead costs allocated to the Agency but paid from CDBG program funds.

## **Conclusion**

The City lacked an acceptable cost allocation plan and did not have adequate time distribution records to account for the salaries charged to its CDBG program. Thus, its controls over administrative costs did not ensure that the costs incurred were reasonable and necessary expenses. The lack of controls allowed questionable administrative costs to be charged to the CDBG program. Contrary to applicable requirements, the City lacked documentation to show that \$558,344 in CDBG funds used to pay for administrative costs was for reasonable and necessary expenditures.

## **Recommendations**

We recommend that the Director of HUD's New York City Office of Community Planning and Development instruct the City to

- 1A. Provide documentation to justify the \$558,344 in unsupported administrative costs incurred, so that HUD can make an eligibility determination, and reimburse from nonfederal funds any unsupported costs determined to be ineligible.
- 1B. Implement procedures and effective disbursement controls to ensure that all transactions charged to the CDBG program are properly incurred, supported, and in compliance with applicable regulations.

## Finding 2: The City's Administration of Program Activities Had Weaknesses

The City's administration of its program activities had weaknesses. Specifically, the City could not adequately demonstrate that CDBG program funds amounting to \$230,240 were used for eligible and necessary activities or that the funded activities achieved program objectives. Contrary to HUD regulations, the City did not establish adequate administrative controls to ensure that CDBG program activities administered directly by the City or through a subrecipient complied with applicable HUD regulations. Consequently, its ability to administer its programs efficiently and effectively, monitor the activities of a subrecipient, and ensure that CDBG program objectives were met was diminished.

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To determine the adequacy of the City's administration and the eligibility of costs incurred, we selected five CDBG program activities for review. The activities selected were administered during the City's fiscal year 2005 through 2007 program years. For each activity reviewed, administrative weaknesses were identified that resulted in costs having been incurred that were unsupported. Details regarding the review of each activity are discussed below.

### City Park Improvements

During fiscal year 2006, the City used \$60,000 in CDBG funds to reimburse its municipal general expense account for park improvements originally budgeted in fiscal year 1998. Specifically, in fiscal year 2001, the City used municipal funds for a \$430,000 park improvement project. The project consisted of improvements to a soccer field and playground. In August 2006, after being warned by HUD that CDBG funds might be recaptured due to slow progress and lack of capacity, the City reimbursed its municipal general expense account for a portion of the project's cost, using \$60,000 in CDBG funds. Our review found no evidence to support that federal procurement rules and labor laws, such as Davis Bacon, were followed or that the project was monitored for compliance with national objectives. The only support for the expenditure consisted of a one-page document showing the breakdown of the contractor's costs for the project. In addition, the timing of the activity raises concerns about citizen participation in the approval of this project since it was completed and paid for in 2001, five years before the use of CDBG funds in 2006. Any citizen participation for this activity would have had to occur in 1998. Paragraph 570.200(a)(2) of the CFR requires the City to ensure and maintain evidence that each of its CDBG-funded activities meets one of the broad national objectives of the CDBG program. Since the activity was not initially a CDBG activity, the City did not maintain evidence from 2001 to 2006 that the activity met a national objective and had a community benefit. Moreover, the City did not revise its consolidated plan as required; thus, we considered the use of \$60,000 in CDBG funds to be unsupported.

## Property Acquisition

In August 2006, the City expended \$64,494 in CDBG funds to reimburse its municipal general expense account for a property acquisition activity. In fiscal year 2005, the City purchased a building for \$150,000 from a local nonprofit organization. The building, located adjacent to a park, was to be used for park-related services and conference space and as an information center. According to City records, the purchase was funded with equipment contingency funds. However, as noted above, upon receiving notice from HUD that CDBG funds might be recaptured, the City reimbursed its municipal general expense account using \$64,494 in CDBG funds. Our review concluded that the use of the \$64,494 in CDBG funds was questionable and considered unsupported since there was no evidence that the City followed any of the property acquisition requirements, such as documenting an appraisal for the \$150,000 purchase price, in accordance with 49 CFR 24.102.<sup>1</sup> In addition, there was no evidence that there had been a determination of whether the activity addressed a national objective based on the planned use of the property after the acquisition as required by 24 CFR 570.208(d).<sup>2</sup> In addition, the City had not revised its consolidated plan and, more than three years after the building was purchased, it remained vacant and unused with no planned use.

