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Audit Report Number	2010-KC-1007
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TO: Cliff Taffet, Director, Office of Affordable Housing, DGH

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FROM: Ronald J. Hosking, Regional Inspector General for Audit, 7AGA

SUBJECT: The Missouri Housing Development Commission Did Not Always Obtain Required Documents and Properly Report on the Tax Credit Assistance Program Funded Under the Recovery Act

## **HIGHLIGHTS**

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

We audited the Missouri Housing Development Commission (Commission) because it received and disbursed the largest amount of American Recovery and Reinvestment Act of 2009 (Recovery Act) funds in Region VII. The Commission received nearly \$39 million in Tax Credit Assistance Program (TCAP) funds and had disbursed more than \$14 million of these funds as of May 3, 2010. Our objectives were to determine whether the Commission obtained wage reports and lobbying certifications required by Federal law and accurately reported job creation to Recovery.gov.

### **What We Found**

The Commission did not obtain and review all Davis-Bacon Act reports and lobbying certifications from contractors working on TCAP-funded projects. Therefore, it could not determine whether its contractors complied with Federal wage rate requirements and lobbying prohibitions. Additionally, it did not accurately report job creation data to Recovery.gov. As a result, the number of

jobs created for the fourth quarter of 2009 was overreported by 0.16 and was underreported for first and second quarters of 2010 by 12.6 and 1.31, respectively.

### **What We Recommend**

We recommend that the U. S. Department of Housing and Urban Development (HUD) require the Commission to design and implement a system for identifying contractors working during the month on TCAP-funded projects and tracking the receipt of required documentation. Additionally, the Commission should obtain and review the required lobbying certifications and Davis-Bacon Act files that are missing.

Further, we recommend that HUD require the Commission to restate its fourth quarter 2009 and first quarter 2010 job creation figures in its administrative files. Also, the Commission should restate its second quarter jobs creation figures to Recovery.gov during the continuous correction period and establish an adequate system for reviewing the job creation reports to ensure proper reporting in future quarters.

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

### **Auditee's Response**

We provided the Commission with our draft report on August 19, 2010. We received its written response on September 3, 2010. The Commission generally agreed with our findings.

The complete text of the auditee's response, along with our evaluation of that response, can be found in appendix A of this report.

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## **BACKGROUND AND OBJECTIVES**

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The Missouri Housing Development Commission (Commission) was established by the 75th Missouri General Assembly in 1969 and is the housing finance agency for the State of Missouri. The Commission operates under a board of commissioners including the governor, lieutenant governor, attorney general, state treasurer, and six persons appointed by the governor with the advice and consent of the Senate. The Commission has invested almost \$4 billion to construct, renovate, and preserve affordable housing.

The Commission functions as a bank, providing financing directly to developers of affordable rental properties and funding for home loans to qualified, first-time buyers. It also administers the Federal and Missouri Low Income Housing Tax Credit (LIHTC) programs and the Federal HOME Investment Partnerships Program (HOME) funds as well as other programs related to its housing finance activities.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) into law. The purpose of the Recovery Act was to jump-start the Nation's economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits. The Recovery Act appropriated \$2.25 billion under the HOME program heading for a Tax Credit Assistance Program (TCAP) grant to provide funds for capital investments in LIHTC projects. The U.S. Department of Housing and Urban Development (HUD) awarded TCAP grants to the 52 State housing credit agencies. On June 26, 2009, HUD awarded the Commission nearly \$39 million in TCAP funds.

Although these funds were appropriated under the HOME heading, TCAP funds are not subject to any HOME requirements other than the environmental review and can only be used in LIHTC projects, which are administered through the U.S. Department of the Treasury. HUD awarded TCAP grants to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009. Since a major purpose of these funds is to immediately create new jobs or save jobs at risk of being lost due to the current economic crisis, the Recovery Act establishes deadlines for the commitment and expenditure of grant funds and requires State housing credit agencies to give priority to projects that will be completed by February 16, 2012.

As of May 26, 2010, the Commission had awarded all of its TCAP funds to 24 LIHTC projects and disbursed more than \$17 million of these funds. The 24 LIHTC projects consist of 12 family and 12 elderly projects, which will create or rehabilitate 1,474 housing units. According to Recovery.gov, the TCAP funds had created 31.11 jobs as of May 31, 2010.

