




Issue Date	September 15, 2010
Audit Report Number	2010-CH-1012

TO: Vicki B. Bott, Deputy Assistant Secretary for Single Family Housing, HU

FROM: 
Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: Michaelson, Connor, and Boul, Southfield, MI, Did Not Provide Adequate Oversight of Closings on the Sales of HUD Real Estate-Owned Homes

HIGHLIGHTS

What We Audited and Why

We audited Michaelson, Connor, and Boul, Incorporated (MCB), a management and marketing contractor for U.S. Department of Housing and Urban Development (HUD) real estate-owned properties in Michigan. We selected MCB based on the results of our audit of Custom Closing, a HUD-designated closing agent for the State of Michigan (see Office of Inspector General (OIG) audit report #2009-CH 1021, issued September 2009). Our objective was to determine whether MCB complied with HUD's requirements regarding the sales of HUD single-family real estate-owned homes (HUD homes) in Michigan, in particular the closing activities. The audit was part of the activities in our fiscal year 2010 annual audit plan.

What We Found

MCB did not adequately provide oversight of the closings on the sales of HUD homes. Specifically, it did not always request lead-based paint stabilization¹

¹ Many homes built before 1978 have paint that contains high levels of lead. Lead-based paint stabilization reduces the exposure to deteriorated paint by removal or repainting with safe paint.

services and/or city presale inspections² in a timely manner. Further, it did not adequately monitor the closing agents and report to HUD deficiencies with closing sales of HUD homes as required under its contract.

As a result, HUD and MCB incurred an additional \$1 million plus in holding costs³ to maintain the homes in its inventory and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays.

On February 5, 2010, HUD awarded MCB the contract for overseeing and/or monitoring lenders for compliance with HUD's requirements. MCB's current management and marketing contract was scheduled to end on August 31, 2010. However, HUD extended MCB's current management and marketing contract to September 30, 2010. Given that MCB's contract is scheduled to expire in less than 30-days, this report does not contain a recommendation for MCB to improve its procedures and controls regarding the oversight of the closings on HUD homes since it will no longer perform this function.

What We Recommend

We recommend that the Deputy Assistant Secretary for Single Family Housing require MCB to provide documentation showing that the buyers cancelled their sales contracts for case numbers 263-335607 and 262-151588 for reasons other than delayed actions by MCB and/or the closing agents or reimburse HUD \$47,947 from non-Federal funds for the losses HUD incurred on the sales of the two homes.

We also recommend that the Deputy Assistant Secretary for Single Family Housing implement requirements for the new management and marketing contracts that provide specific responsibilities for performing activities under the contracts, including but not limited to requesting city presale inspections and lead-based paint stabilization, to ensure that sales of HUD homes close in a timely manner and monitoring the closing agents for compliance with their contracts with HUD.

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.

² Certain cities in Michigan require compliance inspections before the sale or transfer of single-family residential properties. City representatives and the seller(s) arrange the inspections.

³ Holding costs are the costs incurred for maintaining a property in HUD's inventory such as property maintenance and upkeep, taxes, utilities, etc.

Auditee's Response

We provided the results of our review to MCB's management during the audit. We also provided our discussion draft audit report to MCB's management and HUD's staff during the audit. We conducted an exit conference with MCB's management on July 8, 2010.

We asked MCB's management to provide written comments on our discussion draft audit report by July 26, 2010. MCB provided written comments to the discussion draft report, dated July 23, 2010. MCB generally disagreed with the finding and recommendations. The complete text of the MCB's written comments, along with our evaluation of that response, except for 7 exhibits consisting of 175 pages, can be found in appendix B of this report.

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BACKGROUND AND OBJECTIVE

The Federal Housing Administration (FHA) administers the single-family mortgage program. Upon default and foreclosure of an insured mortgage loan, the lender files a claim for insurance benefits. In exchange for payment of the claim, the lender conveys the foreclosed-upon property to the U.S. Department of Housing and Urban Development (HUD). The property is then deemed a HUD real estate-owned property. HUD, through management and marketing contractors, manages and initiates the sale of these single family homes (HUD homes) to promote homeownership and maximize the net return to the mortgage insurance fund.

Michaelson, Connor, and Boul, Incorporated (MCB), an asset management company, has specialized in real estate services since 1994. HUD contracts with MCB to manage and market its real estate-owned single-family homes in several geographic areas such as Nevada and Arizona. In February 2008, HUD amended MCB's contract to include the State of Michigan. On September 1, 2009, HUD awarded MCB a new management and marketing contract that specifically covered the State of Michigan. MCB's headquarters is located at 5312 Bolsa Avenue, Suite 200, Huntington Beach, CA. MCB's Michigan branch is located at 100 Galleria Office Center, Suite 414, Southfield, MI.

In addition to managing, marketing, and selling HUD real estate-owned single-family homes, MCB monitors and oversees the closing agents⁴. Further, MCB is responsible for coordinating the closings on the sale of HUD homes with the closing agents to ensure that sales close in a timely manner, thus minimizing HUD's holding costs.

On February 5, 2010, HUD awarded a contract to MCB to oversee lenders and monitor them for compliance with HUD's requirements. MCB's current management and marketing contract was scheduled to end on August 31, 2010. However, HUD extended MCB's current management and marketing contract to September 30, 2010. Given that MCB's contract will expire in less than 30-days, this report does not contain a recommendation for MCB to improve its procedures and controls regarding the oversight of the closings on HUD homes since it will no longer perform this function.

Our objective was to determine whether MCB complied with HUD's requirements regarding the sale of HUD homes in Michigan.

⁴ HUD contracts with closing agents to close sales of HUD homes. Closing agents settle real estate transactions through the preparation of the HUD-1 settlement statements and disbursement of the sale proceeds.

RESULTS OF AUDIT

Finding: MCB Did Not Adequately Manage Closings on the Sales of HUD Homes

MCB did not adequately manage closings on the sale of HUD homes. Specifically, it did not always request lead-based paint stabilization services and/or city presale inspections in a timely manner. Further, it did not provide adequate monitoring and oversight of the closing agents and report deficiencies with closing sales of HUD homes to HUD as required under its contract. The problems occurred because MCB lacked adequate procedures and controls to ensure that it complied with its contract. As a result, HUD and MCB incurred an additional \$1,059,651 in holding costs and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays.

MCB Did Not Ensure That City Presale Inspections and Paint Stabilizations Were Requested in a Timely Manner

Using HUD's and MCB's systems, we determined that 12,899 real estate sales contracts were ratified⁵ and closed plus 1,933 real estate sales that were ratified but not closed during our audit selection period of July 1, 2008, to October 23, 2009. Of the 12,899 contracts, 1,323 sales of HUD homes took more than 90 days to close. We statistically selected 111 closing files from the 14,832 real estate sales (12,899 plus 1,933) for review to determine whether MCB managed sales of HUD homes in accordance with its contract. Of the 111 closing files, 73 had the following deficiencies:

- The closings for 30 (27 percent) home sales were stalled due to delays in requesting city presale inspections. The closing agents requested 2 of the inspections, and MCB requested the remaining 28. The number of days it took MCB and/or the closing agents to request city presale inspections ranged from 12 to 336 days after the sales contracts for the purchase of the HUD homes were ratified (see appendix D). The presale inspection reports were not received until 54 to 372 days later. According to Section C.2(1) of the closing agent's contract, the closing agent has 1 day to order city inspections after receipt of the closing file (see appendix C). Further, Section 5.4.4.1.2 of MCB's contract requires it to monitor the closing agents for fulfillment of their contracts and ensure that all sales close within the time specified by the sales contracts, 60 days (see appendix C).

⁵ Sales contracts that have been approved by the buyer and seller are deemed ratified.

- The closings for 23 (21 percent) home sales were stalled due to the untimely receipt of presale inspections. The city presale inspection reports did not contain the dates on which MCB or the closing agents requested the inspections; however, these reports were received between 57 and 451 days after the sales contracts were ratified (see appendix D). Additionally, the number of days that elapsed between the date the sales contracts were ratified and the date the reports were received did not allow sufficient time to close the sales for the HUD homes within HUD's requirements. Section 11-11 of HUD Handbook 4310.5, REV-2, requires a closing timeframe to be established within a range of 30 to 60 days of sale contract acceptance. MCB was unable to provide documentation showing that either it or the closing agents ordered the city presale inspections in a timely manner to ensure that sales of HUD homes closed in accordance with the sales contracts and HUD's requirements (see appendix C).
- For 12 sales (11 percent), with buyers seeking to obtain FHA-insured mortgages, MCB did not request approval from HUD for the contractors selected to perform lead-based paint stabilizations or contract with the approved contractors in a timely manner (see appendix G). MCB took approximately 23 to 145 days after the sales contracts were ratified to perform the required actions, thus delaying the closing on the sales of the HUD homes. According to HUD Handbook 4310.5, REV-2, section 11-8, sales will be closed as soon as possible after execution of the sales contract (see appendix C). Further, section 5.3.8.1.2 of MCB's contract requires MCB to order all lead based paint inspection and elimination services.
- For eight sales (7 percent), MCB did not provide needed documentation to the closing agents, discuss with the buyers resolutions for homes that had been vandalized, or perform necessary actions to remove squatters from the HUD homes in a timely manner (see appendix G). Due to MCB's failure to take quick remedial actions, the closings on these homes were delayed. According to Section 5.4.4.2 of MCB's contract, MCB shall ensure that all sales close within the time specified by the sales contracts. The contractor is required to communicate with selling brokers and purchasers to ensure timely closing or a sale cancellation. The contractor must give HUD's closing agents all needed sale documentation in time to ensure a timely closing (see appendix C).

MCB Did Not Effectively Monitor the Closing Agents

MCB did not effectively monitor the closing agents to ensure that sales of HUD homes closed in a timely manner. For the 111 closing files reviewed, MCB approved 601 requests from the closing agents to extend the sales contracts'

closing dates. Of the 601 requests to extend the closing dates on the sales of HUD homes (several had more than one issue),

- 216 requests (36 percent) were approved after the sales contracts or previous extensions to the sales contracts had expired (see appendix E).
- 328 requests (55 percent) were for delays in requesting or following up on requests for city presale inspections. The number of days the closings on the sales of HUD homes were delayed ranged from 15 to 507 (see appendix F). Of the 328 requests, 7 were for the sale of a home for which the city presale inspection report was received before the latest sales contract was ratified since the home was previously under contract (FHA 263-323187). However, the closing on the sale of the home was prolonged for 54 days due to city presale inspections.
- 45 requests (8 percent) were for delays in seeking HUD approval or contracting for lead-based paint stabilization services (see appendix F). The number of days the closings on the sales of HUD homes were delayed ranged from 22 to 102.
- 57 requests (10 percent) either did not contain appropriate justifications of the requests, or MCB failed to follow up on or resolve other closing-related issues identified on the extension requests, such as missing documentation (see appendix F). The number of days the closings on the sales of HUD homes were delayed ranged from 8 to 104.

Section 5.4.4.1.2 of MCB's contract requires it to monitor the closing agents for fulfillment of their contracts and ensure that all sales close within the time specified by the sales contracts (see appendix C). According to Part C of the closing agent contract, the closing agent must coordinate with the management and marketing contractor to affect the closing within the timeframe specified in the sales contract unless an extension is necessary due to circumstances outside of the contractor's control (see appendix C).

Additionally, for 61 of the 111 (55 percent) closing files, MCB did not always report delays in closing sales of HUD homes that were caused by the closing agents (see appendix H). According to Section 5.4.4.1.2 of MCB's contract, MCB has to submit to HUD's government technical representative monthly reports disclosing closing agent deficiencies, late submissions, and errors resulting from closing agent error or incapacity and complaints about the closing agent's performance (see appendix C).

Delays in Closing Sales of HUD Homes Resulted in Buyers' Cancelling Sales Contracts

MCB failed to appropriately manage closings on the sales of HUD homes. For 18 closing files, the buyers cancelled the sales due to closing delays. Specifically, of the 18 files (see appendix F),

- The sales for nine homes were cancelled because the sales contracts expired due to delays in closing the sales of the homes.
- The sales for five homes were cancelled due to delays in requesting city presale inspections or lead-based paint stabilizations. For two of the five cancelled sales (case numbers 263-335607 and 262-151588), the homes were later resold for lesser amounts, thus HUD lost more than \$47,000 in potential proceeds.
- The sales for three homes were cancelled due to changes in the property condition. Specifically, the homes remained vacant for days awaiting presale inspections or lead-based paint stabilization services. Therefore, the homes were subjected to vandalism.
- The sale for one home was cancelled; however, the reason for its cancellation was not disclosed in the file.

Conclusion

MCB lacked adequate procedures and controls to ensure that it complied with its contract. It relied on the closing agents to order city presale inspections without monitoring the process to ensure that it was performed efficiently. Additionally, instead of trying to assist the closing agents in resolving issues with closing sales of HUD homes, MCB continued to grant requests for extensions to the closing dates identified on the sales contracts without sufficient justification. Further, MCB did not maintain a tracking system to monitor the status of the requests it submitted to (1) the various cities in Michigan for presale inspections, (2) HUD, or (3) the contractor approved by HUD to provide lead-based paint stabilization services.

However, as of June 2009, MCB had assumed the sole responsibility for ordering city presale inspections and created a system to monitor and track this process. Nonetheless, it still had difficulties in coordinating the closing activities with the closing agents to ensure that sales of HUD homes occurred by the date specified on the sales contracts. Additionally, MCB did not report closing delays to HUD

because it believed that since the closing dates identified in the sales contracts had been extended, the closings were not stalled.

As a result of MCB's failure to properly manage closings on the sales of HUD homes and oversee the closing agents, HUD and MCB incurred an additional \$1 million plus in holding costs to maintain the homes in its inventory and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays.

MCB reduced the number of delayed home sales closings. Of the 14,832 homes that were sold during our audit selection period, 1,463(10 percent) took more than 90 days to close. However, as of March 1, 2010, we determined, based on reviewing the data in HUD's Single Family Asset Management system⁶, that MCB reduced the number of delayed closings on the sales of HUD homes by 50 percent. As of September 30, 2010, MCB will no longer manage and market HUD homes for sale.

Recommendations

We recommend that the Deputy Assistant Secretary for Single Family Housing require MCB to

- 1A. Provide documentation showing that the buyers cancelled their sales contracts for case numbers 263-335607 and 262-151588 for reasons other than delayed actions by MCB and/or the closing agents or reimburse HUD \$47,947 from non-Federal funds for the losses HUD incurred on the sale of the two homes.

We also recommend that the Deputy Assistant Secretary for Single Family Housing

- 1B. Implement requirements for the new management and marketing contracts that provide specific responsibilities for performing activities under the contracts, including but not limited to requesting city presale inspections and lead-based paint stabilization, to ensure that sales of HUD homes close in a timely manner and monitoring the closing agents for compliance with their contracts with HUD.

⁶ The Single Family Asset Management System is a HUD system that contains information on acquired single-family homes from acquisition through foreclosure to sale.

SCOPE AND METHODOLOGY

We performed our audit work between October 2009 and April 2010. We conducted our audit at MCB's Southfield, MI, office and HUD's Detroit field office. The audit covered the period February 8, 2008, to August 31, 2009. We extended this period as necessary.

To accomplish our objective, we reviewed MCB's contract and marketing plans, applicable HUD regulations, mortgagee letters, the closing agent contracts, and other reports and policies related to the disposition of HUD homes. We also reviewed MCB's quality control plan and hard-copy information/documentation maintained in MCB's Electronic Management System, such as sales closing files, closing documents, etc. We also conducted interviews with MCB's management and staff and HUD staff.

Using MCB's data and HUD's Single Family Data Warehouse⁷ and Single Family Asset Management System, we identified 12,899 homes that were sold and closed during our audit selection period of February 8, 2008, to October 23, 2009. Of the 12,899 homes sales, 1,323 took more than 90⁸ days to close. Using variable sampling, at a 90 percent confidence, 10 percent precision, and 50 percent error rate, we statistically selected 65 of the 1,323 closing files to review the sales.

Using MCB's data and HUD's Single Family Data Warehouse and Single Family Asset Management System, we determined that 1,933 homes had been sold but not closed as of October 23, 2009. Of these, the closings on the sales for 140 homes were still pending more than 90 days after they were sold at the time of our review. Using variable sampling, at a 90 percent confidence, 10 percent precision, and 50 percent error rate, we statistically selected 46 of the pending home sales' closings files to review to determine the reason why the closings on these homes sales were delayed.

We relied on computer-processed data contained in HUD's Single Family Data Warehouse and Single Family Asset Management System only to obtain property information (informational purposes only). We relied on hard-copy documentation maintained in MCB's closing files and Electronic Management System to support our audit finding.