## Ritz Theatre Repairs

The CDBG program was charged for costs reimbursed to a subrecipient for improvements to a local theater that were not supported by adequate documentation. Specifically, the City did not monitor the activity to ensure that costs were eligible before reimbursement, and documentation submitted by the subrecipient showed that the costs were not adequately supported. For example, CDBG funds that were to be used for new theatre seating were instead used for interior demolition work and architect design costs. The City disbursed the funds without evidence supporting the propriety and reasonableness of these costs and without the benefit of competitive bidding or detailed work specifications. Moreover, the project files contained no evidence of monitoring by the City as required by 24 CFR 85.40. Although the City demonstrated a national objective for the theatre repairs, the CDBG funds may not have been used in an efficient and economical manner and in accordance with program objectives. Accordingly, we considered the use of \$50,000 in CDBG funds to be unsupported.

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<sup>1</sup> 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, provides that before initiation of negotiations, the real property to be acquired shall be appraised. When an appraisal is determined to be unnecessary, a waiver valuation shall be prepared.

<sup>2</sup> 24 CFR 570.208(d) provides that for acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term temporary use.



## **Newburgh Community and Neighborhoods**

The City established the Newburgh Community and Neighborhoods activity as part of its 2007 CDBG program year. The activity, with a budget of \$50,000, was earmarked to support the development and implementation of targeted neighborhood organizations by providing revitalization strategies and activities to serve the City's low- and moderate-income areas. At the time of our review, the City had expended \$28,586 in payroll costs for a special projects coordinator, employed within the office of the city manager, to administer the activity on behalf of the City. Analysis of the project activity folder and review of the related disbursement documentation showed that support for the costs consisted of the summary payroll records for the City employee. The project file contained no documentation showing what was accomplished under this activity, what services were provided, or the number of individuals served by this activity. OMB Circular A-87 requires that costs be necessary, reasonable, and adequately supported; therefore, the \$28,586 was considered unsupported. Moreover, based on the unsupported use of program funds for this activity, the remaining unexpended budget balance of \$21,414 should be reprogrammed for other eligible uses and put to better use.

## **Improvements to City-Owned Properties**

The City established a handicap accessibility improvement activity, with a budget of \$150,000, as part of its 2005 CDBG program year. At the time of our review, the City had expended \$93,238 for this activity. Analysis of the project activity documentation showed that there were three disbursements made under this activity in October 2006. Two of these disbursements, totaling \$27,160, represented costs that were questionable regarding their eligibility for CDBG funding and, therefore, were considered unsupported pending an eligibility determination. Specifically, \$20,000 in CDBG funds was used to reimburse the City for non-handicap-related renovation work performed at City Hall in 2004. In addition, \$7,160 in CDBG funds was expended to provide weather stripping and new entry doors at various City-owned buildings. Therefore, the costs incurred should be characterized as general government and maintenance expenses. According to CDBG regulations at 24 CFR 570.207(a)(2), expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part; therefore, a total of \$27,160 was questioned. In addition, the City stated that it had no further projects planned for this activity: thus, the remaining unexpended budget of \$56,762 should be reprogrammed for other eligible CDBG program activities.

## Conclusion

The City did not establish adequate controls to ensure that costs were eligible and necessary before being charged to the CDBG program. Consequently, it expended \$230,240 (\$60,000 + \$64,494 + \$50,000 + 28,586 + 27,160) for unsupported costs, which diminished its ability to effectively and efficiently administer CDBG funding for program activities. In addition, \$78,176 (\$21,414 + \$56,762) in unexpended funds would result in a cost savings if these amounts were reallocated to other eligible activities.

## Recommendations

We recommend that the Director of HUD's New York City Office of Community Planning and Development instruct the City to

- 2A. Provide documentation to justify the \$230,240 (\$60,000 for the City park improvements, \$64,494 for the property acquisition, \$50,000 for the Ritz theatre repairs, \$28,586 for the Newburgh Community and Neighborhoods activity, and \$27,160 for the improvements to City-owned property) in unsupported costs incurred so that HUD can make an eligibility determination. Any unsupported costs determined to be ineligible should be reimbursed from nonfederal funds.
- 2B. Reprogram the remaining unexpended balance of \$78,176 (\$21,414 for the Newburgh Community and Neighborhoods activity and \$56,762 for the City-owned property improvement activity) and put these funds to better use for other eligible program activities.
- 2C. Establish adequate procedures to improve the administration of program activities including the proper monitoring and maintenance of program activity files.

### Finding 3: Unsupported Costs Were Incurred for Consulting Services

The City awarded a contract for consulting services without ensuring compliance with federal procurement requirements, and the CDBG program was charged for the costs of the contract without evidence that all of the contract services provided for related to the City's CDBG program. These deficiencies are attributed to a lack of adequate administrative controls to ensure that contracts were properly procured and executed and that services provided were applicable to the CDBG program. As a result, program funds may have been expended for services that were not necessary or reasonable. Accordingly, payments totaling \$106,209 were considered to be unsupported pending a HUD eligibility determination.