Our objectives were to determine whether the Commission obtained wage reports and lobbying certifications required by Federal law and accurately reported job creation to Recovery.gov.

## RESULTS OF AUDIT

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### Finding 1: The Commission Did Not Obtain All Wage Reports and Lobbying Certifications Required by Federal Law

The Commission did not obtain all wage reports and lobbying certifications required by Federal law. This deficiency occurred because the Commission did not have an adequate system in place to identify which contractors worked on TCAP-funded projects each month. As a result, it could not determine whether its contractors complied with Federal wage rate requirements and lobbying prohibitions.

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#### **The Commission Did Not Meet Federal Law Requirements**

The Commission did not obtain all Davis-Bacon Act wage reports and lobbying certifications required by Federal law. Specifically, for the three projects reviewed, the Commission did not obtain Davis-Bacon Act files for 5 contractors and lobbying certifications for 5 contractors.

Section 1606 of the Recovery Act states that the Davis-Bacon Act prevailing wage requirement applies to Recovery Act-appropriated construction projects. Requirements at 40 U.S.C. (United States Code) Section 3145 and 29 CFR (Code of Federal Regulations) Part 3 state that contractors and subcontractors on covered projects must pay all laborers and mechanics weekly and submit weekly certified payroll records to the contracting or administering agency.

Further, in accordance with 24 CFR Part 87, TCAP funds may not be used for lobbying activities. To comply with this requirement, all TCAP contractors and subcontractors that receive more than \$100,000 in TCAP funds must submit a certification for contracts, grants, loans, and cooperative agreements.

#### **The Commission Relied on the Contractors To Supply All Required Documentation**

The Commission did not have an adequate system in place to identify which contractors worked on TCAP-funded projects each month. It relied on the general contractors of each project to supply all required documentation for the contractors. While the Commission did obtain a list of contractors working on the projects, the list used for Davis-Bacon monitoring did not indicate which contractors worked each month. Therefore, the Commission could not determine

what documentation was required and what documentation was missing on a monthly basis.

### **The Commission Could Not Determine Compliance**

As a result of the conditions described above, the Commission could not determine whether its contractors complied with Federal wage rate requirements and lobbying prohibitions. It needed to review these documents to ensure that the contractors paid the proper wage rates and were not lobbying.

### **Recommendations**

We recommend that the Director of Office of Affordable Housing require the Commission to

- 1A. Design and implement an adequate system for identifying contractors working on TCAP-funded projects during the month and tracking the receipt of required documentation.
- 1B. Obtain and review the required lobbying and Davis-Bacon Act reports that are missing.

## Finding 2: The Commission Inaccurately Reported Job Creation to Recovery.gov

The Commission did not accurately calculate jobs or report them to Recovery.gov. This deficiency occurred because the Commission did not establish an adequate system for reviewing the job creation reports supplied by the contractors and was unaware of changes to the job calculation methodology. As a result, the public did not have access to accurate information on the number of jobs created with the Commission's TCAP funds.

### Job Creation Calculations Did Not Follow HUD and OMB Guidance

The Commission did not accurately calculate or report jobs to Recovery.gov. It incorrectly reported for the fourth quarter of 2009, the first quarter of 2010, and the second quarter of 2010.

	Jobs reported to Recovery.gov	Corrected calculation	Difference
Quarter 4 2009	4.82	4.66	.16
Quarter 1 2010	31.11	43.71	(12.6)
Quarter 2 2010	80.22	81.53	(1.31)

The Commission used an outdated job calculator to calculate the number of jobs created in the fourth quarter of 2009. According to Office of Management and Budget (OMB) Memorandum 10-08, the job calculation methodology had been updated as of December 18, 2009. The new job calculation methodology was simplified from prior guidance and included dividing the total number of hours worked and funded by the Recovery Act within the reporting quarter by quarterly hours in a full-time schedule. The result of the calculation is the full-time-equivalent jobs reported to Recovery.gov.