In interpreting the results of the samples, we estimate that the total number of days that closing on the sales of HUD homes were delayed for the 1,463 (1,323 plus 140) closing files reviewed was 59,766 collectively. Therefore, using this estimated number of days and multiplying it by the average holding cost to HUD during our review period (July 1, 2008, to October 23, 2009)⁹ of

⁷ The Single Family Data Warehouse is a HUD database that contains data regarding borrowers with FHA-insured mortgages such as names, addresses, Social Security numbers, and related financial data.

⁸ Although MCB's contract requires a 60 day closing period, we conservatively selected the closing files that exceeded HUD's 60-day closing requirement by more than 30 days.

⁹ Although our audit period was February 8, 2008, to August 31, 2009, the loans we selected were as of July 1, 2008, to October 23, 2009, allowing for a transition period from the previous management and marketing contractor.

\$17.73¹⁰ per day, we determined that the estimated additional holding costs that HUD incurred due to delays in closing sales of HUD homes totaled more than \$1,059,651.

As of March 1, 2010, MCB had improved its procedures and controls for overseeing the sales and closing of HUD homes and reduced the holding time in which the homes are in HUD's inventory by approximately 50 percent.

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 finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

¹⁰ The average holding cost per day was provided by HUD's Philadelphia Single Family Homeownership Center. This amount was determined by adding the estimated cost per quarter, then averaging the amount.

INTERNAL CONTROLS

Internal control is a process adapted 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:

- Effectiveness and efficiency of operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objective.
- Compliance with applicable laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness 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:

- MCB lacked adequate procedures and controls to ensure that it complied with its contract and/or HUD's regulations regarding the management and marketing of HUD homes (see finding).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS

Recommendation number	Unsupported 1/
1A	<u>\$47,947</u>
Total	<u>\$47,947</u>


1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments

 <p>LAW OFFICES of MARGARET DILLENBURG, P.C.</p> <p>P.O. Box 58234 Washington, D.C. 20037 tel 301 765 7050 fax 301 560 5758 Peggy.Dillenburg@Oillenburglaw.net</p> <p>July 23, 2010</p> <p>Via Email: KANDERSCN@HUDOIG.GOV Ms. Kelly Anderson U.S. Department of Housing & Urban Development Office of Inspector General 77 W. Jackson Blvd Chicago, Illinois 60604</p> <p>Subject: <u>Response of Michaelson, Connor & Boul. Inc. to HUD OIG DRAFT AUDIT REPORT No. 2010-CH-101X Issued June 25, 2010</u></p> <p>Dear Ms. Anderson:</p> <p>This responds to the DRAFT AUDIT REPORT of the HUD Office of Inspector General, (hereinafter "OIG") issued June 25, 2010, (the "OIG Report"), received by Michaelson, Connor & Boul, Inc. on June 28, 2010. The response contained herein details MCB's position with respect to the OIG Report's allegations and two of the three stated recommendations.</p> <p>It is noted that the audit period covered by this report of July 1, 2008 to October 23, 2009, according to page 6 of the OIG Report, spans two separate HUD contracts covering the State of Michigan, awarded to Michaelson, Connor & Boul, Inc.: Contract No. C-DEN-01913 Modification M0020, awarded on February 8, 2008 and expiring August 31, 2009, and Contract No. C-ATL-01933 awarded on September 1, 2009 and currently set to expire on August 31, 2010 (collectively "HUD M&M Contracts").</p> <p>The OIG Report presents facts without adequate contextual background, and without reference to the role of HUD, other non-MCB HUD Contractors, and with no consideration for specific outside market influences that had an impact on the Michigan M&M program. Based solely on a few facts, that tell only part of the story, the OIG concludes that "MCB did not adequately manage sales of HUD homes." Such a leap from so little evidence is not only inaccurate but also unreasonable.</p> <p>1</p>
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Comment 1

Ref to OIG Evaluation

Auditee Comments

Comment 2

The OIG alleges:

“MCB did not adequately manage sales of HUD homes.”

AUDIT REPORT, Page 1

The record of the contract does not support this finding. While the OIG claims that “MCB did not adequately manage sales of HUD homes” the record reflects that, somehow MCB managed to sell 13,855 homes during the course of this audit period, 10,917 more homes than HUD added to MCB’s contract inventory. The OIG data cited in this Audit Report points out a few individual instances where the OIG deemed the performance to be less than perfect. However, these cases involved very few individual tasks, among the thousands of FHA cases handled and closed. But overall, the OIG did not reveal performance problems sufficient to sustain the overall finding that MCB did not manage the sales of HUD homes in light of the actual sales data.

In most industries, if you sell 70%, 80%, 90% of your sales inventory, you would be given a prize. During the course of the audit period, MCB reduced the unsold inventory backlog leftover from the earlier terminated contractor, whose demise in this program led to the award to MCB. It is hard to imagine how anyone at OIG could interpret what is essentially a 127% success rate as a “failure to adequately manage sales of HUD homes.”

The OIG Draft Audit Report reveals that the audit encompassed only a very small portion of M&M duties required under these HUD contracts, as support for the OIG’s sweeping conclusion about MCB’s success in managing the sales of HUD homes. But when you look at the sales data in light of facts surround the total contract, it is hard to assert that MCB failed in its duties under this contract.

The OIG alleges:

“Specifically, it (MCB) did not always request lead-based paint stabilization services and/or city presale inspections in a timely manner.”

AUDIT REPORT, Page 1

The OIG findings fail to account for the various causes of perceived “delay” in the timely performance of work during the course of the contract that were outside the control of MCB. The functions and tasks in the M&M contract are based on the timing of individual events and orders placed in the course of a complex interplay of hundreds of steps and factors that go into managing and selling a HUD home. When the OIG states that certain of these steps were not performed “in a timely manner” it appears to have ignored the fact that, in many instances, there were specific critical factors at play that impacted the timing of those tasks. There were outside HUD contractors and HUD personnel that were late in providing information or documents, which, in many cases, were necessary to the performance of tasks by MCB. The timing of these events, the impact of outside HUD contractors, and more importantly, the issue of whether the

Comment 3

Ref to OIG Evaluation

Auditee Comments

Comment 4

M&M contractor was in a position to control the timing of the steps needed to be considered by the OIG. For example:

Lead-Based Paint (LBP) -- The OIG claims that MCB failed to timely initiate LBP stabilization services, but does not recognize that there are several other issues contributing to delays in the entire required LBP process. These issues include:

- Transition property files given to MCB by HUD's previous M&M contractor had numerous incomplete or missing LBP reports. MCB had to obtain these from HUD's contractor, causing significant delays. **SEE EXHIBIT A** – Two email sequences (July 9-10, 2008 and May 20, 2008) documenting the missing LBP reports from the previous M&M contractor's files and MCB's efforts to obtain said reports. When MCB was not provided with this information timely, which was expected under the contract terms, delays were caused that impacted MCB's performance.

Comment 5

- When HUD's contractor, L&M Construction, failed to timely deliver reports to MCB, MCB experienced delays by being unable to process cases needing LBP services. **SEE EXHIBIT B** – Email sequence (January 9--26, 2009) documenting delays in uploading LBP reports by HUD's L&M Construction.
- Over the course of the contract, problems complying with the HUD lead based paint requirements became severe when agency funding problems resulted in a stop work order for this critical function, which was to be performed by the HUD lead based paint contractor. To the extent that this contractor was required to timely provide services that impacted the performance of services by the M&M contractor, it negatively impacted the ability of MCB to do its job in many instances. **SEE EXHIBIT C** – Email from HUD (September 4, 2009) announcing a stop work order on HUD's L&M Construction.
- There were instances of delays on HUD's part to timely approve requests for expenditures on lead based paint stabilization. **SEE EXHIBIT D** – Email sequence (August 29—September 10, 2009) documenting HUD delay in approving LBP stabilization request from MCB.

Comment 6

City Presale Inspections -- The OIG claims that MCB failed to timely initiate city presale inspections, but the OIG failed to recognize that this requirement is included in the closing agent contract and it has never been included in MCB's M&M Contracts. **SEE EXHIBIT E** – Excerpt from Custom Closings HUD Closing Agent Contract effective March 16, 2009, showing requirement for city inspections C.2 – (I).

The HUD closing agent was to perform this function, so it was not the specific obligation of the M&M contractor. And still to this day, HUD M&M Contracting Officials do not assign this function to the M&M contractor. In the new M&M III procurement process, city inspections were not included in the RFP, and when HUD fielded questions about the need for city presale inspections during the pre bidding period, the Contracting Officer responded that HUD is excluded from these inspections. When HUD Contracting Officials are stating in official communications that this function is not the responsibility of the M&M contractor, there is no

Ref to OIG Evaluation

Auditee Comments

Comment 7

basis for the OIG to assign this requirement to the M&M contractor and assign fault to MCB for past failures of others to perform these functions.

The requirement to request city inspections has been assigned to the HUD closing agent contractor for many years – the requirement was in the HUD closing agent contract and the various HUD closing agents in Michigan had performed this function even in the M&M contract programs prior to the contract covered by this Audit Report.

When the failure of the closing agent to timely perform its contract functions caused MCB to take over that function, MCB efforts to perform the function were impeded by the HUD closing agent's refusal to hand over the many inspections that they had retrieved in violation of HUD's instructions. Also during this time, there were periods when the volume of city inspections requested by MCB -- due to the volume of HUD homes in Michigan and due to the backlog of inspection requests caused by HUD's closing agent -- exceeded the capabilities of the municipal authorities charged with performing inspections.

Typically, it took many weeks to get the inspections performed and certificates issued even when the inspections were ordered early in the sales process by the closing agent or others. These factors adversely affected the length of time it took to gather documents for closing the sale of a HUD home. To the extent that these had an impact on the timing of certain events covered by the OIG audit – and were outside the control of MCB – they were required to be considered before MCB could credibly be blamed for every contractual delay.

The OIG alleges:

“Further, it (MCB) did not provide adequate oversight of the closing agents and report to HUD deficiencies with closing sales of HUD homes as required under its contract.”

AUDIT REPORT, Pages 1 & 2

Comment 8

This allegation is simply untrue. Over the course of MCB's HUD M&M contracts in Michigan, HUD received numerous reports, telephone calls and emails from MCB personnel documenting the shortcomings of the HUD closing agent. Within months of MCB taking over the Michigan Contract, the record indicates that HUD had specific knowledge of the closing agent performance issues and their overall lack of their capacity to handle the volume of closings that were generated by MCB. In fact, MCB made several requests of the HUD programming and contracting offices to add closing agent capacity early on in the contract and both HUD offices recognized the need for additional capacity.

Despite HUD recognizing the performance problems of the initial HUD closing agent, and despite the fact that HUD recognized that there was a critical need for additional capacity, it took almost a year to add a second HUD closing agent in Michigan. During that time, HUD was well informed by MCB of the problems caused by the closing agent issues, and, in fact, there were communications from HUD asking MCB to refrain from continuing to report certain issues on the monthly Closing Agent Report. **SEE EXHIBIT F** – emails documenting MCB notifications

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to HUD of closing agent capacity issues and HUD's emails to MCB directing MCB not to report certain issues on the monthly Closing Agent Report.

By early 2009, the closing agent capacity problem created a backlog of nearly 4,000 closings – including homes that were ready to close, but that the closing agent was unable to close. To compound the problem, HUD's efforts to hire a new closing agent (or consider other alternatives) were so slow that there were several weeks in 2009 where the original closing agent contract had expired and there was no closing agent in place to perform closings in Michigan at all. During this time, HUD asked MCB to consider performing closing agent services in the state by subcontracting out the function. As requested, MCB submitted a proposal to HUD on March 9, 2009. **SEE EXHIBIT G – MCB Proposal for Closing Agent Services in Michigan** presented to HUD, March 9, 2009.

After presenting this proposal to HUD, and spending time and money to figure out a solution to the HUD closing agent capacity problem, discussions were held between MCB and HUD, and MCB never heard back from HUD on this proposal. The backlog of closings continued to grow until HUD brought on a second closing agent and it took many months for the HUD contractors to be able to manage the quantity of inventory for closings. This factor fell completely within the control of HUD, and HUD's failure to timely act to add additional closing agents led to increased costs and increased time in the schedule for MCB to sell thousands of HUD homes.

The OIG alleges:

“As a result, HUD incurred an additional \$1 million plus in holding costs to maintain the homes in its inventory and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays.”

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There is no credible supporting evidence for this allegation. The OIG alleges that HUD “incurred an additional \$1 million plus in holding costs to maintain the homes in its inventory” but does not adequately describe how it arrived at this figure. According to the statements of the OIG auditors, the numbers used in this allegation were not reviewed by the auditors, and in fact, they were not audited at all. The figures were subjected to no test for accuracy or relevancy, and thus OIG cannot guarantee their accuracy. The OIG admits that the figures – and likely the cost allegations as well – were proffered by the HUD program staff, and the figures were never questioned or even documented to the OIG during the course of the audit. The use of unaudited numbers whose validity has not been assessed to support allegations of damages amounts to mere speculation. Real claims need to be based on more than speculation to be fair and just.

Moreover, the OIG's statement that HUD incurred these holding costs indicates a fundamental misunderstanding of the incentives and disincentives inherent in the M&M contract terms, and fails to comprehend the M&M contractor's role and duties with respect to the closing agent. When sales of homes in the M&M program are delayed or a closing occurs later than expected, the M&M contractor is the one to bear the vast majority of the additional costs of managing and

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marketing that home for sale. The incentives are for M&M contractors to sell homes as quickly as possible, under the requirements of the contract, and in Michigan, delays in closings were often due to the performance by HUD and HUD contractors – neither of whom perform their duties under the authority or control of the M&M contractor. In all of those cases, the cost to MCB to manage and sell those homes was increased.

The OIG recommends:

“We recommend that the Deputy Assistant Secretary for Single Family Housing require MCB to provide documentation showing that the buyers cancelled their sales contracts for case numbers 263-335607 and 262-151588 for reasons other than delayed actions by MCB and/or the closing agents or reimburse HUD \$47,947 from non-Federal funds for the losses HUD incurred on the sales of the two homes and continue to improve its procedures and controls to ensure that sales on HUD homes close within established timeframes. These improvements should ensure that HUD avoids additional holding costs totaling \$101,752 as MCB transitions from being a HUD management and marketing contractor.”

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The OIG alleges that MCB is responsible for what it perceives as “delays” associated with the closing on the sale of the two specific HUD homes cited above. First, as explained below, the record indicates that there is no basis to blame MCB for the time it took to close these two sales.

With regard to case number 263-335607, the HUD home went under contract for sale not once but three times during the period in question. The record reflects that MCB followed the HUD M&M Contract procedures and the sale of this HUD home was not delayed. The time perceived by OIG as being days of “delay” due to sales being cancelled were not delays in fact. The time it took to sell the home was the result of market conditions and lender requirements that were not within the authority or control of either MCB or the HUD closing agent.

Specifically, the history of this case included the following events:

- a) The first contract was cancelled when the prospective purchaser attempted to obtain a loan to purchase the property and their loan application was denied. Having no funds to purchase the home with cash, the prospective purchaser had no choice but to cancel the contract. Once this occurred, MCB had to relist the property on the Multiple Listing Service (MLS) and obtain a new appraisal on the property. This is the required procedure under the M&M Contract when a sales contract falls through. As part of the attempted sale to the first prospective buyer, OIG called MCB out for having been delayed in getting Lead Based Paint (LBP) services performed on the property. A closer look at the records indicates that while it might have taken a few days longer than desirable to contract out the completion of LBP services, those services played no role in the cancellation of this sales contract. The contract was

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cancelled because the buyer could not obtain a home loan and that was the only reason the home did not sell to that buyer.

- b) The property was then listed on the MLS as once again available for sale. Brokers marketed the property and MCB provided further management services to keep the property in shape to sell. The property was marketed successfully and a second prospective purchaser put a sales contract on the home. Once again, through no fault of either MCB or the HUD closing agent, the prospective purchaser was unable to obtain financing for the sale. As a result, the second sales contract had to be cancelled as well.
- c) Once again, MCB had to relist the property for sale on the MLS, and once again MCB's marketing efforts resulted in yet a 3rd buyer expressing interest in the home, and executing a sales contract. This time, the buyer was successful in obtaining a home loan, although it took more than 60 days for the buyer to receive a final loan approval and close on the sale in September, 2009.

Having successfully marketed and, effectively, sold the home three separate times, MCB and the buyer were glad to have the property closed in accord with the M&M contract requirements. There is no evidence of delays that are attributable to either the HUD closing agent, or to MCB that had any effect on the date of the closing on this sale.

The fact that each of the prospective buyers found great difficulty finding loan financing for their purchase should hardly come as a surprise to the OIG auditors, particularly those who work and live in the economically distressed Michigan region. Sadly, this scenario is more typical than not when one is charged with managing and selling HUD homes in an economically depressed market.