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A review of the payments made to the consultant included a review of the contract services and the documentation supporting the payments. The review was made to determine whether the payments were reasonable, necessary, and properly documented and in conformance with the contract and the CDBG program regulations. The deficiencies found during the review are described in the subsections that follow.

#### **Method of Procurement Not Substantiated**

Regulations at 24 CFR 85.36 provide in part that the grantee shall maintain sufficient records to detail the procurement history. At a minimum, the records will include the grantee's rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. In addition, a cost analysis is required for any sole source procurement.

Despite these requirements, the City did not maintain the required documentation to substantiate its rationale for the method of procurement, selection of contractor and contract type, or the basis for the contract price.

#### **Payments Made without Adequate Supporting Documentation**

Review of the supporting documentation for the consultant services disclosed that the services were paid for before the execution of a contract. On January 31, 2005, the City received a proposal from the consultant detailing proposed services for assisting the City with the completion of its HUD five-year consolidated plan in line with the City's stated deadline of April 15, 2005. Despite the City's stated deadline, the five-year plan was not submitted to HUD until August 15, 2005.

The proposal also included preliminary work on a sustainable community master plan. The master plan integrated the city planner's priorities, collected data,

sustainable planning, and citizen involvement, along with the City's consolidated plan. The total cost for the proposed consulting services was \$22,860, which included \$13,600 related to the preparation of the City's HUD consolidated plan. On October 10, 2005, the City and its consulting firm entered into a contract for \$107,030, which provided for the consultant to assist in the implementation of a sustainable community master plan.

Our review of the invoices paid in connection with the initial proposal and the contract showed that \$26,902 in program funds was paid to the consultant during the period June to September 2005, which was before the execution of the contract in October 2005. During the period March to December 2006, the consultant was paid an additional \$79,307 from program funds. The consulting firm was paid a total of \$106,209 from CDBG program funds; however, examination of the invoices submitted for payment by the consultant determined that the payments were not adequately supported. The invoice billings submitted were vague and unclear as to the actual services provided in support of the City's CDBG program. Generally, the invoices did not contain adequate descriptions identifying the services performed or the time spent performing the services. Below is a summary of the unsupported payments in question.

Date	Voucher number	Amount	Check number	Description
June 21, 2005	53324	\$393.08	6561	Sustainable master plan
June 23, 2005	53433	9,095.76	6567	HUD consolidated plan & leadership
Sept. 1, 2005	61190	4,375.00	6644	Tuition per person for citizen stakeholder Training
Sept. 14, 2005	61557	13,038.38	6663	Stakeholder training, expenses & consolidated plan
Mar. 10, 2006	67471	6,798.26	6865	Planning support services
Mar. 17, 2006	67728	9,172.85	6873	Planning support services
Mar. 27, 2006	67889	5,080.00	6887	Master planning process/planning support services
May 12, 2006	68844	7,959.37	6936	Planning support services
June 1, 2006	69230	7,000.00	6959	Planning support services
July 14, 2006	70179	9,364.58	7002	Planning support services
July 19, 2006	70309	4,575.38	7012	Planning support services
Sept. 12, 2006	71449	429.46	7067	Planning support services
Sept. 12, 2006	71716	7,884.68	7078	Planning support services
Nov. 21, 2006	72894	13,389.44	7135	Planning support services
Dec. 19, 2006	73482	7,652.61	7164	Planning support services
Total		\$106,208.85		

## Conclusion

The City did not establish adequate administrative controls to ensure that contracts were properly procured and executed and that services provided were applicable to the CDBG program. As a result, \$106,209 in unsupported costs for consulting services was charged to the CDBG program without assurance that the costs were necessary and reasonable and met a national objective.

## Recommendations

We recommend that the Director of HUD's New York City Office of Community Planning and Development instruct the City to

- 3A. Provide documentation to justify the \$106,209 in unsupported costs incurred so that HUD can make an eligibility determination. Any unsupported costs determined to be ineligible should be reimbursed from nonfederal funds.
- 3B. Implement adequate procurement procedures to ensure that all future procurement activities are supported by sufficient records to detail the procurement history as required by 24 CFR Part 85.

## SCOPE AND METHODOLOGY

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Our review focused on whether the City complied with HUD regulations, procedures, and instructions related to the administration of its CDBG program. To accomplish our objectives, we reviewed relevant HUD regulations, guidebooks, and files and interviewed HUD officials to obtain an understanding of and identify HUD's concerns with the City's operations. In addition, we reviewed the City's policies, procedures, and practices and interviewed key personnel responsible for the administration of the City's CDBG program.