Additionally, the Commission underreported jobs created for the first quarter of 2010 by 12.6. It continued to use the outdated job calculator, and it used the wrong percentage of TCAP funds to calculate the number of jobs. According to OMB Memorandum 10-08, if not all jobs were funded by the Recovery Act, an adjustment is made to the jobs number to match the appropriate percentage of Recovery Act funding. The Commission used the wrong percentage of TCAP funds for three projects during the first quarter of 2010. Further, a project's job creation report was submitted using a 28-hour full-time work week, although the project's contractors worked a 40-hour full-time work week.

The Commission underreported jobs created during the second quarter of 2010 by 1.31. It used the wrong percentage of TCAP funds for one project. In addition, the job calculators for five of the projects did not accurately calculate and report jobs

created. The job calculators did not show any jobs created for some of the contractors with hours worked in the quarter and did not accurately calculate the number of jobs for the quarter.

### **The Commission Relied on the Contractor's Report of Jobs Created and Was Unaware of Changes to Calculation Method**

The Commission did not establish an adequate system for reviewing the reports supplied by its contractors. It relied on the contractors' reports of jobs created and did not have a system in place to review the reports for accuracy and consistency, resulting in several undetected errors. The Commission compiled the total number of jobs reported by each general contractor without reviewing the various line items on the report. If it had, it would have been able to catch the errors, such as the 28-hour work week and the various blank lines where the totals had not carried forward from one line to the next.

In addition, although OMB had updated the job calculation methodology, effective December 2009, the Commission did not become aware of the changes until April 2010 when it received an e-mail from HUD containing updated job count guidance. The Commission stated that it checked for updates to TCAP guidance but was not aware of all available sources of information.

### **Recovery Act Goals Were Not Achieved**

As a result of the conditions described above, the public did not have access to accurate information on the number of jobs created with the Commission's TCAP funds. One of the overriding goals of the Recovery Act—fostering unprecedented levels of accountability and transparency in government spending—was not achieved. It was expected that the transparency requirements of the Recovery Act, specifically the requirement to publish both spending and recipient performance reports including jobs created, would create accountability among grantees.

## Recommendations

We recommend that the Director of Office of Affordable Housing require the Commission to

- 2A. Maintain within its administrative records comprehensive information on corrections to job creation figures for the fourth quarter of 2009 and the first quarter of 2010.
- 2B. Restate the job creation figures for the second quarter of 2010 to [FederalReporting.gov](http://FederalReporting.gov).
- 2C. Establish and implement an adequate system for reviewing the job creation reports received from contractors.

## SCOPE AND METHODOLOGY

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To accomplish our objectives, we reviewed the selected project's written agreements, the Federal law requirements and supporting documentation, the Commission's policies and procedures, the results of prior certified public accountant reviews, the reporting to Recovery.gov, and pertinent laws and regulations. We also interviewed Commission and HUD staff.

On June 26, 2009, HUD awarded the Commission nearly \$39 million in TCAP funds. Based on the spreadsheet obtained from the Commission as of May 26, 2010, it had awarded all of its TCAP funds to 24 LIHTC projects and disbursed more than \$17 million of these funds. To compile our Federal reporting review sample of three projects, we selected (1) the project that had drawn down all of its TCAP funds, (2) the project that had not drawn down any TCAP funds, and (3) the project that was awarded and drew down the largest amount of TCAP funds. We reviewed these projects' files for evidence of Federal reporting requirements including lobbying and Davis-Bacon Act documentation.

We also reviewed all of the projects to verify job creation figures that the Commission reported to Recovery.gov. To accomplish this task, we obtained and reviewed the job calculators for each of the projects for the fourth quarter of 2009 and the first and second quarters of 2010. We determined that the Commission used an outdated job calculator for the fourth quarter of 2009 and the first quarter of 2010; therefore, we reran the job creation figures on an updated calculator. We also reran the job creation figures for the second quarter of 2010 because the calculators supplied by the contractors inaccurately calculated and reported jobs created.

Also, during our review of job creation, we recalculated the percentage of TCAP funds used in the job creation calculation. Our review of the calculators and calculations determined that the Commission used the wrong percentage of TCAP funds and the incorrect number of full-time hours in a work week for several TCAP projects.