To define "delay" and accurately attribute fault for real delays, one would have to drill down to the level of detail necessary to realize that lender delays and loan application rejections in many cases are the real cause of what the OIG interprets as a "delay" in this case. Lender delays and the inability to obtain loans were the intervening events that caused the contract cancellations in this case, and the lender delay in approving the 3rd buyer's loan was the reason the closing took place more than 60 days after contract ratification. There is no fault or liability for this case on the part of MCB or the closing agent.

With regard to case number 262-151588, the HUD home was transitioned to MCB's inventory from the previous M&M Contractor who had failed to perform under the contract. The property was under contract for sale, but when it came time to close on the sale of the home, the buyer expressed last-minute distress related to the condition of the property, and cancelled the contract. With respect to this case, OIG needed to consider the following:

- a) Even though all HUD homes are sold in an "as-is" condition, the HUD M&M contract allows buyers to walk away from the deal if they exhibit last minute buyer's remorse, even when the condition of every property is public information. This is simply one of the hazards (to MCB) of managing property for sale by HUD. Once this occurred, MCB

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had to relist the property on the Multiple Listing Service (MLS) and obtain a new appraisal on the property. This is the required procedure under the M&M Contract when a sales contract falls through, and it adds time to the process of selling the home again.

- b) A second prospective buyer was found, and a second sales contract was ratified in June, 2009 and the sale was closed on this home in November, 2009.
- c) The time it took to close on the sale is explained by the fact that the home required a well and septic test to be performed, and the test results indicated that well and septic repairs were necessary prior to closing.
- d) When expensive well and septic work is required, HUD mandates a process whereby MCB had to request HUD's permission to perform repairs, HUD's permission to advertise for subcontractors to bid on the work, and required HUD's permission to chose the subcontractor and pay and complete the work. Following that work completion, another inspection must be performed by the county and frequently, the second county inspection reveals additional repairs that are often necessary on these old systems. When that happens, as it did here, the whole HUD approval process, and subcontracting work process has to be done once again. This takes time, and the added time the process takes is contemplated by the terms of the contract. Unfortunately, this process is a lengthy one, and occurs regularly in light of the age and condition of many of the HUD homes MCB sells. This is the precise reason that HUD agrees to make such repairs when many other property conditions are left to be sold in an "as-is" basis.

To the extent that this process typically is lengthy, what may look like an unreasonable period to complete these repairs is, unfortunately, not unreasonable, given the age and condition of these homes. Thus, the "delay" perceived by the OIG in this case was attributed to the property conditions that necessitated this lengthy procedure. And, to the extent that the timing of this process requires the interplay of numerous HUD approvals, 3rd party subcontractors, and county inspectors, no days of even "perceived delays" can be attributed to MCB when MCB has no authority to control those outside factors.

Second, the holding costs quoted in the OIG Report were not accurate, were not audited by the OIG and the OIG cannot guarantee their accuracy, and as described herein, do not reflect costs that are relevant or attributable to costs that were actually borne by the agency. Therefore, the OIG cannot logically use these costs to calculate money potentially owed to HUD by an M&M Contractor.

Third, there is no legal basis for this relief recommended by the OIG. It is well-established in this contract documentation that the government and the government's closing agent contractor contributed to delays in performance of the M&M work. Thus, there is no basis to hold MCB solely responsible for any delays cited herein, even if actual delays could be proven. And, to the extent that the government contributed to delays in closing many cases during the course of the contract, through delays by HUD or the HUD contractors, or delays that the government was solely capable of addressing, the government does not come to the table with "clean hands." As such, there is a legal bar to any recovery in accord with this recommendation.

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Fourth, the MCB Contracts that were the subject of this OIG audit clearly do not include provisions for any liquidated damages. The contract clearly defines the incentive and disincentive payments applicable to the performance of specific functions in the M&M contracting process. Liquidated damages cannot be imposed absent some legal authority to do so.

Fifth, even by HUD's admission, MCB has already made significant improvements in its procedures and controls in the Michigan contract. What the OIG does not recognize is that these improvements were made long before the OIG began this audit, and they were put in place to address performance issues having to do with the overall M&M process – not just the tasks that MCB is responsible for completing. For instance, MCB was forced to add additional systems and processes to its management flow as a result of the frequent capacity problems involving the closing agents, and issues bearing on the fact that the HUD lead contractor was under a stop work order for some period of this contract. Were those two HUD contractors doing their job adequately, some of these controls and systems would not have been necessary. Thus, rather than credit MCB with the plans it made to work around other HUD contractors that MCB could not control, the OIG Audit Report demands process improvements without noticing that most of them had already been made and some of them were necessary only because HUD did not manage their closing and lead programs properly.

Finally, the efficacy of MCB's procedures and systems is evidenced by its record of HUD home management and sales, particularly MCB's continued success in selling and closing a quantity of homes that far exceeds the number of homes provided to MCB for sale each month. The sufficiency of the process improvements implemented over the course of the contract by MCB is evidenced by the lifting of the January, 2009 Cure Notice in June, 2009, based on HUD's agreement that MCB's processes and systems improvements had addressed all issues to HUD's satisfaction. To the extent that the OIG Report raises the same issues that were already addressed by the 2009 cure notice, HUD's June, 2009 lifting of the cure notice is evidence that this recommendation had already been implemented long before this audit.

The OIG recommends:

"We also recommend that the Deputy Assistant Secretary for Single Family Housing implement requirements for the new management and marketing contracts that provide specific responsibilities for performing activities under the contracts, including but not limited to requesting city presale inspections and lead-based paint stabilization, to ensure that sales of HUD homes close in a timely manner and monitoring the closing agents for compliance with their contracts with HUD."

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MCB contends that these are sound recommendations for HUD to implement, except for one thing: similar suggestions have been proffered before and HUD has failed to act to amend the contracts for three consecutive HUD M&M programs.

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City Inspections Process: In the HUD M&M II Program, the course of conduct in Michigan was that the closing agent, by contract, is tasked with ordering city inspections. Then, without adding the duty to any other party's contract, the task of ordering city inspections was taken away from the closing agent by instruction from HUD, but never added to the M&M contractor's contract.

And, as stated earlier, when the M&M III Program was being procured, HUD failed again to include any provision for the city inspection process in procurement documents. When the topic was addressed by Michigan bidders, HUD responded that city inspections were not applicable to the procurement. Thus, OIG will likely have the chance to audit additional contractors who will be forced to perform services in this same quagmire. Hopefully, the OIG recognizes that many contract administration problems would be remedied by simple contract clarification in the actual contracts for HUD closing agents and HUD M&M contractors. To date, the responsibility for these duties is not outlined clearly in the contracts, and HUD's failure to clarify this provision in writing cannot be blamed on the contractor.

Lead Based Paint Issues: In order to ensure timely closings, HUD must guarantee that there are no lapsed periods in the LEC contract that will negatively impact the timely performance of LBP duties. HUD's oversight should include monitoring the LEC for meeting their contract-required timeframes as well as HUD returning timely approvals to the M&M contractor when the M&M contractor requests permission to order lead based paint services. And, HUD should consider giving M&M III vendors access to the appropriate M&M II contractors' EMS systems to provide ready access to LBP documents on any transition properties.

Closing Agent Oversight: OIG's recommendation appears to be aimed at urging HUD to monitor their closing agents to ensure they comply with their contract. This is a good idea. And, there is certainly nothing wrong with asking the M&M contractor to play the role of monitor, and provide oversight and reporting to HUD on problems with the closing agent contractor's performance. Except for one thing: the OIG has to realize that if HUD is made aware of problems with the closing agent's capacity, capability or performance, HUD must act to remedy the problems. As the contract oversight is currently defined, the M&M contractor has no authority to fix the problems they notice during their oversight and the M&M cannot be held responsible for the closing agent's failures as a result.

OIG STATEMENT:

"We selected MCB based on the results of our audit of Custom Closing, a HUD-designated closing agent for the State of Michigan ... Our objective was to determine whether MCB complied with HUD's requirements regarding the sale of HUD single-family real estate-owned homes (HUD homes) in Michigan. The audit was part of the activities in our fiscal year 2010 annual audit plan."

AUDIT REPORT, Page 1:

MCB RESPONSE. The OIG states that MCB was selected for audit in light of a prior audit performed involving Custom Closing – the HUD Closing Agent contractor charged with

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performing closing agent services for HUD homes in Michigan. Despite the connection between the two audits, the OIG auditors stated in the OIG Exit Interview that specifics pertaining to the capabilities, capacity and performance limitations of Custom Closing were not considered in the development of audit findings pertaining to MCB. As is developed elsewhere in this response, MCB contends that OIG's failure to connect up all the relevant information about the two separate, but interdependent procurements, was fatal to the OIG efforts to arrive at accurate audit findings with respect to MCB.

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MCB also objects to the statement that the OIG audit was "to determine whether MCB complied with HUD's requirements regarding the sale of HUD homes." This is troublesome because if OIG intended to determine whether MCB complied with HUD's requirements, that description grossly overstates the scope of the audit actually conducted. From the OIG Report, it appears that the OIG decided to review only a few small portions of the complex, multi-faceted contract that required MCB to manage and market HUD homes for sale in the state of Michigan during the contract period.

In short, there are hundreds of moving parts to this complex contract, and OIG most assuredly did not audit all aspects of the contractor's performance. In the OIG Exit Interview, MCB representatives urged OIG to revise the stated scope of the audit to accurately describe which of the many contract requirements were actually audited and which were not. OIG auditors made comments that could be interpreted as conceding that this revision would further define the scope of the audit, so MCB looks forward to OIG making that revision in the final audit report. Certainly, fairness and justice to the contractor would dictate that OIG accurately define the specific limits of the audit, because, as MCB contends, it is not possible to reach the sweeping conclusions that OIG outlines in the audit report based on the limited review of issues, and the limited data discussed.

From the data provided to OIG, and that contained in the audit report, it appears that the OIG auditors drew their conclusions by looking at a sample of the cases handled during a portion of the contract period, and the review was limited to the following issues:

- a) efforts made by various parties (including but not limited to MCB) to the ordering, purchase and handling of city inspections for the properties being readied for sale;
- b) the basis for the cancellation of specific sales contracts;
- c) the processes and data pertaining to certain lead-based paint inspections; and
- d) efforts of various parties (including, but not limited to MCB) to obtain sales contract extensions when necessary to provide additional time needed to close the sale of specific HUD homes.

This limited list of issues does not touch even 3% of the requirements imposed on the M&M contractor in the performance of the HUD M&M contract. In addition, these issues do not address all of the various factors at play in determining how long it takes to sell a HUD home that are not within the responsibility, power or control of MCB.

In the OIG Exit Interview, held July 8, 2010, the OIG audit team confirmed that the audit goal had been to determine if MCB had "complied with HUD's requirements." When asked to define

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the referenced "HUD requirements" the auditors pointed to the HUD M&M Contract terms, and the HUD Handbook 4310.5 Revision 2, as outlined as Appendix C, attached to the OIG Audit report. Yet the Audit Report outlines a review of just a tiny portion of the facts and documents that would be necessary to decide compliance with a whole contract.

Finally, to audit whether MCB had "complied with HUD's requirements" an auditor would be required to understand the complex nature of the HUD M&M process, they would have to review a large number of documents not covered by this audit, and there would need to be consideration of a multitude of factors and facts that interplay among many of the parties related to the performance of all of HUD's M&M-related duties that are not covered by the short list of issues reviewed in this audit. MCB contends that if this were the scope of the audit, there are numerous factors and facts, as well as specific actions of the non-MCB performance parties that would need to be considered. As a result, it is simply inaccurate for OIG to state explicitly or implicitly that it reviewed the data necessary to arrive at a finding of "whether MCB managed and sold HUD homes in accord with HUD's requirements."

OIG ALLEGATION:

"On February 5, 2010, HUD awarded MCB the contract for overseeing and/or monitoring lenders for compliance with HUD's requirements. Therefore, as of August 31, 2010, MCB will no longer manage and market HUD homes."

OIG AUDIT REPORT, page 2.

Oddly, the OIG includes a comment about the award of the nationwide contract for the HUD M&M Mortgagee Compliance Management ("MCM") made to MCB on February 5, 2010, as an apparently negative commentary on MCB's performance as an M&M Contractor. Despite their many months spent studying the HUD M&M Contract and the HUD M&M Program overall, the OIG somehow believes the MCM Contract is either not included in the HUD M&M Program, or that if it were part of the program, that it does not require work critical to the management and marketing of HUD homes. The OIG could not have missed the mark more.

The MCM contract was given to MCB in a highly competitive procurement, and is a testament to the skills and performance MCB has provided to HUD over the past 10+ years as a HUD M&M contractor. It is not HUD's habit to hand over single contracts covering a critical program component, covering not one but all contract areas, to contractors with anything but an exemplary performance record. In this procurement, many of MCB's M&M competitors were shut out from receiving any contracts whatsoever in the whole HUD M&M Program, and the company supposedly deemed a failure by the OIG went on to receive the only contract awarded for all 50 United States and territories from the ranks of experienced M&M contractors.

By this award, MCB was the sole HUD M&M Contractor from the HUD M&M II Program (the HUD M&M contracts just concluded in 2009) chosen to perform a critical M&M contract function covering the entire HUD M&M Contract area for the coming HUD M&M III Program. This contract function was awarded to MCB, after a hotly contested competitive procurement involving most of the HUD M&M II contractors and several of the qualified competitors from

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the commercial REO marketplace. OIG could have refrained from referring to the MCM contract at all, but one would presume that a reference to it should be made with full knowledge of the meaning of this award.

If OIG auditors had inquired of the awarding HUD contracting officials, it would have learned that the MCM function is a critical function and necessary to the smooth operation of the entire HUD M&M III Program. It is the only piece of the HUD M&M II Program that the agency dared to risk award of the entire contract function to a single contractor for the HUD M&M III Program. In doing so, HUD had to be certain that the awardee was not only an expert at the performance of this critical function, but the awardee's understanding of all aspects of the HUD M&M Program was required to be exemplary in order to be able to interface with the numerous HUD M&M contractors chosen to perform the other interconnected functions included in the HUD M&M Program.

HUD's confidence in awarding this critical function to MCB – the only one of the numerous M&M contracts awarded in 2010 where HUD has no backup contractor standing at the ready -- involves the performance of functions critical to the overall HUD M&M Program, and yes, it is a function completely related to the management and marketing of HUD homes. Despite this obvious testament to MCB's superior past performance and capabilities as a HUD M&M contractor, the HUD OIG includes this snarky comment as if to imply that MCB will no longer play a key role in the HUD M&M program due to its performance. If that was the insinuation, it was misplaced.

OIG FACTUAL ALLEGATION:

“Michaelson, Connor, and Boul, Incorporated (MCB), an asset management company, has specialized in real estate services since 1994. HUD contracts with MCB to manage and market its real estate-owned single-family homes in several geographic areas such as Nevada and Arizona. In February 2008, HUD amended MCB's contract to include the State of Michigan. On September 1, 2009, HUD awarded MCB a new management and marketing contract that specifically covered the State of Michigan. MCB's Michigan office is located at 5312 Bolsa Avenue, Southfield, MI.”

OIG AUDIT REPORT, page 5.

MCB RESPONSE. The OIG has these facts mostly correct, and they are critical to the issues addressed in the OIG recommendations, as will be explained elsewhere in MCB's response. MCB's Michigan Office is located in Southfield, Michigan, and MCB's home office is located at 5312 Bolsa Avenue, Huntington Beach, California.

OIG ALLEGATION:

“In addition to managing, marketing, and selling HUD real estate-owned single-family homes, MCB monitors and oversees the closing agents. Further, MCB is responsible for coordinating the closings on the sale of HUD homes

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with the closing agents to ensure that sales close in a timely manner, thus minimizing HUD's holding costs."

OIG AUDIT REPORT, page 5.

MCB RESPONSE. As explained earlier, in MCB's response, the OIG's repeated statements that the M&M contractor's responsibility to coordinate with the closing agent" and the responsibility to "monitor and oversee" the closing agent is somehow tantamount to acting as the closing agent or acting as the one charged with responsibility for the closing agent's performance. The task to coordinate with the closing agent requires the M&M contractor to work with HUD's closing contractor, but where that contractor is unable or unwilling to perform, or does so incompetently, the M&M contractor is not allowed or required or even authorized to step in and take steps to remedy the closing agent's problems. This is HUD's responsibility. When HUD is made aware of closing agent issues, and fails to act, or fails to act timely, HUD's responsibility for that failure does not convert to fault on the part of the M&M contractor. Any notion maintained by the OIG that "oversight" equals "liability" is simply not found in the M&M contract or in the law.