For fiscal years 2004 through 2007, the City received approximately \$3.7 million in CDBG funding, and at the time of our review, the City had expended \$2.7 million on CDBG activities. We selected a nonstatistical sample of nine activities administered by the City or its subrecipient for review from the City's consolidated annual performance and evaluation reports. We reviewed the expenditures and related supporting documents for the activities to determine whether the expenditures met CDBG requirements, were reasonable, and complied with the national objectives. We also examined the City's internal controls over its CDBG program.

The review covered the period January 1, 2004, through March 31, 2008, and was extended as necessary. We performed audit work from April through August 2008 at the City's offices in Newburgh, New York. We performed our review in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# INTERNAL CONTROLS

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Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are achieved:

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

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They 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.

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## Relevant Internal Controls

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

- 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 in reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

## Significant Weaknesses

Based on our review, we believe that the following items are significant weaknesses:

- The City did not have adequate controls over its program operations when it did not establish adequate administrative controls to ensure that program activities administered by the City or through a subrecipient would meet a national objective of the CDBG program (see finding 2).
- The City did not have adequate controls over compliance with laws and regulations, as it did not always comply with HUD regulations while disbursing CDBG funds (see findings 1, 2, and 3).
- The City did not have an adequate system to ensure that resources were properly safeguarded when unsupported costs were charged to the program and when it did not maintain adequate supporting documentation (see findings 1, 2, and 3).



## APPENDIXES

### Appendix A

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

Recommendation number	Unsupported _____ 1/	Funds to be put to better use 2/
1A	\$558,334	
2A	\$230,240	
2B		\$78,176
3A	<u>\$106,209</u>	
Total	\$894,793	<u>\$78,176</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.
- 2/ Recommendations that funds be put to better use are estimates of amounts that could be used more efficiently if an Office of Inspector General (OIG) recommendation is implemented. These amounts include reductions in outlays, deobligation of funds, withdrawal of interest subsidy costs not incurred by implementing recommended improvements, avoidance of unnecessary expenditures noted in preaward reviews, and any other savings that are specifically identified. In this instance, if the City implements our recommendations of taking appropriate action to reprogram unexpended activity balances, funds can be put to better use for other eligible activities.

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments



## City of Newburgh Office of the City Manager

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January 28, 2009

VIA E-Mail & Original by Overnight Delivery to:  
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Office of the Inspector General  
26 Federal Plaza, Room 3430  
New York, NY 10278

**RE: City of Newburgh CDBG Audit  
Audit Report Number 2009-NY-10XX**

Dear Mr. Moore:

This letter is in response to your Draft Community Development Block Grant (CDBG) Program Audit Report Number 2009-NY-10XX provided to the City of Newburgh on January 7, 2009. The several matters addressed in the Audit Report will be referenced herein according to the finding and page numbers used in the Report.

We request that you give due consideration to the various points identified and discussed in this response letter, and consider re-drafting the report with appropriate modifications in keeping with the City's responses.

Finding 1: Questionable Administrative Costs were Charged to the CDBG Program

The City confirms that the CDBG program had been utilized to support staff costs for activities administered by the City's Industrial Development Agency (Agency). This practice was discontinued as of December 31, 2007 and controls have been established to ensure that this practice cannot reoccur.

Page 2, Recommendations:

1A. The majority of any unsupported expenditures for administrative costs have already been reimbursed. The IDA reimbursed the CDBG Program \$388,825.97 on December 18, 2008 upon completion of an internal review of applicable/reimbursable costs (see enclosed photocopies.) This documentation was also provided to Ms. Campbell and Ms. Aylwin during the exit conference of January 14, 2009.

**Comment 1**

**Comment 2**

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

**Comment 2**

As to the remaining balance, we are currently reviewing our internal records and will document that such funds were properly expended. We will determine whether any journal entries or other records were recorded in error.

**Comment 1**

1B. As articulated above, the practice of using CDBG funds to fund non-eligible administrative activities was discontinued as of December 31, 2007. Controls have been established to ensure that this practice can not reoccur and only staff which work on CDBG activities and/or administration have been funded from the CDBG program throughout 2008 and to date.

**Comment 3**

The Comptroller reviews and approves all salary allocations and monthly allocation reports are provided to the CDBG Program Director for reimbursement of administrative and/or program costs on a quarterly basis. Copies of all records are maintained in the CDBG program files as well as in the Comptroller's Office.