Our audit period generally covered May 2009 through April 2010. We expanded the period as necessary to address issues identified during our review. We performed audit work from May through August 2010 at the Commission's office at 3435 Broadway, Kansas City, MO.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# INTERNAL CONTROLS

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Internal control is 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.

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## Relevant Internal Controls

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

- Controls to ensure compliance with HUD and Recovery Act requirements.
- Controls over the reporting of TCAP grant information to Recovery.gov.

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 Deficiencies

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

- The Commission did not have an adequate system in place to identify which contractors worked on TCAP-funded projects each month (finding 1).
- The Commission did not have an adequate system in place to review the job creation reports supplied by the contractors (finding 2).

# APPENDIXES

## Appendix A

### AUDITEE COMMENTS AND OIG'S EVALUATION

#### Ref to OIG Evaluation

#### Auditee Comments

September 3, 2010



Mr. Ronald J. Hosking  
Regional Inspector General for Audit  
U.S. Department of Housing and Urban Development  
Office of Inspector General  
Region VII Office of Audit  
Gateway Tower II – 5<sup>th</sup> Floor  
400 State Avenue  
Kansas City, KS 66101-2406

Re: Discussion Draft of HUD OIG Audit of  
Missouri Housing Development Commission's  
Tax Credit Assistance Program

Dear Mr. Hosking:

Thank you for giving to the Missouri Housing Development Commission (the "Commission") the opportunity to respond to the draft audit report prepared by the Office of the Inspector General (the "OIG") of the U.S. Department of Housing and Urban Development ("HUD") with respect to the audit recently performed on the Commission's Tax Credit Assistance Program ("TCAP").

Among its other functions, the Commission administers the Federal and the Missouri Low Income Housing Tax Credit (LIHTC) programs for the State of Missouri. The American Recovery and Reinvestment Act of 2009 (the "Recovery Act") included an appropriation in the amount of \$2.25 billion for TCAP funds to be awarded by HUD to the 52 State housing credit agencies, including the Commission, to be used for capital investments in LIHTC projects. The Commission awarded its allocation of TCAP funds to 24 LIHTC developments, consisting of 12 family and 12 elderly projects, which involve the creation or rehabilitation of 1,474 housing units in the State of Missouri.

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 1**

A major purpose of the Recovery Act was to jump-start the Nation's economy, with a primary focus on creating and saving jobs in the near term while also investing in infrastructure that will provide long-term economic benefits. Thus, the purpose of the OIG audit was to review the Commission's oversight of the TCAP funds awarded to the 24 LIHTC projects mentioned above, to confirm that workers on the projects received Davis-Bacon prevailing wages, that TCAP funds were not being used for lobbying activities, and that accurate reports of job creation were provided to Recovery.gov.

To confirm that these requirements were being satisfied, the Commission assigned various responsibilities to its staff members, including the following:

1. The Commission assigned to one of its employees the responsibility to review the weekly certified payrolls of the contractors and subcontractors on all projects to confirm that each of the workers was being paid the prevailing wage rate required by the Davis-Bacon Act.

2. In addition, the Commission designed a form titled "Master Subcontract List" that required the contractor to provide the full name of each subcontractor used on the project; to specify whether the subcontractor qualified as a Section 3, WBE, MBE, or DBE subcontractor; to list the date of the subcontract as well as the date on which the subcontract work began or was scheduled to begin; to identify all subcontracts exceeding \$100,000 in amount so that the Commission could obtain anti-lobbying certifications from each such subcontractor; and to note those months during which each subcontractor provided labor or materials to the project.

3. The Commission required the contractor on each project to update the Master Subcontract List on a monthly basis, to allow the Commission to (1) track the dates on which each subcontractor was providing labor or materials to the project so that the Commission could confirm that it was receiving Davis-Bacon certified payrolls from all such subcontractors during the month in question, and (2) obtain lobbying certification forms from all subcontractors working on the project at any time whose subcontracts exceeded \$100,000.