OIG ALLEGATION:

"MCB did not adequately manage the sales of HUD homes. Specifically, it did not always request lead-based paint stabilization services and/or city presale inspections in a timely manner. Further, it did not provide adequate monitoring and oversight of the closing agents and report deficiencies with closing sales of HUD homes to HUD as required under its contract. The problems occurred because MCB lacked adequate procedures and controls to ensure that it complied with its contract. As a result, HUD incurred an additional \$1,059,651 in holding costs and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays."

OIG AUDIT REPORT, page 6.

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First, as outlined above, the "more than \$47,000" allegedly lost due to cancelled sales are mythical costs that are undocumented and unproven and alleged to be the result of "delays" that the OIG presumed from the fact that sales were cancelled. The HUD homes in both cases, as the complete record shows, were closed at times that were dictated by the buyer's efforts to obtain loans and the timing of the loans finally issued to purchase those homes. Neither of those homes could be said to represent closing delays due to MCB fault.

Second, by its recommendation, the OIG exhibits a basic lack of understanding of the various causes of delays in the closing of HUD home sales. Inherent in this recommendation is the presumption that the M&M contractor somehow possesses the power to control whether the sales contracts result in closings or cancelled contracts. As has been explained to OIG auditors many times, in audit interviews, telephone calls and meetings, sales contracts can be cancelled for any number of reasons that are beyond MCB's control, including but not limited to the following:

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- a) buyer fails to obtain the loan to close on the sale;
- b) buyer finds another property and withdraws the application for the loan and thus results in cancellation of a sale;
- c) inability of the closing agent to process the closing paperwork in a timely manner due to incapacity, or extreme volume or incompetence;
- d) inability to obtain timely approvals for lead-based-paint stabilization or repairs from the HUD contracting personnel due to travel or training of the personnel whose approval is required, resulting in late work completion and buyer cancels the contract;
- e) inability to obtain timely city inspections of the properties due to the volume capacity of the city inspection office;
- f) inability to obtain timely city inspections of the properties due to the shut-down of city inspection offices due to budgetary constraints or holidays.

Most of the factors that lead to the cancellation of sales contracts are beyond the control of the M&M contractor, as evidenced by the issues causing cancellations in the cases referenced above (263-33607 and 262-151588) that were also not within the control of MCB.

Third, the OIG recommendation reflects a basic disregard on the part of the OIG auditors for the fact that the M&M contractor has an incentive to sell and close homes as quickly as possible. The whole purpose and construct of the M&M contract is presumed to be to maximize the rate at which HUD homes are sold and closed and removed from the inventory of the HUD M&M contractor. To incentivize contractors to do so as quickly and efficiently as possible, the provisions of the contract assign to the M&M contractor the vast majority of the expenses in every case where a HUD home remains on the inventory list even one day longer than necessary.

HUD pays the contractor a set price – per property – to manage and sell the HUD home. HUD forces the contractor to bear all of the expenses associated with getting the home ready to list and show for sale, and it is the contractor that pays the price for all additional inspections, repairs, maintenance and appraisals that are needed when a home remains on the market another two weeks. There are very few instances where HUD bears any actual expense associated with property condition or inspections necessary when a home remains on the market and the impact to HUD is miniscule compared to the burden placed on the M&M contractor for the period the property remains unsold.

For example, for every property that remains on the market, the M&M contractor must have a new and different property inspection every two weeks, the M&M contractor must have the grass mowed every 14 days in the summer and the snow must be removed from the home every time the snow falls. Every week that a home remains on the market in Detroit and similar urban areas, the M&M contractor bears the cost and administrative burden of remediating vandalism – often repeated vandalism on the same properties – and the process of obtaining, paying for, and overseeing new appraisals after six months. In this process, there are ever more requirements placed on the contractor to manage the property maintenance, pay the listing agents, and oversee the process of further marketing of the homes that linger on the market longer than expected.

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All of these expenses are borne by the M&M contractor, despite the fact that the prices paid by HUD were negotiated in an economic climate that bears no resemblance to the actual market conditions existing in the depressed local economy at the time of MCB's M&M contract performance in Michigan. Conversely, when a HUD home remains on the market longer than anticipated by HUD or the M&M contractor, the only quantifiable costs that are borne by HUD would be additional real estate taxes.

HUD does not pay for the additional inspections and appraisals necessary to price the property correctly at every stage of the listing process ... HUD does not pay more to the M&M contractor if the buyer cannot obtain a loan after searching for 60 days and the house has to go back on the market after being off the market and under contract for 60 days ... all the risk of these events, and the vast majority of the costs of the holding time are borne by the M&M contractor.

Fourth, the OIG falsely presumes that HUD has borne the holding costs that are capable of quantification or verification. The OIG recommendation that MCB reimburse HUD for "holding costs incurred" when HUD homes fail to close in the timeframe deemed reasonable by the OIG auditor relies on an unsupported and false presumption that the bulk of the actual holding costs have actually been borne by HUD. HUD's share in the burden is purely incidental to the enormous burden in terms of addition appraisals, inspection and repair, maintenance and marketing expenses that are borne by the M&M contractor each week that a HUD home remains on the market.

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Until just two days before the submission of this response, neither the OIG auditors, nor anyone at HUD, have been able to quantify the specific costs that the OIG believes were actually borne by HUD or that said costs are legally recoverable in this context. And yet, the OIG recommendation has the temerity to quantify the costs in this recommendation for two specific cases down to the exact dollar – valued at \$47,947. As explained above, the cases cited by the OIG as supporting any claim for damages, there was no credible proof that the perceived delay could be tracked to any events MCB could control. And, moreover, the figures provided this week to justify the cost recommendation included vague references to cost figures that stem from 2005 or 2006 – hardly relevant to the calculation of damages for cases closing in 2009. Most incredibly, the cost figures referenced in the government's 11th hour submission appear to reference contract performance costs that are typically borne by the contractor under the HUD M&M contract.

As a result, for the cost data provided by the government – just two days before the contractor was to respond to OIG's Draft Report – to provide any credible support to a claim for damages, the OIG would have to show that: a) a delay existed that is not contemplated by the contract terms, b) MCB was responsible for the delay, and that HUD or other outside forces did not contribute to the delay, c) that the proven delay resulted in actual costs, and d) that the actual resulting costs were both unexpected and paid by the government. Even if such a showing could be made – and there is no evidence to support this – the OIG did not review the data or audit it, and thus, it cannot form the basis for anything more than mere speculation or hearsay within the OIG Audit Report.

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During the OIG Exit Interview, MCB representatives specifically requested the source of these figures and sought clarification for the basis for their calculation. OIG auditors first indicated that they received the figures from HUD program personnel, then the OIG promised to provide the documentation for the figures after OIG received that information from HUD. After that, the auditor decided to defer on that promise pending a decision about whether the documentation was somehow proprietary to HUD. The OIG finally promised to provide an explanation for the calculation, but refused to promise to provide that information at any specific time. When OIG provided the data two days prior to the contractor response submission, the information was not even clear enough to be able to analyze. In any event, what is clear was the OIG statement to MCB that they did not audit or analyze the data, so the fact remains that any reference to the data is simply speculation and hearsay.

Most surprising about this notion is that HUD's chief auditors – the OIG audit team – would simply accept at face value the cost numbers proffered by non-auditor personnel from the agency. It seems reasonable to presume that the OIG audit team would accept information from any agency personnel relevant to the audit, but it is shocking that specific cost numbers provided would be used to form the basis for formal audit findings without any shred of supporting documentation or review by the auditors putting out the report. Rather than actually audit the data, the OIG report simply adopted the unsupported opinions of the agency personnel.

This surprising fact leads one to believe that this was not an audit of the M&M program in Michigan, as stated in the OIG Report, but rather the OIG, without question or audit or review of any supporting data, simply adopting the view of an unnamed agency source that MCB owed HUD a sum. OIG seems to have taken at face value what that sum was, and the apparent lack of data gathering and analysis conducted in this regard makes those opinions mere hearsay, not valid audit findings.

This would also explain why there was no causal connection made in the audit report between the alleged events and the allegation that said events resulted in “holding costs for HUD.” The OIG did not have the data to review, and so no audit of that information or those theories could be performed. There is no basis provided for the conclusion in the OIG report, and when MCB asked for the data or the reasoning in the Exit Interview, the OIG confirmed that it neither had the data nor reviewed it in the course of the audit. MCB does not contest that the OIG can choose to accept certain premises from the agency personnel without testing their theories or asking for backup. MCB only contends that it is not something that should occur if the audit is intended to be thorough or professional or supported by the evidence.

If the calculation of real costs to HUD of any specific event in the course of the performance of the HUD M&M Contract were actually quantifiable, specific numbers that could be verified by audit were never provided to the contractor during the course of 10+ years of performance in the HUD M&M program. The figures – if HUD has any to support any such real costs – have never been used to calculate liquidated damages and no mention of the concept has ever been included in any HUD M&M contract or the RFP documents or even the procurement Q&A information provided to prospective bidders for HUD M&M work. No such contract provision exists that would authorize HUD to seek liquidated damages for costs it cannot prove, and the only enforcement provisions included in the HUD M&M Contract terms are the

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Incentive/Disincentive clauses that all M&M contractors have already been penalized with throughout the performance of the completed HUD M&M II program. There is no basis for further recovery for HUD.

If HUD could document real costs, it was incumbent on the agency to produce the information to the contractor in the course of issuing threats over sales figures during the period of the contract. Having failed to do so, HUD cannot avail itself of remedies that are not provided for in the contract, not allowed by the cases interpreting these contracts, and the OIG's recommendation that HUD has this right – absent any shred of legal authority – is insufficient replacement for actual legal authority to impose such phony penalties in a post-hoc fashion. Specific HUD personnel have been threatening to penalize contractors for years using some perceived “HUD costs” as the basis for a monetary remedy in connection with M&M sales and have been asked to provide the basis for the costs if they do exist.

At no point during the period of this contract, has the HUD Contracting Officer – who is charged with making the business and contract decisions for the government -- ever ventured into this discussion or even alleged that these costs represent a realistic remedy for any perceived M&M performance issue. From the contractors' perspective, the issue of going after contractors for “HUD's holding costs” is a threat that is trotted out anytime the HUD M&M program staff is unable to convince the Contracting Officer that it is in the government's interest to punish one contractor or another. Thankfully, such extra-contractual meting out of punishment has never been condoned by a warranted HUD contracting official.

When this audit began, in late 2009, HUD program and contracting officials were in the middle of the procurement process for the HUD M&M III Program. In all of the relevant RFP documents, there was virtually no reference to potential claims against contractors for liquidated damages or any other remedy that stems from HUD incurring holding costs when a HUD home is slow to sell. If this were a real cost, and the costs could be quantified with any accuracy, and the HUD contracting authorities had any belief that contractors should be held legally liable when HUD homes are slow to sell, surely the current HUD M&M contracts should have contained some provision to that effect. The fact that this debate has been raised by some HUD personnel, during the course of three separate 5-year HUD M&M Programs, and still no contract provisions reference such liquidated damages is very telling. The law is well-settled that the government cannot claim damages where fault cannot be connected to the contractor, and the government cannot seek remedies that cannot be measured.

Absent any legal authority, MCB respectfully requests that HUD personnel cease issuing threats – either directly or through unsubstantiated OIG audit recommendations – related to imposing cost penalties on the contractor that are not lawful under the contract terms and law, and incapable of verification in any event. The HUD OIG has very specific authority under the applicable statutes and regulations – and MCB respects that authority. However, the authority to make up post-hoc remedies for undocumented allegations is not among those the statute conveys to the OIG.

Fifth, the OIG recommendation – that MCB should be penalized for cancelled sales that are the result of a failure on the part of the closing agent – assumes that the M&M contract provision

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requiring MCB to provide “oversight of the closing agent process” somehow equates to an ability on the part of the M&M contractor to control the functions and performance of the HUD closing agent. This is just simply wrong. MCB cannot be held liable for the damages resulting from the failures of another firm unless MCB had the authority to manage that firm, or the responsibility for their success. Neither of those premises was true in this case.

With respect to the closing agent, the HUD M&M Contract provisions provide that “The contractor shall monitor Closing Agents to determine if requirements of the Closing Agent contracts are fulfilled.” HUD M&M Contract, Section 5.4.4.1.2 Oversight of the Closing Agents. The authority to oversee and report to HUD on the performance of the closing agent charged by HUD – and under contract with HUD – to perform closing services in connection with HUD M&M properties does not include any authority to control the closing agent, nor does it provide any responsibility for the actions of the closing agent. Specifically, with respect to the HUD closing agent, the HUD M&M contractor is required to do the following:

- a) work with the HUD closing agent to transmit documents following the execution of a sales contract for a HUD home;
- b) observe the HUD closing contractor with respect to the closing on the sale of HUD homes in the HUD M&M inventory; and
- c) report the information observed to HUD personnel.

This is the extent of the authority in connection with the HUD closing agent. Contrary to the inferences the HUD OIG auditors seem to have drawn, the HUD M&M contractors specifically does not extend to being responsible for the closing agent doing its job. For instance, consider the following facts and information provided to the OIG by MCB:

- a) the HUD M&M contractor does not get to choose the HUD closing agent;
- b) the HUD M&M contractor does not pay the HUD closing agent, nor decide how much they should be paid;
- c) the HUD M&M contractor does not get to choose the number of HUD closing agents that will be needed to close the volume of homes at issue under a specific HUD M&M contract;
- d) the HUD M&M contractor was powerless to get HUD to take steps to remedy the fact that HUD personnel knew for many months that the single Michigan HUD closing agent under contract with HUD – a small business – was unable to handle the volume of closings included in the Michigan M&M program from 2008 to 2009;
- e) the HUD M&M contractor had no authority to get HUD to act to add additional closing agents even when a protest of the HUD closing agent procurement left HUD with viable second sources of closing agent contractors for more than a year after HUD realized that capacity of a single closing agent was insufficient;
- f) the HUD M&M contractor does not get to penalize the HUD closing agent for failing to staff up with adequately trained staff, nor does the HUD M&M contractor get to insist that the closing agent have sufficient staff, telephones, fax machines and closing agents to get the homes closed in a timely manner;
- g) the HUD M&M contractor does not get the chance to provide any input in the HUD drafting of the terms and conditions of the HUD closing agent contract;

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- h) the HUD M&M contractor does not have the power to hire additional closing agents when the single HUD contractor cannot perform the task and the failures result in lost sales and canceled contracts;
- i) the HUD M&M contractor has no other source of supply to submit signed sales contracts when HUD GTR personnel order MCB to defer sending sales contracts to the HUD closing agent because they “are behind” or because they “have too many orders already” or because they “are just getting staffed up” despite the fact of several years of experience;
- j) the HUD M&M contractor has no recourse when it reports to HUD its findings on the capacity, equipment, training, facilities and personnel issues that prevent the closing agent from doing its job and HUD fails to address the issues or provide alternative sources of closing agent services;
- k) the HUD M&M contractor does not have the power to issue a cure notice, notice of termination or any other legal means to force the closing agent to do its job;
- l) the HUD M&M contractor does not have the authority to refrain from sending all sales agreements to the HUD closing agent even when it knows they won’t get the job done;
- m) the HUD M&M contractor has no influence over HUD to urge HUD to retain additional closing agents even when HUD delays doing so for more than a year, all the while agency personnel are aware of sales contracts being cancelled due to failure on the part of the closing agent;
- n) the HUD M&M contractor has no power to urge HUD to amend the terms of the closing agent contracts or the HUD M&M contracts to clarify whose job it is to order and pick up city inspections necessary to close many of the HUD homes in Michigan;
- o) the M&M HUD contractor has no authority to order the HUD closing agent to hand over the city inspections MCB has already ordered, and the closing agent picked up from the city inspection office contrary to the instructions of the HUD closing agent GTR; and
- p) the HUD M&M contractor has no authority to clarify with proper contract terms the duties and responsibilities of the HUD closing agent when there is confusion.

For one to conclude that MCB is responsible for any failures on the part of the HUD closing agent, one would have to read much more into the M&M contractor’s duty to “oversee” and “report to HUD” on the closing agent performance. The law defines clearly that one cannot be held responsible for the actions or damages caused by another party unless that party is in privity of contract with the other party, unless the responsible party has authority to manage and control the actions of the other party, or has some authority to find alternative sources of supply in the event of a party’s performance failure. Nobody even contends that MCB had any such authority over the HUD closing agent contractor in Michigan, and HUD was well aware of the performance problems and limited capacity of the single HUD closing agent contractor in Michigan. HUD was the one with such authority, and it was HUD that failed to act within a reasonable timeframe.