In addition, time sheets have been developed and are being utilized by all staff funded under the CDBG program. These time sheets not only reflect the hours worked, but for those staff which are funded under multiple activities, also indicate the number of hours dedicated to each activity. This time sheet has been put in place as of January 1, 2009 and copies were provided to Ms. Campbell and Ms. Aylwin during the exit conference of January 14, 2009. Another copy is attached to this response.

Finding 2: The City's Administration of Program Activities Had Weaknesses

**Comment 4**

Page 7, City Park Improvements

The City of Newburgh disagrees with this finding.

It has always been well established City operating procedure to follow the Wicks Law, Davis-Bacon and all other applicable laws, rules and regulations pertaining to public bidding and award of contracts. Enclosed is a copy of the resolution awarding the bid which shows that the bidding and procurement process was properly followed.

**Comment 5**

Audit findings state that this activity was not initially a CDBG activity and we disagree. The park improvements were always intended as a CDBG-eligible activity and the City carried out the improvements on a reimbursement basis from the CDBG Program. City records show that in-fact the subject park improvements were included in the 1998 CDBG Budget. As an eligible and approved activity, this expense was subject to the required public review at the required time. No additional public review process was required. In addition, the City's 1995-1999 Consolidated Housing and Community Development Strategy approved by HUD specifically notes *'The primary public facility needs in Newburgh related to neighborhood facilities, specialized facilities such as health care clinics and recreational facilities. This need is both in terms of support of facilities which already exist and well as the development of new facilities on a limited basis.'* A copy of the relevant pages are provided for your review. As such, the City disputes the Audit finding that the Consolidated Plan required revision.

Finally, the park is within Census Tract 5 which is an income-eligible community. We therefore believe that this activity by definition does meet the criteria for national objectives.

**Comment 6**

Page 8, Property Acquisition

The City required and received an appraisal of the property from the City Assessor, a qualified official, in advance of the acquisition which placed the value of this property at \$200,000. A copy of the

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

**Comment 6**

appraisal is attached along with a summary justification to support the acquisition of this property which supports the Low Mod Area Benefit (LMA) National Objective. Finally, the City's 2000-2004 and 2005-2009 Consolidated Plans both point to the support of recreational programs and facilities and key objectives for CDBG funding. As such, a revision of the Consolidated Plan was not required.

**Comment 7**

Page 8, Ritz Theater Repairs

The use of the money for demolition and related work is an approved use. This project was funded by and conducted under the rules and regulations of the New York State Division of Housing and Community Renewal (NYS DHCR). The City relied upon this compliance as satisfying the requirements of HUD. The City will ensure that, should these or any other rules differ from those of HUD, HUD's requirements will be satisfied.

**Comment 8**

Page 9, Newburgh Community And Neighborhoods "CAN"

We disagree with this finding. Records reflecting the accomplishments of the program and the services provided under this activity were provided to the auditors during and after the audit. An additional copy is provided herewith and was provided to Ms. Campbell and Ms. Aylwin during the exit conference of January 14, 2009. The report shows accomplishments, services and number of individuals served by the activity. The current FY 2009 budget, adopted by the Council in November, 2008 includes \$20,500 of reprogrammed funds from this activity. This reprogramming was done in the regular course of budget development and not in response to this audit.

**Comment 9**

Page 9, Improvements to City-owned Properties

We disagree with this finding. Improvements made to City Hall included re-designed doors and automatic assistance devices which were installed to accommodate persons with disabilities. Likewise, the weather stripping and new entry doors at various city-owned buildings quoted in the report speaks to the weather stripping and new entry doors required at the building housing the City's Code Compliance office. Those doors were also repaired to provide automatic assistance devices to accommodate persons with disabilities. The current FY 2009 budget, adopted by the Council in November, 2008 includes \$76,000 of reprogrammed funds from this activity. This reprogramming was done in the regular course of budget development and not in response to this audit. The Audit report is in error as \$74,000 of CDBG funds were expended for this activity.

**Comment 10**

Page 10, Recommendations

2A. As illustrated above, the documentation required to meet this recommendation was either provided during the audit or during the exit conference. Additional copies are provided at this time.

**Comment 11**

2B. The current FY 2009 budget, adopted by the Council in November, 2008 includes \$96,500 of reprogrammed funds from the activities highlighted. This reprogramming was done in the regular course of budget development and not in response to this audit. A copy of the City Council resolution reflecting the FY 2009 budget and reprogrammed funds is attached.

**Comment 12**

2C. As a municipality established and operating under the laws of the State of New York, the City of Newburgh is required to follow the laws, rules and regulations governing municipal record-keeping. The City and its agencies are aware of and comply with these requirements. However, in addition, the City of Newburgh and its departments and agencies including the Department of Economic and Community Development have instituted additional internal institutional controls to address the concerns raised in the audit, including but not limited to the following.

# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

**Comment 12**

We have undertaken additional training of all staff involved in record-keeping with respect to any and all aspects of the CDBG program. We have also institute a revised and enhanced system of cataloguing and cross-referencing files to improve ease of access and efficiency of retrieval. Also we have instructed our staff so they are aware of the best means, methods and practices with respect to records management so as to comply with HUD rules and regulations. Although our records management practices were in compliance prior to these measures, we believe that the improvements described herein above will achieve even greater efficiencies and correct any deficiencies which may have previously existed.

Finding 3: Unsupported Costs were Incurred for Consulting Services

**Comment 12**

Controls have been instituted and are securely in place to ensure that procurement practices comply with HUD requirements. See our response to Finding 2 above. We will provide further documentation supporting certain expenditures. The HUD audit report itself finds that certain documentation was in place.

Page 13, Recommendations

**Comment 13**

3A. The City disagrees with the contention of the audit that the procurement process by which the consultant was retained was improper. There is no question that the consultant in this case provided professional services. The law of the State of New York is clear that the public bidding requirement of General Municipal Law and other relevant rules and regulations do not apply to the retention of professional services. Nevertheless, even though not legally required to do so, the City conducted a thorough recruiting process including identifying sources that could provide candidates, canvassing the population of potential providers, public input into the recruitment process and candidate screenings and interviews. The selected candidates had excellent background, experience and qualifications. The quality of her ability and performance was borne out by the excellence of her work and the success of her effort to create a procedure, including comprehensive public participation in the project. We believe that the procurement process satisfied all requirements of law and regulation, and in fact exceeded such requirements. The ultimate result of the work of the consultant was the creation of a comprehensive, sustainable Master Plan for the city of Newburgh, created by and through the cooperation and participation of eth residents of eth city. There is no question that the accomplishment of this objective was a most significant material benefit to the population of persons identified as eligible beneficiaries and intended recipients of the benefits intended to be served by the expenditure of CDBG funds.

**Comment 14**

3B. The City disagrees with the finding in the audit that the payments were made before an agreement was in place. Under the City Charter of the City of Newburgh, and according to Article XIII of the New York State Constitution and under the Local Finance Law and Municipal Home rule Law of the State of New York, no public funds may be expended unless and until the appropriate and mandated procedures are followed. The City of Newburgh and its various departments, agencies and staff follow these rules to the letter. The City is audited several times every year by, among others, the New York State Comptroller and by an independent Certified Public Accountant. Neither any of these audits, nor the City's internal controls, have disclosed that any funds have been prematurely or otherwise improperly expended. The City Council of the City of Newburgh did in this case, as it does in all such cases, approve the required resolution authorizing the subject expenditure. Under the City Charter, the City Manager is an employee of the City Council and not an independent elected official with separate authority to veto the policy decisions of the City Council. Therefore, under the City Charter, the Municipal Home Rule Law and other applicable laws, the adoption of the subject resolution was adequate and sufficient to approve and confirm the retention of the subject services and to authorize the expenditure of the subject funds. Under standard, lawful procedures of the City, it is the approval of the

## Appendix B

### AUDITEE COMMENTS AND OIG'S EVALUATION

#### Ref to OIG Evaluation

#### Auditee Comments

#### Comment 15

Resolution which constitutes the City's agreement to be bound by the contract. No funds were expended prior to the formal, necessary approval of the City Council.

The City has shown that any and all expenditures met national objectives; that controls are in place to satisfy all HUD regulations and requirements pertaining to disbursements; and that all costs and expenses are properly supported with adequate and sufficient documentation.

Sincerely,



John Platt  
Acting City Manager

Cc: Karen A. Campbell, Assistant Regional Inspector General for Audit  
Vincent Hom, Director, Community Planning & Development, NYC HUD  
City of Newburgh Council  
Geoffrey Chanin, Corporation Counsel, City of Newburgh  
Lourdes Zapata, Director, Planning & Development, City of Newburgh