4. In addition, the Commission electronically forwarded the HUD job calculator to the contractors on a quarterly basis and required each of them to provide the total number of hours worked during that quarter. The Commission also required the owners of each project to certify the accuracy and completeness of the information provided by the contractors. After receipt of this information from the contractors/owners, the Commission entered into the job calculator the TCAP percentage applicable to the project in question, and reported the result to Recovery.gov.

**Ref to OIG Evaluation**

**Auditee Comments**

Having reviewed the OIG’s draft audit report, the Commission intends to implement the recommendations made therein, to further confirm the accuracy and completeness of the project information received by the Commission and provided to FederalReporting.gov.

Specifically, the OIG’s Audit Finding 1 states that “The Commission did not obtain all wage reports and lobbying certifications required by Federal law.” The associated Recommendations are that the Commission “design and implement an adequate system for identifying contractors working on TCAP-funded projects during the month and tracking the receipt of required documentation,” and that the Commission “obtain and review the required lobbying and Davis-Bacon Act reports that are missing.”

**Comment 2**

In response to these Recommendations, the Commission is in the process of obtaining and reviewing any missing Davis-Bacon Act certified payrolls and lobbying certifications. In addition, the Commission has designed and is implementing additional safeguards to confirm the receipt of all required documentation.

**Comment 2**

Specifically, the Commission will require all contractors to complete the “Master Subcontract List” form on a weekly basis and provide it to the Commission, along with all associated Davis-Bacon certified payrolls, with the Master Subcontract List and the payrolls to be accompanied by a certification from both the contractor and the owner to the effect that the list is an accurate and complete statement of all subcontractors who have provided labor and materials to the project for the week in question and that all associated Davis-Bacon certified payrolls have been provided to the Commission. Upon receipt of this information, the Commission’s employees will continue to confirm that (1) each worker listed on the certified payrolls has been paid the appropriate prevailing wage, and (2) that the Commission has received lobbying certifications from each subcontractor on the “Master Subcontract List” whose subcontract amount exceeds \$100,000.

The OIG’s Audit Finding 2 states that “the Commission did not accurately calculate jobs or report them to Recovery.gov,” while the associated Recommendations suggest that the Commission (a) “Maintain within its administrative records comprehensive information on corrections to job creation figures for the fourth quarter of 2009 and the first quarter of 2010”; (b) “Restate the job creation figures for the second quarter of 2010 to FederalReporting.gov”; and (c) “Establish and implement an adequate system for reviewing the job creation reports received from contractors.”

**Ref to OIG Evaluation**

**Auditee Comments**

**Comment 2**

The Commission has satisfied Recommendations (a) and (b) above, and is in the process of implementing Recommendation (c) above. Specifically, the Commission will now provide the HUD job calculator to the contractors on a weekly basis and require them to include in the calculator the total number of hours worked by all subcontractors on the project for the week in question, with this information to be certified by the contractor and the owner. When this information has been received, an MHDC employee will include in the job calculator the applicable TCAP percentage for the project in question. The information received from the contractor as to the hours worked will be verified by a second MHDC employee, who will confirm that the hours worked on the project corresponds to the number of hours shown on the subcontractors' certified payrolls provided for the week in question. This second MHDC employee also will confirm that the proper TCAP percentage amount has been included in the HUD job calculator.

In this way, the Commission believes that it will be able to provide complete and accurate information to the American people with respect to the number of jobs created by the TCAP funds appropriated under the Recovery Act, as well as to confirm that the workers received appropriate Davis-Bacon prevailing wage payments and that the TCAP funds provided were not used inappropriately for lobbying activities.

Once again, the Missouri Housing Development Commission wants to extend its sincere appreciation to the U.S. Department of Housing and Urban Development, as well as its Office of the Inspector General, for its oversight of the Commission's administration of the TCAP funds to ensure their proper disbursement in support of our Nation's recovery from the current economic crisis.

Very truly yours,

Margaret D. Lineberry  
Executive Director

### **OIG Evaluation of Auditee Comments**

- Comment 1** As noted in the report, this subcontractor list was not being used for Davis-Bacon monitoring and review.
- Comment 2** The Commission has taken positive steps to implement the recommendations, including second reviews of job calculators and weekly reporting for Davis-Bacon and lobbying. With the implementation of these recommendations, the Commission will have better oversight of the TCAP.