Over the course of MCB’s HUD M&M contract in Michigan, HUD received hundreds of reports, telephone calls, emails and letters from MCB personnel and attorneys, as well as the buyers and brokers involved in HUD home sales that were impossible to close due to the fault and shortcomings of the HUD closing agent. See Sample of the 2008-2009 Communications Regarding Closing Agent Issues, attached hereto as EXHIBIT F. To blame MCB for the HUD

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closing agent, one must believe that HUD was not informed about the closing agent issues and that belief would be inaccurate. *See id.* Moreover, to blame MCB for the HUD closing agent issues, one must also presume that HUD was powerless to remedy the problem. Again, nothing could be further from the truth.

HUD was the only one with the authority and power to resolve the Michigan closing agent problems and it had numerous opportunities to do so. Instead it did nothing for almost a year. HUD had the chance to replace the closing agent, by terminating Custom Closings, and yet it did not. From all indications, Custom Closings was struggling to perform, and very likely, Custom Closings would have welcomed a move by HUD to add an additional closing agent or two to handle the volume by Fall, 2008. Still, HUD delayed to take action, and provided no explanation.

HUD's Many Opportunities to Hire Additional Closing Agents. If OIG auditors had inquired, they would have learned that, after awarding the HUD closing agent contract to Custom Closings in 2008, HUD received a bid protest, which protest HUD settled by promising to conduct a new procurement. After making that promise, HUD accepted new bids, and took many months to just read just those bids. By June, 2008, HUD had every opportunity to choose another contractor just several months into the contract, or in the alternative, HUD could have revised the procurement and awarded several HUD closing agent contracts to ensure there was closing agent capacity sufficient to meet the needs of the then-current volume of HUD homes on the market in Michigan. Instead, HUD delayed and delayed and requested rounds of additional bids – from two experienced past M&M closing agents that HUD knew very well.

MCB became the HUD M&M contractor for Michigan in April, 2008, and within months, the record indicates that HUD had knowledge of the closing agent performance issues – and had every opportunity to address these issues – in the initial 3 months of MCB's M&M contract. Having failed to act on those opportunities, by delaying, HUD cannot pass the blame for cancelled sales contracts to MCB when HUD was well aware of closing agent problems, and the agency had every chance to remedy the problem but failed to do so for so many months.

HUD has had several experienced Michigan M&M closing agents over the years, and HUD knew the companies it could have called to call to perform work that was not being performed. It could have issued an emergency buy to clear the backlog of unclosed cases with a temporary contractor. HUD could have done a number of things that it did not do to address the closing agent problem. Despite the fact that HUD was well aware that it had numerous experienced closing agents standing ready, willing and able to step in and close HUD homes, HUD still did nothing for many months. There might have been reasons why many of these options were difficult or cumbersome for HUD, but the fact remains, HUD could have remedied the problem and it did so only after many, many months.

From July, 2008 to mid-2009, there was a significant backlog of HUD homes, under contract for sale, and while MCB waited for HUD to act, or for the closing agent to get their act together – none of which happened quickly – sales were being cancelled due to loans expiring or buyers losing faith that their sales would ever be closed by the seemingly incompetent HUD closing agent system. MCB complained and complained to HUD and nothing happened. HUD did not

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even inform MCB that they were conducting a new closing agent procurement because of the protest.

Because of HUD's role in failing to act and remedy the closing agent issues that resulted in numerous cancelled sales, MCB urged the HUD contracting officer to hire additional closing agents, or face the delay and disruption claims that would surely result from HUD not supplying the means for MCB to close the sold homes and remove them from inventory. This is the only tact that resulted in change. In early 2009, HUD Contracting finally acted to bring on an additional HUD closing agent – another small business, and another lengthy delay to wait for the second small business to staff up and start accepting files to handle closings.

All during this “ramp up period”, MCB was instructed to refuse to sign sales contracts and refrain from shipping additional closing assignments to the two small business closing agent contracts. According to the records, during this period, no closing agent oversight was ongoing and no reports were given to HUD on the work of the closing agents – and the reason is simple – MCB was on a *de facto* stop work order with respect to processing any files to closing and there were no closings taking place. MCB was in a panic, begging HUD to bring still additional closing agents onboard, but HUD personnel insisted that MCB exhibit patience and help these two small business closing agents “get used to the volume.” This small business advocacy approach led to numerous cancelled sales, and many cases that were ready to close could not – for one simple reason – there was no HUD closing agent that was actually closing sales in Michigan. This did not bother the HUD contracting office for many weeks, and the backlog that built up due to MCB's efforts to successfully manage the sale of HUD homes only added to the backlog of unclosed sales.

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This backlog was a sign of MCB's success at the time, but the backlog is now seen by the OIG as a symptom of MCB's failure to manage the sales process simply because OIG failed to consider any aspect of the problems that were well documented concerning capacity issues involving the HUD closing agents. This failure alone invalidates the OIG findings pertaining to any adverse events stemming from late closings or failures on the part of the closing agent or cancelled sales stemming from problems getting properties closed.

There is no question that it was MCB – not HUD – that paid the price when the HUD closing agents were incompetent, not working or not working timely. MCB was forced to relist and resell homes it had already sold before, and MCB was forced to bear the burden of the property management costs that mounted with every week that a property remained in inventory even after it was under contract for sale.

At one point, in early 2009, HUD began to recognize the untenable position that HUD's closing agent crisis was placing MCB in, and HUD asked MCB to step in and subcontract for a short period the services of a closing agent to break loose the log jam of unclosed sales that were sitting lifeless on the overwhelmed desks of the only HUD closing agent, Custom Closings. MCB went to the effort to recruit and submit bids to get some short term help to clean up the backlog in HUD home closings, and at the last minute, HUD refused to carry through with the plan to use the temporary closing agents. When HUD Contracting could not resolve the administrative roadblocks to breaking the backlog of closings, no additional creative solutions

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were worked on and MCB continued to calculate the cost to MCB of the additional holding costs – to MCB, not shared by HUD – that would form the basis for the delay and disruption claim that HUD will need to address for MCB eventually.

What is almost comical about the OIG having decided to ignore the issue of “closing agent capacity” when auditing the causes of cancelled sales or late closings is that during this time, the issue of closing agent capacity was the primary reason for the backlog and HUD contracting personnel repeatedly showed the good faith to admit it was HUD’s responsibility to fix the problem or reimburse MCB for the additional holding costs to MCB that resulted. If the OIG had only inquired of the relevant HUD personnel, all of this would have been known to it. There is no reasonable basis for OIG to have ignored this information, and having done so, the audit findings based on information that did not take all this into account is incomplete and thereby invalid.

Comment 29

It is not reasonable for there to be any confusion about the relevancy of the closing agent’s capacity on this case. This very issue was the topic of discussion between MCB and OIG from the beginning of the audit. MCB’s frustration with being unable to influence or control the performance of the closing agent was discussed with HUD and OIG on numerous occasions, and it was discussed all throughout the audit and it was questioned in the Exit Interview following the issuance of the OIG Draft Audit Report on June 25, 2010.

Either OIG doesn’t understand MCB when it has said – over and over again – that the M&M contract simply does not give the contractor the right or power to control the closing agent – or the OIG believes that MCB persons are lying when they make these clear statements repeatedly. If OIG doubted the veracity of MCB’s statements, all they needed to do was to question HUD personnel as to their interpretation of the M&M contractor duties with respect to the closing agent that is under contract to HUD and not with the M&M contractor. Any minimal effort would have uncovered the fact that HUD cannot credibly dispute that the relationship between the closing agent in Michigan and the impact that HUD’s closing agents’ capacity has had on the process of closing HUD homes during the HUD M&M Contract.

OIG ALLEGATION:

“MCB did not ensure that city presale inspections and paint stabilizations were requested in a timely manner.”

OIG AUDIT REPORT, page 6.

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MCB RESPONSE. As addressed earlier, the city inspection and LBP processes were never something that MCB could alone control. The city inspections were the required duty of the closing agent, and were later taken over by the M&M at the demand of HUD due to the failure to perform the function on the part of the closing agent. Any delays alleged to be caused by MCB with respect to LBP processes must also consider – on a case by case basis -- the effect of the frequently slow responses from the agency for required permissions, and must consider whether there was adequate service being provided by the lead contractors that were under contract with

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HUD during the relevant period. Absent this consideration, no clear finding of fault can be made on the part of MCB.

OIG ALLEGATION:

“MCB did not effectively monitor closing agents.”

OIG AUDIT REPORT, pages 7-8.

MCB RESPONSE. MCB’s effective performance of its role in “monitoring the closing agent” is well documented. What is not documented is any evidence that the agency did what it could do to address the shortcomings of its own HUD closing agent when MCB informed HUD of the delays, added costs and failed closing process.

OIG ALLEGATION:

“Delays in closing sales of HUD homes resulted in buyer’s cancelling sales contracts.”

OIG AUDIT REPORT, page 9.

Comment 32

MCB RESPONSE. Again, the specific delays cited by the OIG improperly blamed MCB for the contract cancellations resulting from the inability of the purchaser to obtain financing and from failures on the part of the closing agent, whom MCB could not control. Where HUD or its contractors contributed to delays, MCB could not be found legally responsible.

OIG ALLEGATION:

“MCB failed to appropriately manage the sales of HUD homes. For 18 closing files, the buyers cancelled the sales due to closing delays.

Specifically, of the 18 files,

- *The sales for nine homes were cancelled because the sales contracts expired due to delays in closing the sales of the homes.*
- *The sales for five homes were cancelled due to delays in requesting city presale inspections or lead-based paint stabilizations. For two of the five cancelled sales (case numbers 263-335607 and 262-151588), the homes were later resold for lesser amounts, thus HUD lost more than \$47,000 in potential proceeds.*
- *The sales for three homes were cancelled due to changes in the property condition. Specifically, the homes remained vacant for days awaiting presale inspections or lead-based paint stabilization services. Therefore the homes were subjected to vandalism.*

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- *The sale for one home was cancelled; however, the reason for its cancellation was not disclosed in the file.”*

OIG AUDIT REPORT, page 9.

There is no evidence that all of the cited cancellations were due to any fault on the part of MCB. First, the two specific FHA files mentioned above, involved contract cancellations that resulted from the buyers being unable to obtain financing, as described earlier in this response. Lender delays and lender refusals to issue financing on one house or another can never be blamed on MCB and is part of the risk that MCB runs by agreeing to perform this contract.

The reference to sales that are cancelled due to property condition do not automatically equate to fault on the part of the M&M contractor, even where there was vandalism. All HUD homes are standing vacant while they are being managed and marketed for sale. All HUD homes, therefore, are at risk for vandalism every single day – it has nothing whatsoever to do with them being vacant pending presale inspections and lead based paint inspections. There are a certain number of HUD homes in Michigan that are vandalized every single day -- regardless of their status -- and vandalism is remedied routinely in the course of this contract, and mostly at MCB’s expense.

Comment 33

As stated repeatedly in this response, many sales were lost in the course of this contract due to the failure of the closing agent to timely perform their duties under their HUD contract. Because MCB could “monitor” but not control the closing agent’s performance, it cannot be held responsible for cases that were cancelled due to the closing agent’s failure to perform.

Comment 34

Finally, buyers of HUD homes frequently cancel sales contracts because of property condition issues not having to do with vandalism. HUD homes, by definition, are usually offered at a good price because they are sold in “as-is” condition. This is the requirement of the HUD M&M contract. When the buyers have a property inspection after signing the sales agreement, sometimes they change their mind about buying the home. In other cases, the buyers finds another home on the market that he likes better, and he states that he is cancelling due to property condition reasons because using that excuse will allow him to get his deposit returned. Because this happens so frequently, and because the real reasons can never be verified, the reasons buyers give when they cancel a contract is never presumed to be 100% accurate.

In short, there are a multitude of reasons that sales contracts get cancelled, and for that reason, it is impossible for the OIG to conclude, based on the data provided above that all of the cancellations cited were due to fault or negligence on the part of MCB.

OIG ALLEGATION:

“MCB lacked adequate procedures and controls to ensure that it complied with its contract.”

OIG AUDIT REPORT, page 9.

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MCB RESPONSE. As described earlier, if MCB lacked sufficient procedures and controls, that problem was solved long before the OIG began this audit. And, significantly, when HUD agreed, in June, 2009, that MCB had satisfactorily improved its processes and procedures, HUD acknowledged that some of the changes that were put in place to address performance issues having to do with the overall M&M process – not just the tasks that MCB is responsible for completing. For instance, MCB was forced to add additional systems and processes to its management flow as a result of the frequent capacity problems involving the closing agents, and to address issues bearing on the fact that the HUD lead contractor was under a stop work order for some period of this contract. Were those two HUD contractors doing their job adequately, some of these controls and systems would not have been necessary. Moreover, as stated earlier, the efficacy of MCB’s procedures and systems is evidenced by its record of HUD home management and sales, particularly MCB’s continued success in selling and closing a quantity of homes that far exceeds the number of homes added to MCB’s inventory each month.

OIG ALLEGATION:

“It relied on the closing agents to order city presale inspections without monitoring the process to ensure that it was performed efficiently.”

OIG AUDIT REPORT, page 9.

Comment 36

MCB RESPONSE. As explained above, the HUD Closing Agent Contract required the closing agent to handle this process for the initial period of the Michigan M&M Contract. As such, it was contractually appropriate for MCB to rely on the HUD closing agent to do its job. When the process proved too much for the small closing agent company, MCB took over the task, without HUD making a change to the terms of the closing agent contract that was being altered by that instruction, and without modifying MCB’s contract to add that duty.

OIG ALLEGATION:

“Additionally, instead of trying to assist the closing agents in resolving issues with closing sales of HUD homes, MCB continued to grant requests for extensions to the closing dates identified on the sales contracts without sufficient justification.”

OIG AUDIT REPORT, page 9.

Comment 37

MCB RESPONSE. This is simply not accurate. MCB did everything within its power to help the closing agent do its job and to help HUD when the closing agent would not do its job. MCB realized the closing agent had insufficient phone lines and refused to increase their equipment to handle the call volume, so MCB began issuing status reports via email to cut down on the calls. The HUD closing agent only had one fax line to receive closing documents for thousands of closings, so MCB – at its own expense – began to personally hand deliver the closing documents to Custom Closing on a daily basis.

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When HUD realized that it had an extreme backlog of closings, and asked MCB for suggestions, MCB recruited short-term closing agent help from the private sector and put them in touch with HUD. HUD decided not to act. When HUD decided to address the closing agent not getting their work done, by pushing some of the work over to the M&M contractor without a contract amendment, MCB did not fight the move or request extra funds. When the closing agent picked up city inspections after HUD ordered them to stop, MCB ordered new ones. When the closing agent lost the city inspections they had in their files, MCB paid to order new ones. When the closing agent could not get their documents together for a closing, MCB gave them extra copies from MCB's files. MCB bore the brunt of the closing agents' incapability while HUD failed to address the problem. It is simply not credible that MCB did not do everything it could and more to "assist the closing agent."

OIG ALLEGATION:

"Further, MCB did not maintain a tracking system to monitor the status of the requests it submitted to (1) the various cities in Michigan for presale inspections, (2) HUD, or (3) the contractor approved by HUD to provide lead-based paint stabilization services. However, as of June 2009, MCB had assumed the sole responsibility for ordering city presale inspections and created a system to monitor and track this process."

OIG AUDIT REPORT, pages 9-10.

MCB RESPONSE. A tracking system was maintained during the period when it was clear that the M&M contractor, rather than the closing agent, was being required to handle the city inspections. This requirement was never removed from the closing agent contract and the M&M contractor was expected to take over the function by default. The closing agent under the M&M I and M&M II programs was expected to obtain these city presale inspections. The previous failed contractor to MCB was never expected to take on the presale inspections. MCB is still scratching their heads as to why this duty was shifted to them without modification to either the closing agent or M&M contracts.

OIG ALLEGATION:

"Nonetheless, it still had difficulties in coordinating the closing activities with the closing agents to ensure that sales of HUD homes occurred by the date specified on the sales contracts. Additionally MCB did not report closing delays to HUD because it believed that since the closing dates identified in the sales contracts had been extended, the closings were not stalled."

OIG AUDIT REPORT, pages 9-10.

MCB RESPONSE. OIG's statement of MCB's processes of dealing with closing agent delays is neither accurate nor complete. MCB had no difficulties "coordinating the closing activities" except to the extent of the closing agent's ability to actually do its job. The nearly constant troubles of one type or another in getting the closing agent to close cases timely was the subject

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of daily communications with HUD, and HUD was well aware of the capacity and capability problems of Custom Closing. When HUD brought on the second closing agent contractor, the two companies together could not handle the volume of closings resulting from robust HUD home sales, and the backlog created by HUD's many month delay in bringing on the second closing agent took many months to resolve. MCB extended sales closing dates anytime the buyers desired the closing be extended, and wherever MCB received assurances that the closing agent would finally get around to closing the file.