## OIG Evaluation of Auditee Comments

- Comment 1** Officials for the City confirm that the support staff's cost for activities administered by the City's Industrial Development Agency (IDA) were charged to the CDBG program, and they state that the practice was discontinued as of December 31, 2007. We observed that the expense ledger does not show an increase in the amount due from the IDA after December 2007. Nevertheless, HUD field officials should verify this.
- Comment 2** Officials for the City state that the majority of the unsupported expenditures have been reimbursed to the CDBG program and they provided documentation at the exit conference to support that \$388,826 of the \$558,344 in unsupported administrative costs were reimbursed to the CDBG program on December 18, 2008. We have reviewed the documentation and find it acceptable; however, since the reimbursement occurred because we brought the issue to the attention of officials during the audit, the finding will remain. Further, the intention of officials to document that the remaining funds were properly expended will be addressed during the audit resolution process, at which time the officials should inform HUD of the payment(s) and subsequent results in order to address the finding recommendation.
- Comment 3** City officials contend that procedures and controls have been implemented to ensure that all transactions charged to the CDBG program are in compliance with HUD regulations. In addition, time sheets have been developed and put in place, as of January 1, 2009, to be utilized by all staff funded under the CDBG program. We have reviewed the copies of the timesheets provided to us during the exit conference and conclude that they are sufficient. The actions of the officials are responsive to our recommendations
- Comment 4** Officials for the City disagree with the finding pertaining to the city park improvements. The officials contend that it is established operating procedure to follow the Wicks Law, Davis-Bacon, and all other applicable laws, rules and regulations pertaining to public bidding and award of contracts. In support of their assertion, the officials submitted a copy of the common council resolution, dated March 27, 2000, which authorized the award and execution of the contract for the park improvement project as evidence that the bidding and procurement process was properly followed. However, we have reviewed the common council resolution and have determined that contrary to the City's assertions, it does not provide the evidence to support that federal procurement rules and labor laws were followed.
- Comment 5** Officials for the City contend that the park improvement activity was always intended as a CDBG eligible activity and was carried out on a reimbursement basis from the CDBG program. Since the activity was included in the 1998 CDBG budget and subjected to required public review at that time, the officials further contend that no additional public review process was required and the

Consolidated Plan did not require revision. Lastly, officials state that the park is within an income-eligible community and therefore meets the national objectives criteria. However, in reviewing the common council resolution referred to above, there was no mention of the project being paid for or reimbursed from CDBG program funds. In fact, in the council minutes supporting the resolution, it is noted that the funds were tucked away to go ahead with the project. Further, the City did not reimburse its municipal general expense account for a portion of the project's cost until five years after the project was completed and after it was warned by HUD that the CDBG funds might be recaptured due to slow progress and lack of capacity. Although the park is located within an income-eligible census tract, it does not change the facts of the finding. As such, we remind the City of the requirements contained at 24 CFR Part 91.505(a)(2), which requires the City to amend the consolidated plan to carry out an activity not previously described in the action plan. Since the City did not include the park improvement in its 2006 action plan, an amendment to the consolidated plan would have been required. Additionally, paragraph 91.505(b) provides that amendments to the consolidated plan are subject to a citizen participation process.

**Comment 6** Officials for the City contend that an appraisal of the property in question was required and received from the City Assessor in advance of the property acquisition, and provided a copy of the appraisal along with their comments for our review. In addition, as reasoned above, the officials contend that a revision of the consolidated plan was not required. Nevertheless, the contention of the officials is inaccurate and not supported by the facts. During the audit, we reviewed the project files and found no evidence to support the property acquisition. City officials were unable to provide us the property appraisal until now. Our review noted that the common council resolution supporting the property acquisition was dated May 9, 2005, and the property was purchased by the City on September 15, 2005; however, the property appraisal received from the City Assessor is dated September 28, 2005, more than four months after the acquisition was approved by the common council. Further, since the officials for the City did not include the property acquisition in its 2006 action plan, an amendment to the consolidated plan was required. Moreover, the officials do not contest the fact that there was no evidence to show that the activity addressed a national objective of the CDBG program, since there was no planned use for the property and the building remains vacant and unused, more than three years after its purchase.

**Comment 7** Officials for the City state that the use of CDBG funds for demolition and related work at the Ritz theater is an approved use. Further, the officials suggest that the costs incurred for demolition and related work on the theater was funded by and conducted under the rules and regulations of the New York State Division of Housing and Community Renewal. However, these statements are not responsive to the issues identified in the report. The activity in question was funded under the CDBG program, thus, the officials were required to comply with the rules and regulations of the Department of Housing and Urban Development. The CDBG



funds were disbursed without the evidence supporting the propriety and reasonableness of the costs and without benefit of competitive bidding or detailed work specifications. Moreover, our review of the project files found no evidence of monitoring by the City as required by 24 CFR 85.40. Consequently, the City has not demonstrated compliance with HUD CDBG rules and regulations, as required.