MCB was in an untenable position: in multiple cases, MCB had a buyer, ready, willing and able to buy the home, and HUD's closing agent was unable to handle the work timely. If MCB cancelled the sale, the same buyer would simply rebid on the property at an even lower price, and the case file would go back into line to be closed along with all the other unclosed cases. Any critique that MCB should not have extended the closings is misplaced. The closing agent was required to process the applications for contract extensions, and when requested to extend a contract, MCB agreed when it was reasonable under the circumstances. There were no good options available to MCB in this contract. If MCB refused to grant the extension, it had to sell the property again and face the same result. When it approved extension requests, it is the subject of OIG criticism. MCB should not have been forced to maintain these properties when the closing agent was clearly incapable of keeping up with the closing volume. MCB reported all delays to HUD, and it did so via email, telephone calls, and SAMS reports. There is no credible argument that any problem existed with the closing agent that HUD was unaware of. HUD simply did not take steps to address the problem adequately.

OIG ALLEGATION:

"As a result of MCB's failure to properly manage sales of HUD homes and oversee the closing agents, HUD incurred an additional \$1 million plus in holding costs to maintain the homes in its inventory and lost the opportunity to receive more than \$47,000 in proceeds as buyers cancelled their sales contracts due to closing delays."

OIG AUDIT REPORT, pages 9-10.

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There is simply no evidence to support this allegation. MCB did not "fail to properly manage sales of HUD homes" and OIG has made allegations, but there exists no supporting data or documentation that supports this statement. MCB successfully oversaw the closing agent, but oversight and monitoring and reporting to HUD what was overseen was not enough to get the HUD closing agent to do its job. The OIG is well aware of the closing agent's troubles, as documented in the OIG audit referenced earlier.

More importantly, there is no causal connection established between the unsupported allegations that MCB failed to properly manage sales and oversee the closing agent and any claim that HUD incurred additional holding costs. There are no proven costs that HUD incurred beyond what HUD paid under the HUD M&M contract terms. MCB did their job – and in cases where the properties could not be sold and closed timely due to the actions or inactions of HUD and HUD's closing agent, MCB was forced to do their job in managing and selling many of these properties

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more than once. The additional costs of the added work for MCB were all borne – so far – by MCB alone and could form the basis for a valid claim for delay, disruption and breach of contract on the part of HUD.

OIG ALLEGATION:

“MCB reduced the number of delayed home sales closings. Of the 14,832 homes that were sold during our audit selection period, 1,463 (10 percent) took more than 90 days to close. However, as of March 1, 2010, we determined, based on reviewing the data in HUD’s Single Family Asset Management system, that MCB reduced the number of delayed closing on the sales of HUD homes by 50 percent. Therefore, we estimated the potential additional holding costs over the remainder of the contract, August 31, 2010 would approximately \$101,752 unless more improvements are made (see the Scope and Methodology section). When MCB’s current contract expires on August 31, 2010, it will no longer manage and market HUD homes for sale.”

OIG AUDIT REPORT, page 10.

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There is no basis for the OIG to presume that sales taking more than 90 days to close can be blamed on MCB without considering the capacity of the closing agent, the performance record of the closing agent, the market conditions for home loans, and the pace at which lenders process and approve home loans to finance these sales. To the extent that the time it takes to close a HUD home sale depends more on these forces – all of which are outside the control of MCB – they must be taken into account before MCB can simply be blamed for sales that OIG deems to be “delayed.” Any home sale that is deemed “delayed” without accounting for these factors is insufficient to form the basis for any adverse audit finding about MCB’s performance capability or record.

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There is no legal basis for the relief recommended by OIG. The courts and forums that decide government contracts cases have long ago settled the issue of damages claimed by the government where the allegations are made by one with “unclean hands.” The unclean hands doctrine “closes the door of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief.” *ABF Freight System, Inc. v. NLRB*, 510 U.S. 317, 329 (1994).

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In this case, there is absolutely no evidence that MCB failed to inform HUD concerning the closing agent capacity and capability issues. In fact, HUD was so aware of the issue that it spent the better part of a year thinking about various answers to the problem, all while MCB bore the expense of the costs of managing property that the closing agent could not get closed on time. Moreover, there is no basis to lay all delays stemming from problems with city inspections at the feet of MCB when the responsibility for city inspections was included in the contractual duties of the HUD closing agent. This was the subject of debate and even when HUD ordered Custom

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Closings to cease performing this function as it was being done so badly, HUD did not enforce that instruction and chaos ensued.

Finally, HUD, or their LEC contractor, played a role in the delays related to the lead based paint process in that there were delays in the LEC uploading reports, HUD let the LEC contract expire with no replacement for MCB to use, and HUD itself caused some delays in approvals on lead based paint stabilization requests from MCB. Though MCB could have executed some of the cases quicker, many times MCB was stymied by the failure of the government to timely issue approvals and documentation.

It defies belief that these issues were even brought to the OIG, or that HUD would contend that these issues had not all been settled because they were debated at length and many systemic changes were made to satisfy HUD during the course of the cure notice action in this contract, which was lifted in June, 2009. Following the lifting of that cure notice, the contract expired, and HUD acted with dispatch to negotiate terms of an entirely new contract for the same services with MCB. If MCB were doing such an awful job, it was incumbent on the agency to reprocure the requirement rather than simply negotiate new terms with MCB. HUD did not reprocure because it knew then what it knew the day that HUD awarded the MCM contract to MCB in 2010: MCB is the only company among the roster of HUD M&M prime contractors that had the capacity and skills to proficiently clear the backlog of more than 7,000 HUD homes in Michigan as a result of HUD's previous failed contractor in Michigan.

There is no issue or contract administration problem that HUD encountered in Michigan that was not brought to HUD's attention first by MCB. The fact that HUD ultimately hired another closing agent after months of complaints and an OIG audit is evidence that HUD was aware of the problems. There are hundreds of emails and communications between the parties discussing the logistics of dealing with the resulting backlog of closing cases in Michigan and virtually no legal basis to try to blame MCB for any delays in closings or mythical holding costs.

The government's slow response to adding an additional closing agent is only one instance where the government contributed to delays in closing many HUD home sales, and it was the chief culprit in the cancellation of many of these deals. Thus, the government does not have "clean hands" with respect to this allegation and there is no basis for recovery against MCB.

It simply defies belief that problems resulting in closing delays or cancelled sales were either unknown to HUD or solely the fault of MCB. The record does not support this allegation, and the law will not allow the government agency to "pretend to be an innocent bystander when it possesses knowledge enough to protect itself from harm and damages" and still does nothing in a timely fashion. *American Telephone & Telegraph Company and Lucent Technologies, Inc., v. U.S.*, CAFC Nos. 95-5153,-5154, May 26, 1999.

Moreover, having presented no reasonable method of approximating actual damages to the agency as a result of contractor-caused delay, the government has failed to sustain its burden of proof that damages would ever be owed even if MCB were shown to be at fault. *Armed Services Board of Contract Appeals, Appeal of Job Options, Inc.*, ASBCA No. 56698, 2002. Even if such

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a showing could be made, the doctrine of unclean hands would bar any recovery by HUD in this contract.

There is “an implied provision of every contract, whether it be one between individuals or between an individual and the [g]overnment, that neither party to the contract will do anything to prevent performance thereof by the other party or that will hinder or delay him in its performance.” *George A. Fuller Co. v. United States*, 69 F. Supp. 409, 411 (Ct. Cl. 1947); *see also Restatement (Second) of Contracts* § 205, at 99 (1981). In this case, MCB alleges that HUD has “breached its duty of good faith and fair dealing by the delays, decisions and actions in this contract that led to delays or increased costs to MCB.

From the discussion above, it is clear that the HUD M&M Program is a complex web of interconnected contractors and requirements and market forces that all must work together for a HUD home to be sold and closed and removed from the HUD inventory. There is a lot of estimation and guesswork built into the models and guidelines for how this should happen and how long it should take. That is why the agency decided to use a performance-based contracting approach when procuring these services. Neither the HUD M&M contract nor the HUD closing agent contracts have remained consistent or even clear for the duration of the period of performance covered by the OIG audit, and the requirements of the agency have shifted as dramatically as the regional economic climates have across the United States during the past 6 years. There is a lot of imperfection built into the system when agencies and contractors and contractors are trying to work together and when the hopes and dreams that each will do their job are affected by their power and authority to control the forces at play in the complex market for HUD homes.

In the audit, the OIG made no valid causal connection between the data analyzed and the OIG findings blaming MCB for cancelled sales and delayed sales, and in several instances, the OIG had the data (or at least knowledge of the existence of additional data) that would have rebutted their findings. Because of the OIG’s prior audit, it had knowledge of the closing agent troubles in this same HUD M&M contract. And the large body of evidence that the closing agent could not do its job, particularly given the volume in this contract was not a secret to HUD or the OIG during this contract and during this audit. When the OIG did not consider outside factors -- such as the capacity to perform of the HUD closing agent, or HUD’s management of that situation, it failed to adequately assess the facts that form the basis for their findings. These and other contravening events and facts that implicated fault on the part of HUD, 3rd party HUD contractors or market forces, like the availability of lender financing, are all clearly outside of MCB’s control, and should have been considered with respect to any fact that was impacted thereby. And, while MCB never claims to be perfect, it is grossly unfair for OIG to simply blame MCB for situations where there were factors at play that contributed to the perceived delays in selling HUD homes and those factors were not considered. An audit finding can hardly be deemed accurate when it fails to consider all factors critical to a problem.

Where MCB’s operation has needed improvements in process or technology, it was quick to make the needed investments and effort to improve. It is questionable if that can be said of the closing agent and the HUD program personnel with whom MCB has to interact with daily to successfully perform. Thus, unless the OIG can point to specific areas of material contract

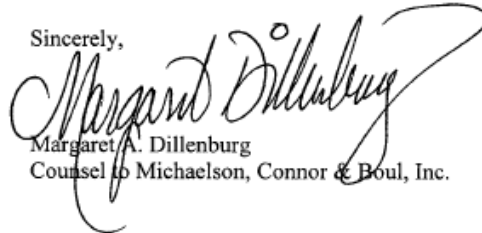
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default by MCB, where no outside force or HUD-caused delay or bad decision was at play, there is no room to blame MCB for periodic shortcomings in the performance of a few of the thousands of tasks this contract requires. MCB's success in managing the sales of HUD homes is evidenced by its record of having sold 127% of the incoming inventory during the period of this audit and in the worst economic downturn that the state of Michigan has ever experienced.

If there are additional questions pertaining to MCB's comments on the OIG Report, we would be happy to address them. If not, we respectfully request that the OIG revise the audit report in accord with the comments provided herein.

Sincerely,



Margaret A. Dillenburg
Counsel to Michaelson, Connor & Boul, Inc.

CC:

Joan Heid, Michaelson, Connor & Boul, Inc.
Vicki Bott, HUD
Craig Karnes, HUD

OIG Evaluation of Auditee Comments

Comment 1 The audit addressed MCB's awarding of HUD homes to the winning bidder and its oversight of the closing agents to ensure that sales of HUD homes closed in a timely manner. However, the discussion draft audit report only reported on MCB's oversight of the closing on the sales of HUD homes due to the deficiencies identified in this process. Therefore, we adjusted the audit report to clearly distinguish that the audit focused only on this performance aspect of MCB's contract. The role of HUD and non-HUD contractors was identified in the background section of the report, and considered during the audit only when determining the entity(s) that were responsible for delays in closing sales of HUD homes. Although outside influences may have contributed to delays in closing sales of HUD homes, we only cited deficiencies in which MCB did not act in a timely manner to ensure that the sales of HUD homes closed within the timeframes specified in buyers' sales contracts.

Further, in conducting the audit, we excluded outside factors that contributed to closing delays that were not under MCB's authority or control. Therefore, we considered the roles other entities played in causing closing delays for every HUD home identified in this audit report. The audit focused on MCB's compliance with its contract.

Comment 2 As mentioned in comment 1, the discussion draft audit report focused on the actual sales and closings of HUD homes. We agree that MCB's contract with HUD entails many other aspects as a management and marketing contractor. However, this audit focused on the area, which disclosed indicators of potential noncompliance as indicated by a backlog of homes that were sold, but did not close in accordance with HUD's requirements. For instance, during our review, of the 12,899 sales of HUD homes that closed during our audit period, more than 29 percent (3,793) exceeded HUD's 60-day requirement. However, this report only discussed the homes that were sold in excess of 90 days, which was 10 percent (1,323) of the 12,899 sales. Therefore, a rate of nearly 30 percent indicated that there were problems with the closing on the sales of HUD homes, which is a performance measurement under MCB's contract. According to MCB, it sold 13,855 homes during the period (this number differed from the number identified in the audit report); however, it did not provide the number of homes that was in its inventory at the time to support its assertion of its 127 percent success rate. Nonetheless, we adjusted the audit report to clearly identify the area of MCB's contract that was reviewed.

Comment 3 As mentioned in comment 1, we excluded outside factors that contributed to delays in closing the sales of HUD homes that were not under MCB's authority or control. Therefore, we considered the roles other entity(s) in causing closing delays for every HUD home identified in this audit report. Our discussion draft audit report addressed MCB's delays in performing actions, such as (1) ordering lead paint inspections and lead-based paint abatements, (2) initiating requests for

documents, (3) ordering presale inspections, (4) approving unjustified requests for extension to the closing dates in the sales contracts, (5) requesting approval from HUD when required, and (6) reporting delays in closing on the sales of HUD homes to HUD as required under its contract. These delays were not the result of waiting on actions by another party as indicated by MCB, since a number of the actions identified in this audit report were initiated by MCB and/or required under its contract.

- Comment 4** The review period covered by this audit report was for sales contracts ratified between July 1, 2008, and October 23, 2009. We specifically excluded the HUD homes that were managed by the previous marketing and management contractor and/or any delayed actions that were the result of the previous management and marketing contractor. Additionally, as mentioned in the Scope and Methodology section of this audit report, we removed all property transactions that occurred before and during MCB's transition period or did not result in a delayed sale because of MCB. MCB provided exhibit A, which was electronic mail correspondence between MCB and a lead-based paint contractor. However, the home or homes that were impacted by this correspondence were not specified/identified. Further, if MCB provided documentation that clearly demonstrated that it was actively trying to correct the problems and the homes were identified, these homes and any related actions by MCB were not identified as being a performance deficiency of MCB; thus, they were excluded from this report.
- Comment 5** As previously mentioned in comments 1, 2, and 3, our discussion draft audit report only reported on delays in closing sales of HUD homes as a result of MCB. If another entity contributed to the delays, we excluded the home(s) or excluded the days that elapsed due to delays of another entity. MCB provided exhibits B, C, and D (exhibit A was discussed in comment 4) as evidence of outside factors that contributed to closing delays. However, exhibits B and C do not identify the home or homes that were impacted. Additionally, the home identified in the correspondence provided by MCB as exhibit D was not identified in this audit report. Further, the correspondence, dated September 4, 2009, referred to by MCB, is an e-mail from HUD about a stop work order to a HUD lead-based paint contractor. However, the same e-mail also authorized MCB to obtain the required services from other qualified entities. As previously mentioned, our discussion draft audit report only reported on the delays of MCB that were not the result of others. Therefore, we did not include the time that elapsed due to the nonperformance of others, except when MCB failed to follow-up with HUD's contractors to ensure that the lead-based paint abatement was performed within a reasonable timeframe. However, for a number of the lead based paint abatements, MCB did not initiate the required actions to procure the services of lead-based paint contractors after it received approval from HUD in a timely manner.
- Comment 6** HUD's closing agents have specific requirements in their contracts for obtaining city presale inspections as discussed in this audit report. Additionally, MCB's

contract required it to coordinate the closing activities and oversee HUD's closing agents. Therefore, if MCB identified concerns with closings on sales of HUD homes, these specific cases should have been reported to HUD as required under its contract. However, MCB did not report the delayed closings identified in this audit report to HUD. Additionally, MCB's contract gives it the authority to approve requests for extensions to the closing dates identified in the sales contracts from the closing agents. Therefore, although HUD may have been aware of performance issues related to the closing agents, as discussed in our discussion draft audit report, MCB repeatedly approved requests for closing extensions that did not justify why the sale could not be closed without delays and that closings would be imminent. Additionally, since MCB approved the extension requests, it did not report the delayed closings on its monthly closing agent deficiency reports to HUD. Although the closing agent is not a sub-contractor of MCB, under its contract, MCB was required to coordinate with the closing agents and report each problem with closing sales of HUD homes to HUD.

Comment 7 As mentioned in comments 3 and 6, we excluded outside factors that contributed to closing delays that were not under MCB's authority or control. Additionally, this audit report identified delays in closing the sales of HUD homes that were caused by MCB's or the closing agents' delays with ordering city pre-sale inspections. We considered the actions of the closing agent because MCB's contract required it to monitor the closing agents to ensure sales of HUD homes closed in a timely manner. Further, MCB continued to approve unjustified requests for extensions to buyers' sales contracts, for the purchase of HUD homes, from the closing agents due to city pre-sale inspections and did not report these delays to HUD. MCB contends that it took weeks to get city pre-sale inspections performed and certificates issued even when the inspections were ordered early in the sales process by the closing agents or others. This report addressed the time it took for MCB and/or the closing agents to order the pre-sale inspections. The time it took for the pre-sale inspections were identified in this report only because MCB was unable to provide documentation to determine whether it or the closing agents requested the inspections in a timely manner.

Comment 8 As mentioned in comment 6 and in reviewing exhibit F provided by MCB, we agree that MCB notified HUD of some closing issues with the closing agents, and HUD was aware of some particular cases. However, as mentioned in this audit report, MCB contributed to the delays in closing sales of HUD homes by continuing to grant requests for extensions to the closing dates identified in the sales contracts that were not justified, and without reporting these delayed closings on the closing agent deficiency reports to HUD as required under its contract. As part of this exhibit, MCB provided an e-mail from HUD, which specifically stated that if MCB receives an extension request that is incorrect, it should not be approved. For instance, if lead-based paint is annotated on the extension as the reason for the request but the lead-based paint was cleared a month prior, the extension request is not in compliance with HUD's program.

Further, MCB contends that HUD told it to stop reporting certain issues with the closing agent to HUD. However, in reviewing the response from HUD to MCB, it did not indicate that HUD instructed MCB to stop reporting any issues on the closing agent deficiency reports. Instead, according to the documentation, HUD informed MCB to stop reporting issues related to extensions requested by buyers for which extension fees were already collected. Further, we did not evaluate exhibit G, which was MCB's proposal to HUD for closing agent services in Michigan, since it was out of the scope of its contract requirements and, thus, not addressed in this audit report.

Comment 9 We acknowledge that HUD provided us with the estimated holding costs per quarter, along with the components that makes up this cost. We also acknowledge that we used the data obtained from HUD to compute the average holding cost amount for the State of Michigan. However, the amounts or costs that comprised these quarterly estimates were reviewed by us and documented in our audit workpapers before issuing our discussion draft report to MCB. However, at the exit conference, the supporting data was not readily available to provide the requested information. We provided an example of some of the expenses that comprised the estimate. However, as mentioned during the conference with MCB, we would provide a breakdown of the costs after a discussion with HUD's staff, who participated in the exit conference. However, this recommendation, including the amount identified as the holding costs, was provided to MCB previously in communication e-mails with MCB and our draft finding outline. Therefore, MCB had opportunities to inquire about the cost with us before the exit conference. Additionally, as acknowledged by MCB during the same conference, it uses the holding cost figure itself in its operations; however, it never fully understood what made up the cost. Further, for reporting purposes, we used the data to estimate the potential loss but did not use the data in the finding or the recommendations as money to be repaid to HUD since it is an estimated cost. However, we modified the wording in our audit report and finding to state that the estimate for the holding cost is an estimated loss to HUD and MCB, since HUD also incurs costs associated with delays in closing sales of HUD homes.

Comment 10 We disagree with MCB's assertion that the cancellation of the two sales we cited was due to market conditions and lender denial and was not under MCB's control. For case number 263-335607, we noted that the sale that occurred on July 18, 2008, was cancelled by the lender on October 28, 2008, due to the property's lead-based paint issues were still not addressed. After the sale was cancelled, MCB approved three more requests from the closing agent to extend the closing date. Consequently, MCB did not relist this property for sale until December 5, 2008. Additionally, MCB did not provide documentation to support its assertions that this contract for the property was cancelled due to the borrower's inability to obtain financing.

Additionally, for case number 262-151588, MCB's closing file did not show when the well/septic inspection was ordered, but it was obtained 114 days after

the second sale of this property. MCB did not keep track of the date it ordered the inspection. The first sale was cancelled 337 days after the sale due to delays with the well/septic inspection. According to MCB's contract, it must ensure that sales close within the dates specified in the sales contract. However, MCB did not keep track of the date on which the inspection was ordered to ensure a timely closing. Further, MCB did not provide documentation to support its assertion that the contract was cancelled because the borrower could not obtain a home loan.

The losses to HUD, cited for these two sales, were calculated as the difference in estimated net proceeds between the original sales price and the lower subsequent sale. Holding costs were not used to calculate this loss. In both of these cases, the documentation provided to us by MCB disclosed that MCB did not act in a timely manner to order the required inspections or procure the services to abate the properties. Further, in determining the number of days it took for required actions to be performed, we did not include the time it took the contractors to perform the services. We only determined the number of days it took MCB to act.

Therefore, the homes cited in this audit report only identified the delayed actions of MCB to perform the required duties under its contract. If outside factors or entities contributed to the delays, we did not count the number of days that elapsed as contributable to MCB.

Comment 11 As mentioned in comment 9, we consulted with HUD on numerous occasions regarding estimated holding cost figures. Therefore, the estimate was reviewed. However, since the number is an estimated figure, it is not practical to attribute the actual costs for HUD and MCB. We adjusted our report to state that the estimated holding costs are estimated costs to both MCB and HUD. The estimated holding costs amount is not a cost to be repaid to HUD. It is an estimated amount of the costs incurred by both parties to maintain homes in HUD's inventory for extended periods. As mentioned in comments 1, 3, and 5, we only reported deficiencies in which MCB was responsible. If another entity contributed to the closing delays, we did not cite MCB for the days that elapsed due to the other entity(s). Although MCB's contract does not include a provision for liquidated damages, to pursue collection from a management and marketing contractor due to negligence is a viable option of HUD. Additionally, whether or not HUD acted quickly to add more closing agents in Michigan does not negate MCB's responsibilities under its contract. It still was required to approve extensions only when reasons were justified and closings were imminent and report unjustified delayed closings to HUD. Therefore, the losses cited for the two cancelled and resold properties were caused by MCB's delay in performing needed actions; therefore, it is appropriate for HUD to recover the losses.

Comment 12 The discussion draft audit report acknowledged that MCB had reduced the number of late closings by 50 percent. Although the number of delayed closings on the sales of HUD homes was significantly reduced, MCB, even with the

implementation of its additional systems and processes, did not always order presale inspections in a timely manner when it initiated this process as disclosed in this audit report. It also continued to approve requests from the closing agents to extend the closings on the sales of HUD homes without sufficient justification during the audit period of July 2008 to October 2009. This period addressed home sales that occurred before and after HUD issued MCB a Cure Notice. According to MCB, HUD lifted the Cure Notice in June 2009. However, we identified deficiencies with MCB's oversight of the closings on the sales of HUD homes that occurred after the notice was lifted. Additionally, since MCB approved requests for extensions to home sales contracts, it did not report the delayed closings to HUD as a closing agent-caused defect as required under its contract. Therefore, as mentioned in this report, although MCB made improvements, more were needed.

Comment 13 This audit report included a recommendation to HUD that would aid it in overseeing and monitoring marketing and management contractors for compliance with their contract. Additionally, as mentioned in comment 6, HUD's closing agents have specific requirements in their contracts for obtaining city presale inspections. However, MCB's contract required it to coordinate the closing activities and oversee HUD's closing agents. Further, as mentioned in comment 5, this audit report only reported on the delays of MCB that were not the result of others. Therefore, we did not include the time that elapsed due to the performance of others, except when MCB did not follow-up with HUD's contractors to ensure that homes with lead-based paint were abated in a reasonable timeframe. However, for a number of lead-based paint abatements, MCB did not initiate required actions to procure the services of lead-based paint contractors after it received approval from HUD in a timely manner.

Comment 14 Although MCB may or may not have authority to "fix the problems" that it notices during its oversight; however, under its contract, MCB is responsible to coordinate with the closing agents and report delayed sales closings to HUD that were due to the closing agent(s), and report delayed closings on the sales of HUD homes to HUD.

Comment 15 This audit addressed MCB's compliance with its contract and excluded outside factors that resulted in delays in closing sales of HUD homes that were not under MCB's control or caused by other entity(s). The audit considered the roles other entities played in causing delays with the sale for each HUD home identified in this audit report. However, reviewing the capacity of the closing agent to perform under its contract was not a factor in this audit. Had MCB reported delays in closing the sales of HUD homes to HUD as required under its contract due to the closing agent(s) or other entities, we would have excluded the properties from this audit report since MCB performed its contractual duties.

- Comment 16** As mentioned in comments 1 and 2, we adjusted our audit report to specifically identify the area of focus for this audit, which was MCB's coordination and oversight of the closings on the sales of HUD homes.
- Comment 17** We provided the information about MCB's new upcoming contract and the ending of its current contract as background information only. Our review did not include the content of the new M&M III contracts, which were effective after August 31, 2010.
- Comment 18** We agree and adjusted this report accordingly.
- Comment 19** MCB alleged that it is not allowed or required or even authorized to step in a take steps to remedy the closing agent's problems, which is HUD's responsibility. As previously mentioned in comment 14, under MCB's contract, it is responsible to coordinate with the closing agents and report delayed sales closings to HUD that were caused by the agents. Also, it is required to ensure that sales of HUD homes close in a timely manner. Had MCB reported the delayed closings to HUD as required, the homes that were identified as delayed due to the closing agents would have been excluded from this audit report.
- Comment 20** As mentioned in comment 10, the loss to HUD for the two homes that were sold totaled more than \$47,000. We determined this amount by subtracting the difference in the net proceeds between the original sales contract price and the lower subsequent sale. Estimated holding costs were not used to calculate this loss. Additionally, the sales of the two homes were cancelled by the buyers due to delays with closings. Further, documentation in the buyers' closing files disclosed that MCB was the main contributor to the delays.
- Comment 21** As mentioned in comment 9, the estimated holding costs are incurred by both HUD and MCB. Although the contractor bears responsibility for some of the fees associated with managing HUD homes, HUD also shares in these costs. HUD is responsible for the taxes, etc., and the costs incurred to repair vacant homes. HUD also incurs losses if it has to reduce the homes' selling prices due to vandalism. These are examples of the costs that are paid by HUD. Therefore, HUD's risk is increased the longer homes remain in its inventory.
- Comment 22** This audit report does not recommend that MCB reimburse HUD for holding costs. As mentioned in comment 20, the loss amount was calculated based on the difference between the net proceeds that HUD would have received between the original sale and what HUD actually received in the subsequent sale due to the cancellation of the original sale. Additionally, as mentioned in comment 9, this recommendation, including the amount identified as the total holding cost, was provided to MCB previously in a number of communication e-mails and in our draft finding outline. Therefore, MCB had opportunities to inquire about the components of the holding cost with us prior to the exit conference. Further, we

used the estimated holding cost for reporting purposes only. We did not use this estimate to determine the potential loss to HUD.

Comment 23 See comments 9, 10, 11, 20, and 22.

Comment 24 As previously mentioned in comment 19, under MCB's contract, it is responsible to coordinate with the closing agents and report delayed sales closings to HUD that were caused by the closing agents. Also, it is required to ensure that sales of HUD homes close in a timely manner. Had MCB reported the delayed closings to HUD as required, the homes that were identified as delayed due to the closing agents would have been excluded from this audit report.

Comment 25 As previously mentioned in comment 8 and in reviewing exhibit F provided by MCB, we do not disagree that MCB notified HUD of some closing issues with the closing agents and HUD was aware of some particular cases. However, as mentioned in this audit report, MCB contributed to the delays in closing sales of HUD homes by continuing to grant requests for extensions to the closing dates identified in the sales contracts that were not justified and without reporting these delayed closings on the closing agent deficiency reports to HUD as required under its contract. As part of exhibit F, MCB provided an e-mail from HUD, which specifically stated that if MCB receives an extension request that is incorrect, it should not be approved. For instance, if lead-based paint is annotated on the extension as the reason for the request but the lead-based paint was cleared a month prior, the extension request is not in compliance with HUD's program. Additionally, as mentioned in comment 24, had MCB reported the delayed closings to HUD as required, the homes that were identified as delayed due to the closing agents would have been excluded from this audit report.

Comment 26 According to documentation provide by MCB and HUD, we agree that HUD instructed MCB to temporarily stop ratifying sales due to a new closing agent being added. However, our audit focused on MCB's and/or the closing agents' actions after the sales contracts were ratified.

Comment 27 This audit report addressed the sales of HUD homes that did not close in the timeframes specified in the buyers' sales contracts. We agree that there was a backlog of HUD homes waiting to close. MCB's contract required it to oversee the closing activities and provide oversight of HUD's closing agents to ensure that sales of HUD homes closed in a timely manner. However, MCB did not effectively monitor the closing agents for compliance with their contracts by failing to report deficiencies with the closing agents to HUD as required under its contract.

Comment 28 As previously mentioned in comments 1 and 15, our audit addressed MCB's compliance with its contract and excluded outside factors that resulted in delays in closing sales of HUD homes that were not under MCB's control or caused by other entity(s). We considered the role other entities played in causing delays

with the sale for each HUD home identified in this audit report. However, reviewing the capacity of the closing agent to perform under its contract was not a factor in this audit. Had MCB reported delays in closing the sales of HUD homes to HUD as required under its contract due to the closing agent(s) or other entities, we would have excluded the properties from this audit report since MCB performed its contractual duties.

Comment 29 See comments 14 and 24.

Comment 30 See comments 1, 3, 5 and 6.

Comment 31 As previously mentioned in comment 6, MCB's contract required it to monitor HUD's closing agents for fulfillment of the closing agent contracts. MCB was required to report delays in closing the sales of HUD homes to HUD and the cause for the delays.

Comment 32 See comment 10.

Comment 33 As previously mentioned in comments 6 and 31, MCB's contract requires it to monitor HUD's closing agents for fulfillment of the closing agent contracts. MCB is required to reported delays in closing the sales of HUD homes to HUD and the cause for the delays.

Comment 34 See comments 10 and 20.

Comment 35 See comment 12.

Comment 36 As previously mentioned in comment 6, HUD's closing agents have specific requirements in their contracts for obtaining city presale inspections as discussed in this audit report. Additionally, MCB's contract required it to coordinate the closing activities and oversee HUD's closing agents. Although MCB's contract did not clearly state that it should order the city presale inspections, MCB took on the responsibility and ordered a number of the inspections identified in this audit report. However, it did not always order the inspections in a timely manner. Under MCB's contract, it was required to report delays with closing sales of HUD homes that were caused by HUD's closing agents. Therefore, only the delayed home sales that were not reported to HUD as required are cited in this audit report. Additionally, under its contract, MCB was responsible for ensuring that sales of HUD homes closed within the timeframes on the sales contracts, which is 60 days.

Comment 37 As mentioned in comment 1, although outside factors may have contributed to delays in closing sales of HUD homes, we only cited deficiencies in which MCB did not act in a timely manner to ensure that the sales of HUD homes closed within the timeframes specified in buyers' sales contracts. Additionally, as discussed in comment 3, our discussion draft audit report addressed MCB's

delays in performing actions such as (1) ordering lead paint inspections and lead-based paint abatements, (2) initiating requests for documents, (3) ordering presale inspections, (4) approving unjustified requests for extension to the closing dates in the sale contracts, (5) requesting approval from HUD when required, and (6) reporting delays in closing on the sales of HUD homes to HUD as required under its contract. These delays were not the result of waiting on actions by another party as indicated by MCB since a number of the actions identified in this audit report were initiated by MCB.

Comment 38 MCB maintained that it established a tracking system when it was clear that MCB, rather than the closing agent, was required to request the city inspection. During our audit, we requested a copy of the tracking control worksheet on more than one occasion; however, MCB did not provide the control worksheet for our review. We acknowledged in our report that MCB reduced the number of delayed closings by half and that improvements occurred, but the delayed closings were still significant.

Comment 39 See comments 15 and 25.

Comment 40 MCB contends that it was in an untenable position due to the closing agent(s) failure to do its work in a timely manner. MCB indicated that it was reasonable to extend the sales contracts since if it denied the extensions, it would have to resell the properties with the same result but for less money. However, MCB did not report the delayed closing on the sales of HUD homes to HUD due to the closing agents' nonperformance as required under its contract. Instead, MCB repeatedly approved unjustified requests for extension to buyers' sales contracts. Additionally, MCB did not provide documentation to show that it reported delays in closing sales of HUD homes as required under its contract.

Comment 41 See comments 1, 3, 5, 6, and 15.