**Comment 8** Officials for the City disagree with the finding pertaining to the Newburgh Community and Neighborhoods (CAN) program, and contend that the records reflecting the accomplishments of the program were provided to us during and after the audit. According to the officials, \$20,500 in funds was reprogrammed from this activity in November 2008 during the regular course of budget development and not in response to our audit. However, the documentation provided during the audit consisted only of summary payroll records for the City employee responsible for administering the program. Further, we reviewed the documentation provided after the audit and determined that it was not adequate to show exactly what was accomplished under this activity, what services were provided, or the number of individuals served by this activity, as required. Thus, the \$28,586 in payroll costs remains unsupported. In addition, during the resolution process, officials should inform HUD as to whether the \$20,500 represents the total funding to be reprogrammed for this activity, as recommended in our report.

**Comment 9** Officials for the City disagree with the finding pertaining to the improvements to City-owned properties. Specifically, the officials assert that the new entry doors and weather stripping at various City-owned buildings were to accommodate persons with disabilities. Further, officials state that \$76,000 in funds was reprogrammed from this activity in November 2008 during the regular course of budget development and that the audit report is in error as only \$74,000 in CDBG funds were expended for this activity. However, the documentation provided by the officials during the audit do not support that the new entry doors and weather stripping performed at various City-owned buildings was to accommodate persons with disabilities. If supporting documents are now available, it will be reviewed by the HUD field office during the audit resolution process. Further, during the audit resolution process, City officials should inform HUD as to whether the \$76,000 reprogrammed from this activity represents the total funding to be reprogrammed. Lastly, in direct contrast to the allegation that the audit report is in error, we remind the officials that the audit results are based on our review and analysis of the City's books and records. The City's 2006 CDBG program year expense ledger details expenditures for this activity totaling \$93,238.

**Comment 10** Officials for the City provided documentation which they believe justifies the unsupported costs and meets the recommendation detailed. We have reviewed all of the documentation provided to us during and after the audit and found that it does not provide evidence that the City ensured that \$230,240 in costs were

eligible and necessary before being charged to the CDBG program. Specifically, \$60,000 for park improvements, \$64,494 for property acquisition, \$50,000 for theater repairs, \$28,586 for the CAN activity, and \$27,160 for improvements to City-owned property are still considered unsupported for the various reasons cited above in Comments 4 through 9. Thus the recommendation will remain.

**Comment 11** Officials for the City contend that the current fiscal year 2009 budget, adopted in November 2008, includes \$96,500 in funds reprogrammed as the result of regular budget development and not in response to this audit. During the audit resolution process, the City should provide the required documentation to HUD. Upon concurrence from HUD, this would appear to address this recommendation.

**Comment 12** Officials for the City detail the additional internal institutional controls they have implemented to address the concerns raised in the audit. The official's actions are responsive to our recommendations.

**Comment 13** Officials for the City disagree with the contention of the audit that the procurement process by which the consultant was retained was improper. Specifically, the officials assert that the law of the State of New York is clear that the public bidding process requirement of general municipal law and other rules and regulations do not apply to the retention of professional services. Further, the officials state that under the City Charter, Municipal Home Rule Law of the State of New York and other applicable laws, the adoption of the resolution authorizes the expenditure of funds and constitutes the City's agreement to be bound by the contract. Contrary to the official's assertions, regulations at 24 CFR (*Code of Federal Regulations*) 85.36 is the authority for local governments to use when procuring consulting services under an independent contractor relationship, as provided at 24 CFR 570.502 (a) (12). Cities can use their own procurement procedures which reflect applicable State and local laws and regulation, if the procurement conforms to applicable Federal law and the standards identified in CFR 85.36. Accordingly, as detailed in the audit report, the City did not maintain the required documentation to substantiate its rationale for the method of procurement, selection of contractor and contract type, or the basis for the contract price.

**Comment 14** Officials for the City disagree that the payments for the consulting services were made before an agreement was in place. They state that no funds are expended unless mandated procedures are followed. They further state that the City council's adoption of the resolution authorized the expenditure for the consultant, and that no prior audit identified premature expenditures. However, our review disclosed that although the consultant's contract was not executed until October 2005, payments for consultant services were made from June 2005 through September 2005 without an executed contract (see chart on page 12). Moreover, the comments of the officials do not address the fact that the City could not demonstrate that the services provided were applicable to the CDBG program. Accordingly, the costs incurred for the activity are properly classified as unsupported.

**Comment 15** Officials for the City contend that they have shown that all expenditures met national objectives; controls are in place to satisfy all HUD regulations and requirements pertaining to disbursements; and all costs and expenses are properly supported with adequate and sufficient documentation. However, in contrast with the City's beliefs our audit work concluded that the City did not comply with CDBG program rules and regulations, did not adequately support CDBG expenditures with adequate and sufficient documentation, and could not adequately demonstrate that the expenditures met a national objective of the CDBG program. As such, consultation with HUD officials during the audit resolution process is necessary to resolve our concerns. Therefore, we have not adjusted the findings to the audit report.