Comment 42 As previously mentioned in comments 1, 3, and 15, our audit addressed MCB's compliance with its contract and excluded outside factors that resulted in delays in closing the sales of HUD homes that were not under MCB's control. The role of HUD and non-HUD contractors was considered during the audit only when determining the entity(s) that were responsible for delays in closing sales of HUD homes. Although outside influences may have contributed to delays in closing sales of HUD homes, we only cited deficiencies in which MCB did not act in a timely manner to ensure that the sales of HUD homes closed within the timeframes specified in buyers' sales contracts. Additionally, our discussion draft audit report addressed MCB's delays in performing actions such as (1) ordering lead paint inspections and lead-based paint abatements, (2) initiating requests for documents, (3) ordering presale inspections, (4) approving unjustified requests for extension to the closing dates in the sale contracts, (5) requesting approval from HUD when required, and (6) reporting delays in closing on the sales of HUD homes to HUD as required under its contract. These delays were not the result of

waiting on actions by another party as alleged by MCB, since a number of the actions identified in this audit report were initiated by MCB.

Further, as mentioned in comment 5, if another entity contributed to the delays, we excluded the home(s) or excluded the days that elapsed due to delays of another entity. Additionally, had MCB reported deficiencies on the closing agents in closing sales of HUD homes to HUD as required under its contract, the delayed closings would have not been cited in this audit report.

Comment 43 The legal argument that HUD cannot recover its damages because HUD was aware of delays caused by third parties is one to be decided by the board that hears the Government's claim. HUD has remedies under the Contract's Disputes Act to recover damages caused by a contractor's breach of contract.

Comment 44 See comments 1, 3, 5 and 42.

Comment 45 We disagree with MCB's assertion that the cancellation of the two sales we cited were due to market conditions and lender denial and were not under MCB's control. See comment 10.

Comment 46 As previously mentioned in comment 19, under MCB's contract, it is responsible to coordinate with the closing agents and report delayed closing on the sales of HUD homes to HUD that were caused by the closing agents. Additionally, as mentioned in comment 15, our audit addressed MCB's compliance with its contract and excluded outside factors that resulted in delays in closing sales of HUD homes that were not under MCB's control or caused by other entity(s). Our audit considered the role other entities played in causing delays with the sale for each HUD home identified in this audit report. However, reviewing the capacity of the closing agent to perform under its contract was not a factor in this audit. Had MCB reported delays in closing the sales of HUD homes to HUD as required under its contract due to the closing agent(s) or other entities, we would have excluded the properties from this audit report since MCB performed its contractual duties. Also, see comments 1 and 6.

Comment 47 See comments 1, 3, 5, 6, 12, and 15.

Appendix C

FEDERAL AND CONTRACT REQUIREMENTS

HUD's Property Disposition Handbook – One for Four Family (4310.5), REV-2, chapter 11, section 11-8, states that sales shall be closed as soon as possible after execution of the sales contract. For all individual property sales, the sales contract should provide for a specific time within which the sale shall be closed. Field offices shall follow up on each sale to ensure a timely closing or a contract cancellation, as possible.

Section 11-11 of the handbook requires a closing timeframe to be established within a range of 30 to 60 days of sales contract acceptance.

Section 11-12 of the handbook states that if scheduled closing dates cannot be met, purchasers may make a written request to extend the closing date. Extensions may be granted in 15-day increments on a case-by-case basis, when extenuating circumstances preclude closing as scheduled. Standardized extension fees must be collected unless the delay is the fault of HUD or its direct endorsement lender.

MCB's contract agreement with HUD, effective February 8, 2008, section 1.1.2, states that the services to be provided are to manage, market, and sell HUD-owned single-family properties. The services include the successful oversight of HUD-designated closing agents which conduct the sales closings for HUD. One of the three primary objectives is marketing and selling the HUD-owned properties in a way that maximizes the net return to HUD and minimizes holding times for the properties.

Section 5.3.8.1.2 of the contract requires MCB to fully comply with HUD's policy for elimination of lead-based paint hazards in homes built before 1978. MCB shall order all lead-based paint inspection and elimination services.

Section 5.4.4.1.2 of the contract requires MCB to monitor HUD's closing agents for fulfillment of the closing agent contracts. MCB has to submit to HUD's government technical representative monthly reports disclosing closing agent deficiencies, late submissions, and errors resulting from closing agent error or incapacity and complaints about the closing agent's performance.

Section 5.4.4.2 of the contract states MCB shall ensure that all sales close within the time specified by the sales contracts. MCB is required to communicate with selling brokers and purchasers to ensure timely closing or a sale cancellation. MCB must give HUD's closing agents all needed sale documentation in time to ensure a timely closing.

Section 5.4.4.4 of the contract states that when a transaction will not close in the specified time, a broker or purchaser may submit, through the closing agent, a written request for an extension. Extension requests must demonstrate that a closing is imminent and must be submitted and

approved before contract expiration. The sales contracts for the properties sold by MCB provide a closing deadline of 60 days from the date the sale was ratified.

The closing agent contract with HUD, effective March 1, 2008, part C, performance work statement, states that the contractor must coordinate with the management and marketing contractor to affect the closing within the timeframe specified in the sales contract unless an extension is necessary due to circumstances outside the contractor's control.

Section C.2(1) of the contract states that to reduce the closing timeframe, the contractor will advance the inspection fees on behalf of HUD and forward the applications to the various cities within 1 day of receipt of file.

Appendix D

SCHEDULE OF HOME SALES WITH PRESALE INSPECTION DELAYS (PRESALE INSPECTION ORDER DATE KNOWN)

Count	FHA case number	Days after sale inspection ordered	Days after sale inspection received	Closing agents requested city presale inspection	MCB requested city presale inspection
1	261-846268	25	72		X
2	261-882781	28	69		X
3	263-373355	28	123		X
4	261-871380	31	90		X
5	261-856867	34	54		X
6	261-834221	37	58		X
7	261-761819	37	68		X
8	261-770452	44	70		X
9	261-778987	44	242		X
10	261-784563	47	57	X	
11	261-887818	48	58		X
12	261-865081	49	78		X
13	262-156123	50	77		X
14	261-692074	52	54		X
15	261-842882	56	110		X
16	261-879813	62	94		X
17	261-885865	67	178		X
18	261-592036	77	92		X
19	261-850457	85	88		X
20	261-905620	90	95	<u>X</u>	
21	261-899093	97	103		X
22	261-695757	98	113		X
23	261-902751	151	273		X
24	261-787790	156	292		X
25	261-879787	336	372		<u>X</u>
26	261-795671	19	62		X
27	261-892617	22	69		X
28	261-868064	18	96		X
29	262-162901	12	97		X
30	261-743090	22	58		X
	Totals	1,922	3,362	2	28

**SCHEDULE OF HOME SALES WITH PRESALE
INSPECTION DELAYS (CONT.)
(PRESALE INSPECTION ORDERED DATE UNKNOWN)**

Count	FHA case number	Days after sales contract ratified inspection requested	Days after sales contract ratified inspection received	Closing agent requested presale inspection	MCB Requested presale inspection
1	261-824547	Unknown	57		X
2	261-647640	Unknown	59	X	
3	261-867041	Unknown	60	X	
4	261-689471	Unknown	62	X	
5	261-817281	Unknown	63	X	
6	261-698704	Unknown	65	X	
7	261-901219	Unknown	71	X	
8	261-883094	Unknown	72		X
9	261-749199	Unknown	82	X	
10	262-160297	Unknown	82	X	
11	261-897769	Unknown	85	X	
12	261-888148	Unknown	89	X	
13	261-904785	Unknown	89		X
14	261-893574	Unknown	92	X	
15	261-659170	Unknown	99	X	
16	261-889927	Unknown	105	X	
17	261-753909	Unknown	162		X
18	261-900348	Unknown	173	X	
19	261-803096	Unknown	209	X	
20	261-750698	Unknown	220		X
21	261-800428	Unknown	230	X	
22	262-163233	Unknown	283		X
23	262-151588	Unknown	451	X	
Totals			<u>2,960</u>	<u>17</u>	<u>6</u>

Appendix E

SCHEDULE OF REQUESTS TO EXTEND SALES CONTRACTS' CLOSING DATES

FHA case number	Number of extensions	Number of late extension requests
261-774667	3	2
261-887414	2	1
261-883094	3	2
261-901219	3	1
261-803096	9	4
261-899093	5	1
261-647640	6	1
261-784563	4	1
261-800428	10	6
263-382645	5	2
261-763674	13	12
261-834221	5	1
261-889927	4	2
261-887527	3	2
261-881946	5	4
261-879813	5	3
261-761819	4	2
261-756582	3	3
261-905620	7	4
261-692074	4	1
261-698704	7	7
261-659170	3	1
261-888148	3	3
261-817281	3	1
261-911851	4	1
261-846268	5	3
262-142542	3	1
261-848499	6	2
261-893574	3	1
261-698754	4	2
263-323187	7	1
261-890562	4	2
263-363068	4	2
261-856867	4	2
261-871380	4	2
263-376017	2	1
263-351059	3	2
261-897769	3	2
261-882781	3	1
261-770452	7	2
263-335607	5	4
261-771182	2	1
262-162822	3	-
261-824547	2	1
261-892617	3	2
263-403391	2	-

SCHEDULE OF REQUESTS TO EXTEND SALES CONTRACTS' CLOSING DATES (CONT.)

FHA case number	Number of extensions	Number of late extension requests
261-749199	5	2
263-328193	3	1
261-743090	4	1
261-904785	4	1
262-151764	6	2
262-112491	3	-
261-862691	6	-
261-868064	4	2
261-865081	3	1
263-357109	4	2
261-689471	8	7
261-900348	6	3
261-867041	4	2
261-795671	3	1
261-664851	3	2
263-358404	7	5
261-592036	3	2
262-160297	3	2
261-891421	3	-
261-859475	4	-
262-151588	6	-
263-315559	8	2
261-881002	4	2
261-879787	18	8
261-920141	5	3
261-885865	10	5
261-901060	7	3
263-403351	6	-
261-870493	4	3
261-850457	3	2
262-156123	6	-
261-827607	17	5
262-162901	4	2
263-373355	6	2
261-862448	2	-
261-884584	5	2
261-835322	1	-
263-350138	8	4
261-750965	16	9
261-887818	4	-
261-704715	8	-
262-152710	3	-
261-859023	4	1
261-800139	3	-
262-163233	16	1
261-902751	16	1
261-695757	7	5
263-376898	3	-
261-895564	4	-
261-842882	4	-
263-379807	3	-
261-807911	4	-

**SCHEDULE OF REQUESTS TO EXTEND SALES
CONTRACTS' CLOSING DATES (CONT.)**

FHA case number	Number of extensions	Number of late extension requests
261-909949	4	-
261-750698	9	2
261-850318	14	2
261-611075	5	2
261-875945	2	-
261-787790	12	1
261-753909	8	1
261-904663	6	1
263-343682	8	4
263-378743	4	-
263-354725	8	4
262-160803	5	1
261-778987	13	-
Totals	<u>601</u>	<u>216</u>

Appendix F

SCHEDULE OF CLOSING DELAYS RESULTING FROM APPROVED CONTRACT EXTENSION REQUESTS

FHA case number	Extensions for presale inspections	Days delayed	Extensions for lead-based paint stabilization	Days delayed	Extensions without justification	Days delayed	Extensions for other closing-related issues	Days delayed	Canceled sale
261-848499	4	45							
263-357109	4	77							
261-592036	3	36							
261-756582	1	45							
261-899093	5	67							
261-824547	2	40							
261-771182	1	30							
261-750698	9	180							X
261-778987	13	195							X
261-850318	1	30							X
263-323187*	7	54							
261-902751	16	240							X
261-827607	17	253							X
261-753909	8	105							
261-692074	2	30							
261-885865	10	137							X
261-865081	3	41							
262-163233	16	240							
261-904785	4	49							
261-887818	3	30							
263-373355	6	84							
261-842882	4	45							
262-162901	4	55							
262-156123	6	87							
261-695757	5	60							
261-850457	3	42							
263-358404			7	102					
261-774667			2	30	1	16			
263-363068			4	52					
263-351059			3	36					
261-890562			4	57					
261-763674							12	104	
263-382645					2	24	1	15	
262-151764					2	45			
261-887527					2	30			
261-905620					1	15	5	43	
261-900348	3	30					1	17	
261-862691	3	45	2	22					
262-151588***	24	507							X
261-897769	3	45							
261-888148	2	29			1	6			
261-881946	1	15			2	18	2	30	
261-689471	1	15			3	45			
261-889927	3	45			1	14			

**SCHEDULE OF CLOSING DELAYS RESULTING FROM APPROVED
CONTRACT EXTENSION REQUESTS (CONT.)**

FHA case number	Extensions for presale inspections	Days delayed	Extensions for lead-based paint stabilization	Days delayed	Extensions without justification	Days delayed	Extensions for other closing-related issues	Days delayed	Cancelled sale
261-698754	3	45							
261-647640	2	30			1	15			
261-867041	4	52							
261-817281	3	40							
261-659170	3	39							
261-784563	4	38							
261-879787	18	345							
261-803096	9	150							
261-749199	5	74							
261-901219	3	45							
261-800428	6	121			4	60			
261-879813	4	32			1	25			
261-871380	2	30			2	8			
261-770452	7	103							
261-883094	3	60							
261-882781	3	31							
261-846268	4	60			1	8			
261-834221	5	43							
261-761819	4	43							
261-892617	3	38							
261-743090	2	30							
261-795671	2	45							
261-856867	4	42							
261-868064	4	41							
261-787790	12	219							X
263-376017			3	37					
261-704715							4	45	X
261-884584									X
263-403351			5	75					
261-800139									X
263-379807									X
261-870493			4	68					
263-335607**			5	36			3	37	X
261-611075			4	45					
263-378743									X
261-859475			<u>2</u>	<u>30</u>					
261-859023							<u>4</u>	<u>15</u>	
261-835322									X
261-807911									X
261-862448									X
261-875945									X
262-160297	3	31							
261-893574	3	32							
261-698704	<u>6</u>	<u>15</u>			<u>1</u>	<u>16</u>			
Totals	<u>328</u>	<u>4,902</u>	<u>45</u>	<u>590</u>	<u>25</u>	<u>345</u>	<u>32</u>	<u>306</u>	<u>18</u>

Legend

*Inspection ordered before the sale

**Loss on cancellation of sale \$15,272

***Loss on cancellation of sale \$32,675

****32 plus 25 equals 57 (amount contained in audit report page 8)

Appendix G

SCHEDULE OF DELAYED SALES CLOSINGS DUE TO UNTIMELY CORRECTIVE ACTION

FHA case number	Lead based paint delays	Unresolved issues
263-358404	X	
261-774667	X	
263-363068	X	
263-351059	X	
261-890562	X	
261-862691	X	
263-376017	X	
263-403351	X	
261-870493	X	
263-335607	X	X
261-611075	X	
261-859475	X	
261-763674		X
263-382645		X
261-905620		X
261-900348		X
261-881946		X
261-704715		X
261-859023		X
Count	<u>12</u>	<u>8</u>

Appendix H

SCHEDULE OF DELAYED SALES CLOSINGS NOT REPORTED TO HUD

FHA case number	Number of days delayed	Closing delays not reported to HUD
261-883094	60	X
261-901219	45	X
261-803096	150	X
261-899093	67	X
261-647640	85	X
261-784563	38	X
261-800428	181	X
261-763674	119	X
261-834221	43	X
261-889927	59	X
261-887527	45	X
261-881946	78	X
261-879813	57	X
261-761819	43	X
261-756582	75	X
261-905620	73	X
261-692074	59	X
261-698704	31	X
261-659170	39	X
261-888148	35	X
261-817281	40	X
262-142542	34	X
261-848499	50	X
261-893574	32	X
261-698754	54	X
263-323187	54	X
261-890562	57	X
263-363068	52	X
261-856867	42	X
261-871380	38	X
263-376017	37	X
263-351059	36	X
261-897769	45	X
261-882781	31	X
261-770452	103	X
261-771182	45	X
261-824547	40	X
261-892617	38	X
261-749199	74	X
261-743090	59	X
261-904785	49	X
262-151764	67	X
261-862691	82	X
261-868064	41	X
261-865081	41	X
263-357109	77	X
261-689471	113	X
261-900348	153	X
261-867041	52	X
261-795671	58	X

**SCHEDULE OF DELAYED SALES CLOSINGS
NOT REPORTED TO HUD (CONT.)**

FHA case number	Number of days delayed	Closing delays not reported to HUD
262-160297	31	X
262-151588	507	X
263-315559	116	X
261-750698	188	X
261-850318	211	X
261-787790	234	X
261-753909	116	X
263-354725	116	X
261-778987	207	X
263-358404	102	X
261-592036	36	X
Total		<u>61</u>